Bloomberg BNA

Corporate Law & Accountability Report™

DISCLOSURE

Boards Should Treat Corporate Political Spending as a Strategic and Reputation Risk Issue: The Conference Board Governance Center's Chia

Douglas K. Chia is the executive director of The Conference Board Governance Center, an independent global research organization. In an interview with Bloomberg BNA's Michael Greene, Chia discussed issues public companies face in evaluating their policies and practices with respect to corporate political spending. The Conference Board last year issued a report on the topic.

BLOOMBERG BNA: What is the proper role of the board when it comes to corporate political spending? How involved should directors be?

Douglas Chia: It's really the duty of the board to understand what the company's strategy is with regard to political activity, whether that's lobbying or political contributions.

Obviously it is going to depend on the industry and what's going on at the time. For example, a few years ago if you were a company in the health-care industry at the time Congress was in the process of major regulatory reform, it clearly made sense for the board to be heavily engaged. It's an external factor that potentially could fundamentally alter the company's business.

If a company doesn't have much stake in what's going on politically and yet it's spending significant resources on contributing to certain candidates, the board is obviously going to want to understand why that is the case.

That ties into the oversight. With regard to political spending, it's not always easily obtained information. If you have activity at the federal, state and municipal level, a company might not have all of the data rolled up in one to present to the board.

This is where the board or a committee should at least once a year be asking for a report from management about political activity. Some years it can be more detailed than others, but part of it is making management go through the exercise of collecting the data that the board would like to see in a report, and that's part of their oversight role.

BBNA: What should the board be doing when it comes to political spending and lobbying disclosures? What is the board's role?

Chia: It's more about risk management at this point. Once the board is convinced the company has the right strategy when it comes to political contributions, then you turn to the issue of disclosure.

Douglas K. Chia

Chia joined The Conference Board in February 2016. Before that, he was assistant general counsel and corporate secretary of Johnson & Johnson. Before joining Johnson & Johnson in 2005, Chia was an assistant general counsel for Tyco International, and also practiced law at the global firms Simpson Thacher & Bartlett and Clifford Chance, both in New York and Hong Kong. He has held a number leadership positions in the corporate governance field, including chair of the board of directors of the Society of Corporate Secretaries and Governance Professionals and president of the Stockholder Relations Society of New York. Chia is a member of the American Bar Association Corporate Laws Committee and the National Asian Pacific American Bar Association.

Obviously, complying with existing disclosure laws is the most important thing. Then it becomes more of a cost-benefit risk analysis in terms of what's the risk of disclosing and what's the risk of not disclosing.

Despite what people say, there's quite a bit of cost involved in compiling this information so that it can be disclosed to the public, especially since there is no margin of error. Companies have to get it right and in order to get it right, you need to spend the proper time to do that.

In terms of the risks of disclosure, there are risks that a certain segment of the population is not going to like the fact that you contributed to certain candidates.

Political contributions can also be revealing of a company's strategy of where it plans to move its business in the future. Political contributions can give competitors clues into where the company is positioning itself.

There are a lot of factors involved and that's what the board has to understand in terms of disclosures. There are going to be pressures to disclose, but there could be very good reasons why the company is hesitant to do that.

BBNA: What are some things companies should disclose? What are some things companies aren't required to disclose but should anyway?

Chia: It starts with looking at what's already publicly available. For companies that make political contributions or have PACs that make political contributions, there already are disclosure laws out there from the Federal Election Commission and the states. At the beginning, what many investors were asking for was that companies compile that information and put it on their websites.

For a company, that arguably shouldn't be a very difficult task and that should satisfy a lot of investors. In terms of going beyond, there are types of contributions that aren't required to be disclosed.

Companies aren't required to disclose contributions to independent organizations that then go lobby or make their own political contributions. A good example of where investors are really interested in knowing more is if the company contributes to a group like the U.S. Chamber of Commerce. Thousands of companies, both public and private, are members of the Chamber, and the money they contribute is in the form of membership dues.

However, trade associations have no obligation to tell members how much they are spending on political activity. You might threaten to drop out but there are consequences to dropping out. Those trade associations tend to be very effective, and are very good sources of information for the company. So if a company drops out, it's losing the benefit of that membership, and the trade association might just be fine with you dropping out.

Most companies are going to weigh all of that and take some kind of middle ground to satisfy what mainstream investors want. But companies are always going to be wary of special interest investors asking for specific disclosures on issues that don't seem core to the company's business.

BBNA: What are some common mistakes companies or directors make regarding corporate political spending?

Chia: The fact is that in the grand scheme of things, corporate political contributions are not a very big chunk of all the money in the political system. When people talk about corporate money affecting politics, the contributions by public corporations are not that big. Very wealthy individuals are the bigger players.

With that being said, a director might feel this is such a small thing and is really a non-issue. To a larger extent, mainstream investors are not that interested in this issue in terms of how a company is spending its money on political contributions. But the fact is that there is a significantly loud investor population that does care. If you look at the shareholder proposals in this area, you see that these proposals tend get decent levels of support.

A common misperception is that investors don't care. That's a very simplistic way of looking at it without digging into some of the details of what the actual level of support is, who the support is coming from, and what's driving that support. The investors that are supporting these proposals tend to be more vocal. They tend to be ones that are quicker to use the media and other public forums to highlight this issue.

BBNA: What are some things companies can do to be proactive? What are some forward-looking actions companies can take to stay ahead of the game?

Chia: The companies that understand this issue realize it's not going to die down. It's not just an election-year issue where after November, people are largely going to forget about it.

Some would even say it's not even a *Citizens United* [*v. Federal Election Commission*, 558 U.S. 310] issue. *Citizens United* got people to rally around it but even if the decision were repealed, this issue is still going to be there.

Some companies realize this issue is going to stay for a while and the pressure is only going to increase, which means the trend is going to move towards more disclosure.

The smart companies are looking at their internal processes and asking, ''Do we have systems in place to collect all of this information to not only satisfy the board but also eventually to satisfy investors?''

Practically speaking, that's what companies should be thinking about, but also naturally looking at the regulatory environment as well.

There is also pressure on the [Securities and Exchange Commission] to require disclosures about political contributions. It's obviously a hot button item for members of Congress and so there is risk there are going to be mandated disclosures.

   ISSN 2330-6300