Operations, Compliance, and Accountability in Corporate Political Spending

A Dialogue Regarding What, How, and Why

Michael D. Greenberg

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Preface

Recent findings from the 2015 CPA-Zicklin Index show that 50 percent of S&P 500 companies now disclose some or all of their political contributions with corporate funds or have adopted policies not to make such contributions. Yet according to the same survey, relatively few companies have implemented compliance mechanisms and programs in support of their corporate political spending (CPS) disclosure and accountability policies. This gap invites a series of questions about operations, compliance, ethics, and transparency in political disclosure. What are the components of a strong compliance program or of a strong operating mechanism to ensure that CPS disclosure policies are more than just a check-the-box exercise? What are some of the practical problems that responsible executives, including compliance and ethics officers and general counsels, have encountered when dealing with corporate political disclosures? How should corporate political accountability mechanisms and compliance policies be crafted to reinforce their effectiveness? And how can executives who are responsible for political spending accountability, regardless of their function within management, contribute to the broader public policy goal of achieving greater transparency and accountability in corporate political spending?

On February 26, 2016, the RAND Center for Corporate Ethics and Governance, together with Columbia Law School, the Center for Political Accountability, and the Carol and Lawrence Zicklin Center for Business Ethics Research of The Wharton School of the University of Pennsylvania, convened a roundtable symposium event to address these questions. The symposium brought together a group of 20 thought leaders from the ranks of public company directors and line executives, compliance officers, and stakeholders from the investment, academic, and nonprofit sectors.

This proceedings report summarizes key issues and topics from the February 26 symposium discussions. This document is not intended to be a transcript. Rather, it is organized by major themes and serves to highlight areas of agreement and disagreement among the participants. With the exception of invited opening remarks from several speakers at the event, we do not attribute remarks to any specific participants.

Funding for the conference and these proceedings was made possible by philanthropic contributions from RAND supporters and income from operations. These proceedings should be of broad interest to policymakers, regulators, corporate directors and executives, compliance and ethics practitioners, investors, and other stakeholders with interest in corporate governance, compliance, and political spending in the United States.

RAND Center for Corporate Ethics and Governance

The RAND Center for Corporate Ethics and Governance is committed to improving public understanding of corporate ethics, law, and governance and to identifying specific ways in which businesses can operate ethically, legally, and profitably. The center's work is supported by contributions from private-sector organizations and individuals with interests in research on these topics.

The center is part of the RAND Institute for Civil Justice, which is dedicated to improving the civil justice system by supplying policymakers and the public with rigorous, nonpartisan research. Its studies identify trends in litigation and inform policy choices concerning liability, compensation, regulation, risk management, and insurance.

Questions or comments about this report should be sent to the project leader, Michael D. Greenberg, at Michael_Greenberg@rand.org. For more information on the RAND Center for Corporate Ethics and Governance, see www.rand.org/jie/justice-policy/centers/corporate-ethics or contact the director at cceg@rand.org.

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As always, I would also like to acknowledge Jamie Morikawa, Michelle Horner, and Sarah Hauer for their assistance in preparing for the symposium, managing logistics, capturing the discussions on the day of the event, and generating these proceedings.

Introduction

As the adoption of political spending disclosure and accountability policies has increasingly become a corporate norm, senior management figures now face a corresponding challenge: how to put in place more effective accountability mechanisms and ensure that employees and executives follow those policies in letter and spirit. Recent, high-profile examples of scandal around corporate political spending (CPS) decisions include Target and Aetna. These examples demonstrate that when company executives ignore CPS risks and neglect CPS disclosure policies, material reputational harm can follow. The examples also demonstrate why compliance to CPS policies and disclosures can be difficult to operationalize and to enforce.

