Changing Corporate Behavior through Shareholder Activism:

The Nathan Cummings Foundation's Experience

Lance E. Lindblom, President & CEO

Laura Shaffer Campos, Director of Shareholder Activities

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The Nathan Cummings Foundation is an endowed institution with approximately $400 million of investments. As a private foundation, the Nathan Cummings Foundation is committed to the creation of a socially and economically just society and seeks to facilitate sustainable business practices by supporting the accountability of corporations for their actions. As an institutional investor, the Foundation believes that the way in which a company approaches major public policy issues has important implications for long-term shareholder value.

For more information on the Nathan Cummings Foundation's shareholder activities, please contact the Foundation at 212-787-7300. Additional information may also be found at **www.nathancummings.org**.

American foundations as a group are significant asset owners, with assets totaling approximately $583.4 billion in 2009.[i] By law, foundations are required to pay out about 5% of their assets each year in furtherance of their programmatic goals, but what about the other 95% that remains in a foundation's endowment? What if this substantial amount of money could be leveraged to further a foundation's mission and address some of the causes and fallout of the recent financial crisis while preserving and maximizing long-term shareholder value, and strengthening a foundation's adherence to its duties as a fiduciary?

Over the last few years, foundations, endowments, and institutional investors of all types have suffered steep investment losses. Foundation assets did increase by 3.3% in 2009, but this modest recovery did not even begin to make a dent in the $117.3 billion of losses the Foundation Center estimates foundations experienced in 2008. Despite some recovery in the equity markets, the global economy's fundamentals continue to look shaky. Meanwhile, "expert" predictions that it could take years for investors to recoup their losses have led to hiring freezes, project postponements, slashed budgets, and a myriad of other cost cutting measures. Within the foundation world, grant budgets have taken a real hit. Some estimates put the 2009 decline in foundation giving at a startling 8.4%[ii], and the impact of the 2008 market turmoil alone will affect foundation grant budgets for several more years. At the same time, the stakes have never been higher for many grantees, both in terms of opportunities to make progress on vitally important issues and, for some organizations, the continuation of their very existence. Now, more than ever, every dollar counts.

As foundation investment committees discuss methods for safeguarding endowments and program directors seek out strategies to achieve maximum programmatic impact with decreased grant dollars, it seems that many foundations have overlooked a crucial strategy for doing both. The investment portfolio, the very source of many of the challenges currently facing foundations, holds the key not only to addressing many of the issues that led to the current economic downturn, but also to furthering programmatic goals without paying out more in grant funds.

RESPONSIBLE INVESTMENT

Globally, the number of institutional investors pursuing some form of responsible investment, including active ownership strategies like proxy voting and direct corporate engagement, continues to grow at an unprecedented rate. The Principles for Responsible Investment (PRI), an investor initiative in partnership with the UNEP Finance Initiative and the UN Global Compact, now counts among its signatories more than 450 asset owners and investment managers from around the world with approximately $18 trillion in assets under management.[1] The list of signatories ncludes US heavyweights like CalPERS, the largest public pension fund in the United States, the New York State Local Retirement System, JPMorgan Asset Management, and Deutsche Asset Management. UK and European signatories include the BT Pension

[1] The Nathan Cummings Foundation was actively involved in the creation of the Principles for Responsible Investment and has given grants to the PRI through its Collaborative Initiatives program.

Fund, Universities Superannuation Scheme, AXA Investment Managers, Swiss Reinsurance Company, and the Norwegian Government Pension Fund.

The PRI arose out of a growing awareness that environmental, social and governance (ESG) issues—many of the same issues addressed by foundations in their grantmaking—can affect companies' financial performance and, as a result, the performance of investment portfolios. Therefore, investors should give appropriate consideration to these ESG issues. Yet most foundations appear to have dropped the ball on these issues when it comes to their own investment portfolios. In doing so, many foundations are overlooking an important means of preserving long-term shareholder value and are, therefore, failing to fulfill their fiduciary duties. They are also failing to address the very types of corporate behavior, including overreaching influence on civil society, that they seek to address with their grantmaking.

The investment portfolio holds the key to furthering programmatic goals without paying out more in grant funds.

The Nathan Cummings Foundation (NCF or the Foundation) is one of a handful of foundation signatories to the Principles for Responsible Investment. NCF is also one of the few foundations in the United States pursuing active ownership strategies such as proxy voting, filing shareholder proposals, and other forms of direct engagement with companies. These activities are explicitly permitted by the Foundation's Shareholder Activity Guidelines, which were developed and implemented in 2002. These activities reflect the Foundation's commitment to use a portion of the other 95% of its assets to serve as a countervailing power in what can at times seem like an environment of unfettered and counterproductive corporate influence. In this way the Foundation both furthers its mission and looks to preserve and enhance long-term shareholder value, thus fulfilling its obligations as a fiduciary. Fortunately, the stock market provides investors with a ready option for doing this. All NCF had to do was begin to utilize the power the system gives investors to vote their proxies and file shareholder proposals.

ACTIVE OWNERSHIP

The Foundation explored a number of existing approaches falling under the rubric of mission related investing (MRI). It found the case for responsible investment in the form of active ownership to be the most compelling.

The most common form of MRI, screening, is a process in which investors seek to screen into or out of their portfolios stocks with certain environmental, social, or governance attributes. While often viewed as a simple means of implementing mission related investing, screening is actually somewhat complicated on a number of levels. Assigning responsibility for and determining causation of adverse impacts can be difficult because of organizational complexities. There are also administrative difficulties associated with the necessity of constant monitoring and the need to relay screening instructions to investment managers. Another difficulty is the inclusion of "good" companies, however they might be defined, with significant social and environmental impacts in screened portfolios. There is also the fact that many large institutional investors are universal owners, meaning that they own the market and cannot screen out entire industries based on environmental, social, or governance criteria. Furthermore, some of the traditional approaches to MRI, including screening, often have little concrete or direct impact on corporate behavior. In an impersonal market, a company does not care whether you own stock. Instead traditional approaches may have a detrimental impact on returns in the short-term because they place constraints on an investment manager's ability to select the stocks it believes will generate the best risk-adjusted returns.

Active ownership bypasses these shortcomings while providing investors with an opportunity to leverage their assets to promote positive changes in corporate behavior that help to protect long-term shareholder value and, for foundations, further programmatic interests.

Active ownership flows out of Albert O. Hirschman's treatise, *Exit, Voice & Loyalty*. Investors, as the owners of a corporation, can choose one of several courses when confronted with corporate behavior they find counterproductive, whether it's the unfettered

emission of greenhouse gasses (GHGs), complicity in human rights abuses, or simply poor governance practices. They can choose to sell their stock, voice their objections to the practices in question or hold onto their stock and say nothing. If they choose to sell their stock, or exit, investors not only risk accepting a discounted value for bad management, but also effectively give up their voice as owners. While selling the stock of a company with bad practices may feel ethically satisfying, it is unlikely to affect any type of significant change in corporate behavior, since when one investor sells a stock, there is, by definition, another willing to buy it.

While selling the stock of a company with bad practices may feel ethically satisfying, it is unlikely to affect any type of significant change in corporate behavior.

Voice, on the other hand, when exercised by filing shareholder resolutions and voting proxies, provides investors with an avenue for communicating their concerns about an issue to both corporate management and other shareholders. Investors concerned with a company's approach to managing the risks and opportunities associated with climate change have the option to submit a shareholder resolution on the topic for inclusion in the company's proxy statement. This serves not only to draw an issue to management's—and the investing public's—attention, but can also provide leverage for investors concerned about an issue's social, environmental and/or economic implications. Many corporations are willing to at least talk with investors about their concerns, and often begin to take steps to address them in exchange for a resolution's withdrawal. If a resolution does remain on the ballot, it can succeed in generating attention in the press and, especially when supported by a significant share of investors, prompt management to reconsider the importance of the issue in question.

