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Additional Restrictions on the Horizon Regarding Corporate Political Activity

Culminating with the events that took place at the U.S. Capitol on January 6, 2021, recent societal developments in the country have brought greater scrutiny regarding corporate political activity and has resulted in many companies reevaluating their corporate and PAC political contributions. Indeed, many major companies have decided to temporarily pause all political giving, while others have suspended contributions to the 147 members of Congress who voted against certifying the 2020 presidential election results. Additionally, there has been an increase in the amount and intensity of activist shareholder requests regarding disclosure of political spending. Now, Congress and regulators are gearing up to weigh in on the topic as well.

Over the past year, the Securities and Exchange Commission (SEC) has been considering updating reporting requirements and adopting standards to require publicly traded companies to report material environmental, social and governance (ESG) matters. Currently, the disclosure of ESG factors to shareholders is required only if they are considered material, and there is no guidance regarding whether political spending is considered a material ESG factor.

However, on March 15, 2021, SEC Acting Chair Allison Herren Lee called on the public for input in crafting new disclosure requirements pertaining to ESG factors, calling them "inextricably linked" to corporate political spending. Moreover, Gary Gensler — President Joe Biden's nominee to serve as chairman of the SEC — stated during his confirmation hearing on March 2, 2021, that he would consider implementing a shareholder political spending disclosure rule.

As for Congress, on March 2, 2021, New Jersey Sen. Robert Menendez reintroduced the Shareholder Protection Act of 2021, which requires public companies to disclose to shareholders "expenditures for political activities," defined as independent expenditures, electioneering communications, and dues paid to Section 501(c)(6) trade associations and membership organizations that are used for independent expenditures and electioneering communications. The bill currently is being considered by the Senate Committee on Banking, Housing, and Urban Affairs.

The bill further includes several provisions that would significantly alter the corporate political spending process, including:

- requiring shareholders to annually authorize, by majority vote, a political activities budget requested by a company;
- requiring a company's board of directors to vote to authorize all corporate political expenditures in excess of $50,000 within the overall budget approved by shareholders; and
- requiring the disclosure of individual board member votes regarding such political expenditures, as well as the details of each approved political expenditure. The disclosures must be made available online, to shareholders and to the SEC.

We will continue to monitor developments on proposed legislation and SEC rulemaking pertaining to corporate political spending disclosure to shareholders. Please call us with any questions.

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