



# CORPORATE SOCIAL ISSUES REPORTER

Impartial Research on Companies and Shareholders Worldwide

March 2008

## Mutual Funds Get Resolutions on Sudan

**T**he non-profit human rights advocacy group, Investors Against Genocide, has submitted proposals to at least 21 Fidelity mutual funds asking them to rid their portfolios of companies complicit in genocide by doing business with repressive regimes, including Sudan's Khartoum government. Already, the proposal has received the support of 27 percent of the shares voted on the Fidelity Capital & Income Fund ballot and 28 percent at Fidelity's Select Health Care Portfolio. That solid backing at two of Fidelity's largest funds—with more than \$11 billion in assets under management combined, according to Morningstar—will allow the proposal to reappear next year.

### The Campaign

The genocide-free investing campaign adopts a novel approach to shareholder activism—one that targets several widely held U.S. mutual funds' stockholdings rather than the companies themselves. The resolutions asks the boards of each of the mutual funds to "institute oversight procedures to screen out investments in companies that, in the judgment of the Board, substantially contribute to genocide, patterns of extraor-

dinary and egregious violations of human rights, or crimes against humanity."

Another 10 Fidelity funds also already had votes, but at all of them the proposal failed on March 19 to

*Traditionally, mutual funds haven't been required by U.S. securities rules to conduct annual shareholder meetings, as listed companies are.*

reach the 50 percent quorum of shares necessary for results to be final when voting was tallied. Consequently, the proposal will be placed on those Fidelity funds' holders' proxy ballots again for an April 16 meeting, along with a handful of other targeted Fidelity funds that already

had voting scheduled for that date.

This delay in voting may buy time for Investors Against Genocide, the proponents, to capture the attention of more ordinary investors with money managed by the giant mutual fund company. "That gives lots more opportunity to vote on the issue or for shareholders ask Fidelity for a new ballot to vote if they didn't this time. We hope to see in April and May more people voting for the resolution. We're really excited," Eric Cohen, chair of Investors Against Genocide, told RiskMetrics Group. He attended the Fidelity shareholders meeting after his group held a protest outside Fidelity's office building in Boston.

Fidelity didn't return calls from RiskMetrics Group for comment on the genocide-free investing proposal or fund voting on March 19.

While a proposal on Sudan cropped up last year, it targeted a publicly traded company rather than a mutual fund. That resolution, from an individual shareholder, asked **Berkshire Hathaway** to divest from foreign firms that operate in countries that U.S. companies are barred from entering under U.S. law. The proposal gained much attention but ultimately only 2.4 percent support. *(continued on p. 3)*

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*Corporate Social Issues Reporter* is published 10 times a year by the Social Issues Service of RiskMetrics Group. The Social Issues Service offers impartial research and analysis on corporate social responsibility issues, particularly those raised in proxy statements and at corporate annual meetings. For information, contact:

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ISSN 1090-0829

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port.

A few more publicly traded companies, though, have this year received resolutions motivated by concerns over Sudan. Amnesty International, Calvert Asset Management, Trillium Asset Management and Walden Asset Management filed resolutions at six investment firms—**Citigroup**, **JPMorgan Chase**, **Merrill Lynch**, **Morgan Stanley**, **T. Rowe Price** and **Wells Fargo**—asking them to consider how their investment policies can address human rights issues. Already, the filers have withdrawn the proposals at Merrill Lynch and T. Rowe Price after productive discussions, as discussed in more detail in the article on p. 9. (The Social Issues Service will issue separate reports on the proposals at the four investment companies, if they come to votes, but not for the proposals at the mutual funds.)

Traditionally, mutual funds haven't been required by U.S. securities rules to conduct annual shareholder meetings, as listed companies are. The funds only have to schedule meetings for business that requires shareholder approval, such as board or fund manager changes. Now, activist groups are starting to ask mutual funds to place their proposals on the ballot whenever a regular business meeting is scheduled for the fund's shareholders.

The resolution from Investors Against Genocide requests that Fidelity set up procedures to avoid future investments in companies complicit in genocide. For those Fidelity funds with existing stakes in problem companies tied to genocide—as determined by human rights watchdogs—two options are acceptable, the proposal says. If the holding is substantial enough that the fund can effectively influence the problem company's management to end the genocide and that company

is receptive to engagement, that approach may be appropriate. If the holding is relatively small or the problem company doesn't respond adequately to engagement efforts, then the shares should be sold.

Adam Sterling, director of the Sudan Divestment Task Force, a project of the Genocide Intervention Network, told RiskMetrics Group that the most important aspect of the campaign against Fidelity is that it's nuanced, calling for engagement by targeted companies with the Sudanese government first, and only advocating divestment when that fails.

The resolution put forth by Investors Against Genocide “asks companies not to leave Sudan but to change behavior in a country before divesting,” an approach meant to be more palatable to mutual funds, which are often slow to abandon shareholdings for ethical, rather than financial, reasons, Sterling said.

### Maneuvering

The Investors Against Genocide activists started a letter and phone campaign last year that was narrowly focused on Fidelity's existing investments with ties to the Sudanese government and its documented atrocities in Darfur, but have since set broader goals asking a number of U.S. mutual fund managers to establish investment screening of companies contributing to crimes against humanity anywhere.

The group, which originally was named “Fidelity Out of Sudan,” describes itself as “a non-profit organization dedicated to convincing mutual fund and other investment firms to change their investing strategy to avoid complicity in genocide.”

Mutual fund managers often respond to shareholder resolutions such as the one placed on Fidelity funds' ballots this spring by saying the proponents are trying to “micromanage”

the numerous, frequent investment decisions necessary to run their funds.

Fidelity appealed to the Securities and Exchange Commission to omit the group's proposals for genocide-free investing on these “ordinary business” grounds, as well as under the materially false and misleading statements rule for proxy omissions, but lost that challenge in January. Cohen said that Fidelity made no move toward negotiating with his group in the weeks after the resolution was placed on the funds' proxy ballot for voting starting March 19.

In addition to these genocide-related shareholder proposals being brought to a vote at mutual funds, 23 states and many colleges and universities in the United States also have ratified policies that call for divesting their pension funds or other institutional investments in companies doing business with the Khartoum government in Sudan. The resulting flow of institutional funds away from these securities is intended to encourage the companies, in turn, to pressure Sudanese leaders to stop their genocidal practices.

Investors Against Genocide has gained attention for its drive by warning ordinary investors that they unwittingly may be supporting genocide by holding shares in a mutual fund such as those offered by Fidelity.