New demands on corporate compliance and political disclosure programs arise in the context of a shifting landscape. The number of companies adopting formal CPS disclosure policies has grown steadily over the past several years. According to the 2015 CPA-Zicklin Index, the annual benchmarking study of company political disclosure and accountability practices, 50 percent of the companies in the S&P 500 Index disclose some or all of their contributions with corporate funds to candidates, parties, and committees or else have policies not to make such contributions at all. Moreover, just under half of the companies in the S&P 500 Index report that their boards regularly oversee their political spending.

That said, the 2015 CPA-Zicklin Index also found few companies with compliance programs and mechanisms that explicitly support their often newly adopted CPS disclosure and accountability policies. This gap invites a series of questions about operations, compliance, ethics, and transparency in political disclosure. What are the components of a strong compliance program or strong operating mechanism to ensure that CPS disclosure policies are more than just a check-the-box exercise? What are some of the practical problems that responsible executives, including compliance and ethics officers and general counsels, have encountered when dealing with corporate political disclosures? How should formal political accountability mechanisms and compliance policies be crafted to reinforce their effectiveness? And how can executives who are responsible for political spending accountability, regardless of their function within management, contribute to the broader public policy goal of achieving greater transparency in corporate political disclosure?

On February 26, 2015, the RAND Center for Corporate Ethics and Governance, together with Columbia Law School, the Center for Political Accountability, and the Carol and Lawrence Zicklin Center for Business Ethics Research of The Wharton School of the University of Pennsylvania, convened a roundtable symposium event entitled “Operations, Compliance, and Accountability in Corporate Political Spending: A Dialogue Regarding What, How, and Why.” The objective was to stimulate a forward-looking conversation about the role of management operations and compliance in contributing to more effective practice in CPS disclosure

and accountability. The symposium brought together a group of 20 thought leaders from the ranks of public company directors and line executives, compliance officers, and stakeholders from government, academic, and nonprofit sectors. The symposium agenda can be found in Appendix A of these proceedings, and the full list of participants is provided in Appendix B.

Prior to the symposium, several participants were asked to prepare brief remarks concerning CPS transparency and compliance issues, which they presented during the first session of the symposium. Chapter Two features a short summary of these opening remarks.

The first discussion session of the symposium addressed the private-sector rationale for pursuing more CPS accountability and how and why companies that undertake such accountability view it as worthwhile. Chapter Three summarizes the major themes and topics of conversation in the session.

The second discussion session of the symposium focused primarily on the “how to” of carrying out CPS transparency and what it takes in practice for a company to make its CPS policies operationally effective. Chapter Four summarizes the major themes and topics of conversation from that session.

The review of discussion themes offered in this report is based on notes taken on the day of the symposium and subsequently reviewed and summarized by two of the primary event organizers and moderators. Note that the ordering of themes within Chapters 3 and 4 does not reflect the order in which these topics were discussed but was imposed by the editor to maximize narrative coherence—broader themes are presented first, and more narrow, derivative, or technical points are presented subsequently. Finally, a prepublication draft of this report was vetted by several symposium participants to affirm and verify the content.

Opening Remarks

The symposium began with an opening introduction by Michael Greenberg, followed by invited introductory remarks from several of the participants in attendance: Bruce Freed, the president and founder of the Center for Political Accountability; Karl Sandstrom, senior counsel at Perkins Coie; Wesley Bizzell, assistant general counsel, external affairs, and director of political law and ethics programs, Altria Client Services; and Keir Gumbs, partner, Covington & Burling. Each of the invited speakers brought an expert viewpoint to the topic of CPS transparency and compliance, and each helped to set the context for the subsequent symposium discussions. This chapter presents a brief summary of their remarks.

