



## Political Transparency and Accountability Profile (2012)

### Mylan (MYL)

[www.mylan.com](http://www.mylan.com)

Sector: Health Care

Report Date: March 5, 2012

#### Summary Findings on Mylan

**Room for Improvement:** Mylan's political contributions policy is only available in its code of ethics, and primarily focuses on employees' responsibilities with regard to political activity. There is no information on the use of corporate funds for political expenditures. There is no process for political spending decision making and general counsel review listed in the policy and no mention of regular board oversight of the company's political spending. The company does not disclose on its website its political expenditures made with corporate funds, nor does it disclose its memberships in or payments to trade associations and other tax-exempt groups.

#### Recent Corporate Political Spending Developments

The January 2010 U.S. Supreme Court decision in *Citizens United v. Federal Election Commission* overturned several long-standing restrictions on corporate political spending activities. The Court's decision struck down part of the Tillman Act of 1907 that first limited corporate political spending. Under the new ruling, companies may spend unlimited corporate funds on independent expenditures to support or oppose a candidate as long as they do not coordinate their efforts with the candidates, although they are still prohibited from contributing directly to federal candidates.

Companies may also continue to give at the state and local level and to 527 groups. These groups—named for the section of the tax code under which they are organized—raise money for political purposes and may significantly impact federal, state and local elections. Companies engage in indirect political spending through their payments to trade associations, organized as 501(c)(6) organizations, and other tax-exempt groups, including social welfare organizations known as 501(c)(4)s and Super PACs. Trade associations and 501(c)(4) groups gained popularity during the 2008 election cycle in the wake of the Federal Election Commission's crackdown on 527 groups for violating campaign finance law during 2004 elections,<sup>1</sup> and may use unlimited general purposes funds for independent expenditures. Another way companies can contribute to the political process is by supporting events such as Presidential inauguration celebrations and the Republican or Democratic Party conventions, a growing source of corporate support in recent years.<sup>2</sup> Company funds are also used to pay for trade associations' grassroots lobbying communications.

#### I. Mylan's Political Spending Policy and Activity: Overview

Mylan's political spending policy is only found in its code of ethics, and deals primarily with employee political activity. The policy does not describe whether there is board oversight of corporate political contributions, and the company does not disclose its political contributions on its website. Mylan appears to focus most of its political

<sup>1</sup> See *Soft Money in the 2006 Election and the Outlook for 2008: The Changing Nonprofits Landscape*, Campaign Finance Institute, 2007. Approximately \$90 million in 501(c) spending on federal election activities was reported in 2006. T.W. Farnam & Brody Mullins, "Interest-Group Campaign Spending Nears Record", *Wall Street Journal*, Feb. 5, 2008.

<sup>2</sup> See "Inside Fundraising for the 2008 Party Conventions: Party Surrogates Gather Soft Money While Federal Regulators Turn a Blind Eye," The Campaign Finance Institute, 2008. See: "The Inauguration: Brought to you by the Few, the Wealthy," Public Citizen, Jan. 14, 2009 available at <http://www.citizen.org/pressroom/release.cfm?ID=2799>, and "Lawmakers and Lobbyists Celebrate Inauguration," *The Washington Independent*, Jan. 20, 2009, available at <http://washingtonindependent.com/26340/lawmakers-celebrate-inauguration-with-lobbyists>).

expenditures on 527 groups over contributions at the state or local level, according to CPA research available later in this report. The company provides little information about its political activity and does not appear to have any formal oversight process for political activities.