### Divestment Criteria

The group used the Sudan Divestment Task Force's model to isolate a few public companies most closely tied to genocide in western Sudan. The model allows for “maximal impact on the government of Sudan while minimizing harms to both Sudanese citizens and portfolio returns,” according to the task force's website. The model uses three criteria to target companies for divestment:

- a business relationship with the Sudanese government or a govern-

- ment-created project,
- imparting minimal benefit to the country's underprivileged or
- having demonstrated no substantial corporate governance policy regarding the Darfur situation.

Cohen said Investors Against Genocide was led by the narrowly focused task force model to **PetroChina Co.**, listed by the task force as the top company of about two dozen "highest offenders."

The list also includes **Sinopec**, or China Petroleum & Chemical Corp, another of that country's state-run oil entities; **Petronas**, Malaysia's state-controlled oil company; and Oil & Natural Gas Corp., or **ONGC**, an oil producer state-owned by India. Net oil importer China has cultivated the Sudanese regime as "Khartoum's largest foreign investor and most significant international supporter," the divestment task force said on Feb. 29 in substantiating its No. 1 ranking of PetroChina atop a handful of international companies labeled most "likely candidates for divestment" because of their relations with Sudan.

Then, Investors Against Genocide determined from SEC filings that household name Fidelity Investments was the largest holder of PetroChina American depositary shares at that time, with a stake of 4.1 million ADSs, valued at about \$446.6 million, listed in its 13F filing to the SEC for the quarter ended June 30, 2006. That position has since been nearly liquidated by Fidelity. (The fund manager reported holding 834 PetroChina ADSs in its most recent ownership filing to the SEC this February.)

The discovery of Fidelity's significant stake in mid-2006 led the activists to approach the company in September of that year about its PetroChina stake. Despite Fidelity's notable selloff of PetroChina ADSs in recent months, Cohen says his group

continues to have serious concerns about Fidelity's holdings in PetroChina and Sinopec in markets outside the United States. He points to passive-investor filings to the SEC and information provided by Fidelity itself on non-U.S. market holdings that show remaining equity holdings worth millions of dollars in those two companies.

For example, a Feb. 14 amended 13G filing to the SEC by FMR LLC, one of Fidelity's reporting entities in the United States, showed the fund manager owned 497,969,400 of PetroChina's H shares traded on the Hong Kong exchange, or 2.36 percent of the Chinese company's outstanding shares.

The defeat of the proposals on the proxy ballots of two of Fidelity's dozens of mutual funds March 19 didn't come as a surprise to Investors Against Genocide, who, Cohen said, had expected only limited support as a result of most Fidelity mutual fund customers' usual dismissal of electronic or mailed proxy statements when received.

### Strategy

Looking ahead, Cohen said his group hopes for a "white knight"—an investment company that offers mutual funds free of the problematic portfolio companies operating in Sudan. He told RiskMetrics that once that happens, "that white knight will have a competitive advantage because it's easy for people to move their money there from Fidelity."

Sterling of the Sudan Divestment Task Force is encouraged about developments he has observed in the short period activists in the United States have been asking financial services companies to act on investments tied to genocide in Darfur.

"We've already seen enormous change since four years ago from dialogues with financial services institutions. For example, American

Funds now has a statement on its website about Sudanese engagement. They're hearing from customers and seeing the impact companies bring" to the situation, he said.

Voting on March 19 were shareholders of eight Fidelity mutual funds that had the resolution in their proxies released to the SEC: Capital & Income, Contrafund, Growth & Income, Low Priced Stock, Puritan, Real Estate Investment, Select Health Care Portfolio and Utilities funds. More votes were to take place on the same day for four additional Fidelity funds on which Investors Against Genocide filed their proxy resolution, although these weren't included in earlier proxy statements filed with the SEC by Fidelity.

Investors Against Genocide is also planning to propose genocide-free investing resolutions for proxy votes yet to be scheduled at mutual funds managed by Barclays—the new largest holder of PetroChina ADSs as of Dec. 31, 2007, with 10.3 million shares valued at \$1.8 billion, or a 4.87 percent stake in the company's U.S. float reported to the SEC. It also seeks to place resolutions for shareholders to vote on at funds run by Vanguard, Franklin Templeton and T. Rowe Price, mainly because of their stakes in the Chinese oil firms linked to Sudan.

—Jane Meacham

RiskMetrics prepares custom data feeds on publicly traded companies' business ties to Burma, Cuba, Iran, North Korea, Sudan and Syria. For each company-country tie, RiskMetrics provides a profile of the company's business activities in the country and estimates for assets, sales and number of employees. For more information, contact Peter DeSimone (202-833-7626 or [peter.desimone@riskmetrics.com](mailto:peter.desimone@riskmetrics.com)).

## Survey Assesses Director Views on Political Disclosure

A survey of U.S. corporate directors commissioned by the Center for Political Accountability, the Washington, D.C., group that has advised a five-year shareholder campaign for better disclosure and governance of corporate political contributions, finds evidence that its message is taking root in corporate boardrooms.

The survey, conducted by Mason Dixon Polling & Research, showed corporate political giving to be a significant issue for directors, a strong majority of whom also support disclosure. However, the survey also indicated that directors possess considerably less knowledge about campaign finance rules and their own companies' policies and activities than they say.

### Survey Results

The survey questioned 255 directors at Russell 2000 companies, both executive and independent outside directors, about their views and knowledge of campaign finance rules, their companies' corporate political giving and other related issues.

While 75 percent of them said they were familiar with campaign finance laws and regulations governing corporate political spending, and 86 percent said they were familiar with their companies' political advocacy and activities, when questioned on the specifics, their responses indicated otherwise.

For example, only 12 percent responded correctly when asked if current law requires corporations to publicly disclose all their contributions. Only 14 percent knew that trade associations are not required to disclose their corporate members nor the candidates and political organizations receiving their contributions.

Yet 88 percent said that corpora-

tions should be required to publicly disclose all corporate funds for political purposes (of which 51 percent "strongly support" the notion), and 57 percent did not believe that additional reporting requirements and transparency would be burdensome or costly. A clear majority would also support the disclosure of payments to trade associations and other tax-exempt organizations, the disclosure of standards governing the companies' political spending, and the identification of corporate officers managing the political spending. Just under half believed the disclosure should be made on the companies' website, a somewhat disappointing result given the challenge of gathering all of the data on even one corporation's political spending.

Two-thirds of the directors agreed that scandals related to corporate political giving have "damaged the public's confidence and trust in corporate America," and only 18 percent said they or other board members were personally engaged in corporate or industry political fundraising or spending.

The surveyed directors' responses may reflect their recognition that, in the fallout from several high-profile political scandals linking corrupt lobbyists to corrupt politicians with corporate money finding its way into the pockets of both, a lack of oversight and disclosure can inject an element of risk to a company's reputation and bottom line.

Since the initial shareholder campaign in 2004 calling on companies to disclose their political giving policies and report on their donations, corporate political funding has been nudged closer to the top of the list of risk areas for companies, and their boards, to address.

