

Integrating Environmental, Social and Governance Issues Into Institutional Investment

**A Handbook for Colleges
and Universities**

Produced by



REC

Responsible Endowments Coalition

Endorsed by



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PREFACE

This Handbook was produced by the Responsible Endowments Coalition (REC) and the Business & Human Rights Program of Amnesty International USA (AIUSA).

The Responsible Endowments Coalition (REC) works to foster social and environmental change and promote corporate reform through university endowments by educating and empowering a diverse community of university members and allies to take action. REC fills a unique niche in the landscape of the corporate reform movement. At member schools controlling over \$150 billion in endowment assets, we introduce students, alumni, faculty, staff and trustees to the tools of active ownership, and provide a national network for collective action. By working with their institutions to invest responsibly and proactively, students and other university members have the power to support corporate reform in areas such as human rights, environmental responsibility, and equal opportunity, and to encourage accountability to the communities in which they live and learn by supporting community development and participation.

The Business & Human Rights Program of Amnesty International USA (AIUSA) works to ensure that companies abide by international human rights obligations in their global business operations. As part of this effort, AIUSA sponsors shareholder resolutions that urge companies to address human rights concerns arising from their business practices. Through its SHARE POWER Campaign, AIUSA likewise calls upon institutional investors – such as universities, pension funds, and investment companies – to support these shareholder resolutions, and to adopt investment policies that allow consideration of the human rights consequences of company activities.

To these ends, this Handbook aims to serve as a resource for colleges and universities that are interested in integrating environmental, social, and governance considerations into investment decisions.

We appreciate the input and support of Friends of the Earth (FOE), the Interfaith Center on Corporate Responsibility (ICCR), and the Social Investment Forum (SIF), and welcome their endorsement of this Handbook.

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INTRODUCTION

Over \$2.29 trillion in assets are currently managed using one or more strategies that consider environmental, social and governance (ESG) issues.¹ This means that one out of every ten dollars under professional management in the United States today is involved in some form of ESG investing.²

Shareholders have both the right and the responsibility to demand that the companies in which they are invested adopt effective corporate governance policies, adhere to international human rights norms, and take precautionary measures to prevent costly environmental catastrophes.

- Shareholders are the principal beneficiaries of the businesses in which they are invested and therefore have an ethical duty to work to ensure that profits are not made at the expense of human rights or the broader public good. This involves leveraging our power as shareholders to hold companies accountable for the social and environmental impacts of their business practices.
- Moreover, when companies incur liabilities in short-sighted efforts to take shortcuts around human rights norms and environmental safety, shareholders eventually shoulder the financial repercussions. As prudent investors, shareholders have the right to expect that companies adopt precautionary policies that minimize the risk of future liabilities.

...institutions of higher learning currently lag behind public and private pension funds, foundations, and mutual funds in adopting strategies and policies for ESG investing.

There are four principal ESG investing strategies: shareholder advocacy, community investing, positive and negative social screening, and divestment. This handbook discusses all four types, but focuses primarily on the important role that colleges and universities can play in promoting corporate social responsibility through shareholder advocacy. Shareholder resolutions regarding social and environmental issues are on the rise: such resolutions increased more than 16 percent between 2003 and 2005, while social resolutions reaching a vote rose more than 22 percent in the same time period.³ Institutional investors that have filed or co-filed resolutions on social or environmental issues now control more than \$703 billion in assets.⁴ Unfortunately, institutions of higher learning currently lag behind public and private pension funds, foundations, and mutual funds in adopting strategies and policies for ESG investing.

The purpose of this handbook is to assist colleges and universities in implementing investment policies that consider environmental, social, and governance issues. Each section of the handbook supports the development and implementation of such policies by providing important background information regarding the reasons for adopting ESG investment policies; the legal issues involved; the actual process of engaging in shareholder advocacy; and nuts and bolts operational considerations.

Section One, *Closing the Credibility Gap*, outlines the nexus between shareholder advocacy and the missions of colleges and universities, and reviews the ways in which passive investing undermines these core missions. Section Two, *Strategies for Incorporating ESG Issues into Investment Practices*, provides a basic overview of the principle ESG strategies. Section Three, *Proxy Resolution Process*, explains the proxy resolution process in greater depth. Section Four, *Efficacy of Shareholder Advocacy in Promoting Corporate Social Responsibility*, illustrates how shareholder advocacy serves as an effective mechanism for promoting corporate social responsibility. Section Five, *Legal Concerns: Fiduciary Duty*, addresses concerns regarding the fiduciary duties of trustees. Section Six, *Policy*

Frameworks and Implementation, summarizes the elements of effective responsible investing policies. The appendix includes: examples of ESG sensitive investment policies that are currently in place at colleges and universities around the country; and an overview of organizational resources available to institutional investors that would like to engage in shareholder advocacy or other ESG investing strategies.

It is both the duty and the right of colleges and universities to adopt investment policies that consider ESG issues. Such mechanisms further the missions of institutions of higher learning by promoting corporate social responsibility and by avoiding the complicity in social malfeasance inherent in a passive investment strategy. At least seventeen of the top twenty colleges and universities in the U.S. have already taken important steps to incorporate ESG concerns into investment practices.⁵

This handbook aims to provide the tools for your institution to effectively implement shareholder advocacy and other ESG investing policies, so as to better fulfill your organizational mission, your fiduciary duty, and your ethical obligations.

FREQUENTLY ASKED QUESTIONS

Q: *What does an effective ESG investing policy entail?*

A: An ESG-sensitive investment policy could entail shareholder advocacy, positive screening, proactive investing, negative screening, community investing, divestment, or a combination of these strategies.

Q: *Why should colleges and universities adopt investment policies that consider ESG issues?*

A: Contributing to the common good and instilling an ethos of social stewardship are fundamental principles underlying the missions of educational institutions; schools, therefore, have a duty to promote ethical practices on the part of the companies whose profits provide the revenue stream that finances educational operations.⁶ Trustees who manage endowment funds have the fiduciary duty to vote proxies and to vote them in the best interest of the funds' participants and beneficiaries; at schools, trustees have the additional responsibility to vote proxies in line with their institutions' missions. Moreover, since shareholders shoulder the financial repercussions when businesses fail to abide by human rights norms and environmental safety standards, prudent investors have the right to demand that companies minimize the risk of future liabilities including lawsuits, fines, and consumer boycotts, as well as reputational damage.

Q: *Do fiduciary duty laws allow colleges and universities to consider ESG issues when making investment decisions?*

A: Shareholder advocacy on social and environmental issues is clearly consistent with the fiduciary duties of school trustees. Some large financial institutions, including UBS, believe that potential social and environmental liabilities are tantamount to business risks and impact shareholder value; UBS suggests that "investment, by firms, in the reduction of social and environmental costs can enhance shareholder value."⁷ Therefore, shareholder advocacy on social and environmental issues may help increase the value of a school's investments. Other ESG investing strategies may also be permitted, since trustees do not violate their fiduciary duties where the costs of considering the social consequences of investment decisions are minimal.⁸ Moreover, shareholder engagement on social and environmental issues may even be compelled by the stated mission of an institution.

Q: *Do fiduciary duty laws prevent schools from publicly disclosing investment holdings?*

The duty incumbent upon trustees of ensuring that investments reflect the values and interests of the university community is best facilitated by transparency regarding investment holdings. Such disclosure is not prohibited by fiduciary laws.

Q: *We want to protect our investment strategy in order to maximize the growth of our endowment and our financial returns. Is this a good reason to refuse to disclose our investment holdings?*

A: No. Disclosing a snapshot of investment holdings tells others nothing about a school's investment strategy and cannot compromise endowment returns.⁹

Q: *Can we assume that all resolutions included with proxy materials are factually accurate and pertain to an issue that is appropriate for a shareholder vote without a detailed investigation into each resolution?*

A: Yes. The U.S. Securities and Exchange Commission (SEC) allows companies to exclude resolutions that the SEC believes contain false or misleading statements, are irrelevant or infeasible for the company to implement, or would violate U.S. or foreign laws if adopted. Every challenged resolution on a proxy ballot has been determined by the SEC to represent an appropriate area of shareholder concern. Shareholders, therefore, can vote on principle to promote socially responsible corporate practices without a detailed factual inquiry in each instance.¹⁰

Q: *Is incorporation of ESG issues into investment strategies effective in encouraging corporate social responsibility?*

A: Yes. Shareholder advocacy has a well-established track record of effectively fostering more socially and environmentally responsible corporate practices. See pages 17-19 for examples of important innovations catalyzed by shareholder efforts.

SECTION 1: CLOSING THE CREDIBILITY GAP - ALIGNING COLLEGE & UNIVERSITY INVESTMENTS WITH MISSIONS

The primary mission of colleges and universities is to serve as educational institutions, providing the best preparation possible for people to lead productive and rewarding lives. At the core of this mission is shaping ethical global citizens who will use their knowledge and skills to serve the broader community.

The missions and values put forth by colleges and universities in the United States increasingly emphasize this commitment to social responsibility. In particular, four values are consistently articulated: (1) an emphasis on working for the common good, (2) an appreciation of diversity, (3) the value of supporting the local community, and (4) the importance of protecting the environment.

Working Toward the Common Good

The mission statements of colleges and universities across the country foreground the centrality of working toward the common good. Mission statements exhibit a broad commitment to preparing students to “benefit society,”¹¹ to serve as “useful citizens,”¹² to “serve society,”¹³ to “see and take responsibility for the intellectual, ethical, and social consequences of what they do and know,”¹⁴ to “live a life usefully,”¹⁵ and to develop “a passion to work wisely, creatively, and effectively for the betterment of humankind.”¹⁶ Top educational institutions are dedicated to “connecting academics to a sense of social justice,”¹⁷ teaching students “the sense of responsibility to want to make the world a better place,”¹⁸ instilling “an appreciation of the shared destiny and common humanity of all peoples,”¹⁹ and promoting “a willingness to serve the common good and subordinate self to higher goals.”²⁰ Students learn to engage in social leadership and to seek to make an impact in their communities and the world beyond. They are moved to “make their individual marks towards a more just and humane world,”²¹ to “understand not only *what* it means to make a difference, but *how* you can make a difference,”²² and to cultivate the “ethical and social qualities essential for leadership in a rapidly changing global community.”²³

In order for colleges and universities to effectively instill in their students the stated values of serving the common good, institutions must model high standards of social and environmental responsibility. One important way that these institutions can demonstrate this commitment to social and environmental stewardship and responsibility is by using the power of their investments to help ensure that businesses in which the schools are invested are upholding similarly high standards. Schools that have not adopted responsible investing policies may in fact be passively profiting from corporate business practices that undermine human rights and inflict other social and environmental harms, which is inconsistent with their core commitments to social stewardship. Companies in which these institutions are invested may be responsible for environmentally destructive practices, labor and other human rights abuses, political corruption, predatory lending, and other social harms that educational institutions are preparing students to help eliminate. Colleges and universities have an important opportunity and responsibility to use their investments to push for the progressive elimination of corporate practices that may be contributing to social and environmental ills.

Appreciating and Encouraging Diversity

Through mission statements, explicit policies, and implicit practices, colleges and universities have made strong commitments to promoting diversity. As the mission statement of the

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University of Pennsylvania notes, “In a democracy and at great universities, diversity and excellence go together.”²⁴ The commitment to diversity is echoed by a broad cross-section of colleges and universities, many of which recognize “the great power in a diverse society”²⁵ and celebrate “the diversity of that community, which includes men and women from different backgrounds, abilities, economic circumstances, perspectives, races, religions, national origins, and sexual orientations.”²⁶ All schools, in accordance with federal legislation, have a policy statement declaring equal treatment for all students and employees regardless of sex, race, color, religion, age, handicap or national or ethnic origin.²⁷ Most schools also reject discrimination based on sexual orientation and gender identity, although this is not federally mandated. Many are committed to actively recruiting minorities to fill staff positions; for example, at Yale, “university policy is committed to affirmative action under law in employment of women, minority group members, handicapped individuals, special disabled veterans, and veterans of the Vietnam era.”²⁸

...an investment strategy that fails to consider socially responsible issues may alienate alumni and donors.

Once again, colleges and universities have an opportunity and responsibility to use their power as shareholders to ensure that the companies in which they are invested have the same respect for and commitment to diversity. Several large companies have yet to adopt comprehensive non-discrimination policies that prohibit discrimination on a range of bases including ethnic origin and sexual orientation and identity. Schools committed to diversity have a great opportunity to use their power as shareholders to make a difference for thousands facing discrimination.

Supporting the Local Community

As major employers, resource users, and intellectual and cultural centers, universities have far-reaching impacts on their local communities, and they often seek to contribute positively to community life.²⁹ For example, Dartmouth recognizes the importance of being a good neighbor, and feels an “obligation related to understanding our relationships to our community.”³⁰ One way that schools can support local communities is by contributing to economic development. At the University of Pennsylvania, expansion of the campus has been tied to “strengthen[ing] our ties with our neighbors and help[ing] drive economic and technological development throughout the City and Commonwealth.”³¹ Schools can effectively contribute to local economic development by investing in community projects directly or by investing in Community Development Financial Institutions (CDFI’s), which may finance low-income housing, invest in microenterprises, and provide services to individuals in low-income communities who typically lack access to credit.

Protecting the Environment

Many colleges and universities view themselves as environmental stewards, not just on campus but also for the world beyond. For example, students at Bowdoin are encouraged to “obtain a broad sense of the natural environment, local and global, and the effects and the role of human beings regarding it”;³² at Swarthmore, wind energy fulfills over a third of the college’s energy needs;³³ Yale students can choose an organic and environmentally sustainable dining plan;³⁴ and at Harvard, not only have campus buses been converted to bio-diesel, but 13 green buildings have also been built.³⁵ As of late June 2007, over 280 college and university presidents have joined The American College & University Presidents Climate Commitment, an effort to “address global warming by garnering institutional commitments to neutralize greenhouse gas emissions, and to accelerate the research and educational efforts of higher education to equip society to re-stabilize the earth’s climate.”³⁶ On the Commitment’s website, the signatories note that “[s]tanding on the sidelines poses a

great risk to the reputation of Higher Education,” and question what society would say “about those of us in Higher Education if we have runaway climate change and we, who have the expertise and the mandate of education and research for a thriving society, didn’t do everything we could to help society recognize the risks and find solutions to the challenge.”³⁷ The Commitment is silent on the role of their investments, but it would better accord with these broad environmental policies and values for schools to use their power as shareholders and investors to advocate improved environmental practices as well.