The company has spent approximately \$649,000 in corporate funds on political activities since 2002, according to publicly available data.<sup>3</sup> The exact figure is difficult to determine because reporting at the state level is incomplete and can be misleading, and companies are not required to disclose other types of spending such as their indirect political purpose expenditures via third party groups. The above estimate also excludes payments Mylan has made to trade associations or other tax-exempt organizations that fund political activities. These gaps in transparency and accountability may expose the company to reputational and business risks that could threaten shareholder value.<sup>4</sup>

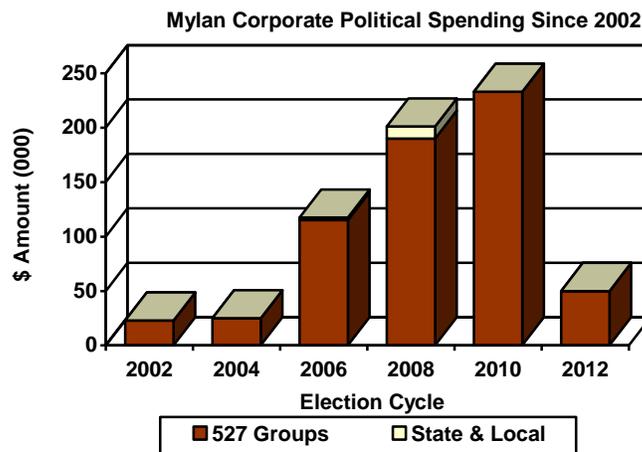
A growing number of companies have adopted disclosure and oversight of their political spending. Currently 90 companies in the S&P 500, including more than half in the S&P 100, have committed to disclosure of their political spending policies, the details of the spending, and oversight. Among sector-related companies, the following have committed to or currently disclose the above information pursuant to this model:

Health Care-Related Companies With Model Disclosure and Oversight		
Johnson & Johnson	Merck	Pfizer

## II. Election Cycle Spending

Mylan has contributed approximately \$636,000 to 527 groups and \$13,000 to state level recipients since the 2002 election cycle.<sup>5</sup> See Figure 1.

Figure 1



### 527 Spending

The Democratic and Republican Governors Associations were among the primary 527 groups in receipt of company donations during these years. Similar groups which received significant donations from Mylan include the Republican State Leadership Committee, the Democratic Senatorial Campaign Committee, and the National Republican Congressional Committee. The RGA was criticized in mid-2008 for raising uncapped donations in the

<sup>3</sup> See Institute for Money in State Politics, [www.followthemoney.org](http://www.followthemoney.org) and CQMoneylne <http://moneyline.cq.com/pml/home.do>. The CPA used these databases to conduct searches on the company's political giving. The search results do not always distinguish between contributions made with corporate funds and those made by the company PAC. Though the CPA made every effort to exclude any PAC contributions, the figure cited in this report may include contributions made with employee funds.

<sup>4</sup> *The Green Canary: Alerting Shareholders and Protecting Their Investments*, Center for Political Accountability, Feb. 2005. See also *Hidden Rivers: How Trade Associations Conceal Corporate Political Spending, Its Threat to Companies, and What Shareholders Can Do*, Center for Political Accountability, May 2006.

<sup>5</sup> See Institute for Money in State Politics, [www.followthemoney.org](http://www.followthemoney.org) and CQMoneylne <http://moneyline.cq.com/pml/home.do>

2008 presidential election.<sup>6</sup>

### 527 Groups in Receipt of Mylan Funds Since 2002<sup>7</sup>

Group	Total Amount Contributed
Democratic Governors Association	\$308,000
Republican Governors Association	\$275,000
Republican State Leadership Committee	\$30,000
Democratic Senatorial Campaign Committee	\$10,000
National Republican Congressional Committee	\$10,000

### State Level Activity

At the state level, Mylan was politically active in Pennsylvania, West Virginia, and Vermont, contributing to individual candidates. The table below lists the top state recipients.

### Mylan State Level Spending Since 2002<sup>8</sup>

State	Total Amount Contributed
Pennsylvania	\$11,000
West Virginia	\$1,500
Vermont	\$1,000

### Independent Expenditures

The *Citizens United* decision allows corporations to fund independent expenditures using unlimited corporate treasury funds. In July 2010, the CPA and its investor partners surveyed the S&P 500, asking whether the companies intended to engage in independent expenditure activity, and if so, whether they planned on disclosing the expenditures and adopting appropriate oversight procedures. A majority of the responding companies stated that they do not intend to engage in this type of activity, while many respondents declined to state their position or commit to additional disclosure. Others noted that their policies were under review. Mylan did not respond to the letter.