### Regulatory Questions

The release of the survey results comes as the 2008 election cycle is on a trajectory to exceed all previous spending records, despite the passage of the Bipartisan Campaign Finance Reform Act (BCRA) of 2002, the most sweeping campaign finance legislation to be passed in more than 30 years. It banned direct contributions by corporations, labor unions and other groups to national political parties and doubled the limit on the amount of hard money that individuals can give to candidates. It left the regulation of political action committees in place and continued to allow issue-based 527 committees (named after the provision of the federal tax code governing their tax-exempt status) to spend money to influence campaigns.

The act also prohibited corporations and unions from funding ads considered to be "electioneering communications (ECs)," from their general treasuries. ECs are ads that name a specific candidate, are distributed within 30 days of a primary election or 60 days of a general election, and target the "relevant electorate."

Yet dramatically greater sums of money have been spent in each ensuing election cycle—not just on federal campaigns, but also at state levels, notably in state judicial contests—and a significant portion of that money, notwithstanding the legal restrictions and the growth in individual contributions, has come from corporate sources.

Moreover, a recent Supreme Court decision eroded some of the BCRA restrictions on ads in the runup to primaries and general elections. The decision provides an opening for a flood of ads supporting or opposing specific federal candidates

| Companies Agreeing to Political Spending Disclosure and Board Oversight |                        |
|---|------------------------|
| Adobe Systems*  | Intel*                 |
| Aetna*  | Johnson & Johnson      |
| American Electric Power*  | Lockheed Martin        |
| American Express*   | McDonalds              |
| Amgen   | Monsanto               |
| Bristol-Myers Squibb  | Morgan Stanley         |
| Capital One*  | Oracle*                |
| Chevron   | PepsiCo                |
| CIGNA   | Pfizer*                |
| Coca-Cola   | Praxair                |
| Colgate-Palmolive*  | Schering-Plough        |
| Dell*   | Southern               |
| E.I. du Pont de Nemours*  | Staples                |
| Eli Lilly   | Texas Instruments*     |
| EMC   | United Parcel Service* |
| FirstEnergy*  | United Technologies*   |
| General Dynamics*   | Verizon                |
| General Electric*   | Washington Mutual*     |
| General Mills   | WellPoint*             |
| General Motors  | Xcel Energy*           |
| Hewlett Packard*  | Xerox*                 |
| Home Depot  |                        |
| *Companies also agreeing to disclose trade association payments         |                        |

and whose donors' ranks will no doubt include corporations.

On June 24, 2007, in *Wisconsin Right to Life v. FEC*, the Supreme Court ruled that corporate and union treasury funds may be distributed to groups airing certain kinds of electioneering communications during the runup to primaries and general elections, as long as the ads cannot be interpreted as an appeal to vote for or against a specific federal candidate, considered "express advocacy." Corporations are prohibited from funding express advocacy communications, but in its final rulemaking to the Supreme Court decision, the Federal Elections Commission laid out a series of exceptions to the BCRA restrictions on funding electioneering communications that create an opportunity for even greater amounts of corporate political giving, through such conduits as 527s, 501(c)(4)s, and trade associations.

mas Donahue added that his organization would disclose no more than required by law. The Chamber also does not disclose its membership, although other trade organizations such as the Business Roundtable and the Pharmaceutical Research and Manufacturers of America (PhRMA) do.

The shareholder advocates pressing companies this season to better disclose and govern their political contributions believe that without more disclosure from trade associations, it is incumbent upon corporations to fill the gap. Interestingly, more than three in four of the directors surveyed agree, saying that corporations should be required to disclose payments to trade associations as well as all other tax-exempt organizations that are used for political purposes.

### Further Discussion

The Center for Political Accountabil-

ity presented the results of its survey of corporate directors at a conference late last month co-sponsored by the Wharton School's Zicklin Center for Business Ethics and Research and the Zicklin School of Business at Baruch College on "Money, Politics and Corporate Risk." The conference opened with the announcement that five companies had agreed to disclose their contributions and establish board oversight, in addition to the 38 since the shareholder effort began. (See accompanying table.)

Although most of the directors in the survey believe trade associations must disclose their membership and political spending, in fact trade associations are not subject to such a requirement. The U.S. Chamber of Commerce vows to spend more than \$60 million in this election, beyond its spending in the previous presidential election, to oppose candidates it perceives to be anti-business. In a Jan. 8, 2008, interview with the *Los Angeles Times*, Chamber Director Tho-

mas Donahue added that his organization would disclose no more than required by law. The Chamber also does not disclose its membership, although other trade organizations such as the Business Roundtable and the Pharmaceutical Research and Manufacturers of America (PhRMA) do.

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—Valentina Judge

<sup>1</sup> Aggarwal, Rajesh K., Meschke, Felix and Wang, Tracy Yue, "Corporate Political Contributions: Investment or Agency?" (November 24, 2007).

## Investors Raise Oil Sands' Environmental Impact

**N**ew to the proxy ballots of oil companies this season are resolutions relating to oil sands production in the Canadian boreal forests of Alberta. Green Century and Trillium have filed resolutions at **Chevron** and **ConocoPhillips** respectively asking the companies to report on the environmental impacts of their expanding oil sands operations in Canada. The companies' annual meetings will take place in May.

Oil sands have attracted more attention recently as rising oil prices have ignited new interest in this unconventional petroleum. Although oil sands production in Canada began over five decades ago, the costly, energy-intensive process of extracting the highly viscous bitumen from the sand-silt mixture was long regarded as economically unfeasible. Now, with oil prices tipping over the \$100/barrel mark, nearly every major western oil company is re-focusing on the profit potential of oil sands production.

### Canada's Oil Sands

The term "oil sands," also commonly called tar sands, refers to a sub-surface mixture of sand, silt, clay, water, and 10 to 12 percent bitumen, a tar-like substance that can be upgraded into a synthetic crude oil roughly equivalent in quality to conventional oil. Bitumen can be extracted in several ways; the 20 percent of oil sands located near the surface can be extracted through open-pit surface mining while the remaining 80 percent of reserves located deeper below the surface must be extracted through a variety of *in situ* techniques.

The high viscosity of bitumen makes its extraction a challenging and intensive process; the most com-

mon extraction technique involves pumping steam into the oil sands to lower the viscosity of bitumen in order to pump it to the surface.

Roughly 81 percent of extractable oil sands are located in Canada, underlying more than 140,000 square kilometers of land in Alberta. As of January 2008, 54,000 km<sup>2</sup> of this land had been leased for oil sands production, with 3,000 km<sup>2</sup> of this area located in the Canadian boreal forest. In 2003 the Alberta Energy and Utilities Board estimated the total crude reserve in Alberta to be about 1.7 trillion barrels, amounting to 175 billion barrels of recoverable bitumen, although estimates from certain oil producers in the region predict an increase in the amount of recoverable resources with advanced extraction techniques.