Bruce Freed provided a backdrop for the symposium event, by sharing a summary of recent findings from the 2015 CPA-Zicklin Index. The Index serves as an annual benchmark of S&P 500 companies' political disclosure and accountability policies and practices. Key findings from the 2015 CPA-Zicklin Index included:

- Fifty percent of the companies surveyed disclose some or all of their political spending.
- Political spending in almost half of the companies surveyed is overseen by their boards.
- A quarter of the companies surveyed place restrictions on their political spending, including some aspect of direct independent expenditures; contributions to candidates, parties and committees, 527 groups, ballot measures, and “social welfare” groups; and/or payments to trade associations for political purposes.
- A quarter of the companies surveyed have adopted detailed compliance policies connected with political spending.¹

Karl Sandstrom offered the perspective of a former member of the Federal Election Commission and legal expert in the regulation of political activity. Sandstrom observed that transparency in political spending is no longer required by the U.S. government as a matter of law. Corporations can now choose to spend freely in national elections without any obligation to disclose their spending to the public or even to shareholders. Disclosure is a matter of choice. A company wanting to evade public scrutiny of its political engagement can easily do so by routing funds through a trade association or an advocacy organization for which disclosure is not legally required. But with choice comes responsibility; each company must decide for itself the rules under which it will engage politically. For companies seeking to act responsibly, the risks of nondisclosure and the concomitant exposure to political shakedowns must be weighed

¹ Freed noted that findings from the 2015 Index are freely available online at http://files.politicalaccountability.net/index/CPA-Zicklin_Index_Final_with_links.pdf.

against the perceived benefits of avoiding public scrutiny and the attendant possibility of shareholder and public disapproval.

Wesley Bizzell offered an operations and compliance perspective based on his experience as an outside counsel advising clients on these issues and his work in building and overseeing Altria Client Services' political law compliance infrastructure. Bizzell observed that any company that is active in the political or public policy arenas needs to have a robust governance structure that includes an effective political law compliance management system. Just as companies have compliance policies and processes to address laws designed to prevent bribery, discrimination, and privacy violations, a company that engages with government officials on political or public policy issues should build a political law compliance system designed to address the unique legal and reputational risks that may arise from such engagements. However, a company cannot adopt a "one-size-fits-all" approach; the system must be tailored to the company's culture and activities. Completely replicating another company's compliance system without taking into account your own company's unique situation could be a recipe for problems and might not provide an effective or efficient governance structure.

Bizzell went on to suggest that building an effective political law compliance management system is similar to building a house and requires

1. choosing the appropriate architectural style (articulating the values of the company's political law compliance program)
2. creating a design "blueprint" (determining the company's legal and reputational risks)
3. obtaining necessary permits (securing senior management buy-in)
4. preparing the foundation (creating a general culture of compliance)
5. framing the house (developing overarching principles and political law compliance policies)
6. selecting the interior finishes (creating strong internal procedures)
7. adding exterior finishes (building an internal and external training and communication plan)
8. scheduling periodic inspections (establishing audit and oversight mechanisms)
9. performing regular maintenance (initiating systematic reviews of the program).

While there is no one-size-fits-all approach to political law compliance, Bizell stated that each company that participates in the political or public policy process should carefully consider which foundational principles, policies, and processes are necessary for that company, both to ensure political engagement in a legal and responsible manner and to establish a good governance structure for its decisions.

Keir Gumbs offered a perspective based on the role of outside corporate counsel. Gumbs suggested that the political spending disclosure debate comes down to two issues: governance and transparency. When reflecting on corporate governance, there are a few questions to consider. Who is managing a company's political spending activities? Which organizations and candidates does the company support in its political spending activities? And what level of board oversight exists with respect to those activities? With respect to transparency, the key question is: how can companies give investors and markets material information about their political spending activities? More specifically, what, if any, information about a company's political spending activities is "material" for the purposes of federal securities law? Gumbs

noted that information is “material” if a reasonable investor would consider it important in making an investment decision.

Gumbs also suggested that beyond transparency and governance, there is an additional question of board oversight priorities. While political spending may be an important issue both for investors and for the general public, from a policy perspective, we have to think hard about what level of priority we want to place on the issue in the context of all the other things that a board of directors needs to think about. What priority should political spending and lobbying have compared to pay votes, general executive compensation issues, sustainability, anticorruption concerns, proxy access, cyber security, and a myriad of other performance and risk issues?