Opportunities to Achieve Mission Alignment

Conventional passive investing strategies – which ignore the social and environmental impacts of the businesses in which the shareholder is invested – are incongruent with the clearly articulated missions, values, and policies of U.S. institutions of higher learning. Investment policies which do not support the well-established and repeatedly stated values of public service and the common good undermine an institution’s principles and integrity. At colleges and universities, investments that contradict the school’s mission can undermine the school’s principles, not only in the public eye but among the school’s students, faculty and administrators as well. For instance, in the late 1990’s, a University of Michigan faculty member raised concern about the University’s stock holdings in tobacco manufacturing companies. The ensuing campaign to divest included public support and hundreds of emails from student organizations and other members of the college community and received public media attention. In June 2000, the Board of Regents concluded “that both tobacco and the tobacco companies’ activities are antithetical to the University’s missions of research, teaching and service,” and they voted to divest the University of its tobacco manufacturing company holdings.³⁸

In addition to undermining a school’s principles, an investment strategy that fails to consider socially responsible issues may alienate alumni and donors. In recent years, donors have become increasingly concerned about endowment investments that are incongruent with a school’s ethical, moral and environmental values. According to a 2005 Goldman Sachs Global Marketing Institution survey that looked at public perceptions of university endowments, 64 percent of donors surveyed said that avoiding investments that are out of step with the university’s values is a top or high priority. Forty-four percent of surveyed donors said that it was a high or top priority that endowment investments were socially responsible.³⁹ In early 2007, a significant donor to Stanford University, whose previous donations to the school totaled \$22.5 million, annulled a planned \$2.5 million gift to the University because of Stanford’s research partnership with ExxonMobil, one of several large oil companies that have vehemently fought against shareholder resolutions calling for reduced greenhouse gas emissions. He also said that he will not donate in the future to Stanford and asked “other major philanthropists to reconsider their promises to give to the Stanford cause.”⁴⁰ ExxonMobil has cited its partnership with Stanford as a reason for why it does not have to take short-term action on climate change, despite Stanford’s longstanding policy to support resolutions endorsing environmental standards and proactive climate change policies.⁴¹

Socially responsible investing policies could, of course, have the opposite effect, attracting more and larger donations to the school. At some schools, such as Williams College, students and alumni have established alternative giving funds that offer alumni and donors the option of directing their contributions to social, environmental, or community enrichment. These so-called “Social Choice Funds” can be individually tailored to the principles and concerns of the students and alumni at each institution. One should note, however, that if a

ESG investing and shareholder advocacy allow schools to ensure that their broad educational missions and important donor relationships are not thwarted by the business activities of the companies in their stock portfolios.

school simply allows an alternate fund to be established without adopting any responsible investing policies for the general endowment, some donors may still be reluctant to contribute. Schools can more fully demonstrate their commitment to responsible investing practices by pledging to match donations to the Fund; committing to transfer a sum from the general endowment to the Fund once the Fund has reached a certain amount; or by allocating funds from the general endowment to community development or another social cause. Socially conscious donors are more likely to give major gifts to schools that have integrated social and environmental responsibility into their investment decisions.

ESG investing and shareholder advocacy allow schools to ensure that their broad educational missions and important donor relationships are not thwarted by the business activities of the companies in their stock portfolios. Implementing an investment policy that considers ESG issues can allow colleges and universities to avoid a conflict between values and practices, and instead encourage diversity, support the local community, protect the environment, and advance the common good.

SECTION 2: STRATEGIES FOR INCORPORATING ESG ISSUES INTO INVESTMENT PRACTICES

Institutions seeking to align their investments with their social values have a number of tools from which to choose. Most colleges and universities utilize a variety of tactics, depending on their particular objectives and opportunities. These tactics typically involve: (1) becoming an active shareholder with regard to social and environmental issues related to investments already held in the school's portfolio; and/or (2) reallocating the school's investments to emphasize holdings that better represent the school's values and to avoid investments that may inflict social and environmental harms. Balancing these approaches provides effective ways of addressing corporate social responsibility concerns across a diverse portfolio.

Shareholder Advocacy

Shareholder advocacy allows investors to engage with companies to address important questions regarding social and environmental practices without any change in investment strategy. Rather, institutional investors use their influence with companies in which they are invested to push for improvements in the social and environmental impacts of business practices. Shareholders are the legal owners of companies, and shareholder advocacy entails exercising the legal prerogatives and responsibilities associated with ownership.

Using what is often termed “quiet diplomacy,” investors may also write letters to company contacts and arrange meetings with executives to express concerns about certain corporate practices. If, after dialoguing with the company, an investor feels that an issue remains unresolved and merits consideration by all of the company's shareholders, the investor might file a shareholder resolution that will be printed in the company's annual proxy statement and put before all shareholders for voting. A shareholder advocacy strategy works through several different mechanisms. Institutional investors can file or co-file resolutions on ESG issues of particular concern, and/or they may vote in support of ESG resolutions submitted by other shareholders.

In some instances, companies are not receptive to requests for meetings or may refuse to discuss a particular issue, and filing a shareholder resolution can provide the impetus for a company to reach out and engage with concerned investors. Because company leadership generally prefers to avoid having resolutions on the ballot which draw attention to issues of concern, they may be willing to take steps so that the resolution is withdrawn before the annual proxy ballot is released. In this way, shareholder resolutions can be an effective tool to push companies to address ESG concerns.⁴² In 2004, over 20% of socially-oriented resolutions filed were withdrawn after dialogue effectively addressed investor concerns.⁴³

Sometimes simply the intention of filing is enough to spur change. For example, two Fortune 500 companies, Dover and Masco, agreed to add sexual orientation to their non-discrimination policies after receiving a single letter from Swarthmore College announcing the school's intention to file a resolution on this issue.⁴⁴

Many times a shareholder resolution can lead to a dialogue that is far more comprehensive and substantive than the content of any single resolution, and this is often where the opportunity for real change arises. Many investors feel their efforts can be best leveraged by meeting with a company as a coalition, rather than one-on-one. For instance, a coalition of ExxonMobil shareholders, including socially responsible investment companies, large pension fund managers, union investment managers and NGO shareholder activists, was instrumental in pushing the company to join the Voluntary Principles for Security and Human Rights, and

Shareholder advocacy allows investors to engage with companies to address important questions regarding social and environmental practices without any change in investment strategy.

to address labor abuse concerns related to their operations. The dialogue was initiated after the shareholders filed a resolution demanding that the company develop a comprehensive human rights policy.⁴⁵

While an investor acting as lead filer on a shareholder resolution will need to undertake appropriate research on an issue, investors do not need to conduct extensive independent factual investigations in order to co-file or vote in favor of a given resolution. As detailed in the next section (*The Proxy Resolution Process*), if a resolution is on the proxy ballot, it has already met standards set by the SEC as an appropriate matter for shareholder action. Therefore, supporting a proxy resolution does not require an institutional investor to be both judge and jury on the issue presented. Since the resolution has already been approved by the SEC, basic due diligence through a reputable research firm is usually sufficient to ensure that the resolution coincides with an investor's mission and ethical values.

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Contrary to popular perception, the goal is not necessarily to “win” on any given resolution. Victory is not measured by whether a resolution garners more or less than 50 percent of a shareholder vote. Instead, the goal is to gain a block of support significant enough to make it clear to management that the issue presented in the resolution is one of considerable shareholder concern, thereby spurring the company to take proactive steps to address it. Relatively small votes of 5 or 10 percent are considered an indication of significant investor interest in an issue,⁴⁶ which can hasten reform of problematic business practices.

The Social Investment Forum divides shareholder resolutions into three main categories:

Social Responsibility Resolutions address company policies, practices, and disclosure regarding issues such as the environment, health and safety, equal employment opportunity, labor standards, military and defense contracting, corporate political contributions, sustainability, tobacco, and animal welfare.

Corporate Governance Resolutions generally focus on how the company is governed by addressing board, voting, compensation and anti-takeover issues, or other proposal seeking to maximize shareholder value. Among the more prominent examples of corporate governance issues are calls for majority elections of the board, proxy voting policies, independent board chairs, separation of the CEO and the chair, limitations on consulting by auditors, expensing stock options and awarding performance-based options, restricting executive compensation, and repealing classified boards and takeover provisions known as “poison pills”...the traditional lines drawn between socially responsible investors and corporate-governance advocates have continued to blur on a host of issues that seek to enhance shareholder value.

Crossover Proposals...include resolutions that involve overlapping corporate governance and social issues. Crossover resolutions address issues such as board diversity and executive pay tied to social benchmarks.”⁴⁷

To facilitate shareholder advocacy, many colleges and universities have set-up committees comprised of students, faculty, staff, trustees and administrators to evaluate resolutions included in annual proxy statements and determine how the school should vote.⁴⁸ As a way of streamlining this process, schools can adopt comprehensive proxy voting guidelines which then provide a basis for voting decisions.⁴⁹ The elements of an effective ESG committee structure are discussed in the *Policy Frameworks and Implementation* section of this handbook.

In addition to voting on proposals set forth by others, institutional investors can also choose to file or co-file resolutions regarding issues important to the school community. Shareholder

resolutions typically have lead filers and co-filers. Lead filers are ultimately responsible for presenting the resolution at the shareholder meeting, garnering support from other investors, providing the media with information about the resolution, and continuing to dialogue with the corporation about the issues at stake. Co-filers at minimum simply write a letter to the company announcing their partnership in introducing the resolution, and they may be invited by the lead filer to join in advocacy and outreach efforts. Co-filing a resolution with an experienced partner is a good way to learn the steps required to effectively employ shareholder resolutions as a strategy for improving corporate standards.

Proactive Resource Allocation

Some investors actively seek to fill their portfolio with investments that match their social values. By proactively investing in socially responsible enterprises and/or avoiding investments that do not adhere to certain standards of corporate social responsibility, colleges and universities can join the large number of institutional investors that are raising the bar for social and environmental practices in the global economy.

Social Screening: In 2005, close to \$1.7 trillion dollars were managed under some type of social screen.⁵⁰ An institution may choose to invest only in companies which meet or exceed baseline social and environmental standards, a policy commonly referred to as “negative screening.”⁵¹ Depending on the investor’s interests, screens may eliminate investments in ‘sin industries’ such as tobacco and gambling, avoid companies with poor environmental and human rights records, or reward companies that uphold international labor rights standards. A related strategy involves investing in particular areas – such as renewable energy, sustainable forestry, or community development financial institutions – that promote the school’s mission and values.⁵² These “positive screens” target specific sectors and/or exemplary companies for investment, supporting businesses and industries that are considered leaders in corporate social responsibility. A number of investment companies, including Trillium Asset Management, Walden Asset Management, Calvert Funds, Domini Social Investments, Pax World Funds, and Parnassus Investments,⁵³ use various “positive” or “negative” screens to address particular sets of issues. Similarly, colleges and universities can create positive or negative screens for their investments, thereby only investing in companies whose practices accord with the school’s mission and values.

Additionally, colleges and universities that invest in private equity can target green energy and other socially responsible industries.⁵⁴ Some institutional investors, such as the California Public Employees Retirement System (CalPERS) and the New York City Employees Retirement System (NYCERS), have adopted private equity policies that require companies to uphold high environmental and labor standards.

Divestment: In some cases, where the practices of a particular company are deemed exceptionally egregious or a company’s continued operations would support a repressive regime, investors will join together to support divestment. Divestment entails selling all shares in a company and publicly refusing to invest in that company until the problematic practices end. For example, as of February 2007, over thirty colleges and universities had taken steps to divest from targeted companies doing business in Sudan⁵⁵ as part of an international divestment movement to avoid supporting atrocities committed by the Sudanese government.⁵⁶ Because they are often highly visible campaigns, divestment movements can be effective in shining a spotlight on abuses and signaling wide-spread concern about an issue. The example most often pointed to as indicative of divestment’s efficacy is the fall of apartheid in South Africa. Many forces were brought to bear against the apartheid regime,

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including internal political resistance and widespread international pressure; the divestment campaign, in which a broad array of institutional investors divested from companies doing business in South Africa, helped create social and economic incentives for the government to end apartheid.⁵⁷

Community Investing: Investments in Community Development Financial Institutions (CDFIs) can directly support the communities in which colleges and universities are located, or other low-income areas in the U.S. or abroad, by providing capital to communities and individuals who are typically underserved by conventional lending institutions. In addition to providing capital and other financial services, CDFIs often fund community-based projects, finance low-income housing and charter schools, invest in microenterprises, and offer job training and education.⁵⁸ Investments in CDFIs tend to be long-term with a fixed rate of return, and thus can be an attractive alternative to traditional secure forms of investment such as bonds. Additionally, colleges and universities can leverage “dead assets” to support credit enhancement in local communities,⁵⁹ or directly use debt finance to support the development of low-income housing.

SECTION 3: PROXY RESOLUTION PROCESS

Shareholder (or proxy) resolutions allow investors to express their views and concerns about issues affecting a corporation and to influence future business decisions by challenging management in a public forum. Generally, these resolutions are non-binding on management even if they are passed by a majority of shareholders, unless the corporate by-laws of the company stipulate otherwise.⁶⁰ However, management will often reach out and engage investors to seek a common agreement on the request in the resolution, especially in a company that cares about its brand and image.^{61,62}

The U.S. Securities and Exchange Commission (SEC) was authorized to regulate the shareholder proxy solicitation process by section 14(a) of the Securities Exchange Act of 1934.⁶³ Accordingly, the SEC has created a body of regulations (Rule 14-8) allowing shareholders to include their proposals with any management proposals in the corporation's proxy materials.⁶⁴ These referendums inform shareholders of the issues to be considered and voted on at the following shareholder meeting.

To be eligible to submit a shareholder resolution, a shareholder must own \$2,000 worth or 1% of the shares outstanding in the company (whichever is less) for at least one year prior to submitting the resolution, and must continue to meet this minimum threshold through the date of the annual meeting.⁶⁵ If the shareholder proposing a resolution is an unregistered shareholder who owns stock through a brokerage intermediary, the shareholder must demonstrate ownership of the shares and the date of acquisition.⁶⁶ A shareholder who owns shares through a mutual fund cannot submit shareholder resolutions because the mutual fund itself is the shareholder of the company.⁶⁷ However, shareholders in a mutual fund can influence the proxy votes taken by the mutual fund by writing to the fund managers, requesting details about the funds voting records and policy, and urging fund managers to vote in favor of ESG resolutions.

Shareholder resolutions and accompanying documents must be submitted both to the company's Corporate Secretary and to the SEC before the filing deadline.⁶⁸ The filing deadline varies by company and can be found in the company's proxy statement from the previous year. The most recent proxy statements are online in the SEC's online EDGAR database.⁶⁹ Rule 14a-8 further requires that the filing deadline be at least 120 calendar days before the date that the proxy statement was released to shareowners the previous year.⁷⁰ If the company did not convene an annual meeting for the previous year, or if the shareholder proposal is for a meeting other than the annual meeting, the company must receive the resolution in a reasonable time before it prints and mails the present year's proxy materials to shareholders.⁷¹ Each shareholder may only submit (either as a lead filer or co-filer) one resolution at each shareholder's meeting. The resolution and any statement that accompanies it may not exceed 500 words.

If the company intends to omit the resolution, it must file a request with the SEC no fewer than 80 days before filing its definite proxy statement with the Commission, and must send a copy of the omission request to the filing shareholder.⁷² At this point, the filing shareholder may submit additional materials to the SEC if they feel the company's request contains material or regulatory misrepresentations. The SEC then rules on whether it is acceptable to omit the proposal, based on whether the grounds for exclusion are justified.⁷³ If the SEC concurs with management, it will issue a "no-action letter" confirming that it will not commence enforcement proceedings against the corporation if the latter excludes the proposal from its proxy materials.⁷⁴ When the SEC refuses to issue a "no action" letter,

thereby permitting the resolution to be included with proxy materials, the SEC has determined that the resolution does not violate any SEC rules, which undermines a company's arguments to shareholders that the resolution is misleading or improper.

