MUTUAL NEGLECT

How the Largest Institutions in the Stock Market Ignore Health Problems and Financial Threats Stemming From Toxic Product Liabilities

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Executive Summary

During 2007, the sale of lead-tainted toys became a major media, public policy, and international trade issue, prompting calls for overhauling and strengthening federal programs for protecting consumers from dangerous products and for closer monitoring of global supply chains. An array of products, ranging from cosmetics to mattresses, from electronics to children's toys, may contain materials that are of concern for their potential toxic hazards to consumers – and financial liabilities to investors.

During the last three years, shareholders concerned about toxic risk have filed 43 resolutions at 27 companies. Companies have been asked to report to shareholders on their policies regarding specific chemicals, such as polyvinyl chloride (PVC). Companies have also been asked to report on toxic chemicals in cosmetics, baby bottles, and personal care and health care products. Pesticide manufacturers and users have been asked about health effects from their products, prospects for shifting to less toxic pesticides, and spending to oppose local regulations limiting use of their products. *See Appendix 2 for a complete listing of resolutions.*

The biggest bloc of votes cast on toxics-related resolutions in 2008 will be by mutual funds – the largest category of institutional shareholders in U.S. stock markets, collectively holding more than one third of assets invested in U.S. companies.[1] More than 100 million Americans invest in mutual funds. The average mutual fund shareholder is also the average consumer who may be exposed to potentially dangerous levels of toxics in everyday products. Thus, consumer concern about toxics could become a volatile marketplace dynamic.

Mutual Neglect

In this report, we examine the proxy voting records of 64 major families of mutual funds on 15 toxics-related shareholder resolutions filed by investors. Many of these resolutions were filed by members of the **Investor Environmental Health Network** – a collaboration of institutional investors representing over $41 billion in assets under management. In most cases, these data show that most mutual funds tended to vote *against* resolutions expressing concern about toxics liabilities.

Emerging Support for Greater Disclosure

We contrast mutual funds' voting record *against* resolutions calling for greater disclosure of toxic risks with an emerging trend of support *for* these same resolutions from analysts at proxy advisory firms. The support of these advisory firms may encourage greater *for* votes on toxics disclosure resolutions by the mutual fund industry in 2008 and beyond. There is also a developing trend towards interest in toxics issues amongst other institutional investors, notably public pension funds and charitable endowments. *See Appendix 1: Public Pension and Charitable Endowment Proxy Voting.*

Recommendations

We close with recommendations for the mutual fund industry, including:

- Developing proxy voting guidelines to support disclosure of toxic hazards similar to the voting guidelines recently developed by Institutional Shareholder Services (ISS), and pension fund giant TIAA-CREF.
- Surveying mutual fund investors to assess their concern about health hazards and financial threats posed by toxics in consumer products and supply chains.
- Encouraging mutual fund investors to ask about their funds' voting records and policies on shareholder resolutions related to product toxicity, and their funds' overall tracking of toxics-related recalls and liabilities.

Introduction & Overview

On June 13, 2007, RC2, the Oakbrook, IL toy manufacturer of Thomas the Tank Engine, Sesame Street, Winnie the Pooh and other brands targeting young children, recalled 1.5 million Thomas & Friends Wooden Railway sets manufactured between January 2005 and June 2007, after discovering excessive quantities of lead in the toys' paint.[2]

RC2 initially estimated the cost of the recall would be $3-$4 million in the second half of 2007, including costs to defend class action lawsuits, and linked the problem to a single manufacturing facility.[3] However, as summer turned into the fall of 2007, RC2 recalled an additional 269,000 lead-painted toys, all of which had been manufactured prior to April 30, 2007.[4] These additional recalls were just the start of the bad news for RC2. In October 2007, RC2 reported that third quarter earnings had dropped 44% and net sales had fallen 8%, and upped the estimated 2007 costs related to the two recalls to $13-$14 million.[5] Sharply exacerbating the mounting financial crisis, in November 2007, RC2 and other toy companies were hit with a lawsuit by the State of California for selling toys containing quantities of lead unlawful under California's Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986.[6]

In response to the wave of bad publicity and mounting investor concern, the share price of RC2 stock declined from above $40 prior to the recall to below $30 as of mid-November 2007.[7] In February 2008, RC2 announced its year-end results, pegging the recall costs at $17.6 million. In the face of the mounting recall costs, soft sales, and rising production costs in China, the stock slumped to below $20 per share.[8]

The sale of lead-tainted toys, aside from impacting RC2 directly, has become a major public policy and international trade issue, prompting calls for overhauling and strengthening federal programs for protecting consumers from dangerous products and for closer monitoring of supply chains in China.

But the problem of product toxicity is much broader than simply a China supply chain issue. An array of products, ranging from cosmetics to mattresses, from electronics to children's toys, may contain materials that are of concern for their potential toxic hazards to consumers – and investors.

As a result, investors have increasingly turned to the time-honored process of shareholder engagement, whereby stockholders raise key policy issues with the management of companies they own through shareholder resolutions asking companies to report on their product safety and toxicity policies.

Shareholder Resolutions Change Corporate Practices

Sears Holdings published a PVC phase-out policy, following withdrawal of a shareholder resolution filed by the Evangelical Lutheran Church in America Pension Board.

Whole Foods Market pulled baby bottles and cups containing the chemicals Bisphenol-A (BPA) and phthalates from its shelves, apparently in response to a shareholder resolution filed by Green Century Capital Management.

ConAgra reviewed alternative packaging materials to reduce PFOA in packaging by 97%, following withdrawal of a shareholder resolution filed by Green Century Capital Management.

Apple announced an expedited schedule for phasing out polyvinyl chloride (PVC) and brominated flame retardants from its products, leading to withdrawal of a shareholder resolution filed by Trillium Asset Management.

Hasbro published a corporate social responsibility report, following a shareholder resolution filed by the Camilla Madden Charitable Trust requesting a sustainability report.

Mutual Fund Clout

When it comes to shareholder voting on resolutions seeking greater disclosure of toxics-related liabilities and company plans for containing or eliminating the toxic risks, the single largest bloc of votes cast in 2008 will be by mutual funds. Mutual funds represent the largest category of institutional shareholders in U.S. stock markets. They hold more than one third of assets invested in U.S. companies – approximately $5.7 trillion of the $16.4 trillion market value of domestic corporations as of the third quarter of 2007, according to data from the Federal Reserve.[9] Consequently, in the words of Wake Forest Law Professor Alan R. Palmiter, mutual funds "have become the swing vote in U.S. corporate governance."[10]

Thus, mutual funds are poised to significantly impact the outcomes of proxy votes, particularly on shareholder resolutions addressing issues such as safer alternatives to toxic materials used in manufacturing processes and found in common consumer products.

Concerned Consumers are Shareholders

With roughly 50% of Americans placing their life and retirement savings into mutual funds, people who buy shares of mutual funds also purchase children's toys, cosmetics, fast food and a host of other products that may be tainted with toxics. Thus, mutual fund shareholders are the same consumers who are exposed to widely-publicized hazards such as lead in recalled toys. Yet these shareholder/consumers have, so far, held very little sway over how the funds vote their proxies, even on issues that may directly affect their health and well being.[11] It's ironic, to say the least, that at a time when recalls of lead-tainted toys have been front-page news and concerned parents have flocked to testing centers in toy stores, these same parents may discover that the mutual fund managing their child's college savings account is voting *against* better toxics disclosure and control.

The ultimate responsibility for the management of mutual funds rests with their trustees. These trustees generally determine proxy-voting guidelines to respond to shareholder resolutions. To efficiently manage the volume of shareholder proposals that may come up for vote during what is often called "proxy season," the trustees may hire proxy advisory firms that analyze resolutions and recommend/cast votes on their behalf, or they may simply delegate voting decisions to their asset managers.

Conflict of Interest?

It has been suggested that large mutual funds may have perverse incentives to support corporate voting recommendations. Corporate managers and boards almost always urge votes against shareholder resolutions, including resolutions related to toxicity of consumer products. Is opposition to resolutions inspired by the mutual funds' efforts to court investment by corporate pension funds?[12] Funds generally deny this suggestion, and academic research to date is agnostic, neither strongly supporting it nor ruling it out.[13] While it is beyond the scope of this paper to investigate these conflict of interest allegations – which in their most extreme may pit the interests of shareholders against the business development goals of various funds – we examine the recent proxy voting records of mutual funds on issues that may impact shareholder/consumers' health and long-term financial interests.

Due to the events of the last year, issues around product toxicity represent an emerging risk and opportunity for investors. Given the proliferation of resolutions on these issues and the relevance to the average consumer/ investor, these issues also have the potential to provoke change in what some observers perceive as a cozy pattern of relationships between mutual funds, corporate pension programs, and proxy voting.

New Data Drive Fresh Analysis

Until just a few years ago, it was impossible to examine mutual funds' proxy voting, which was a tightly guarded secret. But in 2001 and 2002, unions and socially responsible investors began to chip away at this secrecy via rulemaking petitions filed with the Securities and Exchange Commission (SEC) seeking mutual fund proxy voting transparency.[14] The Investment Company Institute (ICI – the mutual fund industry group) responded by arguing that disclosure would financially overburden mutual funds and thereby dilute investor returns.[15] The SEC rejected this line of reasoning when it enacted a rule in January 2003 requiring mutual funds to open the black box of their proxy voting practices.[16] Starting in August 2004, mutual funds have had to file N-PX forms every year disclosing their proxy voting guidelines and records.[17]

One "significant benefit" the SEC intended the rule to create was to provide "stronger incentives to fund managers to vote their proxies conscientiously."[18] The bright light of transparency would help disintegrate mutual funds' rubber stamp of corporate recommendations, resulting in more well-considered voting. What remains to be seen is whether this new transparency will translate into more support for shareholder resolutions related to corporate policies and products that directly impact the health and well being of mutual fund shareholders.