Gumbs concluded that there may be a significant disconnect between what boards, investors, and good governance groups believe, particularly regarding whether

- political spending activities are material to reasonable investors
- political spending is a big issue or a small issue
- membership in a trade association equates to an endorsement of the trade association’s activities
- there should be a one-size-fits-all approach to political spending disclosure.

Gumbs expressed hope for finding a common ground among the various constituencies involved in the political spending disclosure debate. He suggested that the common ground ought to be what matters most to investors, balancing any requirements for political spending disclosure against the associated costs.

Bringing Accountability to Corporate Political Spending

The first discussion session of the symposium addressed the private-sector rationale for pursuing more accountability in corporate political spending and how and why companies that undertake such accountability view it as worthwhile. Much of the conversation focused on the broader regulatory and political environment that has given rise to CPS disclosure policies within firms and the perspectives of different stakeholder groups (both inside and outside firms) on those policies. Particularly of note, it was observed that the widespread adoption of CPS transparency policies is not solely a response to outside pressure for good corporate behavior but also a self-protective response for firms that find themselves compelled to “swim in a dirty [political] pool without being harmed by it.” How and why CPS transparency can be viewed as self-protective against outside coercive influence was an important strand in the symposium discussion. In addition, two other basic themes from this symposium session were noteworthy. First was the basic relationship between CPS and effective governance and the argument that CPS risk may be tied to the fiduciary responsibility of the board and therefore to board oversight of CPS operations through an appropriate management channel. Second was the argument that CPS accountability in 2016 is presenting some specific operating problems for companies, particularly in connection with their contributions to membership-based trade organizations. The nature of these problems, and their implications for accountability efforts, were discussed in some detail.

The first discussion session included the following major points.

Political Disclosure and Accountability Are Becoming Mainstream Corporate Practice

The threshold point of discussion in the session underlined the fact that CPS disclosure has moved in the last decade from being a fringe issue to a mainstream one. As Freed noted, an increasingly large number of companies in the S&P 500 Index have moved to adopt CPS disclosure policies, and average scores among the firms described by the CPA-Zicklin Index (which rates firms on the rigor of their disclosure policies) have been improving over time as well. Several of the symposium participants suggested reasons for this shift in company behavior, including the increasing interest and attention of shareholders, high-profile episodes of corporate reputational crisis associated with poor CPS decisions, and the increasing external pressures for spending in the wake of the Citizens United decision by the U.S. Supreme Court. Symposium participants expressed varied perspectives on the implications of the trend and what it means for companies, shareholders, and policymakers. But participants largely agreed

that more and more companies are drafting CPS policies and engaging in CPS disclosures, and that these practices correspond to an underlying set of risks that companies should recognize and address.

CPS Risk Is Important to Evaluate for Board Fiduciary Oversight

One of the foundational themes in the symposium involved the tie between the board's fiduciary responsibility and CPS risk. Several participants observed that the board has a basic responsibility for making sure that management is appropriately monitoring the firm's operating risk as an element of fiduciary duty. By extension, CPS risk can be understood as one of the many operating risks that both management and the board must understand and evaluate as a part of carrying out their responsibilities. One symposium participant observed that CPS risk is highly variable across firms, depending on whether (and to what degree) they actually engage in political spending. Another participant observed that CPS risk may be more or less "material," and therefore important to fiduciary oversight, depending on what a firm is doing with CPS in any given year. Still another participant suggested that the most basic step in any approach to CPS disclosure and accountability involves a threshold risk assessment to evaluate the magnitude of CPS risk to the firm, the operational mechanics regarding where such risk resides in the firm, and how best to monitor and control CPS risk. Two related points were raised by several participants at the roundtable. First, transparency and disclosure are themselves a basic response to CPS risk as well as a mechanism for gauging and tracking risk. In this sense, the "how to" of disclosure and accountability are all about ensuring that controls are meaningful and that CPS risks genuinely can be known and assessed by a firm's governance mechanism. Second, CPS risk is at least sometimes "material," such that disclosure and oversight are clearly required by the management and board. Although participants varied in the extent to which they believed that CPS risk is universally a serious problem among companies that engage in any level of political spending, there was nevertheless a consensus that understanding CPS risk is a fundamental requirement for boards and management to appropriately carry out their fiduciary duties.