Unlike an exit-based strategy such as divestment (selling the stocks of companies with particularly problematic behavior) or negative screening (excluding whole industries from a portfolio based on selected characteristics), voice-based active ownership strategies also have the advantage of leaving stock selection to the managers. As such, they avoid one of the major objections facing more traditional approaches to MRI: that returns may be sacrificed for the benefit of some abstract conception of the greater good. In fact, many of the most successful examples of campaigns based on active ownership strategies are premised on the idea that addressing the issue in question will actually serve to protect or even enhance shareholder value over the longer-term. The discount for bad management turns into a premium for improved management! This is certainly the case with many of the shareholder campaigns focused on corporate governance carried out by institutional investors and is also the basis for a growing number of the shareholder campaigns focused on environmental and social issues.

Numerous scholarly articles and a growing number of investment houses support the notion that many of the issues pursued by active investors through shareholder actions have very real implications for long-term shareholder value. Shareholder activists (a term frequently used to describe investors submitting shareholder resolutions) have long argued that better governance practices lead to better stock performance. This contention is supported by a large body of research that has found that specific corporate governance attributes—such as annual elections for boards of directors, properly structured incentive compensation plans, the absence of golden parachute provisions and cumulative voting rights—are associated with higher firm valuations.[2] Although the specifics of the ways in which each of these individual governance provisions affects corporate value are somewhat complicated, the general idea is that firms with better governance structures will have managements that pursue policies and actions that will enhance shareholder value over the longer-term.

[2] For examples see:
Faleye, O. (2007). Classified boards, firm value, and managerial entrenchment. *Journal of Financial Economics*, Volume 83, 501-529.
Bebchuk, L. and A. Cohen. (2005). The costs of entrenched boards. *Journal of Financial Economics*, Volume 78, 409-433.
Mehran, H. (1995). Executive compensation structure, ownership, and firm performance. *Journal of Financial Economics*, Volume 38, 163-184.
Gompers, P., J. Ishii and A. Metrick. (2003). Corporate governance and equity prices. *Quarterly Journal of Economics*, Volume 118, 107-155.

EXECUTIVE COMPENSATION

The Nathan Cummings Foundation has chosen to be active on only those issues that will both positively influence long-term shareholder value and further our programmatic objectives. At first glance, it might seem as though some of the more traditional corporate governance issues are hardly a perfect fit with our program interests. However, with a focus on social and economic justice cutting across all of the Foundation's program areas, governance issues such as executive compensation are actually quite well aligned with our grantmaking work and our interests as a long-term shareholder.

Over the last few decades there has been an enormous increase in income inequality, with significant implications for social and economic justice. According to the Economic Policy Institute's (EPI) publication, *The State of Working America 2008/2009*, there has been a massive redistribution of income from the bottom 90% of workers to the top 5% of workers, in particular those whose wages place them in the top 1% of earners. This top 1% includes the Chief Executive Officers (CEOs) of publicly traded corporations. Between 1989 and 2007, average CEO pay rose by 163% while the wages of the average worker in the U.S. rose by a relatively paltry 10%, creating a situation in which the average CEO earns more in just one day than a typical American earns all year. Clearly, the current levels of executive compensation at American companies have important implications for social and economic justice.

With executive compensation eating up an increasing portion of corporate earnings, the issue also has clear implications for shareholder value. According to a 2005 paper by Lucian Bebchuk and Yaniv Grinstein, the aggregate compensation paid by publicly traded companies to their top 5 executives equaled an astonishing 10% of aggregate earnings between 2001 and 2003, up from 5% of aggregate earnings in the period from 1993 to 1995. Constraining compensation without weakening managerial incentives could thus have significant implications for investors, especially over the longer-term.

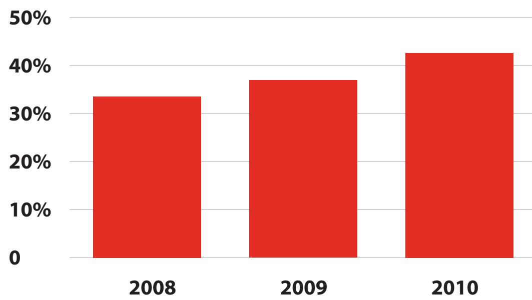
Beginning in 2008, NCF, in partnership with other influential institutional investors, co-filed resolutions with both Apple Inc. and Wal-Mart Stores, Inc. asking the companies to provide investors with a non-binding advisory vote on senior management's compensation packages, or a "say-on-pay". Say-on-pay is not a new idea, and, for some time now, has been required of publicly traded companies in a number of other developed countries including the United Kingdom and Australia.

Say-on-pay resolutions are non-binding, meaning that even if proposals receive a majority vote, corporations are not obligated to act on the request. Furthermore, say-on-pay votes serve only to help the board gauge investor sentiment about the level and structure of senior executive compensation at their company. Nevertheless, implementation of say-on-pay provides investors with an important avenue for making known their thoughts on the appropriateness of compensation levels. A number of studies, including one by Yale University's Millstein Center for Corporate Governance and Performance, have found that providing investors with a say-on-pay can be highly effective in restraining the rate of increases in executive pay, limiting instances of "pay for failure", and more closely aligning compensation with actual performance. RiskMetrics Group, a leader in financial risk management, has also found that say-on-pay enhances board accountability.

While neither of the say-on-pay resolutions NCF co-filed in 2008 resulted in a company adopting the practice—despite achieving a majority vote at Apple—we have continued with our efforts in this area with increasing success.[3] Proposals were resubmitted at both Wal-Mart and Apple in 2009, achieving votes of 18.5% and 51.6% respectively, and leading to a commitment from Apple to implement say-on-pay beginning in 2010.

NCF added to its efforts in this area in 2009 by serving as the lead filer of say-on-pay proposals at UnitedHealth Group and Wells Fargo & Company. In a somewhat ironic turn of events, Wells Fargo was forced to provide investors with a say-on-pay in 2009 as part of

[3] Votes noted throughout this paper are stated as percentages representing the number of shares voted FOR a proposal divided by the total number of shares voted both FOR and AGAINST a proposal.



AVERAGE SUPPORT FOR NCF SAY-ON-PAY PROPOSALS: 2008 TO 2010

the requirements imposed on the recipients of funds under the Troubled Asset Relief Program. As such, the Foundation withdrew its proposal from consideration at Wells Fargo. The proposal at UnitedHealth Group gained the support of 40.7% of shares voted. Although it did not receive a majority vote, the proposal did spark conversations with corporate management about the utility of providing investors with a say-on-pay.

The Foundation continued with its expanded efforts in this area in 2010, with filings on say-on-pay at Chesapeake Energy Corporation, Mylan Inc., Nabors Industries Ltd. and, despite some dialogue with the company, UnitedHealth. Momentum behind the demand for say-on-pay helped to push votes higher in 2010, with the proposals at both Mylan and UnitedHealth receiving the support of over 49% of the shares voted. The Foundation's proposal at Chesapeake, a notorious problem child when it comes to executive compensation, saw more than a majority—56.9%—of shares voted in its favor.

Despite these dramatic shows of support for say-on-pay, all of the companies continued to drag their feet on the issue. Congress, however, put a stop to the foot dragging by legislating say-on-pay at publicly traded companies. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, signed into law by President Obama on July 21, 2010, requires companies to begin providing investors with a say-on-pay in 2011. We continue to believe that executive compensation has important implications for both long-term shareholder value and social and economic justice. We will persist with our efforts to push companies to be more thoughtful about the structure of executive compensation packages going forward. An integral part of these efforts will include the use of NCF's proxy votes on management proposed say-on-pay packages to send compensation committees a message about the appropriateness of the pay packages they design.

