

Different Outcomes on No-Action Letters for Shareholder Proposals Aligning Political Contributions and Corporate Values

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The SEC staff recently disagreed with Procter & Gamble's no-action letter, which sought to exclude a [shareholder proposal](#) on ordinary business grounds, although a [similar proposal](#) sent to Johnson & Johnson was allowed to be kept out of its proxy statement this past February.

Both proposals requested reports to shareholders explaining the congruency between the companies' stated "corporate values" and the company's political contributions, with "justifications for...exceptions" for those contributions which may appear to be misaligned with the values. While the SEC staff did not explain their reasoning in the P&G decision, the different results seem to lie in the focus of the examples used to demonstrate the alleged incongruency.

The J&J proposal questioned the company's public commitment to the Patient Protection and Affordable Care Act (ACA), since, according to the proponent, 30% of the company's political contributions were directed at legislators who voted against ACA and related regulations, or to politicians who favored legislation to prohibit the enforcement of ACA. In that case, the SEC staff stated that the proposal was directed toward specific political contributions that relate to the operation of the business, not general political activities, and therefore permitted the company to exclude the proposal.

Procter & Gamble's shareholder proposal focused on two different issues. The proposal criticized making donations to politicians who voted to deregulate greenhouse gasses as contrary to the company's stated goal toward environmental sustainability. In addition, the proposal also questioned the company's support of candidates who voted against hate crimes legislation or who disfavored same sex marriage, which the proponent claimed is at odds with the company's stated nondiscrimination policy.

In a letter, the proponent's attorney distinguished the P&G proposal, noting that in the J&J proposal the focus was on a single issue, the ACA, which was of direct relevance to J&J's business because the company is a "healthcare industry stakeholder." According to the attorney, the examples of legislation used in the P&G proposal, however, are "general public policy issues" and not aimed at legislation that directly affected the company.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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