Boards and Management Each Have CPS Responsibilities, Particularly with Regard to Transparency and Accountability

An important theme from the roundtable discussion involved the reciprocal roles of the board and of senior management in overseeing CPS processes and responding to CPS risk. Several symposium participants observed that the board has a basic CPS oversight duty and therefore ought to be involved in setting high-level CPS policies. It was also suggested that the board itself may have only limited insight into and influence over CPS activity. As with other aspects of fiduciary duty, the board depends on an effective management structure to carry out its oversight. Several symposium participants described different management structures for carrying out CPS activity and transparency initiatives in large corporations. Despite the operational variation, the consensus view was that a designated management lead for CPS practice and transparency is crucial to making CPS policies effective and controlling related risks.

One symposium participant said, “If [your company is] going to be politically active, then you need to have a good point person [on CPS], someone who tracks what is going on and can feed [the information] back to the board.” Another person asserted that most large corporations should have some board involvement in CPS issues and, by implication, both a set of corporate policies for engaging in CPS and a compliance mechanism for carrying out the policies. Still another symposium participant observed that effective compliance in the CPS domain presents some of the same challenges as does effective compliance practice more broadly: ensuring that a key person within management is designated as having responsibility for compliance and that this person is appropriately positioned and resourced to carry out the mandate. Ultimately, the symposium discussion returned to the fiduciary role of the board and the notion that the ability of the board to oversee CPS risk and compliance will depend on information that is reported up to them. In turn, this requires that the management lead on CPS compliance will have some level of reporting access to the board and that appropriate CPS performance metrics and risk-assessment information is reported back to the board.

Without Effective Compliance, CPS Policies Run the Risk of Being “Hollow”

Another major theme in the symposium discussion involved the importance of compliance as a driver for making a company’s CPS transparency policy meaningful. Moving beyond the specific roles of the board and of management and the relationship between them, it was observed that whatever CPS policy a company chooses to adopt can be carried out either effectively and with fidelity or ineffectively. In this vein, one symposium participant observed that the phenomenon of “hollow” or “check-the-box” compliance, in which a company adopts a strong notional policy but then neglects the control mechanisms to actually carry it out, is widely recognized as a challenge in many compliance domains. With regard to CPS specifically, it was observed that written CPS policies mainly serve to define “what” a company will do, without fully articulating the “how.” Compliance practice in CPS, particularly with regard to disclosure policy, is all about the “how”: how will corporate political spending and contributions be controlled and made transparent and by whom? One symposium participant emphasized that “without [effective] procedures to implement a CPS policy, then the policy [runs the risk of] becoming a sham.” Another participant suggested that “to change corporate behavior, you have to measure it,” and, by extension, that tracking and monitoring relevant CPS performance metrics ought to be an integral part of any CPS compliance effort. In passing, several participants observed that corporate compliance with CPS policies may be driven more by fiduciary and risk-management concerns than by federal and state regulatory standards concerning the campaign finance process. Other symposium participants suggested that the risks of CPS require that companies impose reasonable controls to manage those risks, and that compliance is another label for referring to the controls. As one person summed it up, “If you can’t manage your [corporate political] spending, then you shouldn’t be spending.”