### Other Tax-Exempt Organizations

Newly powerful after the *Citizens United* decision are other tax-exempt organizations that engage in political activities, such as the social welfare organizations that fall under the IRS tax code of 501(c)(4). These organizations can raise and spend unlimited amounts of money on political activities, provided that less than half of their affairs are considered political. These organizations do not have to report their donors, and have become a major conduit for spending by individuals and organizations that do not want their involvement disclosed. The impact of these organizations is already palpable in the landscape of campaign finance. For example, Crossroads GPS, the 501(c)(4) organization that work with the GOP super PAC American Crossroads, raised \$32.6 million in 2010, almost double the amount that the super PAC itself raised, which was \$18.4 million.<sup>9</sup> In comparison, Priorities USA Action, the Democratic super PAC, raised \$4.4 million in 2011, with an undisclosed portion raised by its 501(c)(4) arm, Priorities USA.<sup>10</sup>

An article in the Winter 2012 issue of *The Conference Board Review* highlighted the dangers of such secrecy in campaign finance to corporations. It said, "some of these [c4] groups...are run by political operatives who have close ties to elected officials and who very likely share with them how companies are responding to requests for

<sup>6</sup> Brody Mullins and T.W. Farnam, "McCain Allies Find Finance-Law Holes," *The Wall Street Journal*, Jul. 3, 2008, available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/1369>

<sup>7</sup> CQ PoliticalMoneyline, <http://moneyline.cq.com/pml/home.do>

<sup>8</sup> The Institute for Money in State Politics, [www.followthemoney.org/](http://www.followthemoney.org/)

<sup>9</sup> Kim Barker, Al Shaw, and Ariel Wittenberg, "With Spotlight on Super PAC Dollars, Nonprofits Escape Scrutiny," *Pro Publica*, Feb. 3, 2012, available at <http://www.propublica.org/article/with-spotlight-on-super-pac-dollars-nonprofits-escape-scrutiny>

<sup>10</sup> Ruth Marcus, "Obama Had to Play Super PAC, But Didn't Have to Go All In," *The Tennessean*, Feb. 17, 2012, available at <http://www.tennessean.com/article/20120217/COLUMNIST0150/302170052/Ruth-Marcus-Obama-had-play-super-PAC-didn-t-go-all-in>

contributions... The situation might best be characterized as ‘public anonymity, private disclosure,’ and it leaves companies vulnerable to pressure.”<sup>11</sup>

#### IV. Trade Association Activity

Trade associations serve a variety of purposes. Some engage in political activity through contributions at the state and local level, grassroots lobbying, issue advocacy, and independent expenditures. These activities are funded by dues and other payments from member companies. While not all trade associations are politically active, several major industry groups carry significant political weight.

A complete list of the trade associations or related groups to which Mylan belongs is not publicly available. Most associations only disclose the companies represented on their board of directors, not their entire membership list. Shareholders also do not have access to the amounts Mylan pays to trade associations annually or the portion used for the associations’ political spending.

A Center for Political Accountability review of publicly available information found that Mylan was a member of the following trade association in recent years:

- **Generic Pharmaceutical Association (GPhA):** In 2010, the GPhA reported dues of \$5.0 million and lobbying and political expenditures of \$1.9 million.