There are thirteen acceptable grounds for excluding a resolution according to Rule 14a-8(c):

1. Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;
2. Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;
3. Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
4. Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to the filing shareholder, or to further a personal interest, which is not shared by the other shareholders at large;
5. Relevance: If the proposal relates to operations which account for less than 5% of the company's total assets at the end of its most recent fiscal year, and for less than 5% of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
6. Absence of power/authority: If the company would lack the power or authority to implement the proposal;
7. Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;
8. Relates to election: If the proposal relates to an election for membership on the company's board of directors or analogous governing body;
9. Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;
10. Substantially implemented: If the company has already substantially implemented the proposal;
11. Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
12. Resubmissions: If the proposal deals with substantially the same subject matter as another proposal that was previously included in the company's proxy materials within the preceding five calendar years, a company may exclude the new proposal from its proxy materials for any meeting held within three calendar years of the last time it was included if the proposal received:
 - i. Less than 3% of the vote if proposed once within the preceding five calendar years;
 - ii. Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding five calendar years; or
 - iii. Less than 10% of the vote on its last submission to shareholders if proposed three times previously within the preceding five calendar years;
13. Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.

One of the most salient substantive bases for exclusion of ESG-related resolutions that advocate responsible business practices is found in Rule 14a-8(c)(7), which allows

management to exclude a proposal if it deals with "a matter relating to the company's ordinary business operations."⁷⁵ The SEC has determined that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight."⁷⁶ However, the SEC notes that "proposals relating to such matters but focusing on sufficiently significant social policy issues generally would not be considered to be excludable";⁷⁷ therefore, so long as the proposal transcends day-to-day business matters and raises policy issues, it is generally considered appropriate for a shareholder vote.⁷⁸ Furthermore, the SEC permits exclusion on the basis of Rule 14a-8(c)(7) if the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. This consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies."⁷⁹

Proposals should be written so that they request a policy action; requesting the establishment of a policy emphasizes that the resolution deals with policy and not ordinary business issues.

Shareholder activists must be careful to tailor the language and content in their resolutions to prevent the SEC from allowing the company to exclude their proposals.⁸⁰ When making a determination on a no-action request, the SEC considers "the way in which the proposal is drafted and how the arguments and our prior no-action responses apply to the specific proposal and company at issue."⁸¹ This means that "variations in the language of a proposal, or different bases cited by a company, may result in different responses" on proposals that address similar subject matter.⁸² Proposals should be written so that they request a *policy* action; requesting the establishment of a policy emphasizes that the resolution deals with policy and not ordinary business issues. Submissions may include news clips from the mainstream media on the topic of the resolution or other supporting evidence to show that the resolution is of policy significance.⁸³

Finally, while proposals should not be too vague, shareholders should avoid filing an overly specific resolution; for instance, a proposal could request a report on an issue from a company, but the proposal should not detail the method of preparation or the specific details to be included in the report.⁸⁴ Often a resolution will "contribute to, but not actually state, the ultimate change a shareholder would like to see in the company," for instance by requesting a report on a general issue rather than requesting that the company take specific steps or adopt a specific agenda with respect to the issue.⁸⁵

First-time filers are advised to work with experienced shareholder activists who are familiar with SEC regulations.⁸⁶ A first-time filer can get involved in filing a proposal by joining an existing group of filers as a co-filer, by lending his shares to the coalition, and/or by providing input on negotiations with the company.⁸⁷ There are a number of resources available to learn about existing shareholder coalitions and the resolutions they intend to file, such as CERES, the Interfaith Center on Corporate Responsibility (ICCR) and the As You Sow Foundation.⁸⁸ Because each shareholder resolution that is excluded creates a precedent for following years, all resolution filers should ensure that their resolutions are "well-crafted and defended."⁸⁹

SECTION 4: EFFICACY OF SHAREHOLDER ADVOCACY IN PROMOTING CORPORATE SOCIAL RESPONSIBILITY

As previously mentioned, shareholder advocacy involves actively working with company management to encourage business practices that respect human rights, promote environmental sustainability, and fulfill other aspects of social responsibility and good corporate governance. Unlike with social screening, shareholder advocates do not refrain from investing in certain corporations; instead, they seek change by engaging with company leadership. The goal is to make it clear to management that a specific social issue is a concern for investors. Change is achieved by convincing corporate management to adopt socially responsible business practices, either as a result of shareholder pressure through the filing and voting process, and/or through ongoing dialogue.

...shareholder advocates do not refrain from investing in certain corporations; instead, they seek change by engaging with company leadership.

Shareholder advocacy has proven an effective strategy for promoting corporate social responsibility. For example, the impact of the Interfaith Center for Corporate Responsibility (ICCR) over the past three and a half decades illustrates the crucial role shareholder advocacy can play in ensuring that companies in which institutional investors hold shares are not undermining shareholder institutional missions through their business practices. Some recent ICCR successes include:

- In 2004, ICCR members filed resolutions with two integrated meatpacking companies – Smithfield Foods and Hormel Foods – asking the companies to report on internal compliance with environmental regulations. The Smithfield resolution was withdrawn when the company agreed to issue an Environmental, Health and Safety Report addressing the impact of factory farms on water pollution. ICCR members are now engaging in dialogue with Hormel Foods after the shareholder resolution with Hormel received a 15 percent vote.⁹⁰
- In 2004, investors in the global beverage giant Coca-Cola overwhelmingly approved a resolution sponsored by ICCR members, asking the board of Coca-Cola to review the economic effects on its operations of the HIV/AIDS pandemic, tuberculosis, and malaria. Shareholders asked Coca-Cola to report to shareholders on the risks and opportunities the company faces as a result of the public health crisis in Africa and elsewhere. On March 4, 2004, Coca-Cola issued a statement welcoming the opportunity to work with share owners in addressing the HIV/AIDS crisis, marking one of the exceptionally rare times that management has recommended that investors vote in favor of a shareholder-initiated resolution.⁹¹
- On April 11, 2006, Wal-Mart placed its entire Equal Employment Opportunity Report (EEO-1) on the Wal-Mart Facts Website, setting a new standard in transparency for the company. This measure was taken in response to a shareholder resolution filed by ICCR members, which called for greater transparency in Wal-Mart's employment practices.⁹²

ICCR's victories are only one set of examples illustrating the efficacy of shareholder advocacy. Shareholder efforts initiated by pension funds, colleges, and socially responsible investment funds, have also met with impressive success.

- In 2002, Swarthmore's Committee for Socially Responsible Investing (subsequently renamed the Committee on Investor Responsibility) filed a shareholder resolution with Lockheed Martin regarding discrimination on the basis of sexual orientation.⁹³

Due in part to the committee's proxy solicitation efforts, 5 percent of shareholders voted in favor of the Swarthmore resolution – more than the 3 percent needed to re-file the resolution the subsequent year – prompting Lockheed Martin to change its equal employment opportunity policy and start providing employees with domestic partnership benefits.⁹⁴ To follow-up on this success, in 2003 Swarthmore and a number of other investors⁹⁵ co-filed two shareholder resolutions on sexual orientation non-discrimination with Masco Corporation and Dover. Both resolutions were withdrawn when the companies – in the face of the mounting pressure from shareholders – decided to incorporate sexual orientation non-discrimination provisions in their employment policies.⁹⁶

- In 2004, ExxonMobil agreed to implement a human-rights policy based on the ILO Declaration of Fundamental Principles at Work. This significant policy change came after several years of pressure from a coalition of investors, including Amnesty International USA, the NYC Teachers' Retirement System, Boston Common Asset Management, and the AFL-CIO. The coalition filed repeated proposals and engaged in serious, substantive dialogue to urge the company to uphold ILO standards.⁹⁷
- During the 2005, 2006, and 2007 shareholder resolution seasons, thirty-one companies⁹⁸ agreed to disclosure and board oversight of political expenditures in response to shareholder pressure. The ongoing effort to bring transparency and accountability to company political spending has been spearheaded by the Center for Political Accountability, which works with a wide range of investors, among them the five New York City Pension Funds (the New York City Retirement System, New York City Teachers Retirement System, New York City Police Pension Fund, New York City Fire Department Pension Fund and New York City Board of Education Retirement System), Trillium Asset Management, Walden Asset Management, Green Century Capital Management, Boston Common Asset Management, Calvert Funds, and Mercy Investment Program.⁹⁹
- In response to shareholder requests, in February 2006 four U.S. electric power companies agreed to assess and disclose the potential impacts of regulations regarding the reduction of carbon dioxide and other greenhouse gas (GHG) emissions. Members of the Investor Network on Climate Risk, an alliance of more than 50 institutional investors directed by Ceres, persuaded Great Plains Energy Inc. in Kansas City, Missouri; Alliant Energy in Madison, Wisconsin; WPS Resources in Green Bay, Wisconsin; and MGE Energy in Madison, Wisconsin to disclose preparations for future GHG-reducing regulatory scenarios, specifically the potential impacts the regulations on existing and proposed power plants.¹⁰⁰
- In 2007, U.S. Bancorp and the El Paso Corporation agreed to issue annual reports to shareholders – within the framework of internationally accepted sustainability reporting guidelines – fully disclosing the global social, environmental and economic impacts of their business operations. These agreements came in response to shareholder resolutions calling for sustainability reporting filed by the NYC Comptroller on behalf of the New York City Employees' Retirement System (NYCERS), the Teachers' Retirement System of the City of New York (TRS), the New York City Police Pension Fund, the New York City Fire Department Pension Fund, and the New York City Board of Education Retirement System (BERS).¹⁰¹

SECTION 5: LEGAL CONCERNS - FIDUCIARY DUTY

It is well settled that trustees of charitable trusts and non-profits can consider the social and environmental consequences of corporate behavior in making investment decisions.¹⁰²

According to *The Law of Trusts*, “Of course [the trustees] may well believe that a corporation that has a proper sense of social obligation is more likely to be successful in the long run than those that are bent on obtaining the maximum amount of profits. But even if this were not so, the investor, though a trustee of funds for others, is entitled to consider the welfare of the community, and refrain from allowing the use of funds in a manner detrimental to society.”¹⁰³

...it is implicitly part of the fiduciary duty of college and university trustees to consider the impact of investment decisions on society at large.

Colleges and universities are governed under three different legal regimes: the UMIFA (1972), the UPMIFA (2006), and state common law. The law applicable to any college or university depends both on the legal form of the educational institution and the statutory scheme of the home state. In states that have incorporated the Uniform Management of Institutional Funds Act (UMIFA) of 1972,¹⁰⁴ non-profit corporations are governed by the UMIFA while charitable trusts organized for educational purposes are generally governed by state common law,¹⁰⁵ although the applicable law may differ in states that have modified the UMIFA. The contours of state common law are summarized by the Third Restatement of Trusts (1990).¹⁰⁶ In states that have adopted the Uniform Prudent Management of Institutional Funds Act (UPMIFA) of 2006,¹⁰⁷ all educational institutions, regardless of legal form, are governed by the UPMIFA.¹⁰⁸

Depending on the statutory scheme, the fiduciary duties of trustees are determined either by the *prudent investor* rule or the *business judgment* rule. The prudent investor standard applies to educational institutions organized as charitable trusts and governed by common law, while the business judgment rule applies to colleges and universities governed by the UMIFA (1972) or the UPMIFA (2006). As applied to educational institutions, both standards allow trustees wide latitude to support shareholder resolutions that address human rights and environmental issues at the companies in which the institution is invested.¹⁰⁹

The prudent investor standard has a number of dimensions, but the legal framework specifically relevant to shareholder advocacy concerns the duty “to formulate and implement an investment strategy that incorporates risk and return objectives ‘reasonably suitable to the trust’, over the entire trust portfolio, in light of the trust’s funding requirements, risk tolerance and purpose.”¹¹⁰ In other words, the fiduciary duty of trustees is not to maximize the returns of any one investment, but rather to consider risks as well as returns, in the context of the entire portfolio. Shareholder resolutions primarily seek disclosure, the implementation of guidelines to accord with domestic and international law, and business practices that minimize the risk of lawsuits, all actions that accord with the duty of prudence incumbent upon fiduciaries. Shareholder advocacy is therefore well within the mandate of the prudent investor rule.

Moreover, under the prudent investor standard, consideration of social issues is permitted even if such consideration does not directly advance the financial interests of a college or university. The most relevant legal precedent – a Maryland Court of Appeals decision that considered divestment in the context of the prudent investor standard of the Baltimore City Code – found that trustees do not violate their fiduciary duties where the costs of considering the social consequences of investment decisions are *de minimis*.¹¹¹ The purpose of shareholder advocacy is engagement with corporate management in order to promote better business practices that protect human rights and other aspects of the public good. Such engagement does not limit investor flexibility or the diversity of investment holdings, so

shareholder advocacy does not impact the risk-return calculus that dictates modern portfolio management.¹¹² Any cost associated with such engagement is minimal and therefore permitted under the prudent investor rule.

Although the prudent investor rule prevents trustees from using a trust portfolio as a means of expressing the trustee's own viewpoints,¹¹³ according to the Third Restatement, trustees are entitled to consider an investment's social impact if such considerations are appropriate to the purposes of the trust: "[I]nvestment judgments may be affected by the fact that a special type of trust is involved, such as . . . charitable trusts."¹¹⁴ The mission and purpose of colleges and universities is to serve society at large and promote the greater good. Therefore it is implicitly part of the fiduciary duty of college and university trustees to consider the impact of investment decisions on society at large.

Consideration of ESG issues is likewise permitted under the business judgment rule. In contrast to the preceding discussion, the fiduciary duty standard for trustees of colleges and universities governed by the UMIFA (1972) or the UPMIFA (2006) is that of good faith and ordinary prudence, commonly known as the business judgment rule.¹¹⁵ This standard is analogous to that of a director of a business corporation and includes a *duty of care and loyalty*. A disinterested corporate director fulfills her *duty of care* if she makes decisions "in good faith" that she "reasonably believes" are in the best interests of the entity.¹¹⁶ Adherence to the *duty of loyalty* is generally presumed, absent a clear financial conflict of interest.¹¹⁷ Under the business judgment rule a court will not second-guess a business decision so long as the decision-maker exercised a minimum level of care in arriving at the decision. Effectively, the rule requires only that decisions are made in good faith and are not grossly negligent.¹¹⁸ This standard is far more lenient than the prudent investor rule. Under the business judgment rule, trustees are empowered to take shareholder actions – including filing proxy resolutions and engaging in direct dialogue with corporate management – to pressure companies to adhere to human rights norms and other environmental and ethical standards. Under both the prudent investor rule and the business judgment rule, all trustees, as institutional fund managers, have the fiduciary duty to vote the fund's proxies and to vote them in the interest of the fund and its beneficiaries.¹¹⁹

In sum, shareholder advocacy on social, governance and environmental issues is clearly consistent with the fiduciary duties of trustees. To the extent that shareholder advocacy minimizes investor risks, protects shareholder value, and promotes the missions and stated values of the institution, such engagement may even be required.