CPS Activities Involving Trade Associations and Social Welfare Organizations Present Unique Problems for Companies

One of the recurring points of conversation in the symposium involved the special set of CPS problems that arise around membership in trade associations. In particular, several symposium participants observed that trade associations can often pose the problem of “guilt by association” for member companies, since the associations may be politically active in opaque or controversial ways, while their corporate members have little control over them. Diverging points of view were expressed in the symposium about how much responsibility companies ought to have for policing the downstream spending activity of their trade associations. On one hand, several participants expressed the view that it is indeed the responsibility of companies to monitor and police the spending of any trade associations to which they belong. In this light, one person described the anecdote of a Fortune 500 firm that chose not to belong to the U.S. Chamber of Commerce specifically to avoid being connected with that organization’s advocacy and spending choices. Another person observed that although a company may disagree with the positions taken by a trade association to which it belongs, “[the company] is [nevertheless] financing those positions, and as long your money is involved, then your company is involved.” On the other hand, it was observed that many companies have legitimate, nonpolitical reasons for belonging to trade associations, and that responsibility for the political activities of the latter may not always be realistic, given the actual level of membership dues and involvement on the part of a specific company. Another symposium participant observed that in some large companies, employees may belong to many, many local trade associations for professional reasons that have nothing to do with political advocacy. In such cases, it was observed that simply keeping track of all such memberships can be a daunting task for the corporation without monitoring or influencing downstream political spending connected to all of those memberships. Regardless, the skepticism of several symposium participants concerning contributions to trade associations was undiminished. One person notably observed that some companies make very large payments to trade associations that go far beyond membership dues, with the effect of concealing intentional CPS activity downstream. “Large contributions made to trade associations ought to be disclosed [as a part of a CPS transparency policy], or else there is a tremendous loophole in oversight for what the company is actually doing.”

Making Corporate Political Transparency Effective

The second discussion session of the symposium focused primarily on the “how to” of carrying out CPS transparency and what it takes in practice for a company to make its CPS policies operationally effective. Some major points of conversation included whether there are key procedures and controls for achieving CPS transparency, whether these are consistent across companies (i.e., “one size fits all”), and who within the company ought to be responsible for CPS adherence and compliance efforts. In this vein, the distinction between “adherence” (the degree to which a company actually carries out its CPS transparency policy) and “compliance” (the internal controls needed to compel behavioral fidelity to a CPS transparency policy) was spotlighted as a threshold issue. One key point that was raised at the beginning of this session involved the importance of tracking and monitoring CPS efforts as a way for firms to “know whether they’ve succeeded in accomplishing whatever it is that they are trying to accomplish.” In this light, it was asserted that defining relevant CPS performance metrics and being able to collect data on those metrics are fundamental elements of undertaking any related compliance effort. Broader philosophical questions were also touched on in the symposium session, particularly concerning what “compliance” truly means in the specific context of CPS transparency and whether or not this is intrinsically tied to the responsibility of the compliance function within management.

The second discussion session included the following major points.

Management Structures for Implementing CPS Transparency Are Varied, but Strong Compliance Efforts Share Some Common Elements

One of the opening questions for discussion touched on whether compliance efforts connected with CPS transparency are a one-size-fits-all endeavor or vary by company. At the outset, several symposium participants observed that primary oversight for CPS transparency may reside within different management functions (or “silos”) in different companies, including the legal department, investor relations, government relations, and/or compliance. Therefore, even the use of the term “compliance” was noted to be somewhat confusing with regard to who actually owns the operating responsibility for ensuring CPS policy adherence. It was nevertheless suggested that the compliance function may help ensure that CPS policies are effectively carried out, regardless of which management silo assumes primary responsibility, by contributing to coherent oversight procedures and assessing CPS risks on an enterprise-wide basis. Another symposium participant observed that basic tracking of CPS activity within the company is foundational if any other compliance efforts are to be undertaken by management and if

any meaningful oversight of CPS is to be carried out by the board. In a complementary vein, another participant observed that many of the elements associated with strong compliance programs generally are also specifically relevant in the CPS domain. Good tone at the top within management, clearly articulated standards for CPS behavior within the company, visible consequences for violation of the standards, and a robust mechanism to report to the board were all identified as basic components for achieving effective CPS compliance.