Mutual Neglect

In this report, we examine the proxy voting records of 64 major families of mutual funds on 15 toxics-related shareholder resolutions filed by investors.[19] These resolutions included requests for reports to shareholders on general product safety policies as well as reports on specific chemicals, such as polyvinyl chloride (PVC), in packaging and products. Some resolutions addressed toxic health threats in cosmetics, baby bottles, and personal care and health care products. Pesticide manufacturers and users were asked about health effects from their products, prospects for shifting to less toxic pesticides, and spending to oppose local regulations limiting use of their products. *See Appendix 2 for a complete listing of resolutions.*

Many of these resolutions were filed by members of the Investor Environmental Health Network – a collaboration of institutional investors that represents over $41 billion in assets under management. In most cases, these data show that mutual funds (except for socially responsible funds), tended to vote against resolutions expressing concern about lurking toxics liabilities. This trend is similar to the mutual fund industry's dismissal of shareholder resolutions related to climate change.[20] However, the trend to ignore or oppose toxics is not entirely universal. Striking examples of *for* votes on toxics issues include major mutual fund support for a resolution requesting a report by DuPont on phase-out of PFOA, a toxic compound widely used in manufacturing stain repellants, fast food wrappers, and Teflon coatings.

Mutual Neglect also tracks the trend by proxy advisory firms to increasingly support resolutions calling for greater disclosure of toxic risks, support by some of the nation's largest state and local government pension funds for such resolutions, and increasing interest among charitable endowments in aligning their investment management (including proxy voting) with their programmatic missions. It closes with recommendations for developing mutual fund proxy voting guidelines to support disclosure of toxic hazards similar to the voting guidelines recently developed by Institutional Shareholder Services (ISS) and pension fund giant TIAA-CREF.

Strategic Shareholder Engagement on Toxic Product Liabilities

For more than 30 years, shareholders concerned with corporate governance, human rights, environmental impact, executive pay and other issues have used shareholder resolutions to raise questions that may be traditionally given short shrift by company management and mainstream financial analysts. Over the years, these resolutions have been widely credited with helping end apartheid in South Africa, reducing the use of sweatshop labor, saving old-growth forests, and reining in runaway executive compensation. Activist investors have developed large, collaborative networks to coordinate their engagement with companies. Two of the largest and best known are the Interfaith Center on Corporate Responsibility, a $100 billion collaboration of 275 religious pension funds, and the Investor Network on Climate Risk, a collaboration of institutional investors endorsed by a combined $3 trillion in assets under management.

Following these models, a group of investment managers concerned with product toxicity issues from both a financial risk and consumer health perspective came together in late 2004 to organize the Investor Environmental Health Network (IEHN).[21] In the first full season of shareholder advocacy in 2005-2006 (the 2006 proxy season), IEHN participants filed a dozen resolutions on toxic chemicals.[22] In addition to focusing on individual chemicals, some of these resolutions sought broader product safety reports, referencing a "Product Toxicity and Safer Alternatives Governance Benchmarking Framework" published in 2005.[23]

IEHN has since produced a series of reports on the risk profiles of companies and sectors, including a special report on the cosmetics and personal care industry.[24] In conjunction with staff of Mercer Investment Consulting, in 2007 IEHN published a comprehensive "Fiduciary Guide to Toxic Chemical Risk," which can be used broadly by institutional investors – including mutual funds – to examine the financial dimensions of toxic chemical risk. The Guide also offers a policy framework for responding to these threats to shareholder value.[25]

Toxics in Teflon

The 2005-2006 resolutions produced a number of noteworthy *for* votes. For example, in 2005 a resolution was introduced at DuPont (for the 2006 proxy season) asking the company to report on the feasibility of expeditiously phasing out PFOA, a chemical used in making Teflon as well as grease and stain repellents used for coating carpets and fast-food wrappers. Potential risks associated with these products had gained high visibility in the prior year, and the company faced a cascade of legal and enforcement matters related to public and environmental exposures to PFOA. The resolution received 28.9% support from voting shareholders.[26] Considering the fact that the SEC requires first-year resolutions to surpass a mere three percent support threshold for re-filing the next year, and vote tallies for first-year resolutions typically remain in single-digit percentages, this was a striking result.

Mutual fund support clearly bolstered the big vote at DuPont. IEHN tallied 1453 proxy votes by mutual funds in 2006.[27] Of the 164 votes on the 2006 DuPont PFOA resolution cast by funds tracked by IEHN, 26% (43) voted in favor.[28] Some fund families – such as Aegon, Goldman Sachs, John Hancock, and MassMutual – split their votes on this resolution, with some funds in each of these fund families supporting it while others opposed it. It is unclear why different funds under the same roof vote oppositely on the same resolution, potentially even canceling out their own votes within a single institution. Mutual fund support also drove other notable *for* votes in 2006. For example, a 2006 resolution filed by Green Century Capital Management asking Whole Food Market to report on endocrine disruptors and other toxic chemicals in products it sells received a 10% vote. Of the 115 votes cast on the Whole Foods resolution by mutual funds tracked by IEHN, 17% (19 votes) were in favor – dominated by TIAA-CREF's 12 yes votes.[29] Support also came from three investment management firms participating in IEHN (Calvert Investments Ltd, Citizens Advisers, and Domini Social Investments).

While the Calvert funds predictably voted *for* the resolution, the Ameritas Index 500 Portfolio owned by Calvert's parent company, UNIFI Companies, voted *against* it. This was one of 9 "no"s and 2 abstentions by Ameritas funds in 2006, in contrast to Calvert's 9 "yes" votes – another example of individual funds within the same overall fund family sending a mixed message by canceling each other out.

Proxy Advisory Firm Recommendations Drive Voting Results

One dynamic that clearly drove the strong vote in favor of the DuPont PFOA resolution was support from Institutional Shareholder Services (ISS – the oldest of the proxy advisors, founded in 1985, and the dominant service in the United States). Proxy advisory firms, such as ISS, Glass Lewis, and PROXY Governance work under contract for institutional investors (including mutual funds, pension funds, and foundations) to provide analysis and recommendations on how to vote on shareholder resolutions. Responding to mounting investor interest in toxics, ISS added to its 2006 proxy voting guidelines a new policy on resolutions addressing toxic chemicals in products, an issue its guidelines previously didn't address.[30]

As ISS' revised 2006 guidelines explained:

"ISS will recommend generally voting FOR resolutions requesting that a company [disclose] its policies related to toxic chemicals. ISS will recommend on a CASE-BY-CASE basis on resolutions requesting that companies evaluate and disclose the potential financial and legal risks associated with utilizing certain chemicals, considering: Current regulations in the markets in which the company operates; Recent significant controversy, litigation, or fines stemming from toxic chemicals or ingredients at the company; and The current level of disclosure on this topic."

While these revised guidelines supported increased disclosure of toxic chemicals policies, the 2006 guidelines also called for ISS to recommend voting *against* resolutions requiring product reformulation on a specific timeline. In other words, ISS took the position that increased disclosure was beneficial to shareholder analysis of a company's value, but proscriptive measures to reduce product toxicity were, perhaps, too risky. These new guidelines prompted ISS to recommend support for just one resolution in the 2006 proxy season: the DuPont PFOA resolution that received 28.9% support. It would seem to be no coincidence that ISS' support correlated with the strong *for* vote.

In the 2007 proxy season, ISS recommended voting *for* the DuPont PFOA resolution again, and added two other *yes* recommendations among the seven toxics resolutions that went to vote: a resolution referencing polyvinyl chloride (PVC) products and packaging that asks Hasbro to issue a sustainability report; and a resolution asking Bed Bath & Beyond to report on toxic chemicals such as PVC and

PFOA in products it sells. This was the first year that these resolutions were submitted.[31] The Hasbro resolution cited scientific concerns about PVC and regulatory action to outlaw PVC products containing certain toxic additives, and noted that prominent competing toy companies plus retailers such as Wal-Mart and Ikea were phasing out PVC in products and/or packaging. It received support from 44.8% of voting shareholders, an astonishing outcome for a first-year resolution, and represented at the time the second-highest vote ever recorded for a sustainability resolution opposed by management.[32] Unsurprisingly, mutual fund support for the Hasbro resolution ran remarkably high. IEHN tracked 903 proxy votes by mutual funds on resolutions its participants submitted in the 2007 proxy season. Of the 80 votes cast on the Hasbro resolution, 45% (36 votes) were cast in support.[33] Again, the correlation between proxy analyst support and a strong *for* vote seems clear.

New TIAA-CREF Proxy Voting Policy Supports Product Toxicity Resolutions

In addition to the proxy analysts such as ISS, some major fund managers have begun recognizing the increasing evidence of linkages between toxicity, human health, and financial risk. Earlier in 2007, TIAA-CREF, the nonprofit retirement fund manager controlling more than $430 billion in assets, issued a substantial revision and elaboration of its proxy voting policies that integrate social and environmental concerns into its new corporate governance policy.[34] Two policy areas bear on resolutions addressing toxic chemicals and product safety.