SECTION 6: IMPLEMENTATION CONSIDERATIONS - ELEMENTS OF AN EFFECTIVE POLICY FRAMEWORK

Implementing effective ESG-sensitive investing policies requires well-considered committee frameworks and appropriate institutional commitments. By keeping in mind the core principles that make ESG policies effective, one can ensure that a responsible investing initiative will result in the alignment of values and investments.

Ongoing implementation of responsible investing strategies takes time, expertise, and dedication. To address these needs, it is recommended that schools form Committees on Investor Responsibility (CIRs) with responsibility for overseeing ESG issues. Some schools have instituted a two-committee structure, with a Committee on Investor Responsibility usually comprised of trustees and a separate Advisory Committee on Investor Responsibility (ACIRs) that has more representation from the university community.¹²⁰ At the heart of a successful ESG-responsive investing policy is committee accountability to the university community. Accountability enables the views and values of the university community as a whole to be considered, and provides ongoing impetus for the committee to fulfill its mandate effectively. The five core components of successful and accountable CIRs/ACIRs are: participation, transparency, time and resource commitment, empowered committee structure, and a clear and broad committee mandate.

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Participation

Participation by the university community is important for maintaining the long-term relevance and vitality of ESG policies; for ensuring that the views of the university community are reflected in the CIR's work; for engendering accountability; and for empowering the committee to make sure its recommendations are implemented.

- Direct Participation by Students, Faculty, and Alumni: Direct participation enables students, alumni, and other concerned members of the university community to petition the CIR for action on a specific issue. Stanford has an exemplary mechanism for direct participation: students can request that the university support a particular proxy resolution or take action on a specific issue by filing a simple form with the university Advisory Committee on Investor Responsibility (ACIR).¹²¹ Members of the Stanford University community are also invited to attend well publicized town-hall style meetings of the ACIR where they can testify about issues of concern and hear ACIR members discuss the working agenda of the Committee.¹²² Likewise, Columbia and Barnard also hold annual town-hall meetings that provide a forum for wide community participation.¹²³
- Indirect Participation by Students, Faculty, and Alumni: Indirect participation is established by structuring the CIR to require representation of the various college/university constituencies (students, faculty, alumni, administrators, trustees) on the committee charged with overseeing environmental, social, and governance issues; in practice, effective indirect participation and accountability requires that many of these representatives be selected through a transparent election process. Fair and open elections of student, faculty, and alumni committee members help ensure that members are accountable to their respective constituencies.
- Participation by School Trustees and Administrators: ESG policies are only effective over the long term if they are sustained by participation on the part of key trustees and administrators. As the ultimate decision-makers regarding a

school's investments, trustees have a critical role to play in facilitating ongoing ESG initiatives. Likewise, running a CIR/ACIR requires committed administrative support, since key administrators are best positioned to leverage institutional resources on behalf of specific goals or to block measures they oppose. Moreover, participation by trustees and administrators is critical to maintaining institutional memory and expertise as student, faculty, and alumni members come and go over the years.

Transparency

Access to complete and accurate information about investment holdings is imperative for CIRs/ACIRs to fulfill their responsibilities. Thus, committee participants are typically provided information concerning investment holdings and allowed to share this information in specific situations (e.g., while collaborating on efforts with other schools and organizations).¹²⁴ In addition, transparency to the wider school community is necessary to facilitate the twin goals of participation and accountability. For example, it is impossible for alumni, students, faculty, and administrators to register their positions regarding specific issues and particular proxy resolutions without knowing which companies a school is invested in and the various shareholder resolutions up for consideration.

Endowment managers may be wary that greater transparency will allow outsiders to figure out the university's investment strategy and copy it, thereby reducing profitability over the long term. It is important to note that, generally, disclosure of a school's investment holdings does not compromise financial returns or reveal any proprietary information regarding investment strategies. In fact, investment managers of mutual funds are required to publicly disclose this information,¹²⁵ and public institutions must make such information available via the Freedom of Information Act (FOIA).¹²⁶ Although it may be possible to hypothesize the investment strategy of some specialized funds (e.g., hedge funds, private equity funds) through careful study of their portfolios over time, this is not true for institutional investors that manage risk by utilizing diverse investment strategies. Since a university generally invests in many funds with different investment strategies, disclosure of the total bundle of a school's holdings – without reference to the allocation of holdings – provides no useful information about specific investment strategies.¹²⁷ And in the rare instances when the university is adjusting its position vis-à-vis a particular investment and believes that disclosing these adjustments would jeopardize the position, the specific holding can be disclosed subject to a brief time-lag. A range of mechanisms exist for balancing the critical need for transparency regarding investment holdings – to both the CIR/ACIR and the wider school community – with concerns about disclosing investment strategies.

Generally, a complete and up-to-date list of holdings should be made available to all members of the university community, for instance via an intranet or password-protected website, or through a university publication.¹²⁸ This approach ensures transparency regarding all relevant information for affected stakeholders. An alternative approach could involve subjecting disclosure of particular holdings to a brief time-lag, in order to protect the profitability of specific investments whose returns could be injured by contemporaneous revelation. Second-best strategies, followed by some schools, provide for disclosure of current information regarding specific companies only upon request by students, faculty, or administrators, or for full disclosure to the

...generally, disclosure of a school's investment holdings does not compromise financial returns or reveal any proprietary information regarding investment strategies.

Committee on Responsible Investing and only limited disclosure to the rest of the community. At state-run colleges and universities, current and complete information regarding investments is publicly available by law;¹²⁹ therefore facilitating effective ESG policies at public institutions could include promoting the wider accessibility of this information. Different combinations and variations of transparency policies may be appropriate for different institutions. Implementing an ESG policy involves deciding how to promote transparency effectively while still addressing potential concerns of university money managers.

Transparency is also necessary regarding both the activities of a CIR and the responsible investing policy framework of a school. The university community will be unable to hold a CIR/ACIR accountable for fulfilling its mandate without information regarding the agenda, meeting schedule, members, and past actions of the committee. For example, Swarthmore makes its proxy voting record available online,¹³⁰ while Williams opens up CIR meetings to the broader college community,¹³¹ giving audience members the opportunity to learn more about the college's investor responsibility initiatives.

Time & Resource Commitment

As with all institutional initiatives, successful investor responsibility committees require an investment of both time and financial support. Designated administrators may need to give an hour or more of their time each week to support the committee, and other CIR/ACIR members must also be prepared to make an ongoing time commitment. The committee should plan to meet at least a few times a month for the duration of the school year to prepare for the spring proxy season and to oversee other socially responsible investing strategies. Meetings may need to be more frequent between February and May, when shareholders are asked to vote their proxy ballots.

Additionally, schools should plan on subscribing to an investment research service focused on ESG issues, such as the ESG Research and Analytics offered by Institutional Shareholder Services (ISS).¹³² Appendix II(a) contains a short list of some available research services. However, no single source of research can be considered comprehensive or definitive. Where proxy voting guidelines may stipulate concordance with the recommendations of a particular research service, these recommendations should be open to challenge based on the broader principles underlying the proxy voting guidelines. The committee may also sponsor members' attendance at conferences so that they can keep up-to-date on activities in the field of responsible investing.

Finally, if a school decides to lead file a shareholder resolution, it must send at least one representative to present the resolution at the corporation's annual general meeting; however, that representative is not required to be faculty or staff, and may be an appointed volunteer from either inside or outside the school's community.

Empowered Committee Structure

A broadly representative committee on investor responsibility (CIR) can be given the final authority to implement ESG-related decisions within the parameters set by its charter mandate, or an advisory committee (ACIR) can make recommendations to school trustees, who then have the ultimate authority to implement ESG measures.

Under the two-committee structure, an ACIR is the body that represents the various constituencies of the university community, while the CIR is composed only of trustees.¹³³ In this framework, the ACIR reviews ESG issues first and recommends actions to the CIR, which then acts on these recommendations. Effective use of a two-committee structure requires that the CIR be bound by clear guidelines regarding the actions it must take in relation to ACIR recommendations. These guidelines must address both timeliness of implementation and the grounds for accepting or rejecting ACIR recommendations. The CIR, which excludes the wider university community, should be required to accept and implement the measures recommended by the ACIR, unless the CIR determines that the ACIR's recommendations would have more than a minimally negative impact on the institution's investment returns.¹³⁴ When an ACIR recommends strategies that have a larger impact on returns, such as suggesting significant investment in screened funds, the process by which the CIR decides whether to adopt or reject the ACIR's recommendation must be guided by the underlying purpose of the school's responsible investment policy as well as overall mission-related values. The grounds for such decisions should be made available to the university community in order to facilitate accountability and transparency and avoid arbitrary and capricious review. An effective working relationship between an ACIR and a CIR is facilitated by structuring committee membership to require that a few trustees serve concurrently on both committees.¹³⁵

Accountability, transparency, participation, and non-arbitrary decision-making are more effectively facilitated by a single committee structure, in which a broadly representative CIR is empowered to implement ESG-related decisions. However, this unitary structure is only more effective if the legal authority to implement responsible investing policies is delegated to the committee, and the committee is provided with sufficient institutional resources to fulfill its mandate. The core concern is that the agents ultimately responsible for executing the strategies decided upon by the broadly representative CIR – including filing or co-filing shareholder resolutions, voting proxies, writing letters, engaging with company management, and applying positive or negative screens through investment allocation – must be members of or directly accountable to the committee, in order to ensure that policy recommendations are translated into practice.

Within committees, the decision-making process may vary depending on each school's particular values and history. For example, at Haverford College, an institution with Quaker roots, decisions on committees like the CIR are primarily made by consensus.¹³⁶ At most schools, CIRs and ACIRs are run by majority vote.¹³⁷

Clear and Broad Committee Mandate

The responsibilities of the CIR/ACIR should be clearly articulated in the committee charter, and should be broad enough to allow the committee to explore and recommend a variety of responsible investing strategies. Guidelines regarding social screening, where appropriate, and shareholder advocacy in all instances, should be developed by the CIR/ACIR committee as soon as feasible, in consultation with students, alumni, faculty, administrators and trustees.

Shareholder advocacy (proxy voting) guidelines serve two essential purposes. First, they provide a clear mandate to the CIR/ACIR, thereby avoiding arbitrary decisions, spurring proactive engagement on ESG issues, and promoting public accountability.

Second, they substantially streamline the deliberation process in regards to filing or co-filing shareholder resolutions, voting in favor of proxy resolutions filed by other shareholders, and engaging in dialogue with companies. Due to time constraints and the wide diversity of college/university investment holdings, such streamlining is important if shareholder advocacy is to become a broadly utilized mechanism instead of an ad-hoc policy implemented on a case-by-case basis. These guidelines can be designed to inform engagement with companies, including letter-writing and meetings with company executives, as well as positions regarding specific proxy resolutions. Shareholder advocacy guidelines are generally developed by each institutional shareholder internally, in consultation with all relevant stakeholders, and are designed to reflect the specific mission and values of each institution.¹³⁸

Likewise, broad principles of investment responsibility should provide guidance regarding other socially responsible investing strategies, such as ESG screening, community investing, and divestment. CIRs/ACIRs will be better able to identify ESG opportunities within the universe of SRI screened funds and community development financial institutions if a committee's responsibilities in these arenas are clear. By the same token, clear principles regarding divestment will add teeth to a school's shareholder advocacy, and will establish a framework for constructive dialogue among campus constituencies in relation to particular divestment issues that may arise.

A well-conceived ESG policy will incorporate these five core components in the mandate, corporate structure, and day-to-day operations of a committee on investor responsibility. Initially this involves establishing mechanisms for participation by students, faculty, alumni, trustees and administrators. This also requires development of proxy voting guidelines, clear articulation of the committee's scope of responsibility, and delegation of real decision-making ability so the CIR/ACIR is empowered to effectively fulfill its mandate. These structural underpinnings of a successful committee must be supported by ongoing transparency and publicity, along with an institutional commitment of time and resources.

APPENDIX I

The following pages include three sample ESG policies: (a) Columbia University, (b) Stanford University, and (c) the University of Iowa. These policies are not 'model' ESG policies; each incorporates several important elements but falls short in other areas.

For instance, both Stanford University and Columbia University have good policies about membership in the advisory committee on investor responsibility. Stanford's committee of twelve voting members includes faculty, students, alumni, and staff, and the CEO of the Stanford Management Company serves as an ex-officio member, with the right to vote if there is a tie. Furthermore, all students can request that the university support a particular proxy resolution or take action on a specific issue by filing a simple form with the university Advisory Committee on Investor Responsibility (see form in Appendix 1B). The Columbia committee's twelve voting members are drawn "in equal proportion from the students, faculty, and alumni of the University, and the process for the appointment of its members will provide for the balanced representation, over time, of the University's divisions and schools. Two university administrators may sit as non-voting members..."

However, neither Stanford nor Columbia has an adequate policy on transparency of the University's holdings. Stanford provides the Advisory Committee "access to reasonably available data compiled by or on behalf of the University on companies currently held as pooled endowment securities," but does not provide for full disclosure to the University community. Similarly, the Advisory Committee at Columbia is provided "with current information on a confidential basis regarding endowment holdings and investment management actions of the University related to SRI issues under review by the Committee." These structures limit the ability of the University communities to be adequately informed on issues of social and environmental concern that may implicate University holdings, and thus limits the participatory role of the community on ESG investment issues.

The University of Iowa has an exemplary policy on transparency of the University's holdings ("The University will continue as a regular practice to make available through the Treasurer's Office web site listings of all its direct investments."). However, the University of Iowa has insufficient guidelines regarding the actions that university investment managers must take with respect to the advisory committee's recommendations ("Following submission of [Advisory Committee findings on a company's problematic business practices] the University Treasurer may elect to take whatever action is deemed appropriate.") These inadequate guidelines allow for arbitrary and capricious review of Advisory Committee findings, and undermine accountability and representation in the ESG policy.

The inclusion of these policies in this handbook is meant to provide examples of existing policies, yet each school should carefully design its own ESG policy with input from the various constituencies and community members of the school, careful consideration of the school's values, and inclusion of the important elements discussed in the *Policy Frameworks and Implementation* Section. Staff at the Responsible Endowments Coalition and Amnesty International USA would be happy to assist with drafting or revising a policy.

Proposal to Create an Advisory Committee on Socially Responsible Investing

February 25, 2000

At the direction of the University Trustees, the President will form an Advisory Committee on Socially Responsible Investing (the "Committee") to advise the University Trustees on ethical and social issues that arise in the management of the investments in the University's endowment. The following basic principles will guide the formation and activities of the Committee and the relations between it and other parts of the University:

1. The Committee will be a permanent addition to the University, with an established process for the selection of its members, a growing body of experience and expertise regarding socially responsible investing ("SRI"), stable working relationships with other parts of the University, including the University Administration, the University Senate, and the University Trustees, and an annual budget in support of its activities.
2. To ensure that the Committee is broadly representative of the University community, its twelve voting members will be drawn in equal proportion from students, faculty, and alumni of the University, and the process for the appointment of its members will provide for the balanced representation, over time, of the University's divisions and schools. Two university administrators may sit as non-voting members in addition to the twelve voting members.