With more than \$100 billion of development projects planned for Alberta's oil sands, production looks poised for unprecedented growth as investment pours in from Canadian and international oil companies. In 2005, oil sands production was at one million barrels/day (nearly double 1995 levels), and, under business as usual scenarios, this figure is projected to increase to nearly five million by as early as 2020.

As an example of the business interest driving this growth, ConocoPhillips announced at the end of 2007 its goal to become the top oil sands producer in Canada by increasing production to one million barrels of bitumen per day over the next 20 years. **Suncor**, one of Canada's leading oil sands producers, recently secured a \$20.6 billion expansion project in northern Alberta. **BP**, too, has joined the scurry for Canada's oil, signing into a joint venture last December to link an Albertan oil sands project with a BP refinery in

Ohio.

### Environmental Concerns

Rising oil sands production in Alberta has been paralleled with concerns from a variety of stakeholders—including environmental groups, local residents, and shareholders—regarding the environmental impacts of the complicated extraction and upgrading processes required to convert oil sands into a synthetic crude oil.

By far the biggest issue on the table concerning oil sands is the large volume of greenhouse gases (GHG) associated with production. Producing oil from oil sands releases three times more GHG emissions from does production of conventional oil. In fact, oil sands are the fastest growing source of Canada's overall GHG emissions, releasing roughly 40 million tonnes of CO<sub>2</sub> equivalent in 2007. According to the Pembina Institute, a Canadian environmental policy think tank, oil sands are projected to account for 41 to 47 percent of Canada's total annual emissions growth between 2003 and 2010 under a business-as-usual (BAU) scenario. This would make oil sands responsible for 7.5 to 8.2 percent of Canada's projected BAU emissions. Syncrude, a joint venture of several oil companies and currently the largest oil sands producer in Canada, is already Canada's third largest greenhouse gas emitter. In addition, despite slight improvements by the major oil sands producers in the emissions intensity of production, a March 2007 study by UBS Global Equity Research predicted that the absolute emissions associated with oil sands production could triple by 2015.

Inextricably linked to the climate change implications of oil sands development is the high water intensity of production, which has raised

much concern regarding water management of Alberta's Athabasca River and surrounding watershed. All methods of oil sands production require two to five barrels of water per barrel of bitumen produced; the most common *in situ* technique, which involves the injection of steam underground, is also the most water-intensive of all extraction methods. Current operations in Alberta are licensed to divert 349 million cubic meters per year from the Athabasca River—twice the amount used by the city of Calgary. If all proposed projects are approved, the amount of water needed from the Athabasca would rise to 500 million cubic meters. Continued heavy use of the Athabasca River and other waterways could have significant impacts on water flow and groundwater levels—no small cause for alarm for local residents in Alberta. According to the National Energy Board, the amount of fresh water used for oil sands projects could rise to 81 million barrels per year by 2015.

In addition to these climate change and water issues, the proponents of this year's resolutions have raised concerns about the impact of oil sands extraction on Alberta's boreal forest, an area spanning 48 percent of the province. Inevitably, mining in the boreal forest comes with a heavy surface footprint, requiring removal of vegetation and trees, diversion of rivers and drainage of wetlands. According to Environmental Defence in Toronto, the tailing ponds of oil sands mining projects, which cover 20 square miles of forest and bog, leak into groundwater a number of pollutants—including naphthenic acids, mercury, arsenic, and polycyclic aromatic hydrocarbons—that are acutely toxic to aquatic life. Oil sands projects also emit significant amounts of air pollutants such as nitrogen oxides, sulfur dioxides, and volatile organic com-

pounds. This array of environmental impacts from oil sands development has spurred concerns of fragmentation and depletion of the boreal forest, an important carbon sink and ecosystem for North American birds.

### Regulatory Issues

Despite rising pressure from shareholders and other stakeholders on oil sands producers and the local and federal governments to address the adverse environmental and social impacts of increased oil sands development, the regulatory structure in Alberta remains largely accommodating of continued expansion of the industry. Alberta Premier Ed Stelmach has expressed his full support for unimpeded development of oil sands in the province, announcing intentions in January to triple oil sands production by 2016 and asserting that any measures to curtail operations "don't make sense." Alberta's tax regime also provides a favorable environment for companies seeking to develop oil sands projects in the region, requiring a royalty of only 1 percent until all original capital (plus a return) is recovered.

In March 2007 UBS's Global Equity Research division released a report assessing the regulatory risks for oil sands producers of Alberta's newly enacted Climate Change and Emissions Management Act. The study found that "of the three main environmental concerns, arguably green house gas emissions have emerged as the most significant risk to oil and gas producers – particularly oil sands." Still, the researchers concluded that Alberta's current climate policy will have a minimal impact on the oil sands producers in the region. The legislation requires Alberta's largest emitters to reduce the emissions intensity of their operations by 12 percent (per barrel or kilowatt-hour). Failure to achieve these reductions results in a fine of

\$15 per tonne of CO<sub>2</sub> equivalent above the company's limit. According to UBS, the incremental cost of this legislation to oil sands producers is only \$0.18/barrel.

Under this legislation, Alberta's emissions are projected to rise until 2020. Still, Alberta's government says it aims to achieve a 14 percent reduction in GHG emissions by 2050—primarily through implementation of carbon capture and sequestration technology. Environmental groups and other stakeholders have widely criticized Alberta's climate change strategy.

Interestingly, much of the climate-related regulatory risk facing companies with a stake in oil sands operations may come from pressure outside of Alberta's legislation. In December 2007 President Bush signed a new energy bill that included a ban on U.S. federal agencies purchasing fuel for their vehicle fleets from non-conventional petroleum sources whose life-cycle GHG emissions are greater than those for conventional oil.

Taking a hint from the December U.S. energy bill, as well as rising pressure from shareholders and other consumers, some oil sands producers are anticipating the risk of stronger future emissions legislation by factoring in a carbon price into production costs—although an industry standard in assessing these risks remains wholly undefined. Top Canadian producer Syncrude, for example, incorporates a \$0.25 per barrel compliance cost for Alberta's legislation into its cost assessments. Another company, **OPTI Canada**, forecasts a future legislative scenario with carbon priced at \$20 per tonne, raising compliance costs to \$1 per barrel.

Predicting future policy on oil sands is a challenging task, with various parties giving mixed signals

*(continued on p. 15)*

## Pace of Withdrawal Agreements Quickens

**A**greements for the withdrawal of pending social policy shareholder resolutions began to pour forth in late February and early March. The Social Issues Service has counted 49 since publication of the February issue of the *Corporate Social Issues Reporter*, including 12 sustainability reporting requests, nine proposals in the climate change baliwick and two of the six new resolutions to investment firms that relate to holdings in companies that do business in Sudan. All told, withdrawals have been reported of 94 resolutions so far in the 2008 proxy year; 111 proposals were withdrawn in all of 2007.