Enterprise Risk Assessment Is a Basic Step for Compliance in Carrying Out a CPS Transparency Effort

Symposium participants examined this discussion prompt: if you could suggest one practical step for companies to take in seeking to tackle CPS transparency compliance, what would that step be? One of the most salient responses to this question focused on enterprise-wide risk assessment as a preliminary step for any CPS compliance effort. One participant emphasized that this kind of assessment process is a hallmark of effective compliance inside and outside the CPS domain and that it serves to identify and prioritize operating risks throughout the organization. In turn, that risk assessment can be used to engineer a compliance approach that “fits” the actual risks while communicating those risks to the board and demonstrating that management is actively seeking to address them. It was further observed that these steps are just as relevant in developing a compliance approach to CPS policy and disclosure as they are to other aspects of compliance risk. Although several other participants in the symposium described how operating responsibility for CPS oversight frequently belongs to management figures outside of compliance, there was nevertheless considerable agreement that, even in those instances, the compliance function can be very helpful in empowering and proceduralizing the approach to CPS oversight. Enterprise-wide assessment of CPS compliance risk and expertise in how to conduct that assessment were specifically cited as examples of how the compliance function can ensure that the company is carrying out its CPS policies in a meaningful and rigorous way.

Designating a Management Lead Is Also a Basic Step for Achieving Compliance with CPS Transparency

A second practical step that was suggested as a basic ingredient for undertaking a strong compliance effort around CPS transparency involves designating someone within management as the lead, with explicit responsibility for ensuring that CPS policy is actually carried out. In this vein, one symposium participant observed that, harkening back to the Federal Sentencing Guidelines for Organizations, establishing a management lead for compliance is one of the defining criteria for undertaking an effective compliance program more generally. Another participant observed that whereas a legal perspective on “compliance” might focus on the interpretation of outside rules, a more management-oriented perspective would place emphasis on tasking somebody within the firm to be responsible for CPS, in much the same way that any other operating project would be tasked. The logic of such “tasking,” in general, is that it ensures that designated tasks actually are done within the firm. In a somewhat different vein, it was also observed that making a CPS policy mandate clear within the company, then giving the operating lead both the flexibility and the resources needed to carry out the mandate, are

related steps for making a compliance effort stronger and more effective. Again, it was observed that similar steps are widely believed to help establish strong compliance mechanisms more generally, but they also can apply specifically to CPS transparency and to increasing the likelihood that a company's CPS transparency policies will be carried out.

Senior Management Has a Key Role to Play in Reducing CPS Risk and Making Transparency Effective

Another theme of discussion involved the role of senior management, as distinct from the board, in contributing to the effectiveness of CPS policies and transparency. One symposium participant observed that senior management plays a crucial role in establishing good "tone at the top," and, by extension, senior management's endorsement of and obedience to CPS policy is a facet of tone at the top. Another symposium participant observed that board responsibility for CPS oversight depends on senior management establishing an effective compliance mechanism as well as on management reporting of related information up to the board. Other symposium participants observed, however, that senior management might sometimes play a more negative role in generating CPS risk. A few participants pointed out that top management figures sometimes make unilateral decisions about political contributions in ways that circumvent internal corporate vetting and disclosure processes and that sometimes result in material risk. One participant described an anecdotal example, involving the CEO of a major company, of exactly this kind of situation. Another participant pointed out that when the CEO does not buy into the importance of the company's CPS policy, it might be difficult for any compliance mechanism to "police upward" against misconduct. Still another participant observed that strategic decisions about corporate political engagement and reasonable spending ought to be the province of senior management, and that an appropriate CPS policy and compliance process ought to accommodate that kind of strategic decisionmaking among top executives. Without resolving all of the risk and operating challenges associated with CPS and senior management, participants in the symposium broadly acknowledged that senior management often has a central role in deciding CPS policy and strategy for the firm. By extension, CPS transparency compliance efforts need to build on policy decisionmaking by senior management while empowering both senior management and the board to understand and monitor related risks.