Recognizing the Committee's need to master complex issues, and the desirability of continuity in its deliberations, terms of service will be two years for students and three years for faculty and alumni. Student members of the Committee will be nominated through student government organizations; faculty will be nominated by their divisional vice president, or by their dean and the provost, and alumni will be nominated by the University Vice President for Development & Alumni Relations from candidates identified by the various alumni associations of the schools. Of the four student members of the Committee, two will be Columbia undergraduates, (one from the College and one from the School of Engineering or the School of General Studies) and two will be graduate students, one nominated from among candidates identified by the student government organizations of the Health Sciences Division and one nominated from among candidates identified by the graduate student organizations on the Morningside campus. The student caucus of the University Senate will make the final selection of nominees for the student members of the Committee. Of the faculty members of the Committee, one will be chosen from the faculty of Arts and Sciences in consultation with the Executive Committee of the Arts & Sciences, one from faculty of the Health Sciences Division, and two from the faculties of the School of Business, the School of Law, the School of Architecture, the School of Engineering, the School of Journalism, and the School of Social Work. The four alumni members of the Committee will be chosen from the same groupings of schools as the faculty members. The University Vice President of Development and Alumni Affairs will solicit candidates from the corresponding alumni associations, and forward nominations to the President of the University. Appointments to the Committee will be made by the President, who will also designate a chairperson from among the faculty members of the Committee.

3. The Committee will set its own agenda within the broad arena of socially responsible investing, and will, by formal vote of a majority of the Committee membership, make recommendations to the University Trustees on issues related to investments in the University's endowment, including but not limited to the exercise of the University's proxy-voting rights, shareholder initiatives, and portfolio screening.

Because of the potential number and complexity of the concerns that might be raised with respect to an endowment the size of the University's, it will be desirable for the Committee to be able to focus its concerns on a subset of SRI issues each year. To this end, the Committee will set out a specific agenda to the Columbia community each fall to be submitted to the University Trustees and the University Senate. The Committee,

however, will determine the SRI issues it researches and the recommendations it makes to the University, including its response to issues that arise after the preparation of its annual agenda.

4. To guide it in its work, the Committee may choose to adopt a set of principles that broadly define its objectives and concerns regarding socially responsible investing by the University. In preparing such a statement the Committee would draw on resources and representative bodies across the University. To adopt a set of core principles, the Committee will be required to formally approve them by a 2/3 majority of its members. The same approval requirement will apply to any subsequent amendments of those principles.
5. To carry out its work, the Committee will need to be well-informed regarding the particular SRI issues it chooses to pursue and regarding the University's endowment investments. To inform itself generally on SRI issues, the Committee may hear presentations from concerned members of the Columbia community (students, alumni, faculty, and staff) and invite experts from inside and outside the University to provide information. The University will support the Committee's information needs with respect to SRI issues, including providing subscriptions to the issue-monitoring services of respected research organizations such as the Investor Responsibility Research Center. The University will also provide the Committee with current information on a confidential basis regarding endowment holdings and investment management actions of the University related to SRI issues under review by the Committee. The Committee's deliberations using such information will take place in executive session, and information given the Committee regarding the University's endowment will be held in confidence by members of the Committee and used solely to formulate recommendations from the Committee to the University Trustees. To keep the Columbia community informed on SRI matters pertaining to the endowment, the Committee's formal recommendations to the University Trustees and the subsequent action or response by the University Trustees will be made public. In addition, each year the University will prepare and make available a list of the foreign and domestic publicly held corporations whose shares were held by the University's managed endowment as of the preceding June 30, the last day of the previous fiscal year.
6. The Committee will prepare an annual report on its activities during each academic year. In addition, during the fall of its third year of operation, a special committee, appointed by the President of the University and incorporating members from the Committee, the University Trustees, the University Senate and the Administration, will review the workings of the Committee and recommend modifications of its design or procedures, as suggested by experience, to the University Trustees.
7. The Committee and the University Trustees will develop a direct working relationship supported, as necessary, by the Office of the Secretary of the University and the Finance Office. In at least one potential area of activity, proxy voting, that relationship must be closely coordinated, given the relatively brief time available to respond to proxy proposals. The University Trustees may choose to establish a special subcommittee to work with the Advisory Committee in addressing SRI issues.
8. The final fiduciary responsibility for the management of the investments that support the University's mission lies with the University Trustees. The Committee's recommendations to the University Trustees will therefore be advisory in nature.

Statement on Investment Responsibility Concerning Endowment Securities
October 15, 2002
(supersedes all previous statements)

1. PREAMBLE

- 1.1. The primary fiduciary responsibility of the University Trustees in investing and managing the University's endowment securities is to maximize the financial return on those resources, taking into account the amount of risk appropriate for University investment policy. However, when the Trustees adjudge that corporate policies or practices cause substantial social injury¹, they, as responsible and ethical investors, shall give independent weight to this factor in their investment responsibility policies and proxy voting practices related to corporate securities.
- 1.2. The authority to take ethical factors into account when setting investment responsibility policies and proxy voting practices addressing endowment securities derives primarily from the stewardship responsibilities which attend the ownership of endowment securities. The policies and procedures in this Statement recognize that there is no practical way for the University to avoid having an effect on the outcome of issues involving corporations in which it has invested, and that, consequently, the effect should be as thoughtful and considered as possible.
- 1.3. However, decisions regarding investment responsibility frequently are controversial, and the Trustees recognize that they may not speak for the University on issues of public policy, except those that directly impinge upon Stanford as an educational institution. Therefore, all actions taken pursuant to these policies and procedures should be understood as judgments by the Trustees made in discharging their duties as an investor in corporations, and such an action should not be interpreted to represent the view of all members—or of any particular member—of the University.

2. POLICY GUIDELINES

2.1 Selection and Retention of Endowment Securities

¹ Substantial Social Injury: With regard to corporate behavior, substantial social injury is defined as the injurious impact on employees, consumers, and/or other individuals, or groups resulting directly from specific actions or inactions by a company. Included in this category are actions that violate, subvert, or frustrate the enforcement of rules of domestic or international law intended to protect individuals and/or groups against deprivation of health, safety, basic freedoms or human rights. Only actions or inactions by companies that are proximate to and directly responsible for identifiable social injury will be regarded as falling within these guidelines.

For the purposes of these Guidelines corporate activity that creates a potential for social injury to occur shall not itself be construed as socially injurious. Similarly, for the purposes of these guidelines, social injury shall only in unusual circumstances include the act of doing business with other companies which are themselves engaged in socially injurious activities.

Under this policy, allegations of substantial social injury will be examined on a case-by-case basis using the best available evidence and allowing parties to the allegation reasonable time to develop and disseminate that evidence.

- a) Maximum economic return shall be the primary criterion for the selection of the University's endowment securities.² Maximum economic return shall also be the primary criterion for the retention of the University's endowment securities except in the cases covered by paragraph 2.3 In both cases, when assessing the expected return on the securities of a company, the investment manager or advisor shall take into consideration any substantial social injury caused by company activities which in his or her opinion is likely to have a negative impact on the value of the investment.
- b) In no event will an endowment security be selected or retained for the primary purpose of thereby encouraging or expressing approval of a company's activities, or alternatively, for the primary purpose of placing the University in a position to contest a company's activities.

2.2 Exercise of Shareholder Rights

- a) Proxy Voting Guidelines: From time to time Trustees will review, update and/or develop proxy voting guidelines that address issues of substantial social injury by companies in which the University invests.
- b) Voting: On any shareholder resolution involving social issues, the Trustees shall: (1) normally vote according to existing University Investment Responsibility Proxy Voting Guidelines, (2) vote to "abstain" when no Proxy Voting Guidelines exist, or (3) "not vote" in cases where SCIR has determined that "not voting" on a resolution is in the best interest of the University.
- c) Representations: When the Trustees conclude that the company's activities cause substantial social injury, they may make formal or informal representations to corporate management to explain or reinforce their position on proxy issues and on issues where no proxy is presented.

2.3 Divestment

Where the Trustees conclude that a company's activities or policies cause substantial social injury, and the Trustees conclude that:

- a) a desired change in the company's activities would have a direct and material effect in alleviating such injury,
- b) the Trustees have exhausted their practicable shareholder rights in seeking to modify the company's activities to eliminate or reduce the substantial social injury thereby caused,
- c) the company has been afforded the maximum reasonable opportunity to alter its activities,
- d) no alleviation of the substantial social injury by the company is likely within a reasonable time; the Trustees will consider the alternative of not continuing to exercise their shareholder rights under the foregoing paragraphs, and may, when such an action is consistent with their fiduciary obligations, instead sell the securities in question within a reasonable period of time.

2.4 Exceptions

If the Trustees conclude that a specific Trustee action otherwise indicated under these Guidelines is likely to impair the capacity of the University to carry out its educational mission (for example, by causing significant adverse action on the part

² Endowment security: an equity security held for investment as part of the University's endowment funds or other funds (such as loan funds, building and other temporary funds, reserve funds, and current funds) in which securities are held for investment.

of governmental or other external agencies or groups, or by causing deep divisions within the University community), then the Trustee need not take such action.

3. THE ADVISORY PANEL ON INVESTMENT RESPONSIBILITY

An Advisory Panel on Investment Responsibility (APIR) ³shall advise University trustees and officers and make recommendations to the President (or his designee) and the Trustees' Special Committee on Investment Responsibility (SCIR) concerning investment responsibility matters.

3.1 Specific Duties

The APIR has been designated as the University body responsible for implementation of the policy guidelines on investment responsibility. The Panel shall be advisory to the SCIR and the President, with the following functions:

1. Consider proposals from the University community regarding specific investment responsibility concerns, first determining whether or not there is an allegation of substantial social injury;
2. Monitor trends and activities in investment responsibility that have an impact on educational institutional investors;
3. Conduct research, update company files, and provide analyses when appropriate;
4. Make recommendations to the SCIR on how to vote proxies and on any new issues which may warrant attention;
5. Respond to specific requests from the SCIR or President.

3.2 APIR Membership

- a) There is hereby established an Advisory Panel on Investment Responsibility to be composed of twelve voting members including: four members of the Academic Council nominated by the Faculty Senate Committee on Committees; four students (two undergraduates, two graduates) nominated by the Student Senate Committee on Nominations; two alumni representatives appointed by the President in consultation with appropriate University representatives; two staff members appointed by the President. The Chief Executive Officer of the Stanford Management Company (or his/her designee) shall serve as an ex-officio member. The CEO may vote if there is a tie.
- b) Members shall be appointed for at least two years and may be reappointed. Members shall serve until their successors take office. In the event of a vacancy caused by death, disability, or resignation of a member, the President of the University shall appoint a replacement, who shall serve until the expiration of such member's term and until a successor takes office.
- c) The APIR Chair shall be appointed by the President of the University.

3.3 Organization

- a) The APIR shall meet on call of the Chair and no less than twice during the academic year. At the Chair's discretion, the APIR may also conduct business via conference call.
- b) The Chair is responsible for setting agendas. The Chair shall take as an agenda item any matter referred by the Board of Trustees, the President, or the Chief Executive Officer of the Stanford Management Company. The Chair shall also take as an agenda item any matter submitted by two or more members of the APIR. In addition, the APIR will consider written proposals from any member or group of the Stanford community for possible inclusion on the agenda. The Chief Executive Officer of the Stanford Management Company shall, whenever practicable, give

³ Previously the Commission on Investment Responsibility (CIR)

reasonable notice to the APIR of any matter pertaining to the University's endowment securities which could be within the purview of the APIR.

- c) The APIR may ask individuals, whether or not connected with the University, to attend its meetings as consultants or otherwise provide advice and information.
- d) The Stanford Management Company shall be responsible for providing staff and secretarial assistance to the APIR.
- e) To assist in its review of social responsibility proxy issues, the APIR will have access to reasonably available data compiled by or on behalf of the University on companies currently held as pooled⁴ endowment securities.
- f) The APIR may establish committees of its members to serve at the pleasure of the APIR.
- g) The APIR may establish rules of procedure, subject to the provisions of this statement.

3.4 Operations

- a) Within the Guidelines established under Section 2, the APIR shall examine issues of investment responsibility involving the University's endowment securities and make appropriate recommendations for action by the Trustees. Such recommendations shall take into consideration the following factors: (1) the facts and information the APIR has gathered in its study of the issues; (2) the opinions expressed within the Stanford community regarding the issues; and (3) the legal and financial impact of the recommended action.
- b) If the APIR determines that a substantial issue arises within the Guidelines established under Section 2, the APIR may, at its discretion, sponsor or encourage the convening of occasional local public meetings or forums to assess the views of members of the Stanford community concerning such an issue.
- c) All recommendations by the APIR to the Trustees shall be the result of the following two-step process. (1) When the APIR receives from any member of the University community, including a member of the APIR, a written request for action under this Statement, the APIR shall first determine whether the request, on its face and assuming its factual accuracy, appears to constitute an allegation of substantial social injury against a firm in which Stanford has a direct investment. Such a determination must be made before an allegation may be considered further, and the determination shall be made only by an affirmative majority vote, a quorum being present. If the APIR fails to make such a determination, it shall advise the individual making the request that no further steps will be taken unless persuasive additional evidence or arguments are presented to the APIR. (2) If the APIR by this determination agrees to consider the allegation further, it shall investigate and analyze the allegation in whatever manner it deems appropriate and may then make a recommendation to the Trustees, provided that the recommendation is first approved by the majority of the APIR's members present. Six out of twelve voting members constitute a quorum. Recommendations may call for voting Stanford's shares in shareholder resolutions, making representation to management, divestment of securities, or other action as the APIR deems appropriate.
- d) The APIR shall make its recommendation in writing to the Trustees and the President. The recommendation shall be accompanied by factual findings and an analysis of the question involved. Voting members of the APIR who hold dissenting or divergent views may submit them in writing with the APIR's recommendation. The recommendation, together with accompanying materials, may, at the discretion of the APIR, be made available for public distribution.

⁴ An investment pool is a commingled group of investment funds and assets. The vast majority of the University's endowment assets are retained in commingled pools.

- e) Where the APIR indicates a desire to deliberate on a proxy or divestment issue, the Trustees will, where practicable, await a timely recommendation from the APIR before taking action.
- f) The Trustees will make decisions on all recommendations for action under this policy. Should the Trustees decide not to accept a recommendation of the APIR, the APIR will be informed of the reasons for the Trustees' actions.

4. OTHER MATTERS

- 4.1 Nothing in this Statement shall be deemed to delegate the Trustees' investment responsibilities, or any part of them, to the APIR or any other person or body.
- 4.2 The Trustees may amend this Statement from time to time.
- 4.3 The APIR may, from time to time, submit recommendations to the Trustees for amendments to this Statement.