In addition to the withdrawals, the roster of pending resolutions was cut by more “no-action” decisions by the Securities and Exchange Commission staff that allowed companies to omit some of them under the terms of its shareholder proposal rule. These included decisions that underlined a tougher stance on climate change that had been indicated last month and an unexpected take on transportation security that diverged from an earlier call.

(The names of companies where resolutions recently have been withdrawn or omitted appear in boldface.)

### Withdrawals

**Human rights in investing:** One of the notable new campaigns of this proxy year has been an effort by social investors to get six traditional investment firms to issue reports on “how our investment policies address or could address human rights issues.” The proposal is motivated especially by concern over potential portfolio investment in foreign oil companies and other strategic companies involved in Sudan, and it asks the firms to report on how they can

most effectively respond to human rights concerns, including adopting strategies for shareholder engagement and possible divestment.

The proposal passed muster at the SEC, which rejected Citigroup’s argument that it could be omitted on grounds that it dealt with mundane, ordinary business issues. At this point, it appears that it will be in the proxy there and at JPMorgan Chase, Morgan Stanley and Wells Fargo. But Walden Asset Management was able to work out a withdrawal agreement at **T. Rowe Price**. The company agreed that it would add a policy statement to its website outlining the ways it incorporates nonfinancial (ESG) and corporate social responsibility considerations in security selection and portfolio monitoring. It also reported to the proponents that it had eliminated all of its holdings in managed accounts in the most controversial company operating in Sudan—PetroChina—and that its managed account holdings in Sinopec are now only minimal. The company’s exposure to companies in Sudan is now largely through index funds.

Trillium Asset Management also negotiated a withdrawal of the resolution at **Merrill Lynch**. Merrill Lynch has agreed to discuss policy on human rights and genocide on its web-based corporate social responsibility site. It also agreed to forward to executives who develop new products information about the MSCI Barra custom index that excludes the Sudan Task Force’s list of “Highest Offenders in Sudan.” It also said it would continue to be active in providing and seeking emergency relief for the Darfur region.

**Product safety:** As discussed in the February *Corporate Social Issues Reporter*, the SEC staff told

**Mattel** that it could not omit New York City’s new proposal asking for a report on product safety, which was inspired by a flood of recalls of hazardous imported products last year. Once it got the no-action letter Mattel met with the proponents (the New York City and Connecticut retirement funds) and agreed to provide the requested report, so that proposal has now been withdrawn. Mattel told the proponents that it has scheduled the release of its next Global Citizenship report for July 2009 to include an expanded discussion of product quality and that the report will also provide information about its Global Manufacturing Principles as well as sustainability initiatives.

While the SEC would not allow Mattel, as a manufacturer, to omit the product safety proposal, it did allow retailers to exclude the same resolution on ordinary business grounds, as dealing with “the sale of particular products.” It allowed Home Depot to omit it last month, and the proposal has now been omitted at **Wal-Mart**. But **J.C. Penney** and **Target** chose to negotiate withdrawals, rather than applying to the SEC for no-action letters, and those have now been announced.

**Health principles:** Four more companies have negotiated withdrawals of the new resolutions asking them to adopt principles for universal health care such as those suggested by the Institute of Medicine of the National Academy of Sciences. The big campaign involved two types of resolutions—one directed to health care companies, which mentioned lobbying on national health insurance, which has been shot down at the SEC on ordinary business grounds, and one to other companies that stresses the costs of the existing health care system to the U.S.

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## Proxy Season

economy, which has passed muster at the SEC. (See the lead story in the February *Reporter*.) The new withdrawals are at **ExxonMobil**, **Merck**, **Target** and **Waste Management**, building on the nine withdrawals reported earlier. Of those new withdrawals only one (at Merck) was of a resolution that was vulnerable at the SEC. At this point, it appears that 12 resolutions on the health care principles will come to votes.

**Climate change:** There has been some movement on withdrawals of resolutions in the climate change category. Both proposals at **El Paso** have been negotiated out—New York City’s resolution asking for a report on the company’s response to pressures to reduce emissions and the resolution from Catholic Healthcare East asking it to adopt quantitative goals to reduce emissions. New York City also withdrew a quantitative goals proposal at Williams. The California State Teachers’ Retirement System has withdrawn its proposal asking **Dynegy** to report on and reduce emissions, after the company promised to do the report by Dec. 31, and Boston Common Asset Management withdrew a resolution asking **OGE Energy** to set quantitative goals for reducing emissions.

Another of the resolutions asking companies in the building industry to develop policies on climate change has been withdrawn. Walden Asset Management’s withdrawal of its resolution to **Parkway Properties** follows a Nathan Cummings Foundation withdrawal at KB Home reported last month. Proposals are still pending at Pulte Homes, Ryland Group and Standard Pacific.

Energy efficiency is turning out to be a good area for withdrawals this year. The Connecticut Retirement System has withdrawn its proposal asking **Southern** to assess actions

it’s taking to prepare for emerging regulations that promote efficiency. The withdrawal came when the company agreed to report to shareholders on energy efficiency and rate structure. New York City and the United Methodist Church withdrew their proposal asking **Allegheny Energy** to report on actions to design incentives that will provide financial returns for the company to reduce greenhouse emissions by improving energy efficiency; the same cosponsors had earlier withdrawn the resolution when Dominion Resources also agreed to provide the report. Trillium also reached agreement on its energy efficiency proposal at **Alliant** and the Presbyterians at **First Energy**.

**Sustainability:** As usual, requests that companies issue reports on sustainability have lent themselves to withdrawal agreements because the companies have agreed to produce the reports. In addition to the three (Kellogg, Lowe’s and Safeway) reported last month, proponents have now withdrawn at **Capital One**, **Cigna**, **Continental Airlines**, **Felcor Lodging Trust**, **Hasbro**, **Lowe’s**, **Pentair**, **Raytheon**, **Regions Financial**, **Sigma-Aldrich**, **Tyco International** and **Waters**.

**Military criteria:** Church groups, especially Catholic orders, have been proposing resolutions on military questions to defense contractors since the 1970s. These resolutions are rarely negotiated out, but a large coalition has withdrawn a proposal this year asking **General Electric** to review and, if necessary, amend its criteria for military contracts with an eye to ethical and environmental standards. The withdrawal came with the stipulation that the company and proponents would continue meetings and discussions on the following:

“1) does compliance with applicable

laws and regulations include international law;

- 2) do GE employees service military engines in unstable or dangerous regions such as Iraq;
- 3) will GE engage in a dialogue on the environmental impact of wars that are supported by GE military engines;
- 4) where not required by DoD contracts, does GE hold itself to its environmental standards that may exceed those of the DoD contract;
- 5) what more can GE do to promote the ‘common good’, such as contributing to the rebuilding of areas of the Middle East that have been ravaged by war.”