In addition to asking companies to provide investors with a say-on-pay, the Foundation has sought to use its standing as a shareholder to raise concerns about income inequality directly with companies. In the third quarter of 2009, NCF, along with the Benedictine Sisters of Mt. Angel, the Sisters of St. Francis of Philadelphia, and the Edward W. Hazen Foundation, filed a shareholder resolution asking The Goldman Sachs Group, Inc. to report on internal pay disparity and evaluate the appropriateness of the compensation packages of the company's senior executives.

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In the wake of the 2008 meltdown of the financial system, Goldman Sachs, with its outsized bonus pools and generously paid CEO, became the poster child for grossly excessive compensation. Media coverage of the company's pay packages was relentless, creating a massive public relations problem for the company and creating outrage among both Goldman shareholders and the public at large. While the company did take some steps to address the outrage over its compensation levels, the measures failed to align compensation levels with the firm's fundamental performance. This was made more egregious by the fact that the firm's performance—and in fact its very existence—was heavily reliant on the firm's receipt of taxpayer funds through TARP, its expedited conversion into a bank holding company, and the fact that Goldman was made whole—again with taxpayer funds—on various trading positions it had with AmericanInternational Group.

The Foundation and its partners chose to press Goldman on compensation not only because of the issue's clear implications for social and economic justice, but because of its direct impact on corporate profits and shareholder wealth. Excess compensation comes directly out of shareholder profits and robs shareholders of investment value. It's that simple. In fact, Goldman's announcement of the highest quarterly profits in its 140-year history was widely attributed, in the press, in part to the firm's moves to limit the amount

it set aside for compensation in the 4th quarter. Dow Jones, for instance, noted that, "Goldman Sachs Group Inc. (GS) on Thursday delivered its richest quarterly profit in the investment bank's 140-year history, driven in part because it restrained compensation amid a public outcry about excessive pay." As long-term shareholders, the Foundation has not only a programmatic interest in reining in executive compensation, but also a clear shareholder value-driven motivation to do so.

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The Foundation's proposal, asking for a review of pay disparity and executive compensation, proceeded to a vote at Goldman's May 2010 annual meeting, where it gathered the support of approximately 5.5% of shares voted. Though support for the proposal was relatively low, the proposal generated significant press coverage—including an NCF-authored opinion piece on the issue in the *New York Times'* DealBook—that we were able to leverage to gain the attention of Goldman's management. Under immense pressure from institutional investors, the company did address absolute levels of compensation for its top executives, at least temporarily. Goldman CEO Lloyd Blankfien's compensation, for example, was "only" $9 million for 2009 and not the $100 million that many speculated he would be paid. The company also took steps to better align compensation with long-term performance, including paying bonuses for top executives entirely in shares at risk and instituting more stringent clawback provisions.

Like say-on-pay, internal pay disparity is addressed in the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Going forward, publicly traded companies will be required to disclose the median total compensation of all employees other than the CEO, the annual total compensation of the CEO and the ratio between the two.

CLIMATE CHANGE

Like corporate governance issues, climate change has significant and well-recognized implications for long-term shareholder value. With its overwhelming implications for the health of our planet, climate change is an environmental issue of paramount importance. It is also a major focus of the Nathan Cummings Foundation's grantmaking activities under the Foundation's Ecological Innovation program. As such, shareholder proposals focusing on climate change have constituted an important part of NCF's shareholder activities work.

For funders with any type of focus on climate change, the social and environmental impacts of the issue are familiar. The increased temperatures associated with climate change are expected to lead to more severe droughts, increasingly intense storms, melting icecaps, rising sea levels and more frequent heat waves, among other things. What may not be so familiar, however, are the issue's implications for investment portfolios, corporate profitability and indeed, the global economy.

As with corporate governance issues, there is a large and growing body of literature examining the financial implications of climate change. The Intergovernmental Panel on Climate Change's report, *Climate Change 2007: Impacts, Adaptation and Vulnerability*, observed that "[t]aken as a whole, the range of published evidence indicates that the net damage costs of climate change are likely to be significant and to increase over time." The *Stern Review*, often cited as the most comprehensive overview of the economics of climate change, estimated that the cumulative economic impacts of climate change could be equivalent to a loss of up to 20% of average worldwide consumption if action is not taken quickly.

Consulting firms such as McKinsey & Company and Marsh have put out dozens of publications examining the risks that climate change poses to long-term shareholder value. For example, in a 2006 alert entitled, "Climate Change: Business Risks and Solutions" Marsh noted, "The way in which companies respond to the new operational and strategic risks and opportunities of climate change will have far reaching impacts on corporate profitability and shareholder value." McKinsey, meanwhile, has declared that global warming's effect on the valuations of many companies is likely to be profound and that the resulting shocks to some industries could be severe.[iv]

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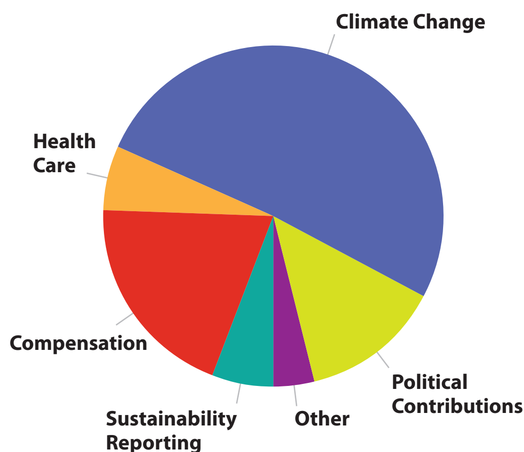
Many mainstream financial institutions also recognize that climate change is a significant investment issue. Goldman Sachs, for instance, has said it is very concerned about the threat that climate change presents to the economy[v]. (Yes, ironically they recognize that environmental issues can have significant implications for both society and the economy, but fail to recognize that governance issues like compensation do as well.) Alliance-Bernstein has predicted that regulation aimed at reducing GHG emissions will have profound implications for companies across a wide swath of industries.[vi] DB Advisors, the institutional asset management division of Deutsche Asset Management, has even identified the ability to predict trends in climate change regulation as a potential source of excess return for investors.[vii]

With its clear implications for long-term shareholder value and explicit links to the Foundation's Ecological Innovation program, climate change has been the subject of more than half of all shareholder proposals filed by the Nathan Cummings Foundation. Since 2004, NCF has filed 42 climate change proposals with 19 different companies across a range of industries, leveraging the assets in its endowment to achieve greater disclosure and, in a growing number of instances, commitments to reduce emissions.

NCF initially filed shareholder proposals asking companies to report on various facets of climate change, including their GHG emissions and their responses to pressure to reduce these emissions. Over time, a significant percentage of those companies we engaged on the reporting question committed to providing information on their responses to climate change and/or tracking and disclosing their emissions. Filings at The Kroger Co., the Home Depot and Lowe's Companies, for instance, all resulted in increased disclosure, although there remains enormous room for improvement. In the homebuilding industry, too, we have seen a significant increase in reporting relating to climate change and energy efficiency following our filings. Of the seven homebuilders we have filed climate change proposals with, four produced disclosure related to climate change. We have also succeeded in prompting a number of energy companies to increase their disclosure.

NCF PROPOSALS BY TOPIC: 2003 TO 2010



Increasing disclosure helps to address both a company's contribution to climate change and climate change's implications for a company's operations and financial performance. Certainly, there's widespread acceptance of the fact that you can't manage what you haven't measured. Tracking emissions, for instance, can help companies to get a better handle on the possible financial impacts of potential climate regulation. It can also help to identify potential areas for increased efficiency or targeted emission reductions.

