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Corporate Boards, GCs Tighten Political Spending Oversight

By Sue Reisinger | *Nov 29, 2021*

Bruce Freed

In a year marked by political polarization, civil unrest and the Jan. 6 attack on the U.S. Capitol, more American companies have expanded board oversight of potentially controversial political spending, according to a study released Monday.

Some 295 of 500 leading public companies now have policies for general board oversight of political spending, up 13.9% from 259 companies last year, according to the 2021 CPA-Wharton Zicklin Index of Corporate Political Disclosure and Accountability. The index is an annual, nonpartisan measure of Standard & Poor's index of 500 leading public companies.

Bruce Freed, co-founder and president of the Center for Political Accountability, or CPA, told Law360 Pulse on Monday that general counsel can take away from the study "that robust political disclosure and accountability policies are now the norm."

The index also showed that 293 companies disclosed some or all of their political spending, up from 260 in 2020.

Freed said the trends reveal that companies are strengthening their oversight, especially at the board committee level, "and that much closer risk management is crucial for protecting companies from the blowback from ill-considered political spending."

Freed noted that the index trends "were taking place against the backdrop of the Jan. 6 attack on the U.S. Capitol, the continued refusal by significant political elements to accept the legitimacy of the 2020 election outcome, and the attacks on voting rights and women's reproductive rights at the state level."

He said employees, consumers and investors are now "paying much closer attention to the political spending of companies and what it associates them with. This has raised the risks [of company harm] from political spending exponentially."

This year marks the start of the second decade for the index, a joint project of the CPA in Washington, D.C., and the Zicklin Center for Business Ethics Research, part of the Wharton School of Business at the University of Pennsylvania.

Freed suggested that general counsel consider adopting the CPA-Wharton Zicklin model code of conduct for corporate political spending.

The model code contains 12 policy statements, including that the company and the board should "review the positions of the candidates or organizations to which [the company] contributes to determine whether those positions conflict with the company's core values and policies."

"The model code provides a much broader framework that companies need today to approach their political spending," Freed said. "It's no longer just a matter of looking at immediate risks. The impact on the broader political and societal environment [as well as] ethical considerations need to be given the same weight."

In a statement, William Laufer, professor of the Wharton School and director of the Zicklin Center, said, "With the looming possibility of a Securities and Exchange Commission rulemaking over corporate political disclosure, corporations can cross the threshold of accountability before being required to do so as a matter of law."

Laufer said embracing accountability is more than a matter of legal risk mitigation or ethics code compliance.

"Ultimately, corporate political accountability is a reflection of a firm's integrity, culture and leadership," his statement said. "This, I believe, explains the significant progress made by S&P 500 companies on the 2021 index." Laufer did not immediately respond to a request for further comment.

Other major findings of the 2021 index include that board committee reviews of payments to trade associations and other tax-exempt groups, spending known as "dark money," rose to 228 from 199 in 2020, an increase of 14.6%.

The index scores companies according to their responses to 24 questions. The answers can be "yes," which receives assigned points; "no," which receives a zero; or "partially," in which case the response receives half the assigned points.

The questions range from asking about public disclosure on various types of spending, to whether the company has an announced policy governing political expenditures, to whether there is a specified board committee overseeing the company's political spending.

The average index score for political disclosure and accountability rose to 54.1% this year, from 50.1% a year ago.

Top scoring, "trendsetter" companies — those with scores of 90% or higher on the index — rose to 87 from 79 last year. Among 15 new trendsetter companies are Cigna, Comcast and Ford Motor Co., the first automaker to achieve this status.

Some 171 companies are in the top index tier, scoring from 80% to 100%, up from 156 last year. "For the first time, there are more first-tier companies than bottom-tier dwellers," those scoring in the lowest 20%, the report said. The bottom-tier number is now 128.

As an example of a company that aligned its values and its spending policy, the report cited Intel Corp.

"Intel made itself a model for others by detailing a policy for avoiding conflict between its core values and its political donations," the report said. "In the aftermath of the January 6th events, Intel pledged, 'In cases of significant misalignment across our multiple key public policy issues, we take action to realign future funding decisions.'"

Intel also stated in its political spending policy that it would not contribute to members of Congress who refused to certify the 2020 presidential election, the report noted.