"TIAA-CREF will generally support reasonable shareholder resolutions seeking disclosure or reports relating to the safety and impact of a company's products on the customers and communities it serves," reads TIAA-CREF's "Product Responsibility" policy, noting that "ethical behavior and diligence with regard to product safety and suitability can avoid reputational and liability risks and strengthen their competitive position."[35]

The new policy also holds that TIAA-CREF will "generally support reasonable shareholder resolutions seeking disclosure or reports relating to a company's initiatives to reduce any harmful community impacts or other hazards that result from its operations or activities," according to its "Impact on Community" policy.[36]

The new policy significantly shifted TIAA-CREF's voting pattern on toxic chemical resolutions. In 2006, TIAA-CREF *opposed* two toxics resolutions at Dow, two at DuPont, and one at Avon, and *supported* resolutions at CVS and at Whole Foods Market. TIAA-CREF split its voice at medical device supplier Becton, Dickinson (with some of its funds supporting the resolution and others opposing it), and abstained on a resolution at lawn care giant ServiceMaster.

In 2007, TIAA-CREF supported *all* toxics resolutions that went to vote—three at DuPont, and one each at Dow, Hasbro, and Scotts Miracle-Gro.

In late November 2007, perhaps influenced by the wave of recalls and warnings on toxic ingredients identified in products manufactured in China, such as lead in toys, ISS again updated its voting guidelines for the upcoming (2008) proxy season. ISS retained its recommendation against overly-prescriptive phase-out resolutions. But, acknowledging that its existing policy on toxic materials "works appropriately for manufacturers but falls short of being able to address companies further down the supply chain, notably retailers," ISS revised its policy to address the pressing issues of toxics in supply chains:

> "ISS will recommend FOR proposals requesting the company to report on its policies, initiatives/procedures, oversight mechanisms related to toxic materials, including certain product line toxicities, and/or product safety in its supply chain, unless:
>
> - The company already discloses similar information through existing reports or policies such as a Supplier Code of

Conduct and/or a sustainability report;
- The company has formally committed to the implementation of a toxic materials and/or product safety and supply chain reporting and monitoring program based on industry norms or similar standards within a specified time frame; and
- The company has not been recently involved in relevant significant controversies or violations."[37]

The evolution of ISS' approach over such a short period shows how rapidly perceptions of the potential financial risks associated with product toxicity are changing. For the 2006 proxy season, ISS supported basic disclosure related to toxics policies, with a case-by-case approach to considering risk. Two years later, ISS has now adopted a much more sweeping position that would favor reports on toxicity throughout a company's supply chain.

In fact, the new ISS guidelines strongly suggest to companies that, unless management has already committed to substantial environmental disclosure throughout its supply chain, ISS is likely to support shareholder initiatives seeking such disclosure. Since the data clearly show that significant *for* votes tend to follow ISS' recommendations, we may well expect to see higher vote totals across the board for toxics-related resolutions in the coming year.

The Winds of Change? Goldman Sachs Increases Support for Toxics Resolutions

In some instances, even firms that have not made discernible changes in their proxy voting guidelines have made significant changes in their proxy voting. For example, Goldman Sachs has been integrating ESG (environmental, social and governance) factors into the brokerage research produced by its investment analysts since 2004.[38] However, this integration did not immediately translate into support for the first major wave of shareholder resolutions in 2006. That year, Goldman Sachs funds voted *against* all the toxicity resolutions except at DuPont, where one actively managed fund voted *for* the PFOA resolution while an index fund voted *against* it.[39]

Goldman Sachs Funds' *Description of Proxy Voting Policy* for 2007 did not foretell any changes. They contained very generic language in the Social and Environmental Issues section, stating that votes would be on a "case-by-case" basis, noting explicit guidelines on just two issues: voting *for* resolutions asking to add sexual orientation to Equal Employment Opportunity (EEO) Statements, and *against* resolutions asking for voluntary labeling of ingredients.[40]

Nevertheless, Goldman's voting record on toxics resolutions shifted significantly in 2007. Four actively managed Goldman funds voted *for* the DuPont PFOA resolution (while the same index fund voted *against* it again), and six Goldman funds voted *for* the Hasbro sustainability report resolution that referenced PFOA and PVC (and here again the index fund voted *against*). All Goldman Funds voted *against* two other toxics resolutions at DuPont, as well as a resolution at Dow.[41]

In fact, the 2007 DuPont PFOA resolution and the Hasbro sustainability report resolution similarly received support from a number of other fund families, including MassMutual (7 funds voted *for* DuPont PFOA and 5 *against*; and 6 funds *for* Hasbro, 1 *against*, and 2 *abstain*) and Janus (6 funds *for* DuPont PFOA, 2 *abstains*, and 1 did not vote even though it apparently held shares; and 4 funds *for* Hasbro).

While perhaps driven by different investment styles and risk tolerance, it is striking that different funds within the same fund families vote so differently. But the data suggest that some of the funds in these families are seriously looking at toxics as a source of financial risk, rather than reflexively voting in support of company recommendations.

Most Mainstream Mutual Funds Still Disregard Toxics Resolutions

While Goldman Sachs and perhaps a few other funds may be showing some movement towards supporting toxics resolutions, other firms have not yet followed this lead – even those that are integrating sustainability considerations elsewhere in their operations. Wells Fargo, which issued an alternative energy report in 2006, opposed *all* toxics resolutions.[42] Merrill Lynch, which launched an Energy Efficiency Index in 2007 and partnered with the World Resources Institute (WRI) to issue two reports on climate change impacts on the auto sector in 2005 and 2006, opposed almost *all* toxics resolutions (one fund supported the Hasbro sustainability report resolution).[43] By adopting a posture of blanket opposition to all shareholder questions related to understanding or reducing toxic risk, these funds appear indifferent to the strong financial argument for the resolutions, as well as their shareholder/consumers' undoubted preference for less-toxic consumer products. As consumers increasingly rebel against toxic hazards in commonly-used products, funds with a tin ear towards their customers' wishes may find themselves at a disadvantage in the highly competitive mutual fund market.

In fact, the broad support for the DuPont and Hasbro product toxicity resolutions is an exceptional piece of a larger mosaic of the mainstream mutual fund industry's apparent disdain for toxics-related resolutions. One of the three largest mutual fund companies, Fidelity, has not supported any toxic product resolutions in the past two years – abstaining eight times in 2007 and voting *against* 87 times in 2006. Another top-three fund company, American Funds, had no holdings in companies facing toxics resolutions in 2007, but voted *against* toxics resolutions in 13 instances in 2006.

Vanguard, the other of the three largest mutual fund firms, *abstained* on all toxics resolutions both years – punting on its fiduciary duty to weigh in one way or the other – claiming in its *Proxy Voting Guidelines* that "social policy issues" amount to "ordinary business" best handled by management.[44] Since companies can and do aggressively petition the SEC to allow them to omit resolutions pertaining to "ordinary business," most of the resolutions actually in front of Vanguard had already passed this challenge (or were unchallenged by the company). An SEC or company decision to allow resolutions onto the proxy typically follows a legal conclusion that these issues do not relate to ordinary business, and <u>are</u> appropriate issues for investors to weigh in on, beyond the realm of issues normally "reserved to the management." Thus Vanguard could, and should, have weighed in on these, but chose not to.

Vanguard also abstains from voting unless it sees "a compelling economic impact on shareholder value," essentially disregarding the strong liability, marketplace, and regulatory risk arguments underlying the toxics-related resolutions.[45] Some shareholder activists may take comfort from the fact that SEC rules call for leaving abstentions out of vote counts, which in most cases raises the impact of *for* votes. However, shareholders of Vanguard and other mutual funds that regularly abstain on toxics resolutions may wonder why their fund seems to avoid taking a position on toxic risk and emerging green chemistry issues that, in the words of a recent report produced by the University of California, have the potential to "contribute to a sustainable economy… improving the profitability of businesses using safer materials, (and) providing job opportunities." [46]

Most Mutual Funds Seem to Ignore the Business Case for Supporting Product Toxicity Resolutions

Unlike Vanguard, whose pattern of abstention on toxics resolutions may seem like an attempt to hide from the specter of toxic risk, other fund families seem to simply oppose any and all toxics-related resolutions. For example, ING voted *against* every single toxics resolution for the past two years – with 28 ING funds voicing opposition to six resolutions in 2007 and 31 ING funds opposing 9 resolutions in 2006.

The "Social and Environmental Issues" section of the *ING Funds Proxy Voting Procedures and Guidelines* explains the rationale for such voting:

> "While a wide variety of factors may go into each analysis, the overall principle guiding all vote recommendations focuses on how or whether the proposal will enhance the economic value of the company," the guidelines state. "Absent concurring support from the issuer [i.e., the company], compelling evidence of abuse, significant public controversy or litigation, the issuer's significant history of relevant violations; or activities not in step with market practice or regulatory requirements, or unless provided for otherwise herein, generally vote AGAINST shareholder proposals seeking to dictate corporate conduct, apply existing law, duplicate policies already substantially in place and/or addressed by the issuer, or release information that would not help a shareholder evaluate an investment in the corporation as an economic matter." [47]

A guiding principle of considering economic impact, fleshed out by various quantifiable metrics such as regulatory violations, significant public controversy, or litigation – would this seem to weigh towards support *for* proposals seeking to quantify or cap significant financial and/or reputational liabilities related to toxic risk? On paper, perhaps, but in the real world ING voted *against* the DuPont PFOA resolution, <u>despite</u> the fact that DuPont had been forced to fund a sizeable legal settlement,[48] had paid the largest civil penalty ever administered by EPA,[49] and had incurred reams of bad publicity coast to coast.

