

## SEC Considering Disclosure of Political Activity Spending

*If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.*

**Kenneth A. Gross**

Partner

202.371.7007

**Ki P. Hong**

Partner

202.371.7017

**Brian V. Breheny**

Partner

202.371.7180

**Samuel Scrimshaw**

Associate

202.371.7336

\* \* \*

*This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.*

On December 21, 2012, the U.S. Securities and Exchange Commission (SEC) indicated in its semiannual regulatory agenda that the staff of the SEC's Division of Corporation Finance is considering whether to recommend that the SEC issue a proposed rule to require that public companies provide disclosure to their shareholders regarding the use of corporate resources for political activities. This is the first time that the SEC has listed a potential rulemaking regarding such disclosure in the Unified Agenda of Regulatory and Deregulatory Actions (Regulatory Agenda).<sup>1</sup>

*Background.* Certain shareholders have pressed for greater transparency of corporate political spending over the last decade or so by submitting proxy proposals to certain selected companies that would require such disclosure. This effort intensified in the wake of the U.S. Supreme Court's January 2010 ruling in *Citizens United v. FEC*,<sup>2</sup> which allowed corporations to make unlimited independent expenditures for a federal, state or local candidate. In August 2011, the Committee on Disclosure of Corporate Political Spending, a group of corporate and securities law professors, petitioned the SEC to adopt a rule that would require public companies to disclose corporate political spending to their shareholders.<sup>3</sup> To date, the SEC has received more than 322,000 comment letters regarding the petition. SEC officials have also reported that they have met with the supporters of the rulemaking petition.

In November 2012, officials from the SEC's Division of Corporation Finance announced that the staff was considering whether to recommend that the SEC issue a proposed rule to require that public companies provide disclosure to their shareholders regarding the use of corporate resources for political activities. Those officials emphasized that the staff had not reached a conclusion about whether to recommend that the SEC issue such a proposed rule.

*Insights into the potential rulemaking.* By placing the political activity spending rulemaking in the Regulatory Agenda, the SEC has provided further evidence that it is strongly considering the issue, and that a rule proposal may be forthcoming. The Regulatory Agenda states that the rulemaking is in the "Proposed Rule Stage" and that future action on the proposal could come as early as April 2013. The U.S. Office of Management and Budget's Office of Information and Regulatory Affairs, which is responsible for publishing the Regulatory Agenda, states that rulemakings in the "Proposed Rule Stage" are "actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step."

The staff's decision whether to recommend that the SEC issue a proposed rule, and any eventual rulemaking process, may be complicated by several practical considerations. At present, the SEC has two Democrat commissioners and two Republican commissioners. The fifth seat on the commission has been vacant since the departure of former Chairman Mary Schapiro on December 14, 2012, and it may be difficult for the commission to take action until a replacement has been confirmed. The SEC also has ongoing and extensive rulemaking responsibilities as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Jumpstart Our Business Startups Act. Should the SEC proceed with the rulemaking process, any proposed rule would likely be controversial and subject to an unusually high level of media and public scrutiny.

1 A copy of the Unified Agenda of Regulatory and Deregulatory Actions entry regarding the potential rulemaking is [available here](#).  
2 A copy of the decision is [available here](#).  
3 A copy of the petition is [available here](#).

1440 New York Avenue, NW  
Washington, DC 20005  
Telephone: 202.371.7000

Four Times Square, New York, NY 10036  
Telephone: 212.735.3000

[WWW.SKADDEN.COM](http://WWW.SKADDEN.COM)