STANFORD UNIVERSITY

Request For Review
Advisory Panel on Investment Responsibility – APIR

TO BE COMPLETED BY APIR

APIR Preliminary Reviewers (1) _____ (2) _____ Date _____

Recommend Full APIR Review ___ Yes ___ No ___ Revise & Resubmit ___ Reason _____

Requestor Notification Date _____ Reason: _____

SUMMARY

Date of Submission: _____

Requestor's Name: _____

Contact Information: _____ (phone) _____

University Affiliation: _____ (year) _____ (Subject/Dept) _____

Specific (Target)/Subject of Review: _____

Core Social Issue Category: (see Core Issue & Sub-Issue Category Reference Table)

___ Corporate Governance

___ Diversity/Non-Discrimination

___ Environment

___ Human Rights

___ Labor Related

___ Miscellaneous - Identify Subcategory: _____

___ Tobacco

Sub-Issue Category: _____

Allegation of Substantial Social Injury: (see Preamble to Statement on Investment Responsibility for definition of "substantial social injury")

Brief Background Summary: _____ (Please include additional details as attachments)

Your Position:

What Action(s) Would You Like to Recommend to the APIR & Why:

___ Disinvestment & if so Why:

___ Divestment & if so Why:

___ Other Action & if so What Form: _____

UNIVERSITY OF IOWA

Financial Investments: Management of Complaints

Background:

The Board of Regents and its Investment Committee set investment policy in accordance with the Iowa Statutes, Iowa Code Chapter 12B. The Board delegates management and oversight authority for the investment program to each institution. The University of Iowa maintains an investment portfolio in accordance with the policy and procedures defined by the Board of Regents and for the purpose of assisting The University of Iowa in carrying out its educational mission. The Board and the University recognize their fiduciary responsibility to manage this portfolio wisely with the view of maximizing financial returns with a prudent level of risk.

Proposal:

The University will continue as a regular practice to make available through the Treasurer's Office web site, listings of all its direct investments.

At the University of Iowa an Investment Advisory Committee has been in place for many years to advise the Treasurer. The University of Iowa proposes that as a part of its duties, the Investment Advisory Committee receive and evaluate complaints from faculty, staff or students about any securities held within the University portfolios. Whenever the University's Investment Advisory Committee finds, following a complaint setting forth facts providing substantial evidence that the University has a direct investment in a company whose current policies or practices are causing substantial injuries to its employees, consumers or society as a whole that warrants shareholder concern, it shall advise the Treasurer of the University of its findings.

When the Committee advises the above conditions exist, the Treasurer shall consider the result and as appropriate, shall communicate those findings, as well as any Treasurer's office recommendations to the President of the University and the Board of Regents office.

Following submission of findings the University Treasurer may elect to take whatever action is deemed appropriate. Actions may include, without limitation, a decision to: (i) retain the investment without further action, (ii) communicate with the Board of Regents' investment advisors and appropriate fund managers regarding the investment, (iii) communicate with the company regarding the objectionable policies or practices, (iv) sponsor appropriate shareholder resolutions, or (v) recommend other measures including divestment to the Regents' Investment Committee. Any decisions to recommend divestment must take into account the fiduciary responsibility for the investments and the statutory criteria for investment of these public funds.

Should students, faculty or staff wish to address the Board directly on the University's investments or investment policy, the Board's process is as follows:

"Students, faculty, and staff may request an opportunity to appear before the Board to discuss matters of interest and may request that an item be included on the agenda. Such requests should be made in writing to the president of the Board with a copy to the president of the university concerned. The request should include a statement as to the reason why a personal appearance is desired or why an item should be included on the agenda. A statement as to the exhaustion of local campus remedies, including specific persons or groups approached and their disposition of the matter, should also be included in the request. The president of the Board is empowered to permit such person or persons to appear or an item to be on the agenda, if, in the president's judgment, it is appropriate or unless there are unusual circumstances."

APPENDIX II

ORGANIZATIONAL RESOURCES

Research Services*

EthVest database: A compilation of a decade of shareholder resolutions and updates on current shareholder filings. This database, provided by the Interfaith Center on Corporate Responsibility, is available by subscription to institutional investors, universities, foundations, and other organizations. www.iccr.org

Governance Metrics International: Measures governance practices across a large universe of countries using standardized assessment techniques. www.gmiratings.com

Innovest Strategic Value Advisors: Structures sub-advisory mandates with asset management partners and provides custom portfolio analysis and research regarding risks generated by a companies' ability to handle political, environmental, labor, and human rights challenges. www.innovestgroup.com

Institutional Shareholder Services: ISS analyzes proxies and issues informed research and vote recommendations for more than 33,000 shareholder meetings each year. Investor Responsibility Research Center (IRRC), a subsidiary of ISS, is a leading source of information on corporate governance and social responsibility issues. Founded in 1972, IRRC provides proxy research and analysis, benchmarking products, and proxy voting services to institutional investors, corporations, law firms, foundations, academics and other organizations. www.isssproxy.com

IW Financial: Delivers socially responsible investment recommendations that can be customized for each client. www.iwfinancial.com

KLD Research & Analytics: Conducts social research and constructs indices for institutional investors. Institutional money managers use KLD's research to integrate environmental, social and governance factors into their investment decisions. www.kld.com

*No single source of research can be considered comprehensive or definitive. Where proxy voting guidelines may stipulate concordance with the recommendations of a particular research service, these recommendations should be open to challenge based on the broader principles underlying proxy voting guidelines.

Networks and Nonprofits

As You Sow Foundation: The Corporate Social Responsibility Program (CSRP) of As You Sow provides research, analysis, and advice to assist foundations and other institutional investors engage in effective shareholder advocacy. Website: www.asyousow.org

Friends of the Earth: Friends of the Earth (FoE) is the U.S. voice of an influential, international network of grassroots groups in 70 countries. FoE is the only national environmental organization to offer its members the opportunity to use the power of their shares to advance the group's campaign priorities. FoE will coordinate and file shareholder resolutions on behalf of its members. Website: www.foe.org
Phone: (877) 843-8687

CERES: A national network of investors, environmental organizations and other public interest groups working with companies and investors to address sustainability challenges such as global climate change. Website: www.ceres.org

Phone: 617-247-0700

Interfaith Center on Corporate Responsibility (ICCR): An association of 275 faith-based institutional investors, including national denominations, religious communities, pension funds, foundations, hospital corporations, economic development funds, asset management companies, colleges, and unions. ICCR and its members press companies to be socially and environmentally responsible by meeting with the management of companies in which they are invested and sponsoring over 200 shareholder resolutions each year.

Website: www.iccr.org

Phone: (212) 870-2295

Social Investment Forum: A national membership association for socially and environmentally responsible investment practitioners. The Forum's members integrate economic, social, environmental and governance factors into their investment analysis, and the Forum provides resources to advance this work.

Website: www.socialinvest.org

Phone: (202) 872-5361

UN Principles for Responsible Investment: The Principles for Responsible Investment (PRI) provide a framework for investors to give consideration to environmental, social and corporate governance (ESG) issues. In early 2005 the United Nations Environment Program Finance Initiative (UNEP FI) and the UN Global Compact invited a group of the world's largest institutional investors to join a process to develop the PRI, so the agreement reflects the core values of a group of large investors whose investment horizon is generally long, and whose portfolios are often highly diversified. The PRI initiative is governed by a volunteer Board of 12 representatives from asset owner signatory organizations and two representatives from the United Nations.

Website: www.unpri.org

Socially Responsible Investing Funds, Community Banks, and Other Resources

Altrushare Securities: Nonprofit-owned institutional brokerage firm specializing in community investment and domestic emerging markets research.

Boston Common Asset Management, LLC: Employee-owned social investment firm; offers U.S. large cap equity and balanced portfolios as well as international and small cap products.

Calvert: Manages over \$10 billion in assets in 32 screened and non-screened mutual funds.

Domini Social Investments LLC: Employs both ESG screens and shareholder advocacy tactics.

Dreyfus Corporation: Dating back to 1972, Dreyfus blends social research with company engagement.

First Affirmative Financial Network, LLC: Provides wide range of consulting and asset management services for mission-driven institutions.

MMA Praxis: Mutual fund family that uses positive screens, shareholder advocacy, and community development investing.

Parnassus Investments: Parnassus manages SRI mutual funds with a total of 1.4 billion dollars in assets.

Pax World Funds: Mutual fund family that uses positive screens to select companies that promote environmental stewardship and social responsibility.

ShoreBank: Community development and environmental banking Co-op headquartered in Chicago, with affiliated nonprofits in Chicago; Cleveland; Detroit; Ilwaco, Washington; and Portland, Oregon.

Sierra Club Mutual Funds: The Sierra Club Funds screen potential investments using more than 20 environmental and social guidelines established by the Sierra Club.

SKBA Capital Management: SKBA offers value-oriented investment products from within a socially screened universe.

Shared Interest: Shared Interest is an international community investment fund that guarantees bank loans to development finance institutions serving economically marginalized communities in South Africa.

Trillium Asset Management: Independent investment management firm devoted exclusively to SRI.

Walden Asset Management: Founded in 1975, Walden Asset Management is the socially responsive investment division of Boston Trust & Investment Management Company.

APPENDIX III

Sample Shareholder Resolution

This resolution was filed at Home Depot in 2005. It is included here to give an example of the language and format of ESG shareholder resolutions.

Whereas: Equal employment opportunity (EEO) is a fair employment practice and an investment issue. We believe that companies with a good EEO record have a competitive advantage in employee recruitment and retention. Moreover, U.S. customers are becoming increasingly diverse. A representative work force is more likely to anticipate and respond effectively to evolving consumer demand.

Conversely, allegations of discrimination in the workplace have created a significant burden for shareholders due to the high cost of litigation and the potential loss of government contracts. Such litigation may also damage a company's reputation.

Specifically, the cost to Home Depot shareholders for settling discrimination lawsuits has exceeded \$100 million in the last 10 years. While Home Depot's most significant EEO settlement of \$87 million was in 1997, allegations of discrimination have persisted. In August 2004, Home Depot agreed to pay \$5.5 million to settle U.S. Equal Employment Opportunity Commission charges of class-wide discrimination based on gender, race and national origin in its Colorado stores.

In U.S. corporations, women and minorities comprise 47% and 27% of the workforce, respectively, yet they represent less than 19% and 11% of executive-level positions. Representation in management is better, but still disproportionately low at 36% for women and 17% for minorities (Peopleclick Research Institute, Feb. 2004, using U.S. Census Bureau's Census 2000 Special Equal Employment Opportunity Tabulation).

We agree with a recommendation of the 1995 bipartisan Glass Ceiling Commission report that "public disclosure of diversity data—specifically data on the most senior positions—is an effective incentive to develop and maintain innovative, effective programs to break the glass ceiling barriers."

Many major U.S. corporations provide diversity reports with detailed EEO information, including some that have previously experienced discrimination lawsuits, such as Chevron-Texaco and Coca-Cola.

In 2001 Home Depot, in an agreement with a coalition of more than two dozen institutional investors, began providing comprehensive EEO information to investors upon request. Since then, however, Home Depot has reversed its policy on disclosure of this information.

In 2005, 30% of Home Depot shareholders voted for a resolution requesting a comprehensive diversity report – the highest level of support ever on this issue – sending a strong signal to management that shareowners desire increased accountability on EEO.

Home Depot has demonstrated leadership on corporate social responsibility issues. We ask the company to expand upon that leadership by honoring its previous commitment to comprehensive EEO disclosure.

RESOLVED: The shareholders request that Home Depot prepare a diversity report, at reasonable cost and omitting confidential information, available to investors by September 2006, including the following:

1. A chart identifying employees according to their gender and race in each of the nine major EEOC-defined job categories for the last three years, listing numbers or percentages in each category;

2. A summary description of any affirmative action policies and programs to improve performance, including job categories where women and minorities are underutilized; and

3. A description of any policies and programs oriented specifically toward increasing the number of managers who are qualified females or minorities.

Sample Filing Letter

The following 'filing letter' was sent to Home Depot with the above resolution.

November 28, 2005

Mr. Frank L. Fernandez
Secretary
The Home Depot Inc.
2455 Paces Ferry Road
Atlanta, GA 30339

Dear Mr. Fernandez:

Amnesty International USA holds 1,000 shares of The Home Depot, Inc. Founded in London in 1961, Amnesty International is a Nobel Prize-winning grassroots activist organization with over one million members worldwide. Amnesty International is dedicated to freeing prisoners of conscience, gaining fair trials for political prisoners, ending torture, political killings and "disappearances," and abolishing the death penalty throughout the world. Amnesty International USA (AIUSA) is the U.S. Section of Amnesty International. AIUSA is also concerned about the issue of equality in the workplace.

The AIUSA investment committee has decided to co- file the shareholder resolution coordinated by Walden Asset Management, a division of Boston Trust & Investment Management Company. AIUSA submits the enclosed shareholder proposal for inclusion in the 2006 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. AIUSA is the beneficial owner, as defined in Rule 13d-3 of the Securities Exchange Act of 1934, of the above mentioned number of shares. We have been a shareholder for more than one year and enclose verification of our ownership position. We will continue to be an investor through the stockholders' meeting. A representative of the filers will attend the stockholders' meeting to move the resolution as required by the SEC Rules.

We look forward to hearing from you. Amnesty International USA recognizes Walden Asset Management as the "primary" filer of this resolution. We would appreciate it if you would please copy Heidi Soumerai at Walden Asset Management on correspondence related to this matter, as well as the individuals noted below. Ms. Soumerai can be reached by phone at (617) 726-7233, or by e-mail at hsoumerai@bostontrust.com. Our best wishes for your continued success.

Sincerely,

Mila Rosenthal
Director, Business & Human Rights Program

Encl. Resolution Text

APPENDIX IV

SAMPLE LETTER

The following letter was sent on behalf of investors in Dow Chemical to the Dow Board of Directors and Auditors. It is included here as an example of a letter that colleges and universities can write to companies as shareholders to express concern about certain environmental and social practices.

TO: Dow Board of Directors and Auditors

As Dow Chemical investors, we are writing to request fuller and expanded disclosures regarding the potential impacts on the financial condition of Dow and its subsidiary Union Carbide as a result of outstanding issues associated with the Bhopal Chemical disaster, and the continued contamination of the Bhopal site. Our investing institutions are Dow Chemical shareholders.

Specific issues which we believe necessitate better disclosure and analysis by the management include:

- Status and potential impact of criminal and civil litigation relative to Bhopal.

There are both civil and criminal cases pending regarding Bhopal. The Dow management has repeatedly asserted or implied that there are no criminal cases pending against Union Carbide over Bhopal, that the company faces “absolutely” no liability associated with Bhopal, and that the only defendants associated with Bhopal are individuals or companies in India. Recent developments in courts in India and the US appear to be directed to further involving Dow Chemical or its subsidiary in issues of site contamination and remediation. In addition, Dow Chemical is being asked by an Indian court to respond regarding the responsibility of its subsidiary, Union Carbide, to appear in the criminal case pending in India.

- Potential impact of reputational damage associated with unresolved issues in Bhopal.

The reputation of Dow may be undermined by the escalating controversy regarding Bhopal. In December 2004, the 20th Anniversary of the disaster, there was massive press coverage and NGO activity -- over 250 events worldwide focused on Dow, Union Carbide and Bhopal. Also in December 2004, the prominent UK-based SustainAbility, “the world’s leading business consultancy on corporate responsibility and sustainable development” issued a report stating that “the experiences of Union Carbide and more recently Dow illustrate how **hidden liabilities can and will emerge to threaten reputations and license to operate.**”

- Status of current activities and initiatives to resolve the outstanding issues associated with Bhopal. It is unclear whether Dow or Union Carbide management is undertaking any efforts to address the company’s legal or moral responsibilities in this matter.