**Political contributions:** Five more companies have agreed to disclose their political contributions, adding to the five agreements announced earlier. New withdrawals came at **American Express**, **Capital One Financial**, **Prudential Insurance** and **Texas Instruments**. In addition, Washington Mutual has agreed to disclosure. Its shareholder resolution on the issue had been omitted because of a problem with the filing.

**Exploitation of children:** Church groups have withdrawn resolutions asking **Choice Hotels** and **Wyndham Hotels** to adopt a human rights policy prohibiting the sexual exploitation of children in return for what they termed “constructive dialogue.” This is an issue they have raised with hotel companies for the last two years. Companies are understandably not eager to have their facilities’ possible links to child prostitution highlighted in their proxy statements, and withdrawal agreements have always been forthcoming.

**Board diversity:** The number of resolutions asking companies to increase efforts to diversify their boards has been shrinking. From 16

*(continued on p. 12)*

## Charitable Contributions Proposal Passes Muster

The Securities and Exchange Commission staff has required **Ford Motor** to include a shareholder resolution from Tom Strobhar asking it to list the recipients of corporate charitable contributions of \$5,000 or more on its website. Strobhar has been associated with the pro-life groups Pro Vita Advisors and Human Life International, and has had spotty success with getting shareholder resolutions past the SEC, trying different approaches. The Ford decision brings him back to the fore as a proponent.

The history of SEC decisions on charitable contributions proposals, especially from conservative groups, has been complicated. Back in 1992, the SEC staff was prompted to revise its policy that allowed votes on resolutions referring to specific types of contributions after a contentious batch of proposals—mostly on issues related to funding for groups that support abortion rights—appeared on proxy statements in the late 1980s and early 1990s. Companies complained strongly about being caught in the maw of the abortion issue, and the new policy set forth in 1992 altered the interpretation of the shareholder proposal rule to provide that resolutions on specific contributions raise ordinary business issues and therefore could be excluded from proxy statements.

Until fall 2003, the SEC clung to its policy of disallowing all contributions resolutions from proponents who appeared to be pushing a particular agenda, including proposals with neutral-sounding resolved clauses that asked the companies to form committees to study the impact of charitable contributions on their business. The staff said they could be omitted on ordinary business

grounds because the supporting statement made clear that the proponents' central concern was ensuring that companies not contribute to organizations that support abortion.

At that point, Tom Strobhar revised a resolution asking companies not to make contributions that had failed at the SEC. The revised proposal said, in part, "We may also be forcing thousands of people to support causes they may disagree with on a most profound level....Today there are a number of prominent charities advocating for abortion and, in at least one case, Planned Parenthood, actually performing abortions." Shareholders affiliated with Pro Vita Advisors submitted it to nine companies in 2004.

One of those companies was Bank of America, which argued that it should be able to omit the resolution on ordinary business grounds. Citing the supporting statement, it argued that "On the whole, it is clear that the proponent is concerned not about charitable contributions generally, but rather only those contributions to organizations that are disfavored by the proponent. The true goal is the elimination of charitable contributions to groups involved in abortion and other related activities and Planned Parenthood, in particular." The SEC staff, without elaboration, did not agree, allowing the proposal to go forward.

Then in 2006 proponents associated with Human Life International and Pro Vita Advisers asked companies not to end contributions, but to "list all the charitable organizations [the company] gives to on the company website." The supporting statement made clear that support for abortion continued to be a concern. It said, "People did not invest in this company so a portion of their investment could be given to someone else's favorite char-

ity. In fact, some money has gone to Planned Parenthood, a group responsible for almost two thousand abortions per year." A whereas clause also noted that "some potential recipients of charitable funds promote same sex marriages." The resolution came to votes that year, but when it was proposed to three companies for 2007, they all went to the SEC to protest that they should be able to omit the resolutions because the proponents had a particular agenda and were not in fact interested in general contributions disclosure. The SEC staff agreed, and all three companies were allowed to omit the proposals as dealing with "contributions to specific types of organizations."

For 2008, Strobhar has made the proposal's supporting statement more neutral in tone. It reads in part:

The more people know of our support of philanthropic activity the better it is for our company. For example, if we should decide to give money to the American Cancer Society we might garner good will from the millions of people touched by cancer. Similarly, should we decide to give money to Planned Parenthood, the nation's largest abortion performing organization, we might be expected to win sympathetic praise from many who support the choice of abortion....Proper disclosure of charitable contributions would cost us little and should only serve to enhance our corporate image.

It was proposed to Ford, which quickly challenged on ordinary business grounds. This time the SEC staff did not agree.

—Carolyn Mathiasen

(Withdrawals, continued from p. 10) proposals filed in 2006, the number dropped to nine in 2007 and only four in 2008. Of those four, three have already been withdrawn after agreements—at **L-3 Communications**, **Take-Two Interactive** and **Zimmer Holdings**. The only resolution the Social Issues Service is aware of that remains is at **Mueller Industries**.

**Water use:** The Evangelical Lutheran Church and other shareholders withdrew a third year resolution to **Coca-Cola** asking it to commission a study to report on the potential damage from its ventures that extract water from areas of water scarcity in India. The proposal had gotten support that was only in the 6 percent range, but Coca-Cola's operations in India, where some parts of the country are facing chronic water shortages, have been the source of controversy for several years. Coke's water use in India has been one element of a campaign on college campuses that also involves a controversy about anti-union activity and violence at bottling plants in Colombia. The withdrawal took place with the understanding that there will be ongoing dialogue about compliance with the recommendations of a new report by the Energy and Resource Institute (Teri), an India-based nonprofit research organization.

**Store siting:** Christian Brothers Investment Services withdrew a new resolution at **Lowe's** asking it to develop a policy for land procurement, leasing and store siting that incorporates social and environmental factors. The company agreed to expand its 2008 Social Responsibility Report to include information regarding its store siting practices, covering such issues "as Community Consultation and Engagement, Preservation of Cultural Heritage, Protection of Biodiversity and Natural Heritage, and Respect for

Indigenous Cultures." The company also promised to bring Christian Brothers into discussion with members of the company's real estate team "to better understand how the company engages communities as the company seeks to address the range of issues and challenges mentioned above and as described in the 2005 paper by Christian Brothers and Domini Social Investments, *Outside the Box: Guidelines for Retail Store Siting*."