In fact, ING seems to be entrenched in a position of reflexively voting *for* management, regardless of the company's record on toxics. It's clear that the operative portion of ING's guidelines is their pledge to vote *against* resolutions "absent concurring support from the issuer" – a circumstance that virtually never occurs. Therefore, one is forced to wonder if ING (and such other funds that may have similar language in their proxy voting guidelines) will <u>ever</u> support a shareholder resolution pertaining to toxic chemicals in products, short of some catastrophic environmental disaster.

For funds managed by financial conglomerates that also offer health insurance, such as MassMutual and John Hancock, financial risks from product toxicity may come from multiple directions. For example, a 2006 resolution filed by Trillium Asset Management asked Dow to produce a report analyzing the extent to which Dow products,

Company Implementation Advances Case for Supporting Toxics Resolutions

The best argument for mutual funds to support shareholder resolutions on toxics may come from companies themselves, when management agrees to pursue the objectives of resolutions, sometimes before the resolution goes to vote (usually prompting filers to withdraw the resolution).

Sears Phases out PVC Packaging and Products
The Pension Board of the Evangelical Lutheran Church in America withdrew a resolution at Sears Holdings when the company reported on practices regarding PVC. After continued dialogue with investors and environmental health advocates, Sears announced a policy in December 2007 to phase-out products containing PVC.[50] Coming on the heels of Wal-Mart's 2005 announcement of a phase out policy for PVC in it private label packaging, and Target's announcement in November 2007 of a PVC reduction policy, the Sears decision signals a possible tipping point against the use of PVC packaging in the U.S. retail sector.

Whole Foods Market Pulls Polycarbonate Baby Bottles
In 2006, Green Century Capital Management filed a shareholder resolution raising questions about Whole Foods Market's sale of products containing hormone disrupting chemicals, including Bisphenol A (BPA). While Whole Foods had already engaged consultants to explore issues around these chemicals, it had not yet pulled any products from its shelves. Prior to the shareholder vote, Whole Foods pulled polycarbonate baby bottles containing BPA from its shelves and announced a policy of reducing customer exposure to hormone disruptors. BPA science has grown since that time – mainstream media have reported this issue extensively, and the market for non-BPA bottles has expanded dramatically. By nimbly responding to shareholder concerns, Whole Foods placed itself in a strong position to capture this increasing market.

Apple Goes Greener
In the days preceding Apple's 2007 annual meeting, IEHN member Trillium Asset Management withdrew its resolution asking the company to become "a leader in the use of safe materials, by eliminating persistent and bioaccumulative toxic chemicals, and all types of brominated flame retardants (BFRs) and polyvinyl chloride (PVC) plastics, in all Apple products…" The resolution was withdrawn when, a few days prior to the meeting, Apple CEO Steve Jobs announced a strengthened Apple commitment to use environmentally safer materials in Apple products (by eliminating PVC and bromated flame retardants, among other things).[51]

such as its pesticides, may cause or exacerbate asthma.

As a disease that has been extensively studied over the years, the financial burden of asthma is well documented. For example, the annual costs of childhood asthma in California alone are estimated to be $289 million per year.[52] Given existing science pointing to Dow products as contributing to asthma and other respiratory problems, the resulting liabilities could be significant. While any mutual fund company might do well to consider the potential financial risk this poses to their shareholders, a health insurance company must also be concerned about asthma from the standpoint of the costs of covering their clients and beneficiaries. Therefore, one might expect John Hancock and MassMutual to support a resolution trying to investigate asthma-related risk.

Unfortunately, the data point in the opposite direction. Eight John Hancock funds voted *against* the Dow asthma resolution in 2006, and three MassMutual funds voted *against* it, while a fourth abstained and a fifth did not vote. In future years, this could become an area where both mutual fund shareholders and consumers facing skyrocketing insurance premiums begin to raise sharp questions.

In fact, the dichotomy between different interests within major fund families may be widespread. Consider Morgan Stanley, the global financial services firm with over $780 billion in assets under management. Among Morgan Stanley's many laudable global citizenship and community involvement programs is its 30-year partnership with New

York Presbyterian Hospital, hallmarked by the opening of the Morgan Stanley Children's Hospital in 2003, a state-of-the-art facility to which Morgan Stanley directly contributed $60 million.[53] Among other programs, the new children's facility provides asthma treatment services. How would a parent who invests in a Morgan Stanley mutual fund square the company's substantial donation to support children's asthma treatment with Morgan Stanley's opposition to the Dow shareholder resolution asking for a report analyzing the extent to which Dow products may cause or exacerbate asthma? (Five Morgan Stanley mutual funds voted *against* the Dow asthma resolution in 2007 and 12 voted *against* in 2006.)

Conclusion

Stepping back to assess the overall effectiveness of shareholder activism on toxics in products reveals that the issue is gaining momentum with concerned investors. The average support from *all* voting shareholders (including not only mutual funds but also pension funds, foundations, endowments, and individual investors) for the toxics-related resolutions in 2007 was 16.9%, up substantially from 10.2% for the nine resolutions in 2006. This undoubtedly reflected the impact of the changed mix of resolutions and increased support from proxy advisory firms.

There appeared to be a sizeable level of mutual fund support for the landmark Hasbro resolution in 2007 and there was a discernible shift in voting by a handful of mutual fund families such as TIAA-CREF and Goldman Sachs, but otherwise mutual fund families largely maintained their traditional pattern of abstaining from or voting against resolutions. Although it is beyond the scope of this paper to provide a detailed analysis of all the drivers behind these votes, readers interested in how other institutional investment sectors are responding to toxics-related shareholder resolutions should refer to *Appendix 1: Public Pension and Charitable Endowment Proxy Voting.*

In fact, the mutual fund industry's overall neglect of toxics issues may be changing. Early indicators for the 2008 proxy season show promise for increasing support for toxics resolutions. A resolution filed by IEHN member Domini Social Investments asking medical devices manufacturer Becton, Dickinson to report on brominated flame retardants (BFRs) and other chemicals of concern in its products came to a vote in late January. Both ISS and the proxy advisory firm PROXY Governance Inc. (PGI) recommended voting *for* the resolution. On January 29, 2008, shareholders cast a whopping 36.1% of their votes in favor of the Becton, Dickinson resolution, thereby continuing the trend that sizeable "yes" votes correlate with proxy advisory service recommendations.

ISS' support is particularly noteworthy, since it opposed a related resolution filed with the same company in 2006. ISS' support may be a bellwether of growing acceptance of toxics-related resolutions. It also reflects shareholder proponents tracking past ISS objections to overly prescriptive resolutions and recrafting the resolution to better fit ISS' guidelines.

For its part, PGI took the opportunity to express disappointment that the Becton, Dickinson board did not more fully address the specific issues raised in the resolution, such as the expectation of many observers that the European Union's RoHS directive (which seeks to restrict hazard substances such as lead, mercury, and some BFRs in electrical and electronic equipment) will remove its exemption for medical devices in coming years. In PGI's words:

> "While we are inclined to believe that the company is aware of the issues raised in the proposal, in light of the potential impact that product safety issues may have on shareholder value at medical device companies, we believe that shareholders would benefit from additional disclosure on the company's current policies and practices. As such, we are inclined to support the proponent's request."

During the balance of the 2008 proxy season, it remains to be seen how many resolutions ISS and PGI will support. The 2008 N-PX filings will then reveal whether mutual funds followed their lead with respect to the other toxics and product safety resolutions that came to a vote. These 2008 resolutions are outlined in *Appendix 2: Recent Toxics-Related Shareholder Resolutions.*

Four Easy Steps Towards Mutual Respect:
Policy Recommendations for the Mutual Fund Industry (and its Investors)

1) FOLLOW THE LEADERS:
Adopt a proxy voting guideline similar to ISS or TIAA-CREF.

Proxy voting is a critically important component of fiduciary duty, and funds owe it to their shareholders to carefully evaluate shareholder resolutions at portfolio companies pertaining to toxic chemicals and product safety. In light of the substantive business case on toxic chemical issues, the affirmative duty to evaluate toxics-related resolutions is clear, and we recommend that funds follow the lead of ISS and TIAA-CREF in developing proxy voting guidelines covering this still-emerging, but critically important area. Specifically, IEHN recommends that mutual funds adopt voting guidelines that *support* proposals which request a report on:

- ✓ A company's policy on potentially toxic chemicals and/or hazardous substances.
- ✓ Lists of product lines or categories containing toxic chemicals or other hazardous substances.
- ✓ An evaluation of the feasibility of phasing out a toxic chemical or other hazardous substance and/or reformulating products to eliminate the substance(s) of concern.
- ✓ How these activities are implemented across the company's global supply chain.

In addition to the model provided by ISS and TIAA-CREF, the Connecticut and Maryland state pension funds also offer excellent examples of similar language that funds can integrate into their proxy voting guidelines.

2) ATTEND TO CORE FIDUCIARY DUTIES:
If a prudent investor would be concerned about the costs and liabilities of toxic risk, so should mutual funds (as owners of the companies in which they invest).

