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Spotlight on CPA



Founder's Column: A 'Major Chilling Effect' for U.S. Shareholders

By: Bruce F. Freed

An [academic paper](#) by Securities and Exchange Commissioner Daniel Gallagher and former Commissioner Joseph Grundfest suggests that Harvard University may have violated federal securities law with resolutions filed by its Shareholder Rights Project. More broadly, it offers a legal interpretation that if adopted would have a "chilling effect" for shareholder engagement of companies.

That's the opinion of Jonathan R. Macey, who teaches Corporate Law, Corporate Finance & Securities Law at Yale Law School. Macey's warning ought to give shareholders a real concern.

In the paper, Gallagher and Grundfest warn that Harvard University could be vulnerable if legal action were taken by the SEC or investors over the Shareholder Rights Project at Harvard Law School. They contend that shareholder proposals backed by the Project, seeking annual elections of corporate directors, are incomplete and can be misleading.

The project's director is Lucian Bebchuk, a Harvard law professor. The project's work is "entirely consistent with SEC rules and not false or misleading in any way," Bebchuk told the [Wall Street Journal](#), asserting that the project does not violate securities laws. He is supported by Yale's Macey in a post at the [blog of the Harvard Law School Forum on Corporate Governance and Financial Regulation](#).

"[Gallagher and Grundfest] accuse the ... SRP of violating the anti-fraud provisions of the

securities laws. The alleged fraud occurred when institutional investors represented by the SRP proposed shareholder resolutions encouraging shareholders in U.S. public companies to vote to de-stagger their companies' board," Macey writes.

He concludes "that the SRP proposals were not fraudulent or misleading and that the aggressive application of the anti-fraud provisions of the securities laws advanced by the authors ... would be inconsistent with the

Sharp U.S. Chamber of Commerce Attack on CPA, Corporate Political Disclosure Closes out 2014



The U.S. Chamber of Commerce and allies have closed out 2014 with another round of attacks on the Center for Political Accountability and other advocates of corporate political disclosure.

Bruce Freed, CPA president, said the latest attacks actually serve to spotlight the increasing strength of the corporate political disclosure movement.

"Advocates of 'dark money' spending, concerned that they are losing ground, are falsely representing themselves as the voice of mainstream business, hoping to sway major companies away from their better instincts," Freed said. "Far from wanting to return to the pre-Watergate days, American businesses increasingly are showing that they want to conduct political activity in the open sunlight, where stockholders, directors and managers all can assess the risks and benefits of a company's campaign spending."

The attacks came at a Dec. 3 conference sponsored by the U.S. Chamber of Commerce Foundation. Chamber President Thomas J. Donahue and other speakers, according to [BNA Bloomberg](#), "voiced a message that efforts to secure greater disclosure for corporate money spent on elections and lobbying are not motivated by a concern for transparency, but a desire to silence the legitimate expression of business interests in American politics."

"The Chamber is particularly concerned about the efforts of ... the Center for Political Accountability (CPA), which tracks corporate policies on disclosure and has created a ranking system to show which of the top U.S. corporations are more or less transparent," Bloomberg reported.

Since 2011, CPA has compiled an annual benchmarking study of corporate political disclosure and accountability with the Zicklin Center for Business Ethics Research at the Wharton School of the University of Pennsylvania. The [2014 Index](#) showed a majority of almost 200 publicly held companies that were examined in both 2013 and 2014 received higher overall scores this year.

Chamber spokeswoman Blair Latoff Holmes labeled the survey "preposterous," according to Bloomberg, and a tool for activists to remove business from the political and policy-making process. Speakers at the U.S. Chamber Foundation conference condemned campaign finance reform efforts such as the DISCLOSE Act in Congress, as well as shareholder resolutions for greater transparency.

"You have to view this as a war," said Bradley A. Smith of the Center for Competitive Politics, a former FEC commissioner. "It's [the reform movement] about trying to drive companies out."

Proxy Season Update



Of 36 proxy season votes this year on the Center for Political Accountability's model shareholder resolution for political disclosure and accountability, the average vote was 30 percent. There were 10 votes of more than 40 percent on these shareholder resolutions.

This was the fifth year in a row that the average vote for a CPA resolution hit or topped 30 percent.

CPA currently expects that its resolution will be filed in 2015 urging political disclosure at about 50 companies

Public Citizen Asks Federal Election Commission to Close a Loophole



Public Citizen has asked the Federal Election Commission to close a loophole of its own making. As a result of the loophole, federal government contractors can now both give federal campaign contributions and receive government contracts if these activities are carried out through separately incorporated divisions of the same company.

"The FEC ruling effectively gutted the federal ban against federal contractors attempting to curry favor among lawmakers by giving money to candidates, parties and PACs," said Craig Holman of Public Citizen's Congress Watch. "Any large company easily can create artificial distinctions between its various divisions so that one entity makes the endearing contributions while another pulls in the government largess."

law and, by the authors' own admission, inconsistent with the current policy and practice of the staff of the [SEC]."

Macey warns, "Adoption of the position being advocated by Gallagher and Grundfest would, in my view, have a major chilling effect on the ability of any shareholder to make a shareholder proposal without fear that such shareholder and its advisers will become the target of an SEC enforcement action and a defendant in private lawsuits of the kind that Gallagher and Grundfest claim could be taken against SRP."

Macey's entire analysis is well worth reading, as is that of Matt Levine at [Bloomberg View](#). Levine calls the Gallagher and Grundfest paper "utterly loony."

The paper fits in with the campaign to stifle shareholder engagement of companies. If successful, it would have serious consequences not just for shareholders but also for companies that are addressing a range of important governance, business and competitiveness issues including political disclosure, climate change and diversity as a result of shareholder resolutions.

New FEC Chair Makes Political Transparency Signature Issue



Ann Ravel, newly elected chair of the Federal Election Commission, told the [Center for Public Integrity](#) she will fight for campaign finance transparency and disclosure, no matter which political party is involved.

"The [Koch brothers], they are not a problem to me, nor are their activities specifically anything I want to address," Ravel said. "Dark money is a broader problem — a much broader problem. It's a problem for those on the Democratic side as well as the Republican side. It's not a partisan question for me."

[Public Citizen's petition](#) targets the Federal Election Commission's dismissal earlier this year of what has been called the "Chevron Complaint." The petition asks the Commission to clarify the standard for distinguishing separate entities of the same corporate family, for the purposes of the federal ban on campaign contributions from federal contractors. Otherwise the FEC "has given a green light for Chevron and other federal contractors to evade" federal pay-to-play law, the petition contends.

The Center for Political Accountability seeks increased disclosure of corporate political spending in order to reduce the risks this spending can pose for companies and shareholders. A number of major public companies are government contractors. When there is legal uncertainty about corporate political spending it adds to the risk, and it increases the need for political disclosure.

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