Although the Securities and Exchange Commission recently reportedly rejected a proposed 2005 shareholder resolution to address disclosure of the risks facing the company, as investors we believe disclosures of financial risk are core legal obligations of the management. In particular we are struck by the requirement for the management to discuss and analyze trends, events and uncertainties which, according to SEC guidelines issued December 29, 2003, requires that an item should be analyzed unless the management has concluded that such item cannot reasonably impose a material impact on the company. We believe it is unrealistic to draw such a conclusion regarding the events relating to Bhopal.

In addition, Sarbanes-Oxley Act Section 302 requires the CEO and COO to certify in periodic SEC filings that the report, “based on such officer’s knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report...” Again, fair presentation of the condition of Dow would appear to require better discussion of the issues surrounding Bhopal.

Finally, we believe that prior and current company statements must be revised to the extent they may mislead investors. This is a clear obligation under SEC rule 10b-5.

Dow Chemical should be reporting the potential financial risks imposed on the company by the Bhopal incident and contamination including:

- Status and potential impact of criminal and civil litigation relative to Bhopal.
- Potential impact of reputational damage associated with unresolved issues in Bhopal.

In addition, the management should also be disclosing the status of its current activities and initiatives to resolve the outstanding issues associated with Bhopal.

As Dow's Board members and auditors, you have a personal responsibility to ensure the adequacy of Dow disclosure practices. We urge you to fulfill that responsibility by demanding enhanced disclosures by Dow's management.

Sincerely,

© Amnesty International USA and the Responsible Endowments Coalition, August 2007

This handbook was co-produced by the Responsible Endowments Coalition and Amnesty International USA, with particular support from AIUSA Business and Human Rights Legal Fellows Terra Lawson-Remer and Lisa Sachs, and Morgan Simon, Executive Director of REC. The authors are grateful for input from Amy O'Meara, Mila Rosenthal, Tim Smith, Meg Voorhes, Joey Salisbury and DeLisa White. The text may be used free of charge for the purposes of advocacy, campaigning, education, and research, provided that the source is acknowledged in full.

¹ Social Investment Forum, *2005 Report on Socially Responsible Investing Trends in the United States: Ten-Year Review* iv-v (2006), available at: http://www.socialinvest.org/areas/research/trends/SRI_Trends_Report_2005.pdf (last visited May 29, 2007)

² *Id.* at iv-v.

³ *Id.* at iv-v.

⁴ *Id.* at iv-v.

⁵ Harvard, Yale, Stanford, University of Pennsylvania, Dartmouth, Columbia, Williams, Swarthmore, Wellesley, Middlebury, Carleton, Haverford, and Pomona all have committees on investor responsibility; Princeton, Amherst and MIT do not have committees, but have at times used socially responsible investing tools like screened funds and divestment; Duke has a policy that allows students to petition for shareholder advocacy in specific instances. Only the California Institute of Technology, Wesleyan and Bowdoin have not yet adopted some form of a socially responsible investment policy. Rankings derived from the US News and World Report's 2007 rankings of National Universities and Liberal Arts Colleges, available at: http://www.usnews.com/usnews/edu/college/rankings/brief/t1natudoc_brief.php (National Universities) and http://www.usnews.com/usnews/edu/college/rankings/brief/t1libartco_brief.php (Liberal Arts Colleges) (last visited May 29, 2007).

⁶ See page 6.

⁷ UBS, "SRI Equity Research: why try to quantify the unquantifiable?" July 2005. Available at: http://www.ubs.com/1/ShowMedia/about/corporate_responsibility/environment/reports/2004?contentId=83321&name=UBSEnvironmentE2004.pdf

⁸ See page 19.

⁹ See page 22.

¹⁰ See page 16.

¹¹ California Institute of Technology Mission Statement, <http://www.caltech.edu/at-a-glance/> (last visited May 29, 2007) ("The mission of the California Institute of Technology is to expand human knowledge and benefit society through research integrated with education.")

¹² Stanford University History, <http://www.stanford.edu/home/stanford/history/begin.html> (last visited May 29, 2007) (the Stanfords "arrived at the concept of producing cultured and useful citizens")

¹³ The Mission of Harvard College, http://webdocs.registrar.fas.harvard.edu/ugrad_handbook/current/mission.html (last visited May 29, 2007) ("Harvard expects that the scholarship and collegiality it fosters in its students will lead them in their later lives to advance knowledge, to promote understanding, and to serve society.")

¹⁴ Swarthmore College, President's Welcome, <http://www.swarthmore.edu/presidentsoffice.xml> (last visited May 29, 2007) (Swarthmore educates its graduates "to see and take responsibility for the intellectual, ethical, and social consequences of what they do and know.")

¹⁵ Williams College Mission, <http://www.williams.edu/home/mission.php> (last visited May 29, 2007)

¹⁶ MIT Mission Statement, <http://web.mit.edu/facts/mission.html> (last visited May 29, 2007) ("We seek to develop in each member of the MIT community the ability and passion to work wisely, creatively, and effectively for the betterment of humankind.")

¹⁷ Haverford College School Mission, as reported to US News and World Report, http://www.usnews.com/usnews/edu/college/directory/brief/drmiss_3274_brief.php (last visited May 29, 2007)

¹⁸ Engaged with the World: A Strategic Plan for Wesleyan University 2005-2010, <http://www.wesleyan.edu/wesleyanplanning/> (last visited May 29, 2007)

¹⁹ Princeton University, Princeton Today, <http://www.princeton.edu/main/about/present/> (last visited May 29, 2007)

²⁰ Bowdoin College, The Mission of the College, http://www.bowdoin.edu/communications/publications/coursecatalogue/pdf/03_mission.pdf (last visited May 29, 2007)

²¹ Swarthmore College, President's Welcome, <http://www.swarthmore.edu/presidentsoffice.xml> (last visited May 29, 2007)

²² Wellesley College, *Women Who Will Make a Difference in the World*, Admissions Brochure, <http://www.wellesley.edu/admission/pdf/VB01-04.pdf> (last visited May 29, 2007)

²³ Middlebury College Mission Statement, http://www.middlebury.edu/academics/catalogs/catalog/about_midd/mission.htm (last visited May 29, 2007)

- ²⁴ Penn Compact, *Advancing Opportunity and Diversity at Penn*, www.upenn.edu/compact/access.pdf (last visited May 29, 2007)
- ²⁵ Williams College Mission, www.williams.edu/home/mission.php (last visited May 29, 2007)
- ²⁶ Middlebury College Sexual Harassment Policy, www.middlebury.edu/campuslife/services/health/sexualharrasment.htm (last visited May 29, 2007)
- ²⁷ See U.S.C.A. Const. Amend. XIV, § 1; 42 U.S.C.A. § 2000e-5; 42 U.S.C.A. § 2000d
- ²⁸ Yale University's Equal Opportunity Policy Statement, <http://www.yale.edu/equalopportunity/policies/> (last visited May 29, 2007)
- ²⁹ See e.g. Community Impact at Columbia University, <http://www.columbia.edu/cu/ci/> (last visited May 29, 2007)
- ³⁰ Dartmouth College Mission Statement, www.dartmouth.edu/home/about/mission.html (last visited May 29, 2007)
- ³¹ Penn Compact, *Advancing Opportunity and Diversity at Penn*, www.upenn.edu/compact/access.pdf (last visited May 29, 2007)
- ³² Bowdoin College, Mission of the College, www.bowdoin.edu/communications/publications/mission.shtml (last visited May 29, 2007)
- ³³ "Swarthmore College Makes Ambitious Commitment to Windpower," CollegeNews.org, 28 Feb 2007, <http://www.collegenews.org/x6742.xml> (last visited May 29, 2007)
- ³⁴ See <http://www.yale.edu/sustainablefood/> (last visited May 29, 2007)
- ³⁵ "Green Campuses," USA Weekend Magazine, Aug. 13, 2006, http://www.usaweekend.com/06_issues/060813/060813news.html (last visited May 29, 2007)
- ³⁶ <http://www.presidentsclimatecommitment.org/html/about.php>
- ³⁷ <http://www.presidentsclimatecommitment.org/html/why.php>
- ³⁸ "Regents approve divestment of tobacco-related stocks," The University Record, June 19, 2000. Available at: http://www.umich.edu/~urecord/9900/Jun19_00/4.htm. Dozens of other colleges and universities have also divested of tobacco-related stocks, including Smith College, Haverford College, Harvard University, Johns Hopkins University, Tufts University, Northwestern University, and the public universities of Texas and Vermont, among others. "Colleges Ending Investments in Tobacco Stocks," The New York Times, May 21, 1997.
- ³⁹ Goldman Sachs Global Markets Institute, "Public Perceptions of University Endowments."
- ⁴⁰ "Exxon Mobil Partnership Proves Costly for Stanford," March 12, 2007. <http://www.prwatch.org/node/5843>
- ⁴¹ "Alumni Succeed in Push for Stanford to Vote Proxies After Exxon Exploits Support for University's GCEP as 'Fig Leaf' to Hide Inaction on Short-Term Climate Steps," <http://sev.prnewswire.com/oil-energy/20070517/DCTH03517052007-1.html>
- ⁴² E.g., Big Lots agreed to adopt ILO labor principles in its vendor standards, ConAgra reported on GMOs, Amgen disclosed information on equal employment opportunity (EEO), Crawford & Company adopted the McBride Principles, J.P Morgan Chase created an Office of Environmental Affairs. See http://www.iccr.org/shareholder/proxy_book04/04statuschart.php (last visited May 29, 2007)
- ⁴⁵ Social Investment Forum, *supra* note 1, at 17.
- ⁴⁴ "Two more companies broaden anti-discrimination policy under pressure from Swarthmore College," CollegeNews.org, 23 Feb 2004, available at <http://www.collegenews.org/x3134.xml> (last visited May 29, 2007)
- ⁴⁵ Amnesty International Business and Human Rights Program, "Why is Amnesty Concerned About Exxon Mobil", available at http://www.amnestyusa.org/Business_and_Human_Rights/Why_is_Amnesty_International_concerned_about_ExxonMobil/page.do?id=1101642&n1=3&n2=26 (last visited May 29, 2007).
- ⁴⁶ Social Investment Forum, *supra* note 1, at 18. ("Indeed, shareholder resolutions may achieve their goals by only obtaining a relatively small percentage of votes.")
- ⁴⁷ Social Investment Forum, *supra* note 1, at 17.
- ⁴⁸ E.g., Harvard, Yale, Stanford, MIT, University of Pennsylvania, Dartmouth, Columbia, Williams, Swarthmore, Wellesley, Middlebury, Carleton, Pomona and Wesleyan all have some form of investor responsibility committee.
- ⁴⁹ See, e.g., Swarthmore College's Proxy Voting Guidelines, http://www.swarthmore.edu/Admin/investment_office/proxy_guidelines.pdf. (last visited May 29, 2007)
- ⁵⁰ Social Investment Forum, *supra* note 1, at 15.
- ⁵¹ A list of socially screened mutual funds can be found at <http://www.socialinvest.org/areas/sriguide/mfpc.cfm>. (last visited May 29, 2007)

⁵² Often called “positive screening”

⁵³ Authors do not endorse any particular mutual fund and provide these names as prominent examples of the hundreds of screened mutual funds available. For a more comprehensive list and information about the types of screens available, see <http://www.socialinvest.org/areas/sriguide/mfsc.cfm>. (last visited May 29, 2007)

⁵⁴ See, e.g., Underdog Ventures, www.underdogventures.com (offering customized social venture funds to institutional investors).

⁵⁵ Sudan Divestment Task Force, “The State of Sudan Divestment: An Overview of Countries, States, Cities, Universities, Companies and Private Pensions Currently Working on Sudan Divestment,” December 24, 2005 (last updated May 25, 2007), available at: http://www.sudandivestment.org/docs/state_of_sudan_divestment.pdf. (Colleges and Universities that have taken steps to divest include American University, Amherst College, Brown University, University of California, Columbia University, Dartmouth University, Harvard University, University of Illinois, University of Pennsylvania, Williams College, and Yale University.)

⁵⁶ See www.genocideintervention.net for more information.

⁵⁷ “During the 1990s, South Africa witnessed a number of dramatic changes away from apartheid, culminating in the election of Nelson Mandela in the country’s first multiracial elections in spring 1994. According to most observers, the economic sanctions imposed by the international community played a role in this transition, because the combination of economic pressure and international ostracism ultimately convinced white South Africans that change was less risky than the continuation of the status quo.” Kenneth A. Rodman, Public and Private Sanctions against South Africa, *Political Science Quarterly*, Vol. 109, No. 2 (Summer, 1994) (describing the history of the anti-apartheid movement and the mechanisms by which the corporate divestment campaign contributed to destabilizing the apartheid regime)

⁵⁸ SRI World Group, “Sustainable and Responsible Investment Strategies: An abbreviated guide for fiduciaries and institutional investors,” 2002.

⁵⁹ See www.wallstreetwithoutwalls.com for more information.

⁶⁰ See Andrew R. Brownstein & Igor Kirman, Can a Board Say No When Shareholders Say Yes? Responding to Majority Vote Resolutions, 60 *Bus. Law.* 23, 41 (2004) (introducing the debate over the proper use of shareholder proposals).

⁶¹ See Sung Ho (Danny) Choi, It’s Getting Hot in Here: The SEC’s Regulation of Climate Change Shareholder Proposals under the Ordinary Business Exception, 17 *Duke Envtl. L. & Pol’y F.* 165, 172-73 (2006) (noting that “company boards are wary of shareholder reaction” and that a significant minority vote on an issue is therefore “likely to influence management behavior.”)

⁶² In 2006, corporations including Starbucks, Home Depot, Coca Cola, Cummins and Caterpillar agreed to address key social responsibility issues after resolutions were filed with the corporations; the resolutions were consequently withdrawn.

http://www.iccr.org/news/press_releases/2006/pr_withdrawals022706.htm (last visited May 29, 2007)

⁶³ 15 U.S.C. §78n(a) (2000) (authorizing the SEC to adopt rules “as necessary or appropriate in the public interest or for the protection of investors.”)

⁶⁴ Shareholder Proposals, 17 C.F.R. § 240.14a-8 (2005).

⁶⁵ 17 C.F.R. § 240.14a-8(b) (2005). A July 2007 SEC proposal, which would revise SEC Rule 14a-8, could significantly impact shareholder democracy. The proposed rule, which is open for public comment until October 2, 2007, would limit the ability of shareholders to file advisory resolutions by requiring prior approval of shareholders who together hold at least 5 percent the company stock.

⁶⁶ 17 C.F.R. § 240.14a-8(b)(2) (2005) This section of the Act states the ways in which a shareholder may prove eligibility to file. See text at <http://www.law.uc.edu/CCL/34ActRIs/rule14a-8.html>.

⁶⁷ If one fails to follow one of the eligibility or procedural requirements, the company must notify the shareholder of the problem, and the shareholder has 14 days to correct it. 17 C.F.R. § 240.14a-8(f) (2005).

⁶⁸ Shareholders should send the resolution by Certified Mail/Return Receipt Requested to have proof of the company’s receipt of the resolution, particularly when close to the filing deadline.

⁶⁹ SEC’s EDGAR database is available at <http://www.sec.gov/edgar.shtml>. Past shareholder resolutions are also available in this database.

⁷⁰ 17 C.F.R. § 240.14a-8(e)(2) (2005).