According to both "black-letter" law and prevailing regulatory interpretation, as well as the respected opinions of international law firms such as Freshfields Bruckhaus Deringer, integrating environmental considerations into investment decisions is, at the very least, consistent with fiduciary duty. The wealth of empirical data describing the positive nature of the environmental/financial nexus begs consideration by mutual funds of integrating toxics issues into stock selection, monitoring, and engagement strategies.

Mutual funds are part owners of the companies in which they invest. Mutual fund trustees should proactively assess their own understanding of the relationship between toxics and financial risk, and explore these issues with their investment managers and consultants. Along with staff from Mercer Investment Consulting, the Investor Environmental Health Network has published a comprehensive guide for managing risk exposure and protecting investment portfolios. The *Fiduciary Guide to Toxic Risk* can be downloaded free from www.iehn.org.

3) ASK YOUR CUSTOMERS WHAT THEY WANT:
Most people don't want toxic hazards in their homes – they probably don't want toxic risk in their portfolios, either.

Mutual funds should survey their customers' opinions on toxic health hazards. One model to follow is the 2006 survey conducted by TIAA-CREF that sought participants' opinions on socially responsible investing. The survey polled equal numbers of participants in socially screened and non-socially screened accounts maintained by the giant financial services provider. Interestingly, 67% of participants in the non-screened accounts said they thought that shareholder activism was important. The survey also found that the majority of both screened and non-screened fund participants would boycott companies whose corporate practices they disapprove of, and would prefer to buy organic food. As Scott Evans, Executive Vice President and Head of Asset Management at TIAA-CREF commented, the survey "illustrates that many participants think about the environmental and social impact of their investments."[54] While the TIAA-CREF survey may not be representative of the entire spectrum of U.S. mutual fund customers, it nonetheless paints a broad picture of participants who are likely to want their funds to play an active role in reducing toxic health threats. This is a market dynamic that the mutual fund industry needs to respond to.

4) *For individual mutual fund investors*
BE AN INFORMED CONSUMER:
A smart shopper reads the label – a mutual fund investor should ask their fund about its toxic risk profile.

Just as mutual fund trustees need to step forward to manage toxic risk in the companies they own, mutual fund investors also need to proactively protect their investments. Mutual fund shareholders need to act as informed consumers. Over the last year, consumers have learned that they need to ask about the presence of toxics in many everyday products such as children's toys, baby bottles, cosmetics, and fast-food wrappers. A parent who is concerned about toxic lead in a toy or lunchbox should also worry about lead contamination in their college savings account.

Mutual fund shareholders should contact their funds' investor services department and ask:

- → To review the fund's voting record on the last two years of toxic-related shareholder resolutions.
- → Whether the fund has a policy of voting *for* shareholder resolutions seeking to report on, or reduce, toxic health risks and financial liabilities, and if not, ask for the company to revise its policies to do so.
- → Whether the fund monitors a portfolio company's record of toxics-related violations, recalls, and product hazards as part of the fund's ongoing monitoring process and proxy voting decision-making process.
- → Whether the fund has quantified the total extent of toxics-related liabilities in its portfolio as a whole.

Appendix 1:
Public Pension and Charitable Endowment Proxy Voting

To provide some context in analyzing the mutual fund industry's posture in responding to toxics-related shareholder initiatives, this appendix briefly profiles how public pension funds and charitable foundations are voting their proxies on toxics-related issues.

Public Pension Funds

In contrast to mutual funds, public pension funds are not required to disclose how they voted their proxies. Instead, a handful of funds provide the information on a voluntary basis through their websites or upon request. Because there is a lack of transparency and systematic reporting, it is very difficult to conduct a comprehensive analysis of public pension fund voting patterns.

Nevertheless we were able to obtain voting information about a group of public pension funds (assets under management are noted) including: CalPERS ($260 billion)[55], Ohio PERS ($78 billion), Connecticut Retirement Plans and Trust Funds ($26 billion)[56], MainePERS ($11 billion)[57], NYCERS ($105 billion)[58], NYS Common Retirement Fund ($154 billion)[59], Maryland State Retirement System ($42 billion)[60] and Wisconsin Retirement Trust Funds ($88 billion).[61] From these sources we determined that of those that held Hasbro, all voted for the shareholder proposal regarding product toxicity. Similarly, all of the funds that held Scotts Miracle-Gro voted in favor of the proposal except for one, Maine, which abstained. With respect to the 2006 DuPont PFOA proposal, all of the funds which had DuPont in their portfolios voted for the proposal except for Ohio PERS which voted against.

It is also noteworthy to observe the variety of approaches to toxics in pension fund proxy voting guidelines. These may vary significantly from fund to fund, ranging from guidelines that are very general to guidelines that are very specific. For example, on one end of the spectrum we find that CalPERS' guidelines are very general and articulate support for proposals that ask companies to provide "accurate and timely disclosure of environmental risks" and "to measure, disclose, and be accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development."[62] These guidelines serve to give the trustees a maximum amount of flexibility, but leave shareholders and observers uncertain regarding how a specific proposal will be viewed by the fund.

On the other end of the spectrum, NYCERS has very detailed guidelines that address very specific subjects such as chlorine, cosmetic product safety, and PVC-containing medical devices. NYCERS has some 26 guideline categories covering social and environmental issues alone. The fund also regularly adopts new guidelines to address new issues that are not covered by the existing guidelines.

Somewhere in the middle of these two extremes are funds like Connecticut, which has eight guideline categories on topics such as HIV/AIDS, climate change, and toxic chemicals. While some of the guidelines are specific, some are more general. For example, its recently-adopted guideline on toxic chemicals indicates that the fund "will vote FOR shareholder resolutions that request companies disclose [their] policies related to toxic chemicals."[63]

Most recently, the Maryland Retirement System adopted a proxy voting guideline similar to Connecticut's which states the fund generally will "vote FOR shareholder proposals seeking the preparation of a report discussing the potential financial and legal risks associated with utilizing certain chemicals and/or the implications of adopting a policy for phasing out toxic chemicals of concern." Maryland also adopted a product safety guideline that is identical to the ISS product safety guideline which indicates the fund will vote "FOR proposals requesting the company to report on its policies, initiatives/procedures, oversight mechanisms related to toxic materials, including certain product line toxicities, and/or product safety in its supply chain." [64]

Charitable Foundations and Endowments

Just as some of the largest public pension funds have demonstrated a supportive posture on toxics-related resolutions, there are growing indications that similar support may be on the upswing among charitable foundations and endowments – a combined investment pool of nearly $500 billion in the United States. As recently as 2002, the Council on Foundations reported that nearly half of U.S. foundations surveyed automatically voted their proxies in favor of management, and over 50% delegated proxy voting to investment managers with no instruction or policy guidance to consider the impact of a resolution's environmental or social impact on the foundation's mission.[65] Although some of the nation's largest foundations, such as the Ford Foundation, have quietly maintained a policy of alignment between their charitable and investment practices, these policies of alignment have generally been the exception, rather than the rule.

However, in the last few years, many foundations such as the Hewlett Foundation ($8.5 billion) and MacArthur Foundation ($6.1 billion) have become vocal proponents of considering mission goals in voting proxies.[66] The new MacArthur guidelines express the general sentiment of the field, stressing that the goal of their voting policy is "to reduce or eliminate a substantial social injury caused by a company's actions."[67] In most cases, these guidelines do not specifically address toxics, so an increase in support for toxics-related resolutions cannot be forecast with any certainty. However, it seems likely that proposals related to potentially serious health risks caused by toxics in products or supply chains may well meet the "substantial social injury" criterion and gain support.

A Tailwind Behind Toxics Disclosure?

Overall, the trend among both the public pension funds and foundations may be creating a tailwind in support of toxics-related shareholder proposals and efforts to develop proxy voting guidelines that speak to toxic chemical and product safety issues. These developments are critical because (1) toxic chemical issues have financial implications for the funds and foundations and (2) fiduciary duties require that trustees not vote blindly with management but rather inquire into the facts presented by the proposal and consider the impact of the issue.[68]

Finally, while public pension funds and charitable endowments do not share the mutual fund industry's affirmative burden to report their proxy votes, such reporting is emerging as a best practice. As the SEC noted with respect to mutual funds, "increased transparency will enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which may have a dramatic impact on shareholder value." We believe the same is true for public pension funds and endowments. Many, but certainly not enough, public pension funds do provide public access to their proxy voting decisions. For example CalPERS, OPERS, and Connecticut all provide disclosure on a quarterly basis or in a searchable form. [69] On the charitable endowment side, a wealth of proxy voting model policies and guidance can be found at www.foundationpartnership.org.[70] We believe that these examples from highly respected institutions should provide the basis for a uniform and readily accessible body of data that is available for beneficiaries and concerned investors.

Appendix 2:
Recent Toxic-Related Shareholder Resolutions

Excludes resolutions that SEC allowed companies to omit from their proxies.

2008 Proxy Season

Avon

Lead Filer: Calvert Investments

RESOLVED: Shareholders request that the Board publish a report to shareholders on Avon's policies on nanomaterial product safety, at reasonable expense and omitting proprietary information, by November 1, 2008. This report should identify Avon product categories that currently contain nanomaterials, and discuss any new initiatives or actions, aside from regulatory compliance, that management is taking to respond to this public policy challenge.