Tracking emissions and reporting on climate change can also help companies to lessen the potential for shareholder derivative actions focusing on the inadequacy of climate risk disclosure.[4] According to the

[4] A shareholder derivative action is a lawsuit filed by a corporation's shareholders against the corporation's directors and/or managers for improper management.

national practice leader for Emerging Environmental Risk at Marsh:

> Increasingly, shareholder derivative actions are centering on the adequacy and fairness of management disclosure—particularly as it relates to future trends that could have a profound effect on investment performance. That being the case, it's not difficult to imagine a scenario where shareholder derivative litigation focuses squarely on the quality of a company's climate risk disclosure. [viii]

It's clear that companies need to undertake climate risk disclosure, but disclosure alone is not sufficient. Shareholder resolutions can also prove useful in getting management and boards to begin thinking about the impacts of climate change. Companies wishing to reduce their exposure to climate risk need to actually begin reducing their emissions. It is the success that the Foundation has had in this area that is perhaps the best demonstration of the power of the shareholder resolution process to stimulate concrete changes in corporate behavior, changes that can help to protect both long-term shareholder value and the environment.

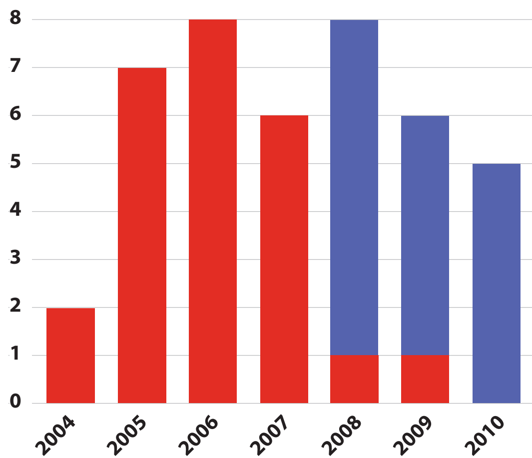
The Foundation's first foray into climate change related shareholder activities occurred in 2004 with a shareholder resolution at Valero Energy. While the resolution asked only for a report on the company's response to pressure to reduce GHG emissions, it spurred the company to go one step further and actually establish a plan to reduce its emissions. The company's board initially opposed the resolution, but the prospect of a high level of support for the proposal appears to have gotten the company to acknowledge the issue and think seriously about it. At the annual meeting in 2004, NCF's climate change proposal received the support of 9.3% of shares voted. Valero simultaneously announced plans to reduce operational emissions by 5% by 2008 versus projected emissions for that year under a "business as usual" scenario, to reduce emissions stemming from the production of its gasoline by a further 2 million tons a year, and to complete and publicly disclose an annual emissions inventory. Six years on, the company has continued to lead the industry with unique approaches to addressing climate change. Valero has invested more than $5 billion in projects leading to cleaner-burning fuels and reduced emissions, entered into ethanol production with the acquisition of seven ethanol plants in 2009, and constructed a number of wind turbines in an effort to improve energy efficiency and reduce the company's carbon footprint.

The Foundation has also seen enormous progress from companies in the homebuilding industry, where NCF became the first institutional investor to file a climate change proposal in 2005. When NCF first filed in this sector, our proposals were met with a sense of bewilderment, both from the companies we engaged and from other institutional investors.

While it may, at first blush, not be as evident as the connection between climate change and, say, oil companies, the link between homebuilders and climate change is undeniable. According to the Energy Information Administration's *Annual Energy Outlook 2009*, the residential sector accounted for the end-use of 21.76% of primary energy in 2007.[ix] All this energy consumption means that homes are a significant source of GHG emissions; residential buildings now account for about one-quarter of all GHG emissions in the United States, so getting homebuilders to construct more energy efficient homes is certainly good for the environment. It's also good for the long-term profitability of the companies themselves.

Several U.S. homebuilders have used energy efficiency as a strategy to distinguish themselves from competitors and gain entry into highly competitive, and profitable, markets. In fact, a March 5, 2008 *Wall Street Journal* article proclaimed that homebuilders in the U.S. were going green out of necessity. The article quoted KB Home CEO Jeffrey Mezger as saying, "We definitely think [green building is] a selling point, and we think it's here to stay."[x] Another recent article in the *Detroit Free Press* noted that, "You have significant challenges in residential homebuilding so [energy efficiency is] a competitive tool on behalf of the homebuilder."[xi]

Even if it weren't for these opportunities, there would still be plenty of reason for homebuilders to set emission reduction targets for their products. Regulatory risks associated with tightening efficiency standards are arguably one of the greatest climate risks facing



NCF CLIMATE CHANGE PROPOSALS: REQUESTS FOR DISCLOSURE VERSUS REDUCTIONS

the homebuilding sector. Given the Obama administration's commitment to addressing climate change and the current Energy Secretary's emphasis on the role of energy efficient buildings in doing so, it's highly likely that builders will have energy efficiency targets set for them in the next few years.

Those companies that already have a handle on their products' emissions and have voluntarily set about increasing the energy efficiency of the homes they build will be in a much better position to respond to future regulation than those that are caught off guard. British builder Berkeley Homes, for instance, has said that its extensive understanding of the EcoHomes methodology, which is voluntary for those developments not receiving grant funding from England's Housing Corporation, helped to prepare the company for the introduction of England's Code for Sustainable Homes, which entails rigorous emission reductions.[xii]

Setting voluntary goals now will give companies the flexibility to innovate and experiment on their own terms, without the pressure of mandatory emission reduction requirements. It might also allow them to establish beneficial relationships with suppliers of energy efficient technologies, and it will certainly allow their staff to gain experience using such technologies.

So, as a long-term shareholder, the Nathan Cummings Foundation wanted to be sure that the homebuilding companies it owns shares in were thinking strategically about climate change and energy efficiency. NCF also wanted to be sure that these companies were getting a head start on the competition by implementing voluntary, company-wide energy efficiency targets covering both products and operations.

In 2008, NCF began to file shareholder resolutions that went beyond disclosure and asked companies to establish voluntary GHG emission reduction goals. For homebuilders, this is essentially the same as establishing energy efficiency targets, at least with respect to product related emissions. A number of the larger companies we engaged on the issue were quite receptive to our request. KB Home, for instance, entered into a dialogue with NCF. As a result, the company agreed to include significant amounts of information on climate change and energy efficiency in its sustainability report. Following the withdrawal of our proposal at KB Home, the company announced plans to build all new homes in new communities to Energy Star® standards beginning in 2009. Centex Corporation, which NCF first engaged on the issue of climate change disclosure in 2005, revealed plans in 2008 to implement the Centex Energy Advantage Program in all new homes. This came just ahead of the announcement of a relatively high vote, 26%, on an NCF-led proposal on climate change and energy efficiency. Centex Energy Advantage Homes are between 10 and 22% more efficient than homes built to the most commonly used code.

Following another relatively high vote, 23%, on an NCF-led proposal at Pulte Homes in 2008, and the resubmission of the proposal for the 2009 season, Pulte Homes also announced plans to begin reducing emissions. Pulte took a slightly different approach than KB and Centex, focusing on operational emission reductions and detailing the energy efficiency programs already in place in many of the communities it builds.

Taken together, the commitments made by KB Home, Centex and Pulte will reduce emission by thousands of tons each year. Without expending a single grant dollar, the Nathan Cummings Foundation was able to use shareholder resolutions to ensure that these companies were focusing on climate change and thinking about ways to reduce their emissions while helping to enhance long-term shareholder value. These actions also fit well with the Foundation's Eco-

logical Innovation Program's goal of addressing the challenges of climate change as well as its objective of promoting approaches by which corporations take responsibility for the real risks and costs of their activities.