**Toxic substances:** Domini Social Investments has withdrawn its resolution asking **J.C. Penney** for a report on toxic chemicals in electronics supply chains, emphasizing PVC (polyvinyl chloride). The company agreed to release a sustainability report that will discuss its approach towards identifying and substituting PVC-containing products and packaging.

**Sexual orientation nondiscrimination:** Two more resolutions asking companies to develop policies for nondiscrimination against homosexual and transgendered employees have been withdrawn after companies agreed to the request. The latest withdrawals came at **Borg Warner** and **Liberty Global**.

**Forestry issues:** The Capuchins and Domini Social Investments have reached an agreement with **Mead Westvaco** on their resolution asking the company to conduct a feasibility study on phasing out its use of fiber that is not certified by the Forest Stewardship Council. The agreement, which came after the SEC staff rejected the company's attempt to get the resolution omitted on grounds of mootness, provides that Mead will produce the report, which will cover forest ownership and fiber production in the United States and Brazil and examine the feasibility of transitioning to FSC-certified materials within 10 years.

**International labor:** Domini

also withdrew a proposal asking **Nucor** to review its practices related to its global operations and supply chain and assess where additional policies are needed. The SEC staff had rejected the company's arguments that the proposal raised ordinary business issues and was vague and misleading. The withdrawal came when the company agreed to consider signing a Brazilian agreement banning use of forced labor. (For details, see p. 16.)

**Controlled atmosphere killing:** People for the Ethical Treatment of Animals withdrew resolutions at **Safeway** and **Chipotle** after the companies agreed to give purchasing preference to suppliers that use or switch to controlled atmosphere killing, a slaughter technique that PETA and some other animal welfare groups believe is more humane.

### Decisions at the SEC

**Homeland security:** The SEC staff has given **Union Pacific** a different verdict from the one it earlier gave three other companies on whether it can omit a proposal from the Teamsters on railroad security on ordinary business grounds, and Union Pacific is excluding its proposal. All the companies cited the ordinary business clause as the reason for exclusion, but Union Pacific made somewhat different arguments.

As discussed in the February *Reporter*, the Teamsters filed a new resolution with five railroads on the security actions they have taken to protect their infrastructure and personnel. The proposal asks for a report on information "relevant to the Company's efforts to safeguard the security of their operations arising from a terrorist attack and/or other homeland security incidents." It replaced a 2007 Teamsters resolution asking three companies for "information relevant to [the company's] ef-

forts to both safeguard the security of their operations and minimize material financial risk arising from a terrorist attack and/or other homeland security incidents.” The SEC staff had agreed with the companies’ argument in 2007 that the resolution constituted an ordinary business issue, citing a June 2005 staff bulletin enunciating a policy that allows companies to omit proposals that entail the evaluation of business risk.

This year, the Teamsters removed the phrase “minimize material risk” from the resolution to avoid the problem it had encountered the year before, and when Burlington Northern, Norfolk Southern and Kansas City Southern challenged the new proposal as still relating to ordinary business, the SEC staff did not agree. However, subsequently Union Pacific also challenged, arguing that it was excludable because even though “the company’s efforts to safeguard from a potential terrorist attack transcends the company’s ordinary business, the proposal clearly also requests that the company report on actions it has taken to safeguard the security of its operations from incidents and threats that are routine and have been faced by railroads for over a century.” The company argued that “If a proposal does raise a significant social policy issue, it is not the end of the analysis,” citing precedents when “the staff has concurred with the exclusion of shareholder proposals that raise a significant social policy issue when other aspects of the report or action sought in the proposals implicate a company’s ordinary business.”

This time the SEC staff agreed with the company, noting in a Feb. 25 no-action letter that the “proposal appears to include matters relating to Union Pacific’s ordinary business operations.”

The Teamsters were take aback by the Union Pacific decision, which

it is appealing. Carin Zelenko, Director of the Teamsters’ Capital Strategies Department, told the Social Issues Service:

Frankly, we were shocked that the SEC reversed course with the Union Pacific decision. It directly conflicts with determinations the Staff had made within just the past month regarding virtually identical rail security shareholder proposals filed at Burlington Northern Santa Fe, Norfolk Southern, and Kansas City Southern. Rail security is a national priority, and a matter of critical importance to the rail companies, shareholders, workers, and the general public—if rail security isn’t a matter of significant social policy, then what is?

The proposal was originally submitted to five companies but is now pending only at one. After Burlington’s and Norfolk Southern’s no-action requests were turned down, the companies met with the Teamsters and agreed to do the report. Once Union Pacific was allowed to omit, Kansas City filed for reconsideration. That request has not yet been decided. The resolution will not come to a vote at the fifth target, CSX, because the SEC staff agreed with CSX that its existing reporting, especially on its website, made its proposal moot.

**Sexual orientation nondiscrimination:** In a decision similar to the Union Pacific call, the New York City pension funds got a jolt from a March 5 no-action letter allowing Apache to omit a resolution asking it to implement the Equality principles on ordinary business grounds. The SEC staff noted that “some of the principles relate to Apache’s ordinary business operations.” The principles enumerate such issues as prohibiting discrimination based on gender identity and sexual orientation, avoiding the use

of negative stereotypes in advertising, and distributing the company’s non-discrimination policy to all employees. An equality principles proposal had been challenged in the past and passed muster at the SEC.

**Climate change:** The SEC staff has allowed another company—Oneok—to omit New York City’s standard climate change proposal asking for a report “on how the company is responding to rising regulatory, competitive and public pressure to significantly reduce carbon dioxide emissions from the company’s operations.” As with the Arch Coal decision discussed in the February *Reporter*, the staff agreed with the company that the resolution was fundamentally asking it to perform an assessment of the risks it faces—a process that the SEC in its June 2005 staff bulletin decreed should be classified as an ordinary business question. A New York City spokesman noted that the decisions are ironic, since the city pension funds had come up with the wording with the help of the SEC staff back in 2004 after the staff in 2003 had sanctioned omission of the city’s climate change proposal that asked for a report on “risks” associated with greenhouse emissions. New York had also filed the resolution at El Paso, but negotiated a withdrawal agreement there.

In another surprise, the staff allowed OGE Energy to omit Calvert Asset Management’s resolution asking for a report describing how it “is assessing the impact of climate change on the corporation, and the corporation’s plans to disclose this assessment to shareholders, and the rationale for not disclosing such information through reporting mechanisms such as the Carbon Disclosure Project.” This entailed “evaluation of risk,” the staff said, and made the proposal excludable as ordinary business. Calvert had submitted this resolution to seven companies this

year, but had already worked out withdrawal agreements at five (Big Lots, Kirby, Harley-Davidson, Lowes and Ryder System), so that it will come to a vote only at Dover.