Becton, Dickinson

Lead Filer: Domini Social Investments   Vote: 36.1%

RESOLVED: Shareholders request that the Board publish by October 2008, at reasonable cost and excluding proprietary information, a report evaluating the company's policies on BFRs and other internationally recognized toxic chemicals of concern, including a characterization of whether and in which product categories the chemicals of concern are contained in company products, and options for policies and practices to deploy safer alternatives to the chemicals of concern.

Best Buy

Lead Filer: Adrian Dominican Sisters

RESOLVED: Shareholders request that the Board publish a report to shareholders on Best Buy's policies on product toxicity, at reasonable expense and omitting proprietary information, by December 2008. This report should summarize which, if any, product lines or categories sold in Best Buy stores may be affected by the product toxicity concerns described above, and options for new initiatives, above and beyond legal compliance, that management can or will take to respond to this public policy challenge.

Circuit City

Lead Filer: Sisters of St. Francis of Philadelphia

RESOLVED: Shareholders request that the Board publish a report to shareholders on Circuit City policies on product safety, at reasonable expense and omitting proprietary information, by December 2008. This report should summarize which, if any, product lines or categories sold in Circuit City stores may be affected by the product safety concerns described above, and options for new initiatives, above and beyond legal compliance, that management can or will take to respond to this public policy challenge.

Colgate-Palmolive

Lead Filer: Calvert Investments (withdrawn)

RESOLVED: Shareholders request that the Board publish a report to shareholders on Colgate-Palmolive's policies on nanomaterial product safety, at reasonable expense and omitting proprietary information, by November 1, 2008. This report should identify Colgate-Palmolive product categories that currently contain nanomaterials, and discuss any new initiatives or actions, aside from regulatory compliance, that management is taking to respond to this public policy challenge.

Costco

Lead Filer: Boston Common Asset Management (withdrawn)

RESOLVED: Shareholders request that the Board publish a report to shareholders on Costco policies on product safety, at reasonable expense and omitting proprietary information, by December 2008. This report should list product categories sold in Costco stores which contain substances affected by the public health concerns described above, and discuss any new initiatives or actions, aside from regulatory compliance, that management is taking to respond to this public policy challenge.

Dow

Lead Filer: Trillium Asset Management

RESOLVED: Shareholders request that the Board establish an independent panel, controlling for conflict of interest, to publish by May 2009, at reasonable cost and excluding proprietary information, a report analyzing the extent to which Dow products may cause or exacerbate asthma, and describing public policy initiatives, and Dow policies and activities, to phase out or restrict materials linked with such effects.

DuPont

Lead Filer: Amalgamated Bank

RESOLVED: The shareholders urge the Board of Directors to issue a report on PFOA compounds used in DuPont products by the 2009 annual meeting, at reasonable cost and excluding confidential information, evaluating the feasibility of rapid phase out of PFOA from all DuPont products, including materials that can degrade to PFOA in use or in the environment, and the development and adoption of safer substitutes.

Hasbro

Lead Filer: Camilla Madden Charitable Trust (withdrawn)

RESOLVED: Shareholders of Hasbro Inc. request the Board of Directors to publish a sustainability report, at reasonable expense and omitting proprietary information, by December 2008.

JC Penney (Product Safety)

Lead Filer: Submitted by Comptroller William C. Thompson, Jr., on behalf of the New York City Pension Funds

RESOLVED: Shareholders request that the Board publish a report on the company's policies on product safety, at reasonable cost and omitting proprietary information, by December 2008. The report should summarize attempts by the company to secure its supply chain of goods marketed, which, if any product lines and categories sold in JC Penney stores may be affected by the new product safety concerns described above, and the options for new initiatives or actions management is taking to respond to this public policy challenge, beyond those initiatives or actions already required by law.

JC Penney (PVC)

Lead Filer: Domini Social Investments

RESOLVED: Shareholders request that the Board publish a report to shareholders on JC Penney's PVC policies and practices, at reasonable expense and omitting proprietary information, by December 1, 2008. This report should summarize which, if any, product lines or categories sold in our stores may be affected by the product hazard and environmental concerns described above, and options for new initiatives that management can or will take to respond to these concerns, beyond those initiatives or actions required by law.

Kroger

Lead Filer: Catholic HealthCare West

RESOLVED: Shareholders request that the Board publish a report to shareholders on Kroger policies on emerging product safety issues, at reasonable expense and omitting proprietary information, by March 2009. This report should summarize which, if any, product categories sold in Kroger stores may be affected by the product toxicity concerns described above, and options for new initiatives, above and beyond legal or regulatory compliance, that management can or will take to respond to this public policy challenge.

Mattel

Lead Filer: Submitted by Comptroller William C. Thompson, Jr., on behalf the New York City Pension Funds. Co-filed by Donald A. Kirshbaum, State of Connecticut Treasurer's Office

RESOLVED: Shareholders request that the Board publish a report on the company's policies on product safety, at reasonable cost and omitting proprietary information, by December 31, 2008. The report should summarize attempts by the company to secure its supply chain of goods marketed, which, if any, product lines and categories sold by Mattel may be affected by the new product safety concerns described above, and the options for new initiatives or actions management may take to respond to this public policy challenge, beyond those initiatives or actions already required by law.

Target

Lead Filer: Submitted by Comptroller William C. Thompson, Jr., on behalf the New York City Pension Funds. Co-filed by Donald A. Kirshbaum, State of Connecticut Treasurer's Office

RESOLVED: Shareholders request that the Board publish a report on the company's policies on product safety, at reasonable cost and omitting proprietary information, by December 31, 2008. The report should summarize attempts by the company to secure its supply chain of goods marketed, which, if any, product lines and categories sold in Target stores may be affected by the new product safety concerns described above, and the options for new initiatives or actions management may take to respond to this public policy challenge, beyond those initiatives or actions already required by law.

Wal-Mart - Nanotechnology

Lead Filer: As You Sow Foundation

RESOLVED: Shareholders request that the Board publish a report to shareholders on Wal-Mart's policies on nanomaterial product safety, at reasonable expense and omitting proprietary information, by June 2008.

Wal-Mart - Product Safety

Lead Filer: Submitted by Comptroller William C. Thompson, Jr., on behalf the New York City Pension Funds

RESOLVED: Shareholders request that the Board publish a report on the company's policies on product safety, at reasonable cost and omitting proprietary information, by December 2008. The report should summarize attempts by the company to secure its supply chain of goods marketed; which, if any, product lines and categories sold in Wal-Mart stores may be affected by the new product safety concerns described above and the options for new initiatives or actions management is taking to respond to this public policy challenge, beyond those initiatives or actions already required by law.

2007 Proxy Season

Apple Computer
Lead Filer: Trillium Asset Management (withdrawn)
RESOLVED: Shareholders request that the Board publish a report within six months of the 2007 annual meeting, at reasonable cost and omitting confidential information, on the feasibility of adopting a policy of becoming a leader in the use of safe materials, by eliminating persistent and bioaccumulative toxic chemicals, and all types of brominated flame retardants (BFRs) and polyvinyl chloride (PVC) plastics, in all Apple products, including an expeditious timetable to end the use of all BFRs and PVC.

Bed Bath & Beyond
Lead Filer: As You Sow Foundation Vote: 21.6%
RESOLVED: Shareholders request that the Board publish a report to shareholders on Bed Bath & Beyond policies on product safety, at reasonable expense and omitting proprietary information, by December 2007. This report should summarize which, if any, product lines or categories sold in Bed Bath & Beyond stores may be affected by the new product safety concerns described above, and options for new initiatives that management can or will take to respond to this public policy challenge (beyond those initiatives or actions already required by law).

CVS Corporation
Lead Filer: Boston Common Asset Management (withdrawn)
RESOLVED: Shareholders request that the Board publish a report to shareholders on CVS policy on cosmetics safety, at reasonable expense and omitting proprietary information, by December 2007. This report should summarize which, if any, product lines or categories sold in CVS stores may be affected by the new cosmetics safety legislation and consumer trends described above, and any new initiatives or actions the management is taking to respond to this public policy challenge.

Dow Chemical Company (asthma)
Lead Filer: Trillium Asset Management Vote: 6.8%
RESOLVED: Shareholders request that the Board establish an independent panel, controlling for conflict of interest, to publish by May 2008, at reasonable cost and excluding proprietary information, a report analyzing the extent to which Dow products may cause or exacerbate asthma, and describing public policy initiatives, and Dow policies and activities, to phase out or restrict materials linked with such effects.

E.I. du Pont de Nemours & Co. (PFOA)
Lead Filer: Amalgamated Bank Vote: 22.9%
RESOLVED: The shareholders of E.I. du Pont de Nemours and Company ("DuPont") urge the Board of Directors to issue a report on PFOA compounds used in DuPont products by the 2008 annual meeting, at reasonable cost and excluding confidential information, evaluating the feasibility of an expeditious phase out of the use of PFOA in the production of all DuPont products, including materials that may degrade to PFOA in use or in the environment, and the development and adoption of safer substitutes.

E.I. du Pont de Nemours & Co. (cost of PFOA-related pollution from facilities)
Lead Filer: members of United Steelworkers Vote: 6.2%
RESOLVED: Shareholders request the Board of Directors to report by the 2008 shareholder meeting, at reasonable cost and excluding confidential information, its annual expenditures for each year from 1996 through 2006, on attorney's fees, expert fees, lobbying, and public relations/media expenses, relating to DuPont's environmental pollution with PFOA and related fluorocarbon compounds or by dioxins, as well as expenditures on actual remediation of contaminated sites.