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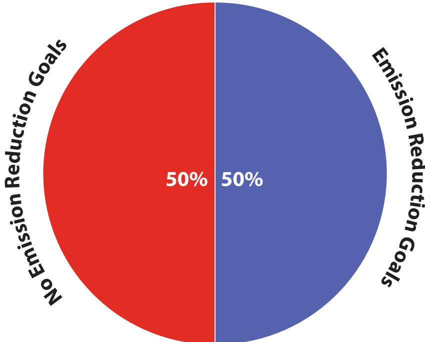
In addition to fitting well with the Ecological Innovation Program's broad goals and objectives, the Foundation's shareholder work has also served as an important tool for increasing the success of some of the market-focused organizations the Ecological Innovation Program has funded through its grants. For instance, several of the withdrawal agreements NCF has reached with companies receiving shareholder resolutions have included a request that the companies respond to the annual Carbon Disclosure Project questionnaire. This questionnaire seeks investment-relevant information from companies on their carbon emissions and climate change strategies. As such, we have helped to increase response rates to the questionnaire and to build the information base of the Carbon Disclosure Project, an organization that NCF has funded for a number of years.

Climate change presents a truly compelling example of the compatibility between the Foundation's program interests and its interests as a long-term shareholder. Using its standing as a shareholder to file resolutions, NCF has successfully pushed companies to take steps to increase disclosure, decrease emissions and protect shareholder value. While a handful of smaller foundations, including the Needmor Fund, the Christopher Reynolds Foundation, and As You Sow, have also used the shareholder resolution process to address climate change, the lack of interest in this tool from larger foundations working to confront the climate challenge is startling. At the very least, they are overlooking an important tool for change. At the worst, they are failing to fulfill their fiduciary duties and ignoring the disconnect between their investment portfolios and their missions.

REDUCTION PROPOSALS AT HOMEBUILDERS RESULTING IN EMISSION REDUCTION GOALS



SUSTAINABILITY REPORTING

The Foundation has filed sustainability reporting resolutions with only one company, Smithfield Foods. Nevertheless, it is worth examining this approach because it allows foundations, and indeed all investors, to focus on a wide variety of social, environmental and economic impacts.

Like requests for climate change reporting, the general philosophy behind requests for sustainability reporting is that companies can't manage what they haven't measured. When it comes to improving social and environmental performance and managing long-term financial risks associated with these types of issues, establishing a measurement of impacts can help to identify potential problem areas. It can also pinpoint possible areas for waste reduction and track year-on-year changes in performance. Completing a rigorous and thoughtful sustainability report can also demonstrate an organizational commitment to sustainable development.

For investors, sustainability reports can provide important information on extra-financial risks associated with a company's operations. Concerns about these types of risks, coupled with NCF's focus on the environment, were what initially motivated the Foundation to file a sustainability reporting resolution with Smithfield Foods in 2003. While the 2003 version of the proposal was found to be too vague in its requests and was omitted by the company with the permission of the Securities and Exchange Commission, the com-

pany chose to engage the Foundation in a conversation about its concerns anyway. At the time, a number of the Foundation's grantees had been attempting to get the company's attention to talk about environmental issues, with little success. With the submission of just one shareholder proposal, the Foundation suddenly had access to the company's Vice President, Environmental and Corporate Affairs and its Chief Legal Officer. In fact, they flew to New York to meet with us.

Following our discussions, Smithfield greatly enhanced the quality of reporting contained in its corporate social responsibility report, a report that prior to our engagement with the company was little more than an assemblage of pretty pictures. Still, the Foundation continued to be concerned about the lack of reporting associated with the contract growers Smithfield used to raise approximately two-thirds of its hogs. While the company claimed that the contract growers were independent contactors, we were concerned by a number of legal developments holding integrators like Smithfield responsible for pollution occurring on contract farms. This meant that Smithfield could potentially take a financial hit if the contract farmers raising its hogs were not carefully managing the environmental aspects of their operations. Of course, in addition to our concerns about possible implications for shareholder value, we were concerned about the possible environmental consequences of contract farming.

With the company refusing to report on the environmental impacts of contract farms, the Foundation developed and submitted a new resolution asking for a sustainability report covering both company-owned and contract farms. In 2007, following three years of strong votes culminating in a vote of 29.3% in 2006, Smithfield and NCF reached an agreement including a commitment from the company to include data on environmental violations occurring on contract farms in its corporate social responsibility report. Smithfield also agreed to undertake a facility-level report on a company-owned farm to provide investors and other interested stakeholders with a better understanding of the environmental impacts of a typical hog farm. Smithfield followed this commitment up with the production of a detailed facility-level report of a processing plant, providing for the first time a relatively complete picture of the impacts of pork production and processing from "farm to fork."

In many ways, the Foundation's experience with Smithfield Foods is a great example of the kind of positive changes investors can achieve through the use of shareholder resolutions. While we did not get everything we hoped for from the company, it did drastically improve its reporting and take a number of steps to provide a more complete picture of the impacts of its operations. In fact, the Foundation's unique working relationship with Smithfield Foods was profiled in a report by the National Research Council of the National Academies entitled, *Enhancing the Effectiveness of Sustainability Partnerships*. That report concluded, among other things, that "the foundation's shareholder resolution caused Smithfield to critically examine its own reporting and how its supply chain is reviewed . . . " It also noted that "the expectation by all parties is that increased transparency will support continuous improvement and sustainable environmental outcomes in Smithfield Foods' operations."

While there are many forms a sustainability report can take, the most commonly used sustainability reporting framework is the G3 Guidelines, which were developed by the Global Reporting Initiative (GRI). Clearly, many foundations support the objectives of the GRI. According to sourcewatch.org, past funders of the GRI include the United Nations Foundation, the John D. and Catherine T. MacArthur Foundation, the Ford Foundation and the Bill and Melinda Gates Foundation. Thus far, however, few foundations have used the holdings in their investment portfolios to push for the uptake of the GRI's rigorous reporting framework. This seems a shame, given that the submission of shareholder resolutions asking for a GRI-based sustainability report offers a clear mechanism for better aligning missions and investments and achieving greater transparency on issues that have implications for society, the environment, a corporation's bottom line, and the long-term value of investment portfolios.

HEALTH CARE

Access to health care has consistently been a major focus of the Nathan Cummings Foundation's grant-

making. In fact, the current goal of the Foundation's Health program is to improve Americans' health by ensuring that all people in the United State have access to high quality and affordable health care and live in a healthy environment.

While the business implications of health care reform are currently the subject of great debate, it is generally accepted that corporations have a lot at stake. As a long-term shareholder, the Foundation believes that rising health care costs in the form of rapidly increasing insurance premiums have significant implications for the competitiveness and profitability of American companies. According to the National Coalition on Health Care, health insurance costs are the fastest growing expense for employers. Something has to be done. Corporations should not, however, look to eliminate coverage for their employees. The provision of health insurance is crucial to productivity. In fact, one estimate from the HR Policy Association puts the annual cost of reduced productivity stemming from the lack of health insurance coverage at more than $87 billion. Given our country's history of employer-provided coverage, health insurance coverage is also something most workers expect as part of their compensation package; it is part of the social contract.

In order to push corporations to think more strategically about health care reform, the Nathan Cummings Foundation drafted resolutions asking companies to report on the implications of rising health care expenses.

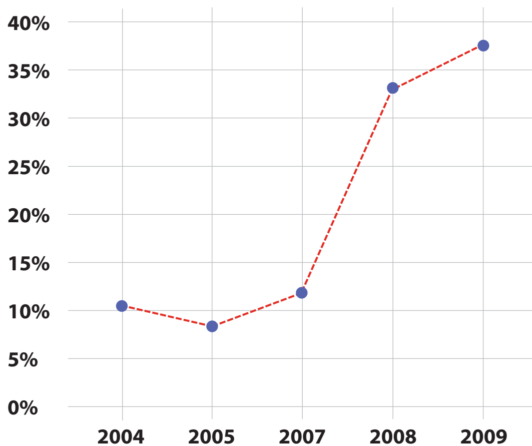
In order to push corporations to think more strategically about health care reform, the Nathan Cummings Foundation drafted resolutions asking companies to report on the implications of rising health care expenses, including an outline of how the company was positioning itself to address health care reform as a public policy issue. Several other institutional investors, including faith-based investors associated with the Interfaith Center on Corporate Responsibility, joined the Foundation in filing this resolution at a number of companies in 2007. Unfortunately, the campaign was ultimately unsuccessful. Although there was wide-spread recognition among institutional investors that high health care costs have significant implications for the profitability of American companies, the SEC found that the resolution related to ordinary business and thus allowed virtually all companies receiving the proposal to omit it from their proxies. This included the proposals that the Nathan Cummings Foundation filed with 3M Company and Kohl's Corporation.