It is unclear whether Mylan is a member of the U.S. Chamber of Commerce since the organization does not publicly disclose its members. The following table lists the Chamber’s recent political and lobbying expenditures. The Chamber was one of the biggest spenders in the 2010 midterm elections, spending more than \$50 million.<sup>12</sup> In February 2012, the *Wall Street Journal* reported that the Chamber was launching a \$10 million ad blitz campaign to support “the mostly Republican congressional candidates,” adding that it was “a sign that it isn’t only the presidential race that could see record spending this year.”<sup>13</sup>

U.S. Chamber of Commerce	2006	2007	2008	2009
Reported Dues (\$ millions)	98.9	92.1	118.6	193.4
Lobbying and Political Expenditures (\$ millions)	28.9	30.8	63.1	123.5
<i>Percent of Dues and Payments Used for Lobbying and Political Purposes</i>	29.2	33.4	53.2	63.9

(Source: IRS Form 990s, available at Guidestar.org)

A portion of the company’s payments to these groups likely was used to underwrite some of this political spending. The company could face reputational or business risks from the political activities of trade associations or groups to which it makes payments. This risk is discussed in the *Handbook on Corporate Political Activity*, released by The Conference Board in November 2010. While “corporate leaders are aware that even when their own actions pose little risk,” it notes, “the behavior of suppliers, trade associations, and other third parties has the potential to affect how their organizations are viewed.”<sup>14</sup> Without disclosure of such payments made by the company, shareholders cannot assess these risks.

Inadequate disclosure can be problematic for another reason. Shareholders may not be able to evaluate whether the company’s political giving aligns with the mission and values of the company. “[G]iven the relative freedom trade associations have to engage in political activity, it may be advisable for companies to inquire about how their own payments to trade associations are spent,” the handbook notes. “Without this information about how its

<sup>11</sup> Bruce Freed and Karl Sandstrom, “Dangerous Terrain: How to Manage Corporate Political Spending in a Risky New Environment,” *The Conference Board Review*, Winter 2012

<sup>12</sup> T.W. Farnam, “U.S. Chamber of Commerce begins multi-million dollar ad campaign in congressional races” *The Washington Post*, Feb. 9 2012, available at: [http://www.washingtonpost.com/blogs/election-2012/post/us-chamber-of-commerce-begins-multi-million-dollar-ad-campaign-in-congressional-races/2012/02/09/g1QA1Rr51Q\\_blog.html](http://www.washingtonpost.com/blogs/election-2012/post/us-chamber-of-commerce-begins-multi-million-dollar-ad-campaign-in-congressional-races/2012/02/09/g1QA1Rr51Q_blog.html)

<sup>13</sup> Brody Mullin, “Chamber Starting Early Hill Blitz” *The Wall Street Journal*, Feb. 9 2012, available at: <http://online.wsj.com/article/SB10001424052970203315804577211402026796234.html?KEYWORDS=chamber>

<sup>14</sup> *Handbook on Corporate Political Activity: Emerging Corporate Governance Issues*, The Conference Board, Nov. 2010, p.15. Available at [www.politicalaccountability.net](http://www.politicalaccountability.net)

contributions are spent, a corporation may unwittingly end up supporting politicians or political causes with which the company may not want to be associated. It may also find its funds being used to promote positions that may not be aligned with its values or business strategies.”<sup>15</sup>

## V. Transparency and Accountability Analysis

### **Publicly Disclosed Standards & Procedures Governing Corporate Political Activity**

The CPA derived the following checklist from existing legal standards, best practice standards among leading corporations and policies that ensure protection of shareholder value. Some of the standards and best practices are included in the *Handbook on Corporate Political Activity*.<sup>16</sup> A company that fulfills most of the criteria listed below likely has good governance of its corporate political spending. The CPA relied on information that is disclosed on the company website and therefore publicly available to all investors. A company will not get credit for policies or procedures that are not publicly available.

#### **Industry Comparison**

Pfizer, one of Mylan’s peers, discloses its corporate political contributions semiannually as well as memberships in trade associations and other tax-exempt groups and the nondeductible portion of payments made to those groups. The company states in its policy that it does not use corporate funds to engage in independent expenditures.