E.I. du Pont de Nemours & Co. (chemical security)
Lead Filer: Green Century Capital Management Vote: 6.7%
RESOLVED: Shareholders request that the independent directors of the Board of DuPont prepare a report, at reasonable cost and omitting proprietary information, on the implications of a policy for reducing potential harm and the number of people in danger from potential catastrophic chemical releases by increasing the inherent security of DuPont facilities through such steps as reducing the use and storage of extremely hazardous substances, reengineering processes, and locating facilities outside high-population areas. The report should be available to investors by the 2008 annual meeting.

Hasbro Inc.
Lead Filer: Camilla Madden Charitable Trust Vote: 44.8%
RESOLVED: Shareholders of Hasbro Inc. request the Board of Directors to publish a sustainability report, at reasonable expense and omitting proprietary information, by December 2007.

Mohawk Industries Inc.
Lead Filer: United Methodist Church Pension Board (withdrawn)
RESOLVED: The shareholders of Mohawk Industries urge the Board of Directors to issue a report on PFOA and PVC in Mohawk Industries products by the 2008 annual meeting, at reasonable cost and excluding confidential information, discussing the feasibility of an expeditious phase-out of the use of PFOA and PVC in the production of all Mohawk products, including materials that may degrade to PFOA in use or in the environment, and the deployment of safer substitutes.

Scotts Miracle-Gro Co.
Lead Filer: Boston Common Asset Management Vote: 9.1%
RESOLVED: Shareholders request that the Board of Directors report by October 1, 2007, at reasonable cost and excluding confidential information, the company's annual expenditures by category for each year from 1993 to 2005, for attorneys' fees, expert fees, lobbying, and public relations/media expenses, relating to efforts to oppose local policies to limit lawn care product use.

Sears Holdings Corp.
Lead Filer: Evangelical Lutheran Church of America Pension Board (withdrawn)
RESOLVED: Shareholders request the Board of Directors to publish at reasonable expense and omitting proprietary information, a Sustainability Report. A summary of the report should be provided to shareholders by December 2007.

ServiceMaster Company
Lead Filer: Green Century Capital Management Vote: none (company taken private)
RESOLVED: Shareholders request that the ServiceMaster board shall prepare a report, at reasonable expense and omitting proprietary information, on the feasibility and implications of a policy to discontinue the use of synthetic pesticides by TruGreen Chemlawn, instead substituting natural and non-toxic lawn care services. The report shall discuss the impact of such a policy on our customers and our employees, and shall be available by November 1, 2007.

2006 Proxy Season

Avon
Lead Filer: Domini Social Investments Vote 4.4%
RESOLVED: Shareholders request the Board to prepare a report analyzing and articulating Avon's policy on using safer substitutes for chemicals that are known or suspected carcinogens, mutagens, and reproductive toxicants, as well as chemicals that affect the endocrine system, accumulate in the body, or persist in the environment. The report, prepared at reasonable cost and omitting proprietary information, should be made available to shareholders by November 1, 2006.

Becton, Dickinson
Lead Filer: Domini Social Investments Vote: 8.7%
RESOLVED: Shareholders request that the Board publish by October 2006, at reasonable cost and excluding proprietary information, a report evaluating the company's policies on BFRs and other internationally recognized toxic chemicals of concern, including the status of the chemicals in company products, and a plan to revise policies and practices and to phase out the uses of target chemicals.

CVS
Lead Filer: Boston Common Asset Management Vote: 9.9%
RESOLVED: Shareholders request that, by April 2007, at reasonable cost and omitting proprietary information, the Board publish a report evaluating the feasibility of a) CVS reformulating all its private label cosmetics products to be free of chemicals linked to cancer, mutation or birth defects, thereby globally meeting the standards set by the EU Cosmetics Directive 2003/15/EC which amended EU Directive 76/768/EEC b) complying with the additional actions sought by the Campaign for Safe Cosmetics as described above, and c) encouraging or requiring manufacturers or distributors of other cosmetics products sold in CVS to ensure that their products comply with the same reformulation and other actions that the company is taking.

ConAgra
Lead Filer: Green Century Capital Management (withdrawn)
RESOLVED: Shareholders request that the Board publish a report to the shareholders within six months of the 2006 Annual meeting, at reasonable cost and excluding confidential information, setting forth policy options for Conagra to reduce or eliminate the use of PFOA-related chemicals in product packaging.

Dow (asthma)
Lead Shareholder: Trillium Asset Management Vote: 5.8%
RESOLVED: Shareholders request that the Board establish an independent panel, controlling for conflict of interest, to publish by May 2007, at reasonable cost and excluding proprietary information, a report analyzing the extent to which

Dow products may cause or exacerbate asthma, and describing public policy initiatives, and Dow policies and activities, to phase out or restrict materials linked with such effects.

Dow (chemical security)
Lead Filer: Green Century Capital Management Vote: 6.9%
RESOLVED: Shareholders request that the independent directors of the Board of Dow Chemical prepare a report, at reasonable cost and omitting proprietary information, on the implications of a policy for reducing potential harm and the number of people in danger from potential catastrophic chemical releases by increasing the inherent security of Dow Chemical facilities through such steps as reducing the use and storage of extremely hazardous substances, reengineering processes, and locating facilities outside high population areas. The report should be available to investors by the 2007 annual meeting.

DuPont (PFOA)
Lead Filer: Amalgamated Bank Vote: 28.9%
RESOLVED: The shareholders of E.I. du Pont de Nemours and Company ("DuPont") urge the Board of Directors to issue a report on PFOA compounds used in Dupont products by the 2007 annual meeting, at reasonable cost and excluding confidential information, evaluating the feasibility of an expeditious phase-out of the use of PFOA in the production of all DuPont products including materials that may degrade to PFOA in use or in the environment, and the development and adoption of safer substitutes.

DuPont (chemical security)
Lead Filer: Green Century Capital Management Vote: 7.7%
RESOLVED: Shareholders request that the independent directors of the Board of DuPont prepare a report, at reasonable cost and omitting proprietary information, on the implications of a policy for reducing potential harm and the number of people in danger from potential catastrophic chemical releases by increasing the inherent security of DuPont facilities through such steps as reducing the use and storage of extremely hazardous substances, reengineering processes, and locating facilities outside high-population areas. The report should be available to investors by the 2007 annual meeting.

Johnson & Johnson
Lead Filer: Citizens Funds (withdrawn)
RESOLVED: Shareholders request that the Board of Directors prepare a report on the status of J&J's use of chemicals banned by EU Directive 2003/15/EC in the company's products sold to non-EU markets, the feasibility of implementing a global reformulation plan, and the costs and timeframe for global reformulation. The report, prepared at reasonable cost and omitting proprietary information, should be made available to shareholders by November 1, 2006.

ServiceMaster
Lead Filer: Green Century Capital Management Vote: 9.1%
RESOLVED: The ServiceMaster board shall prepare a report, at reasonable expense and omitting proprietary information, on the feasibility and implications of a policy to discontinue the use of synthetic pesticides by TruGreen Chemlawn, instead substituting natural and non-toxic lawn care services. The report shall discuss the impact of such a policy on our customers, our employees, and the employees of companies providing services to us, and shall be available one year from the 2006 annual meeting date.

Whole Foods Market
Lead Filer: Green Century Capital Management Vote: 10%
RESOLVED: Shareholders request that by February 2007, at reasonable cost and omitting proprietary information, the Board publish a report evaluating Company policies and procedures for systematically monitoring and reducing consumer and environmental exposure to endocrine-disrupting chemicals, including BPA, and persistent bioaccumulative toxics. The report should summarize the criteria used to evaluate such chemicals, and include options for systematically identifying toxics in stocked products, encouraging suppliers to reduce or eliminate such chemicals and develop safer alternatives, educating WFMI customers about toxics in products, and enhancing WFMI's leadership reputation by routinely reporting on its progress.

Endnotes

1 As of the third quarter of 2007, mutual funds held approximately $5.7 trillion of the $16.4 trillion market value of domestic corporations.