In 2009, the Foundation once again joined with other institutional investors to file a resolution drafted by the AFL-CIO asking companies to adopt principles for health care reform. The NCF-led proposal at Yum! Brands, the world's largest restaurant company, proceeded to a vote despite a vigorous challenge from the company at the SEC. While the company initially demonstrated some willingness to consider adopting principles based on those established by the Institute of Medicine, the vote of 6% does not appear to have prompted any real action from the company. Given the importance of health care reform as it relates to both the Foundation's Health program and corporate financial risk, the Foundation will continue to work with other investors to find ways to successfully use the shareholder resolution process to push companies to think more strategically about this key issue.

POLITICAL CONTRIBUTIONS

Like the corporate governance issues NCF has focused on in its shareholder work, political contributions may not initially seem to have a clear link to one of the Foundation's four core program areas. The issue, however, does have clear ties to the work of both the Ecological Innovations program and the Health program. It also has implications for the Foundation's overarching commitment to democratic values and social justice.

Although campaign finance reforms have sought to limit undue corporate influence over the political process, companies continue to play a significant role in national, state and local-level politics. The amount of money corporations spend to influence the political process now looks set to grow as a result of the recent Supreme Court decision on the Citizens United case.



AVERAGE SUPPORT FOR POLITICAL CONTRIBUTIONS PROPOSALS FILED BY NCF: 2004 TO 2009

There were no political contributions proposals filed by NCF in 2006.

What may be in the short-term interest of a corporation is not always beneficial for society, the environment, or even a company's bottom line in the longer-term. Take, for instance, the political contributions made by pharmaceutical companies in the early part of this decade. Through political contributions, Big Pharma sought to shore up continuing legislative support for government policies that created market barriers and protected profits – policies like import restrictions and limitations on the ability of certain large groups, namely Medicare, to bargain for better prices. While this may have been an effective short-term strategy, it created a backlash among some consumers and was arguably not in the best interests of society.

In addition, absent a system of disclosure, accountability and board oversight, companies have gotten themselves into trouble for donations that run counter to broad-based corporate commitments to certain ideals. A commonly cited example deals with gay rights. According to the Center for Political Accountability, Altria Group, Union Pacific, and BellSouth, among others, ran into problems when contributions to Americans for a Republican Majority (ARM) were passed through to several organizations with anti-gay rights agendas. This led to trouble for the companies, each of which had sought to create positive public images and/or boost employee morale in part through progressive personnel policies that prohibited discrimination based on sexual orientation and/or provided benefits to same sex partners.[xv]

Beginning in 2004, NCF sought to increase disclosure of corporate political contributions by filing shareholder resolutions asking companies to do just that. The Foundation filed with both Pfizer Inc. and Merck & Company. Resolutions proceeded to a vote at both companies, garnering 10.9% and 10.1% of the vote, respectively. While the votes were similar, the companies' responses were not. Pfizer announced at its 2004 annual meeting that it would take steps to increase disclosure, including publishing its bi-annual report "Our Voice in the Political Process" on a yearly basis and posting it on the company's website. Merck, on the other hand, did not respond positively to the 2004 vote, citing administrative burdens, and NCF resubmitted the proposal for inclusion in Merck's 2005 proxy statement. The company took steps to address our concerns that year, despite a slightly lower vote of 8.8%. The company increased access to information about Merck Political Action Committee (PAC) contributions, posting a link on its website to Merck PAC data available on the Federal Election Commission's website, and agreed to post information on its corporate contributions in the United States on an annual basis.

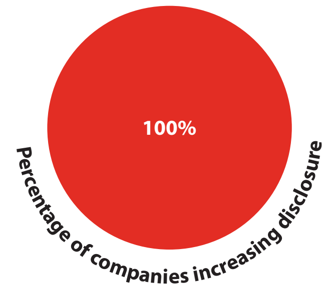
Over the last few years, the link between corporate political contributions, shareholder value, and NCF's programmatic themes has become increasingly apparent.

Over the last few years, the link between corporate political contributions, shareholder value, and NCF's programmatic themes has become increasingly apparent. The Center for Political Accountability, which NCF has funded through its Ecological Innovation and Collaborative Initiatives programs, has expanded the focus of its work to include payments made to 527s and trade associations.[5] As the political influence of 527s and trade associations has grown, it has become increasingly clear that many corporations take public postures on issues like climate change or health reform that are at odds with the stances aggressively pursued by the trade associations of which they are dues-paying members. A company might, on the one hand, appear to be promoting an employer man-

date for the provision of health insurance while simultaneously funding the Chamber of Commerce's campaign against such a mandate through the portion of its membership dues used to fund the Chamber's lobbying budget. Many of the issues where this type of disconnect is evidenced most clearly—climate change, environmental issues, healthcare reform—happen to be a focus of one or more of NCF's program areas.

NCF has long had a focus on climate change and, as discussed in the earlier section on climate change, the issue has clear implications for long-term shareholder value. As such, the Foundation began to file resolutions touching on the misalignment between corporations' climate policies and the stances promoted by the trade associations of which they are members in 2007. The first was filed with ConocoPhillips. Conoco is a member of the U.S. Climate Action Partnership (USCAP), which has called for national legislation to require significant reductions of greenhouse gas (GHG) emissions. Conoco has also committed to expand its business planning process to address GHG emissions and to develop GHG targets for its operations. Yet it is also a member of trade organizations, like the National Association of Manufacturers (NAM), which vehemently oppose federal legislation to cap GHG emissions. The company's membership in NAM and payment of dues to the association seems at odds with the company's decision to join USCAP. Either the company's commitment to addressing climate change is not nearly as strong as it would seem and Conoco is playing both sides of the fence, or, if it truly does believe that the U.S. needs to enact national legislation to reduce GHG emissions, its payments to NAM are counterproductive, a waste of corporate resources and bad policy.

NCF joined with other investors working with the Center for Political Accountability to file a resolution in 2007 asking for additional disclosure from Conoco, including information on its payments to trade associations. Following submission of this initial resolution,



COMPANIES INCREASING DISCLOSURE FOLLOWING RECEIPT OF NCF POLITICAL CONTRIBUTIONS PROPOSALS

ConocoPhillips did take some steps to increase disclosure, including posting the policies governing its political contributions on its website and providing links to lists of corporate political contributions and contributions to ballot initiatives. It also posts a listing of Spirit PAC's—the employee political action committee—contributions to federal, state and local candidates. However, the company has yet to undertake the full level of disclosure requested in NCF's 2007 resolution. NCF has continued to engage the company on the issue of increased disclosure, resubmitting its resolution in 2008, 2009 and 2010 and achieving the support of over 25% of shares voted each year.

ConocoPhillips is not the only company NCF has engaged on political contributions and payments to trade associations in partnership with the Center for Political Accountability. In 2008 and 2009, the Foundation filed resolutions with Valero Energy. Following a "for" vote of nearly 50% on the 2009 proposal, Valero finally took steps to address investors' concerns in this area. The company now discloses the policies governing its involvement in federal, state and local politics. In addition, it discloses its actual political contributions on a semi-annual basis and provides easily accessible links to its quarterly lobby disclosure reports. In spite of this progress, the Foundation chose to re-submit its proposal in 2010. We did so because we believe that Valero's disclosure in this area is lacking a central component; the disclosure of contributions or payments

[5] 527s are independent political groups named for the section of the tax code that regulates the activities of political groups whose purpose is to influence elections. Following the campaign-finance contribution limits established by Congress in 2002, 527s have become increasingly influential. 527s have the ability to raise enormous amounts of money to spend on activities such as issue advocacy as long as they do not coordinate with political candidates or national parties and they refrain from explicitly supporting the election or defeat of a given candidate.

to trade associations and other tax-exempt organizations.