⁷¹ *Id.*

⁷² 17 C.F.R. § 240.14a-8(j) (2005).

⁷³ See SEC Staff Legal Bulletin No. 14, July 13, 2001, <http://www.sec.gov/interp/legal/cfslb14.htm> [hereinafter Staff Legal Bulletin No. 14] (“[The SEC will] analyze each of the bases for exclusion that a company asserts, as well as any arguments that the shareholder chooses to set forth, and determine whether [they] concur in the company’s view.”)

⁷⁴ *Id.* at 8, 10.

⁷⁵ 17 C.F.R. § 240.14a-8(c)(7) (2005) (noting the “ordinary business exception”).

⁷⁶ Amendments to Rules of Shareholder Proposals, Exchange Act Release No. 34-40018, 17 C.F.R. § 240 (May 28, 1998) [hereinafter Amendments] Available at: <http://www.sec.gov/rules/final/34-40018.htm>

⁷⁷ *Id.*

⁷⁸ The SEC has adjusted its views with respect to “social policy” proposals and the ordinary business exclusion in accordance with changing societal views; for instance, the SEC reversed its initial position on the excludability of several types of proposals, “including plant closings, the manufacture of tobacco products, executive compensation, and golden parachutes.” *Id.*

⁷⁹ *Id.*

⁸⁰ There are various reference tools that shareholders can use to appraise how the SEC has responded to the specific wording and content in previous resolutions, including previous no-action letters issued by the SEC, interpretive releases (such as the Amendments, *supra* note 71), and staff legal bulletins (such as Staff Legal Bulletin No. 14C, *infra* note 78).

⁸¹ Staff Legal Bulletin No. 14, *supra* note 68 at 6.

⁸² *Id.* In this Legal Bulletin, the SEC has included a chart indicating where variations in company arguments and in language in the proposals have resulted in different responses. See also Choi, *supra* note 2, at 177 (noting that “SEC no-action letter decisions often appear to turn on semantic, not substantive, differences in shareholder proposals.”)

⁸³ The SEC states that “[i]n determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.” SEC Staff Legal Bulletin No. 14C, June 28, 2005, <http://www.sec.gov/interp/legal/cfslb14c.htm> [hereinafter Staff Legal Bulletin No. 14C]

⁸⁴ See Choi, *supra* note 2, at 181-83 (comparing SEC responses to two resolutions filed at Ford Motor Company and ExxonMobil requesting disclosure of research on climate change, in which Ford was allowed to exclude an overly specific resolution but ExxonMobil was required to include a resolution asking the company to make the relevant data available.)

⁸⁵ Friends of the Earth, Confronting Companies Using Shareholder Power: A Handbook on Socially-Oriented Shareholder Activism, at “Shareholder Activism & Issue Campaigns.” Available online at: <http://www.foe.org/international/shareholder/issue.html>

⁸⁶ Sample resolutions can be found in Friends of the Earth, Confronting Companies Using Shareholder Power: A Handbook on Socially-Oriented Shareholder Activism, at “Index of Documents.” <http://www.foe.org/international/shareholder/docindex.htm>. For more details about eligibility and procedural requirements for filing shareholder resolutions, see Staff Legal Bulletin No. 14, *supra* note 68.

⁸⁷ Interfaith Center on Corporate Responsibility, Who is Eligible to File a Shareholder Resolution?, ICCR Advocate eNewsletter (Feb. 2007). Available at: http://www.iccr.org/news/press_releases/pdf%20files/AeN_February%202007.pdf

⁸⁸ See Appendix II (B) for contact information for a number of shareholder advocacy networks.

⁸⁹ Friends of the Earth, Confronting Companies Using Shareholder Power: A Handbook on Socially-Oriented Shareholder Activism, at “Tips on Drafting, Submitting, and Defending Resolutions.” Available online at: <http://www.foe.org/international/shareholder/tips.html>

⁹⁰ See Interfaith Center on Corporate Responsibility, 2004-05 ICCR Annual Report, vol. 33, no. 8-9 at 5 (Sept. 16, 2005), available at: http://www.iccr.org/news/press_releases/pdf%20files/Annual_Report05.pdf.

⁹¹ See Press Release, Interfaith Center on Corporate Responsibility, *Coke Applauded by Religious Shareholders for First Steps on HIV/AIDS in Africa, Board Urging ‘Yes’ Vote on Resolution Seeking to Report to Shareholders* (Mar. 9, 2004). Available at: http://www.iccr.org/news/press_releases/2004/pr_coke3.9.04b.htm. See also Press Release, Interfaith Center on Corporate Responsibility, *Investors Celebrate HIV/AIDS Victory at Coca-Cola Resolution Approved by 97% of Shareholders* (Apr. 21, 2004). Available at: http://www.iccr.org/news/press_releases/2004/pr_coke042104.htm.

⁹² See Marcus Kabel, *Wal-Mart opens books on U.S. work force diversity*, Chi. Defender at 5, vol. 99, issue 455 (Apr. 12, 2006),

⁹³ See The Associated Press, *Swarthmore Urging Lockheed Martin to Prohibit Bias Based on Sexual Orientation*, Pitt. Post-Gazette, A3 (Apr. 12, 2002)

⁹⁴ See Heather Draper, *Lockheed Policies to Cover Gays Company Bans Bias After Swarthmore Students Urge Change*, Rocky Mtn. News, 2B (Dec. 4, 2002),

⁹⁵ Co-filers were: Domini Social Investments, the five New York City Pension Funds, and Walden Asset Management. See Tom Krattenmaker, *Two More Companies Broaden Anti-Discrimination Policy Under Pressure from Swarthmore College: College Joined by New York City and Two Socially Responsible Investment Funds in Shareholder Activism* (Feb. 20, 2004), available at: <http://www.swarthmore.edu/news/releases/04/shareholder.html>.

⁹⁶ *Id.*

⁹⁷ Social Investment Forum, *supra* note 1, at 25.

⁹⁸ Companies are General Electric (NYSE:GE), Hewlett-Packard (NYSE: HPQ), American Electric Power (NYSE: AEP), Home Depot (NYSE: HD), Bristol-Myers Squibb (NYSE: BMY), Staples (NASDAQ: SPLS), Amgen (NASDAQ: AMGN), McDonald's (NYSE: MCD), Southern (NYSE: SO), General Mills (NYSE: GIS), Morgan Stanley (NYSE: MWD), Johnson & Johnson (NYSE: JNJ), Schering-Plough (NYSE: SGP), PepsiCo (NYSE: PEP), Coca Cola (NYSE: KO), Eli Lilly (NYSE: LLY), Verizon (NYSE: VZ), Monsanto (NYSE: MON), and General Dynamics (NYSE: GD), Aetna (NYSE: AET), Colgate-Palmolive (NYSE: CL), E.I. du Pont de Nemours and Company ("DuPont") (NYSE: DD), FirstEnergy (NYSE: FE), Pfizer (NYSE: PFE), WellPoint (NYSE: WLP), Xcel Energy (NYSE: XEL), CIGNA (NYSE: CI), Chevron (NYSE: CVX), EMC (NYSE: EMC), General Motors (NYSE: GM) and Lockheed Martin (NYSE: LMT).

⁹⁹ Center for Political Accountability, *Gaining Momentum: Number of Companies Adopting Political Disclosure Hits 31*, Press Release, (Apr. 4, 2007), available at <http://www.politicalaccountability.net/files/PR-04-04-07.pdf> (last visited May 29, 2007).

¹⁰⁰ See Press Release, Ceres, *Four Electric Power Companies in Midwest Agree to Disclose Climate Risks* (Feb. 21, 2006), available at: http://www.ceres.org/news/news_item.php?nid=144 (last visited May 29, 2007)

¹⁰¹ Office of NYC Comptroller William Thompson, *Thompson: NYC Pension Funds Successfully Urge U.S. Bancorp and El Paso Corporation to Issue "Sustainability Reports,"*, Press Release (Feb 12, 2007).

¹⁰² See Austin Wakeman Scott and William Franklin Fratcher, *The Law of Trusts* 227.17 (4th ed. 1987).

¹⁰³ Lewis Solomon and Karen Coe, *Social Investments by Nonprofit Corporations and Charitable Trusts: A Legal and Business Primer for Foundation Managers and Other Nonprofit Fiduciaries*, 66 UMKC L. Rev. 213, 223 (1997) (citing Scott and Fratcher, *The Law of Trusts* 227.17 (4th ed. 1987)).

¹⁰⁴ UMIFA (1972).

¹⁰⁵ UMIFA §(1).

¹⁰⁶ Restatement (Third) of Trusts (1990), §170, §227, §228.

¹⁰⁷ UPMIFA (2006).

¹⁰⁸ UPMIFA §2(1).

¹⁰⁹ Dialoguing with companies directly or through letters, introducing resolutions that encourage companies to adopt good business practices, and expressing concerns about company policies do not impact fiduciary responsibilities. SRI World Group, "Sustainable and Responsible Investment Strategies: An abbreviated guide for fiduciaries and institutional investors," 2002.

¹¹⁰ UNEP Finance Initiative, *A Legal Framework for the Integration of Environmental, Social, and Governance Issues into Institutional Investment*, produced for the Asset Management Working Group of the UNEP Finance Initiative by Freshfields Bruckhaus Deringer (2005), at 111.

¹¹¹ *Bd. of Trustees v Mayor of Baltimore City*, 317 Md. 72, 109-10, 562 A.2d 720 (1989).

¹¹² John Langrein and Richard Posner, *Social Investing and the Law of Trusts*, 79 Mich. L. Rev 72 (1980)

¹¹³ Lewis Solomon and Karen Coe, *Social Investments by Nonprofit Corporations and Charitable Trusts: A Legal and Business Primer for Foundation Managers and Other Nonprofit Fiduciaries*, 66 UMKC L. Rev. 213, 223 (1997) (citing Restatement (Third) of Trusts §227)

¹¹⁴ *Id.* (citing Restatement (Third) of Trusts §227, cmt. e)

¹¹⁵ UMIFA (1972) § 6; UPMIFA (2006) § 3(b).

¹¹⁶ Lewis Solomon and Karen Coe, *supra* at note 95, at 223 (citing Principles of Corporate Governance 4.01 (Tent. Draft No. 4, 1985); Revised Model Business Corporation Act 8.30 (1984)).

¹¹⁷ UNEP Finance Initiative, *supra* at note 92, at 109. (citing *In re The Walt Disney Company Derivative Litigation*, No. 15452 (Del. Ch. Aug. 9, 2005); Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. Rev. 733 (2005), arguing that "[u]nder the business judgment rule, the courts won't second-guess managers' business judgment about what

conduct is in the best interests of the corporation unless those managers have a conflict of interest”, which Elhauge states is limited by statutes and case law to “the financial interests of the director and his immediate familiar and associates,” at 770).

¹¹⁸ *Id.*

¹¹⁹ See Securities & Exchange Commission, “Proxy Voting by Investment Advisers” (Jan. 31, 2003), 17 CFR Part 275 [Release No. IA-2106; File No. S7-38-02], RIN 3235-A165. Available at: <http://www.sec.gov/rules/final/ia-2106.htm>. See also US Dept. of Labor, “Interpretive bulletin relating to written statements of investment policy, including proxy voting policy or guidelines” (Jul. 29, 1994), 29 CFR 2509.94-2 (reiterating the Department’s position that trustees have a fiduciary responsibility to vote the shares they own).

¹²⁰ A single committee structure is preferable to avoid a break-down of accountability and transparency, but guidelines for an ESG policy that calls for two committees is also addressed in this section, as many schools have already adopted the two-committee structure.

¹²¹ Request for Review Form, <http://ucomm.stanford.edu/apir/files/4b.APIR-RequestForReviewForm-2005-11-28.pdf>, available in Appendix I(a).

¹²² Advisory Panel on Investor Responsibility, <http://ucomm.stanford.edu/apir/index.html>. (last visited May 29, 2007)

¹²³ Conversation between Morgan Simon, ED of REC, and members of the CIRs at Columbia and Barnard (March 2007)

¹²⁴ Swarthmore College and Middlebury College policy, conversation with members of their respective CIRs (April 2 2007, May 10 2007)

¹²⁵ 17 C.F.R. §§ 270.30b1-5 (2004). Available online at: 270.30b1-5

¹²⁶ Each state has its own Open Records Law or Freedom of Information Act which generally requires that a wide range of information held by public agencies be made available to the public upon request. The exact coverage of and exceptions to these laws vary by state. The Reporters Committee for Freedom of the Press publishes a compendium of the open records laws for each state and the District of Columbia. The Compendium, “Open Government Guide,” is available at:

<http://www.rcfp.org/ogg/index.php>. (last visited May 29, 2007)

¹²⁷ Some funds may pursue niche investment strategies which capitalize on knowledge/speculation regarding economic trends. However, when all of the holdings of all the investment managers of a university are “mixed-up” and disclosed in aggregate, without linkages to any specific fund or manager, it is impossible to deduce investment strategies, since the holdings represent a wide variety of different investment strategies.

¹²⁸ See e.g., Williams College, <http://acsr.williams.edu/>. Community members can log in to get investment information.

¹²⁹ For information on the open record laws for each state, see Open Government Guide, *supra* note 119, available at:

<http://www.rcfp.org/ogg/index.php>.

¹³⁰ Swarthmore College Committee on Investor Responsibility, 2006 Proxy Season Voting Results, http://www.swarthmore.edu/Admin/investment_office/2006%20Proxy%20Voting%20Results.pdf.

¹³¹ Williams College Advisory Committee on Shareholder Responsibility: Meetings,

<http://acsr.williams.edu/meetings.html>

¹³² See <http://www.issproxy.com/esg/index.html> for further information on the ESG Analytics offered by ISS. AIUSA and REC do not endorse ISS or any particular investment research services.

¹³³ For example, University of Pennsylvania and Yale each have a 2-committee structure.

¹³⁴ Shareholder advocacy and divestment from particular companies generally has a *de minimis* impact on returns. *Bd. of Trustees v Mayor of Baltimore City*, 317 Md. 72, 562 A.2d 720 (1989).

¹³⁵ This is the policy at Swarthmore, Conversation between Morgan Simon, REC Executive Director, and a CIR member at Swarthmore (April 2007)

¹³⁶ Conversation between Morgan Simon, REC Executive Director, and a CIR member at Haverford (May 2007)

¹³⁷ Conversation between Morgan Simon, REC Executive Director, and a Socially Responsibility Advisory Committee (SRAC) member at the University of Pennsylvania (April 5, 2007). See also Stanford University Statement on Investment Responsibility Concerning Endowment Securities, 3.4 (c), Appendix I(b); Bard Committee for Socially Responsible Investing (SRI), Sec. A, on file with authors

¹³⁸ For examples of existing proxy voting guidelines, see Stanford University, Fundamental Principles & Policies of Investment Responsibility, Appendix I(b); AFL-CIO, Exercising Authority Restoring Accountability: AFL-CIO Proxy Voting Guidelines, http://www.aflcio.org/corporatwatch/capital/upload/proxy_voting_guidelines.pdf; and CALPERS, Principles of Accountable Corporate Governance, <http://www.calpers-governance.org/principles/default.asp>.