2 RC2 press release, June 13, 2007, "RC2 Corp. Recalls Various Thomas & Friends Railway Toys Due to Lead Poisoning Hazard," available at: http://www.rc2.com/press/2007/Release_TWR_recall_07.pdf and same-titled US Consumer Product Safety Commission press release, June 13, 2007, "RC2 Corp. Recalls Various Thomas & Friends Railway Toys Due to Lead Poisoning Hazard," available at: http://www.cpsc.gov/cpscpub/prerel/prhtml07/07212.html

3 RC2 press release, July 26, 2007, "RC2 Updates Estimates of Recall-Related Costs" available at: http://www.rc2.com/investor/financial/2007/Release_recall_update_final.pdf

4 RC2 press release, September 26, 2007, "RC2 Recalls Five Additional Thomas & Friends Wooden Railway Items," available at: http://www.rc2.com/press/2007/Release_TWR_recall_0907.pdf

5 RC2 press release, October 24, 2007 "RC2 Reports 2007 Third Quarter Operating Results; Increases and Extends the Company's Stock Repurchase Program," available at: http://www.rc2.com/investor/financial/2007/Release_q3_07_final.pdf

6 Office of the Attorney General, State of California, Department of Justice press release, November 19, 2007, "Brown Sues Toy Companies for Lead," available at: http://ag.ca.gov/newsalerts/release.php?id=1497&

7 This paragraph based on viewing graph of RC2 stock price over one year beginning mid-November 2006, available at Yahoo Finance website. Available at: http://finance.yahoo.com/q/bc?s=RCRC&t=1y

8 RC2 press release, February 14, 2008 "RC2 Corporation Reports 2007 Fourth Quarter and Full Year Results; Remains Focused on Sustainable Growth Opportunities," available at http://www.rc2corp.com/press/2008/release_Q4_07_final.pdf

9 Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States, Flows and Outstandings, Third Quarter 2007, 6 December 2007. Chart L.213, "Corporate Equities," lines 16 and 20, page 90. In 2002, when Prof. Palmiter made his assertion, mutual funds held $2.2 trillion, slightly over a fifth of the $10.2 trillion market value of domestic corporations. In the third quarter of 2007, the non-institutional "household sector" held $6.1 trillion, the largest category of corporate equities ownership. http://www.federalreserve.gov/releases/z1/Current/z1.pdf

10 Alan R. Palmiter, "Mutual Fund Voting of Portfolio Shares: Why Not Disclose?" Cardozo Law Review, Vol. 23, March 2002. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=269337

11 The term "shareholders" typically applies to investors who directly own stock in publicly traded companies, distinguishing them from "mutual fund shareholders," who invest in funds and so only indirectly own corporate stock—the mutual funds own the shares of corporate equities in the name of fund investors.

12 Private (including corporate) pension funds hold almost $2.8 trillion of the $16.4 trillion in market value of US companies as of the third quarter of 2007. Op cit i, line 13.

13 Gretchen Morgenson, "A Door Opens. The View Is Ugly," New York Times, 12 September 2004. "There is no correlation between how we vote [on proxy resolutions] with respect to whether someone is a 401(k) client or not," a Fidelity spokeswoman is quoted as saying. Burton G. Rothberg and Steven B. Lilien, Mutual Fund Proxy Votes, February 2005. http://ssrn.com/abstract=669161. Rotheberg and Lilien investigate potential conflicts of interest, comparing voting records of fund companies that primarily manage mutual funds to the voting records of fund companies that are small parts of larger financial services companies, and do not find a difference in how often they vote against management. Gerald Davis and E. Han Kim, "Would Mutual Funds Bite the Hand that Feeds Them?" Business Ties and Proxy Voting, 15 February 2005. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=667625. Davis and Kim find no differences between proxy voting within fund families at companies that are also clients compared to voting at companies that are not clients. However, the researchers do find some evidence that fund firms with over 30 corporate clients tended to oppose shareholder resolutions more frequently than firms with fewer than 10 clients. They also find proxy voting guidelines at fund firms with more clients providing greater latitude to support company voting recommendations, whereas proxy voting guidelines at fund firms with fewer clients tended to contain tighter restrictions on following company voting recommendations.

14 Rulemaking petitions filed by the American Federation of Labor and Congress of Industrial Organizations (30 July 2002 and 20 December 2000), Domini Social Investments (27 November 2001), and the International Brotherhood of Teamsters (18 January 2001). See for example: http://www.domini.com/about-domini/News/Press-Release-Archive/Proxy-Voting-Ltr-to-SEC-12-01.doc_cvt.htm

15 William Baue, "Mutual Fund Industry Takes Last Stab at Blocking Proxy Voting Disclosure," SocialFunds.com, 12 March 2003. http://www.socialfunds.com/news/article.cgi/article1061.html

16 Securities and Exchange Commission, Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, January 23, 2003. http://www.sec.gov/rules/final/33-8188.htm

17 http://www.sec.gov/about/forms/formn-px.pdf

18 Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, US Securities and Exchange Commission, 23 January 2003. http://www.sec.gov/rules/final/33-8188.htm

19 A caveat is needed regarding reporting below of mutual fund votes on specific resolutions. Because the new SEC rules for mutual fund voting transparency do not require disclosure of the number of company shares voted by each fund, the vote calculations for funds in this report are not weighted by the number of shares they voted. Rather, the numbers reported are simply the number of funds reporting that they cast their votes for or against. Consequently the percent level of support by mutual funds discussed in the text is not directly comparable to the percentages of support by all voting shareholders that are calculated on the basis of one vote=one share. Since various funds hold different quantities of shares, not all fund votes are equal. Moreover, some of the largest funds that generally oppose product toxicity resolutions likely have some of the largest holdings in many of the companies in question.

20 CERES, U.S. Mutual Funds Critical Missing Link in Supporting Climate Change Shareholder Resolutions, April 2007.

21 This approach was pioneered in a similar coalition of investors concerned with climate risks and opportunities, in the Investor Network on Climate Risk.

22 Bill Baue, "Shareowner Action on Product Toxicity Shifts from Isolated Resolutions to Become a Campaign," SocialFunds.com, 9 February 2006. http://www.socialfunds.com/news/article.cgi/1924.html

23 Richard Liroff, "Protecting Public Health, Increasing Profits And Promoting Innovation By Benchmarking Corporate Governance of Chemicals in Products," Rose Foundation for Communities and the Environment, January 2005. http://www.rosefdn.org/liroffreport.pdf

24 Tim Little, Sanford Lewis, Pamela Lundquist, "Beneath the Skin: Hidden Liabilities, market Risk and Drivers of Change in the Cosmetics and Personal Care Products Industry," (2006)

25 All IEHN reports are available at www.iehn.org

26 SEC guidelines for tabulating voting results on shareholder resolutions call for dividing the number of votes for by the number of votes for plus the number of votes against, and not counting abstentions.

27 The IEHN analysis of mutual fund voting draws on a database of voting behavior of 1,400 funds in 64 mutual fund families, compiled by Jackie Cook of Boardmap Research, Vancouver, Canada. This is an extensive but not exhaustive database of more than 8.5 million voting decisions by most of the largest funds from most of the largest U.S. fund groups over four years. Statements in the text about the voting behavior of fund families are based on this extensive but not exhaustive data compilation. IEHN appreciates the access provided by Ms. Cook to the FundVotes database. Summaries of data contained in the FundVotes database are published at: http://www.fundvotes.com/IEHN/Toxics_FundVoteResults_2006-2007.xls

28 There were 19 abstentions. As noted previously, SEC guidelines call for tallying only votes for and against, leaving abstentions out of the calculations altogether.

29 There were 2 abstentions and 10 no-votes.

30 ISS U.S. Corporate Governance Policy—2006 Updates (Rockville, Maryland: Institutional Shareholder Services, 2005)

31 The Bed Bath & Beyond resolution received 22 % support at the July 10, 2007 Annual General Meeting, after the June 30 end of the 2007 N-PX reporting period, so mutual fund voting results on this resolution will not be available until the 2008 reporting period.

32 Anne Moore Odell, "Shareholders Push Social and Environmental Issues ot the Forefront," SocialFunds.com, 13 June 2007. http://www.socialfunds.com/news/article.cgi/article2310.html. In rare instances, corporate boards recommend voting for sustainability resolutions, which predictably leads to exceedingly high levels of support, as most investors vote reflexively with company recommendations. For example, in 2004 when Coca-Cola recommended voting for an HIV resolution, 98 % of voting shareholders supported it. See William Baue, "Ford HIV Report Exemplifies New Shareowner Action Strategy," SocialFunds.com, 7 December 2004. http://www.socialfunds.com/news/article.cgi/1584.html

33 The percentage of support is calculated by the SEC method of tallying yes and no votes only, and ignoring the 44 abstentions.

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35 TIAA-CREF, Policy Statement on Corporate Governance, 13 March 2007, p. 39.

36 TIAA-CREF, Policy Statement on Corporate Governance, 13 March 2007, p. 37.

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40 Goldman Sachs Funds, Description of Proxy Voting Policy, 2007.

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46 University of California, Centers for Occupational and Environmental Health, “Green Chemistry: Cornerstone to a Sustainable California” (2008)

47 ING Funds Proxy Voting Procedures and Guidelines, p. 35. http://vds.issproxy.com/FundList.php?CustomerID=1666&FundFamilyID=1

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64 Maryland State Retirement System Appendix H Corporate Governance Policy and Proxy Voting Guidelines, February 2008, Nos. 61 and 62.

65 As reported in Foundation News & Commentary, March/April, 2003.

66 Charles Pillar, “Foundations Align Investments With Charitable Goals,” LA Times, 29 December, 2007.

67 Ibid.

68 In a December 2007 letter to the U.S. Chamber of Commerce (http://www.dol.gov/ebsa/regs/aos/ao2007-07a.html), the Department of Labor discussed its long standing position that pension funds can engage in shareholder activism so long as there is a reasonable expectation that such activities are likely to enhance the value of the plan. The Chamber of Commerce, in a classic case of political theater, has tried to make hay out of the somewhat harsh and vigorous tone of the letter to instill fear in fiduciaries. The goal is apparently to make fiduciaries believe that the Department's tone indicates it no longer believes shareholder engagement is appropriate. There is nothing, however, in the letter that changes the substance of the Department's position, which it has held since 1994. As Ian Lanoff, a partner with the Groom Law Group and a former administrator for the Department’s Pension and Welfare Benefits Administration said, “This is not a new message. It has always been a law that proxy votes and proposals have to be tied to a financial or economic basis.” Council of Institutional Investors. Alert, Vol. 13, No. 2. 10 January 2007.

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