The recent Supreme Court decision in the Citizens United case, which cleared the way for virtually unlimited political spending, is expected to accelerate political activity by trade associations and non-profit advocacy groups. Funding for this will depend on increased corporate funding of such groups. Because of this, it is now more critical than ever that companies like Valero know what their trade associations are doing and hold them accountable. The way to do this is through increased transparency, with companies tracking and disclosing the portion of their membership payments that is used for political spending. A number of leading companies are already doing so and, at Valero's 2010 annual meeting, we urged the company to follow suit. The results of the 2010 vote—around 26% of shares voted supported our request for this additional piece of disclosure—indicate that plenty of other investors agree that Valero's disclosure is not complete without this important element. While the company has not yet indicated a willingness to address this gap in its disclosure, we plan to continue to push the company on this issue.

We've also had some success with the McGraw-Hill Companies, where an NCF-led proposal won 37% of the vote in 2009. Following a meeting with the Foundation and the Center for Political Accountability later that year, McGraw-Hill did agree to take certain steps to begin to address our concerns. The company now provides for annual board oversight of its political contributions, discloses some information on its trade association memberships, and provides a list of politically-driven tax exempt organizations to which it contributes on its website.

Unfortunately, like Valero, McGraw-Hill is still missing key components of the requested disclosure. While we have not been successful in obtaining all of the requested disclosures from either of these companies to date, we plan to continue to engage these companies on the issue. One thing that has become increasingly apparent over the years is that multi-year efforts can sometimes be required to achieve success.

That said, change can also be accomplished with a single filing. In 2009, NCF filed a resolution with the chemical manufacturer Albemarle Corporation asking the company to report on expenditures relating to the defense of one of the company's products, brominated flame retardants, or BFRs. This resolution was similar in its intent to many of the political contributions resolutions filed by NCF in that it sought disclosure of the company's expenditures, including lobbying expenses, relating to the protection of the market for the company's products. After extensive negotiations with the company, including an in-person meeting at the Foundation's offices in New York with one of the company's board members, the company agreed to include disclosure on total product defense spending in its *Report on 2008 Sustainability Performance*. The report also included information on the company's efforts to develop alternatives to BFRs. NCF continues to engage in periodic dialogues with Albemarle. The company recently informed the Foundation of plans to voluntarily phase out the production of Decabrom, the BFR that was the primary focus of the Foundation's shareholder proposal.

CONCLUSION

Since the passage of the Nathan Cummings Foundation's Shareholder Activities Guidelines in 2002, the Foundation has successfully used the other 95% of its assets to achieve concrete changes in corporate behavior. Without spending a single extra dollar on grants, and with very little in the way of administrative costs, the Foundation has pushed corporations to strengthen shareholder rights, improve governance practices, increase transparency and think more strategically about environmental and social issues. We've even been successful in prodding companies to begin reducing their GHG emissions. Our approach of engagement instead of screening, voice instead of exit, has promoted both long-term shareholder value and the issues that the Foundation focuses on in its grantmaking. We've been able to do all of this without limiting our managers' ability to pursue the investment strategies they deem appropriate.

In spite of the success the Nathan Cummings Foundation has experienced with active ownership and its use of shareholder resolutions, we continue to be one of only a few foundations to use this tactic. The reason

Without spending a single extra dollar on grants the Foundation has pushed corporations to strengthen shareholder rights, improve governance practices, increase transparency and think more strategically about environmental and social issues.

for the reluctance of the broader foundation community to do so remains unclear. Perhaps some foundations have board members too closely tied to corporate management interests to think of using this strategy? If so, this certainly poses a potential conflict of interest.

Fiduciary duty is a red herring often raised. However, concerns over whether or not one's fiduciary duties permit the filing of shareholder proposals and the consideration of environmental, social and governance factors in investment decision-making have been put to bed by work such as the 2005 Freshfields report entitled, *A legal framework for the integration of environmental, social and governance issues into institutional investment* and the recently released *Fiduciary II*. The Freshfields report, hailed as a critical legal interpretation with the potential to change worldwide investment thinking, reviewed numerous common and civil law jurisdictions and found that investors do have discretion to consider ESG issues when making investment decisions. The authors of *Fiduciary II*, intended as a follow up to the Freshfields report, reached an even stronger conclusion, declaring that, " . . . the global economy has now reached the point where ESG issues are a critical consideration for all institutional investors and their agents." Indeed, it is now perceived that those who fail to take these issues into account may in fact be in breach of their fiduciary duties. Regardless, as filing a shareholder proposal has no impact on stock selection, this was never a valid argument.

Whatever the reason for their reluctance, many foundations are overlooking a valuable tool for addressing some of the most pressing issues confronting the field today. According to data from the Foundation Center, the largest 100 foundations in the U.S. collectively had more than $250 billion in assets at the end of 2007.[xvi] Imagine what they could achieve in partnership with other institutional investors if, rather than viewing these assets solely as an income-generating corpus, they used them as a tool for change.

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[xvi] http://foundationcenter.org/findfunders/topfunders/top100assets.html. Accessed on September 1, 2009.

NATHAN CUMMINGS FOUNDATION SHAREHOLDER RESOLUTIONS & DIALOGUES

Company	Resolution	Primary Filer	Outcome[1]
2010			
Chesapeake Energy	Say-on-pay	NCF	57.0%
ConocoPhillips	Political contributions	NCF	26.9%
Exxon Mobil	Climate change	Sisters of St. Dominic of Caldwell New Jersey	27.2%
Goldman Sachs Group	Pay disparity	NCF/ Benedictine Sisters	5.5%
Kimco Realty	Climate change	NCF	Withdrawn. Kimco agreed to take a number of steps to address climate change and energy efficiency, including the creation of an internal position focused on sustainability.
Lennar	Climate change	NCF	8.9% (Company has dual classes of stock with CEO controlling 46.3% of combined class A and B votes as of February 2010.)
McKesson	Equity compensation	NCF	28.8%
Mylan	Say-on-pay	NCF	49.5%
Nabors Industries	Say-on-pay	NCF	43.7%
Oracle	Equity compensation	NCF	Vote pending. Meeting to be held in October of 2010.
The Ryland Group	Climate change	NCF	37.4%
Standard Pacific	Climate change	NCF	17.4%
UnitedHealth Group	Say-on-pay	NCF	49.2%
Valero Energy	Political contributions	NCF	26.5%
WellPoint	Political contributions/ lobbying	AFL-CIO Office of Investment	18.8%
Wal-Mart Stores	Say-on-pay	Amalgamated Bank	19.6%
2009			
Albemarle	Lobbying expenses/ toxics	NCF	Withdrawn. Albemarle now discloses total product defense spending. It also provides qualitative guidance on spending related to different products and issues and commentary about its efforts to develop and commercialize new and improved flame retardants.