Appropriate Compliance Metrics for CPS Transparency Need to Be Developed and Implemented

One of the lead-off questions for this symposium session focused on the need for compliance performance metrics in CPS transparency and the specific meaning of "good" compliance. Without reaching a definitive answer, it was suggested that defining some set of performance metrics and being able to collect related data is necessary for a company (or for an outsider) to judge whether that company's compliance approach is doing "well." There was some discussion in the symposium about corresponding possibilities for CPS performance metrics and data. One participant observed that corporate financial disclosures more broadly involve standardized accounting rules; that CPS disclosures arguably should be subject to similarly explicit standards; and, by extension, that related data on CPS activity can support some rigorous

performance metrics. Exactly how that kind of financial data would relate to compliance, as opposed to simply indexing underlying CPS activity levels, was less clear. Another symposium participant suggested that simply tracking and disclosing CPS activity and documenting company tracking and transparency efforts are themselves a kind of performance metric. Likewise, it was suggested that some of the basic steps for CPS compliance discussed in the symposium session, such as enterprise-wide CPS risk assessment and the appointment of a management lead on CPS transparency, are also steps that imply some basic performance metrics (e.g., noting whether either of those steps has been undertaken). Participants in the symposium discussion did not themselves generate a list of more sophisticated metrics for CPS compliance efforts. Nevertheless, there was a consensus that such metrics will likely be important and that the corporate community should therefore strive to develop and refine such metrics over time.

Symposium Agenda

Center for Corporate Ethics
and Governance

Operations, Compliance and Accountability in Corporate Political Spending: A Dialog Regarding What, How and Why

February 26, 2016

RAND Corporation, Pentagon City
1200 South Hayes Street, Arlington, VA 22202

A roundtable event sponsored by the RAND Corporation, Columbia Law School, The Center for Political Accountability, and the Zicklin Center for Business Ethics at The Wharton School

Agenda

8:00 a.m. Registration and Coffee

8:15 a.m. Opening Remarks and Introductions

Michael D. Greenberg, Director, RAND Center for Corporate Ethics & Governance

8:35 a.m. Invited Remarks

Accountability in Political Spending Has Become Mainstream, and for Good Reason

Bruce F. Freed, President, Center for Political Accountability

Karl J. Sandstrom, Senior Counsel, Perkins Coie

How Much Accountability and Compliance Is a Good Thing?

Kier Gumbs, Partner, Covington

Wes Bizzell, Assistant General Counsel, Altria

9:05 a.m. Roundtable Session 1: Bringing Accountability to Corporate Political Spending

Introduction by Robert J. Jackson, Jr., Professor, Columbia Law School

Why is transparency in corporate political spending a useful risk management tool? What are the roles of the board and of management in setting policy for transparency, decision-making and oversight? Which elements are relatively easy, vs. relatively difficult, to implement?

10:20 a.m. Break

10:35 a.m. Roundtable Session 2: Making Corporate Political Transparency Effective

Introduction by William S. Laufer, Julian Aresty Professor, Wharton School

Is an effective corporate political transparency program a "one size fits all" endeavor? What are the "best practices" for operating a political transparency program? What procedures and controls are necessary to ensure management compliance with and adherence to a company's political transparency and accountability policy?

11:50 a.m. Closing Remarks

Michael D. Greenberg, RAND Corporation

12:20 p.m. Roundtable Concludes

Symposium Participant List

Center for Corporate Ethics and Governance

Operations, Compliance and Accountability in Corporate Political Spending: A Dialog Regarding What, How and Why

Participant List

Wes Bizzell Altria
 Dan Bross..... Microsoft
 Pat Doherty..... New York State Comptroller
 Vic Fazio..... Northrop Grumman
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