Another peer company, Merck, also does not use corporate funds to engage in independent expenditures. Merck’s policy states that contributions can be made using corporate funds, but these expenditures must be “approved by the Company’s General Counsel” and be included “in an annual report from the General Counsel to the Company’s Board of Directors”.<sup>17</sup>

Johnson & Johnson also engages in good disclosure practices, including a commitment to post semi-annual reports of political contributions starting in 2012, and clearly defined criteria for determining which candidates receive corporate contributions. The company also explicitly states that it does not make direct independent political expenditures.<sup>18</sup>

#### **Positive Practices**

Mylan mentions its policy on political activity in its code of ethics. The company acknowledges that employee participation in political activity is strictly voluntary and employees can opt out of participation “without fear of retribution or retaliation”.<sup>19</sup>

#### **Room for Improvement**

Mylan’s political contributions policy is only available in its code of ethics, and primarily focuses on employees’ responsibilities with regard to political activity. There is no information on the use of corporate funds for political expenditures. There is no process for political spending decision making and general counsel review listed in the policy and no mention of regular board oversight of the company’s political spending. The company does not disclose on its website its political expenditures made with corporate funds, nor does it disclose its memberships in or payments to trade associations and other tax-exempt groups.

<b>CPA Checklist on Accountability &amp; Disclosure</b>	
<b>Basic Disclosure</b> <i>Is the following information disclosed on the company’s website?</i>	<b>Standards &amp; Oversight Procedures</b> <i>Do company policies explicitly include the following items?</i>

<sup>15</sup> Ibid.

<sup>16</sup> *Handbook on Corporate Political Activity: Emerging Corporate Governance Issues*, The Conference Board, Nov. 2010. Available at [www.politicalaccountability.net](http://www.politicalaccountability.net)

<sup>17</sup> See “Corporate Policy 21/Political Contributions”, last reviewed 12/13/10, available at [http://www.merck.com/corporate-responsibility/docs/CPOL\\_21\\_Political\\_Contributions.pdf](http://www.merck.com/corporate-responsibility/docs/CPOL_21_Political_Contributions.pdf)

<sup>18</sup> See “Political Contributions”, available at <http://www.investor.inj.com/governance/contributions.cfm>

<sup>19</sup> See “Code of Business Conduct and Ethics”, available at [http://files.shareholder.com/downloads/ABEA-2LQZGT/1716867826x0x315487/da43bf87-a1d3-4ae7-90d8-124868863811/Code\\_of\\_Business\\_Conduct\\_and\\_Ethics.pdf](http://files.shareholder.com/downloads/ABEA-2LQZGT/1716867826x0x315487/da43bf87-a1d3-4ae7-90d8-124868863811/Code_of_Business_Conduct_and_Ethics.pdf)

Corporate contributions to candidates and political parties, including the recipient and contribution amount		The use of corporate funds for political purposes is prohibited	
Independent political expenditures in support of or in opposition to a candidate, the name of the candidate and the amount expended		Political contributions permitted only through voluntary employee-funded PAC contributions	
Trade association memberships and amounts used for political purposes		No contribution will be given in anticipation of, in recognition of, or in return for an official act	
Recipients and amounts of contributions made to 501(c)(4) groups		Company will not reimburse employees directly or indirectly for political donations or expenses	
Payments made directly or indirectly to influence the outcome of ballot measures, including the recipient and contribution amount		No employees will be pressured to make any personal political expenditures	✓
A policy statement governing its political contributions and expenditures made with corporate funds		Political contributions policies are included in Code of Conduct	✓
		A dedicated political disclosure web page found through search or accessible within three mouse-clicks from homepage	
		Specific criteria for approval of political donations	
		Prior approval by senior officer or department is required for political contributions	
		General counsel or legal department must approve political contributions	
		Board of directors or board committee oversees political contributions	
		Board of directors or board committee must issue prior approval for political contributions	
		The same standards and oversight procedures apply to payments made to trade associations and other tax-exempt groups that are used for political purposes that apply to political contributions	
		A detailed report of its political spending with corporate funds issued semiannually	

*This checklist relies on the company's publicly disclosed information and reflects only external company standards and procedures. It does not measure compliance with the company's expressed standards and procedures. Any clear violations of the company's standards and procedures of which the CPA is aware will be included in this report.*