Company	Resolution	Primary Filer	Outcome[1]
Apple	Say-on-pay	AFSCME	51.6%. Apple has agreed to implement the proposal and provide shareholders with a say-on-pay.
ConocoPhillips	Political contributions	NCF	27.5%
Exxon Mobil	Climate change	Sisters of St. Dominic of Caldwell New Jersey	29.0%
Lennar	Climate change	NCF	9.8% (Company has dual classes of stock.)
The McGraw-Hill Companies	Political contributions	NCF	37.1%. McGraw-Hill agreed to provide annual board oversight of its political contributions and to disclose information on its memberships in trade associations along with a list of politically-driven tax exempt organizations to which the company contributes.
McKesson	Equity compensation	NCF	30.6%
Oracle	Equity compensation	NCF	20.6%
PulteGroup	Climate change	NCF	Withdrawn. Pulte agreed to include information on the energy efficiency of the homes it builds, as well as a discussion of strategies to increase the number of homes it builds above code, in its annual report. Pulte also agreed to answer the Carbon Disclosure Project (CDP) Questionnaire in 2009.
The Ryland Group	Climate change	NCF	29.9%
Standard Pacific	Climate change	NCF	15.3%
Ultra Petroleum	Climate change	NCF	The vote did not count due to a technicality.
UnitedHealth Group	Say-on-pay	NCF	40.7%
Valero Energy	Political contributions	NCF	47.4%. The company has adopted a political contributions disclosure policy and provides contribution data on its website.
Wal-Mart Stores	Say-on-pay	Amalgamated Bank	18.5%
Wells Fargo & Company	Say-on-pay	NCF	Withdrawn. As a recipient of TARP funds, the company was required to give investors a say-on-pay.
Yum! Brands	Healthcare principles	NCF	6.2%

Company	Resolution	Primary Filer	Outcome[1]
2008			
Apple	Say-on-pay	AFSCME	50.7%
Centex	Climate change	NCF	26.0%. The company announced plans to implement its Energy Advantage Program in all new homes it builds beginning in 2009. The program is expected to reduce emissions by thousands of tons over the lifetimes of the homes. The company has also released a sustainability report and provided information to the Carbon Disclosure Project.
ConocoPhillips	Political contributions	NCF	28.2%
Costco Wholesale	Toxics	Boston Common Asset Management	Withdrawn. Costco agreed to report to filers on progress relating to general sustainability efforts, with a particular focus on the reduction of PVC use.
Exxon Mobil	Climate change	Sisters of St. Dominic of Caldwell New Jersey	30.9%
KB Home	Climate change	NCF	Withdrawn. KB Home released its first sustainability report in 2008. The report included a description of how it plans to address emissions from the end-use of its products and used the WRI/WBCSD GHG Protocol to begin tracking emissions. The company also provides the proponents with ongoing progress reports.
The Kroger Co.	Climate change	NCF	39.6%
PulteGroup	Climate change	NCF	22.0%
The Ryland Group	Climate change	NCF	25.4%
Standard Pacific	Climate change	NCF	33.7%
Ultra Petroleum	Climate change	NCF	36.6%
Valero Energy	Political contributions	NCF	38.7%
Wal-Mart Stores	Say-on-pay	Amalgamated Bank	17.1%
2007			
3M Company	Healthcare	NCF	Omitted.

Company	Resolution	Primary Filer	Outcome[1]
Bed Bath & Beyond	Climate change	Sierra Club Mutual Funds	25.0% (Unofficial Result). Although the vote will not count due to a technicality, BBBY has acknowledged shareholders' desire for reporting on energy efficiency, emissions reductions and climate change. BBBY assembled a team to gather information and consider ways to report on these topics. The team was also charged with considering the development and implementation of additional related measures. BBBY also responded to the CDP in 2007.
Centex	Climate change	NCF	Omitted.
ConocoPhillips	Political contributions	NCF	11.9%. The company provided some information relating to political contributions on its website in response to our proposal.
D.R. Horton	Energy efficiency	NCF	Withdrawn. The company agreed to complete the requested report.
Kohl's	Healthcare	NCF	Omitted.
The Kroger Co.	Climate change	NCF	37.4%
Smithfield Foods	Sustainability reporting	NCF	Withdrawn. Smithfield agreed to commence reporting on NOVs occurring on contract farms and to undertake a facility-level report for a company-owned farm.
Standard Pacific	Energy efficiency	NCF	Omitted.
Ultra Petroleum	Climate change	NCF	30.9%
2006			
Centex	Energy efficiency	NCF	9.0%
D.R. Horton	Energy efficiency	NCF	5.5%
The Home Depot	Energy efficiency	NCF	Withdrawn due to the following commitments: completion of the 2006 CDP4 Questionnaire, continuation of a dialogue with the proponents, and disclosure of various indicators and information relating to climate change and energy efficiency.

Company	Resolution	Primary Filer	Outcome[1]
Lowe's Companies	Energy efficiency	NCF	Withdrawn due to the following commitments: expansion of Lowe's sustainability reporting, and disclosure of various indicators and information relating to climate change and energy efficiency.
The Ryland Group	Energy efficiency	NCF	Omitted.
Smithfield Foods	Sustainability reporting	NCF	29.3%
Standard Pacific	Energy efficiency	NCF	39.3%
Ultra Petroleum	Climate change	NCF	22.3%
Vintage Petroleum	Climate change	NCF	This resolution did not go to a vote as Vintage was acquired by Occidental Petroleum.
2005			
Anadarko Petroleum	Climate change	Trillium Asset Management	Withdrawn due to the following commitments: adoption of a GHG management plan and ongoing collection of baseline emissions data, formation of a climate change committee, discussion of the company's strategies for managing climate risk in its 10-K and utilization of carbon-constrained scenario planning.
Apache	Climate change	Boston Common Asset Management	Withdrawn due to the following commitments: estimation of GHG emissions intensity for all of Apache's operated properties in Kyoto Annex I countries as well as operated properties in the US and Australia, discussion of the progress made on all major GHG mitigation projects undertaken by the company, issuance of a statement regarding climate change endorsed by the company's CEO, and reporting on climate change-related projects, initiatives and issues to the company's Board of Directors.
Centex	Energy efficiency and climate change	NCF	Withdrawn. The company agreed to: include a short section in its proxy statement indicating that it received a proposal regarding climate change, continue to discuss climate change related issues with the proponents, and place information on energy efficient homes on its website.

Company	Resolution	Primary Filer	Outcome[1]
Lennar	Energy efficiency and climate change	NCF	2.3%
Merck & Co.	Political contributions	NCF	8.8%. As a result of the resolution, Merck took steps to improve access to information about its PAC contributions. The Company posted a link on its website to Merck PAC data on the Federal Election Commission's website. In addition, Merck annually posts information about its corporate contributions in the United States, categorized by state, candidate office and amount. This information is updated annually.
Pfizer	Reimportation of prescription drugs	AFSCME	10.8%
The Ryland Group	Energy efficiency and climate change	NCF	7.9%
Smithfield Foods	Sustainability reporting	NCF	24.8%.
Vintage Petroleum	Climate change	NCF	25.6%
XTO Energy	Climate change	NCF	Withdrawn. XTO agreed to: create a climate change committee to address issues relating to GHG emissions, publicly acknowledge that climate change is an important issue and disclose the actions it is currently taking to address this issue, disclose its emissions baseline, update emissions data annually, and formulate a plan for the reduction of methane emissions from current operations.
2004			
Anadarko Petroleum	Climate change	Trillium Asset Management	31.4%
Merck & Co.	Political contributions	NCF	10.1%
Pfizer	Political contributions	NCF	10.9%. The company agreed to take the requested actions.
Smithfield Foods	Sustainability reporting	NCF	20.9%

Company	Resolution	Primary Filer	Outcome[1]
Valero Energy	Climate change	NCF	9.3%. The company agreed to take the following actions: reduce projected 2008 emissions by 5% below business as usual, reduce emissions related to the combustion of its gasoline by an additional 2 million tons a year, complete and post an annual emissions inventory, and publicly list the ways in which the company is attempting to reduce its emissions.
2003			
Merck & Co	Ethical criteria for the extension of patents	Province of St. Joseph of the Capuchin Order	6.4%
Smithfield Foods	Sustainability reporting	NCF	Omitted. Ongoing dialogue between company and investors commenced.

[1]Reported votes are calculated as follows: votes FOR as a percentage of the total votes FOR and AGAINST the proposal.

THE NATHAN CUMMINGS FOUNDATION

475 10th Avenue • 14th Floor
New York, NY 10018