While the New York City and Calvert proposals ran into the risk assessment buzzsaw, another climate change resolution, filed by church groups, social investment funds and the California State Teachers' Retirement System at a number of companies, made it past the SEC staff. That resolution asked the companies to adopt quantitative goals for reducing greenhouse emissions. Three of the targets—Chevron, OGE Energy and Oneok—all tried without success to argue that that proposal, too, constituted risk assessment. (As discussed earlier in this article, the resolution was later withdrawn at OGE.) The quantitative goals proposal, though, led to omission of the Connecticut Retirement Funds' new resolution asking **Ford** and **General Motors** to report on the steps they are taking to meet the fuel economy stan-

dards mandated by Congress late last year; the companies argued successfully that the proposals were substantially duplicative of the quantitative goals proposal, which was also on the roster for both of their annual meetings, and which had been filed first.

A different type of proposal with a greenhouse twist was omitted under section i-3 of the shareholder proposal rule, as being "vague and indefinite." That resolution asked **Bank of America** to "amend its greenhouse gas emissions policies to observe a moratorium on all financing, investment and further involvement in activities that support MTR coal mining or the construction of new coal-burning power plants that emit carbon dioxide."

**Nanomaterials product safety:** A resolution from As You Sow asking for a report on nanomaterial product safety has been omitted at **Wal-Mart**. The SEC staff agreed that in this case the resolution raised an ordinary business issue because it dealt with a retailer's sale of par-

ticular products.

**Stem cell research:** **Pfizer** has been allowed to omit a resolution from Human Life International asking it to "form a committee to more fully explore the ethical and business implications of further research involving cells or cell lines that are the result of the destruction of human embryos." The company argued successfully that the proposal related to ordinary business because it involved the manner in which it conducts product research, development and testing.

**Animal welfare:** Several more resolutions on animal welfare issues have been omitted. The staff agreed that two proposals at **Pfizer**, a resolution to **Wyeth** on overseas testing and a proposal to **Chevron** on animal welfare standards were too similar to resolutions voted on in 2007 that failed to receive enough support for resubmission (section i-12 of the shareholder proposal rule) to be submitted for the next three years. A resolution asking **Covance** to report on efforts to foster quality animal care standards was judged moot, as was a proposal asking **McDonald's** to consider purchasing cage-free eggs.

## Fund Seeks to Outlaw 'Nuisance' Proposals —Carolyn Mathiasen

**A**ction Fund Management, a conservative group, has filed 21 shareholder proposals for the 2008 proxy season, including two asking companies to amend their bylaws to outlaw non-binding shareholder resolutions "unless the board of directors takes specific action to approve submission of such proposals." Most shareholder proposals that raise social issues are non-binding, or advisory. The recipients of the proposals to end non-binding resolutions are **ExxonMobil** and **Charles Schwab**. Neither company has said whether it will support the proposal. Charles Schwab's

annual meeting is May 15. Exxon's annual meeting is May 28.

Action Fund Management, which advises the Free Enterprise Action Fund, a Maryland-based mutual fund, uses shareholder advocacy to "counter-balance social activist pressure on corporate managements and strive[s] to keep managements focused on lawful maximization of profits and shareholder returns rather than appeasement of [left-wing] social activists," according to a description posted on its website. Its chairman is Steven Milloy, an adjunct scholar at the Competitive Enterprise Institute and a Fox News col-

umnist.

Milloy told Dow Jones Newswires Feb. 22 that "Shareholder proposals have simply become a way to harass companies.... We'd like to see the stuff go away." He acknowledged that his own resolutions fell into what he considers the "nuisance" category, but said, "You've got to fight fire with fire." Milloy also told RiskMetrics' *Risk & Governance Weekly*, "We see the whole proposal thing as having gotten out of hand. The process allows for back-room deals between corporations and investors that don't need to be disclosed to other shareholders, and we see that as harm-

ful.”

In suggesting that companies move to outlaw non-binding resolutions, Milloy is raising an issue that was broached by the Securities and Exchange Commission as part of its rulemaking last summer on whether shareholders should have access to company proxy statements to nominate members of the board of directors. In connection with a proposed rule that would have allowed limited proxy access, the commission asked for comment “on whether a company or its shareholders should have the ability to propose and adopt bylaws that would establish the procedures that the company will follow for including non-binding proposals in the company’s proxy materials.”

Activists interpreted that as providing an opportunity for companies to “opt-out” of the shareholder resolution process. That request for comment drew a deluge of submissions from labor, social investing and religious groups supporting non-binding resolutions, while corporations were generally silent on the issue. At the end of the process, the SEC voted against allowing proxy access for director nominations and has not said anything since about non-binding proposals. (For background on all this, see the December and October issues of the *Corporate Social Issues*

*Reporter*.)

Milloy maintains a website called junkscience.com (“All the junk that’s fit to debunk”) that questions the science of global warming and the need for policies to address it. Since he began offering resolutions in 2006, Milloy has been filing proposals asking companies to issue a “Global Warming Report” describing how any action they have taken to reduce their impact on climate change “has affected global climate in terms of any changes in mean global temperature and any undesirable climatic and weather-related events and disasters avoided.” The supporting statement asserts that “U.S. greenhouse gas regulation is not likely to discernibly affect global climate” and that “global warming regulation is expected to harm the economy.”

This year Milloy has proposed his global warming resolution to 14 companies: **Alcoa, Caterpillar, ConocoPhillips, Dow Chemical, Duke Energy, DuPont, Exelon, Ford, FPL Group, General Electric, Johnson & Johnson, Pepsico, PG&E and Wal-Mart.** It has been omitted at Caterpillar, Dow Chemical, Johnson & Johnson, PG&E and Wal-Mart on grounds that their existing reporting makes the proposal moot. It’s a resubmission at GE and DuPont.

In addition to the resolutions on global warming and non-binding resolutions, Milloy has resubmitted a resolution to **Goldman Sachs** asking it to provide a report on its definition of sustainability. Milloy is particularly unhappy about a land donation that the company made to a conservation group in Chile. This year, for the first time, he has also proposed a sustainability reporting resolution to **Lehman Brothers.** In Lehman’s case, Milloy is concerned about reports that the company is using corporate assets “to find environmentally sustainable solutions and to develop market-based solutions in response to the threat posed by climate change.”

Milloy is also asking **Bank of America and Citigroup** to issue reports discussing how “implementation of the Equator Principles has led to improved environmental and social outcomes in its project finance transactions.” He says shareholders want to see whether the banks’ “touted implementation of the Equator Principles actually produces real and significant improvements.” Resolutions that he submitted on the Equator Principles last year were omitted on ordinary business grounds, but he rephrased the issue and survived challenges this time at both banks.

—Carolyn Mathiasen

*(Oil Sands, continued from p. 8)* about their intentions. In a departure from his usual stance of refusing to “put the brakes” on oil sands development, Premier Stelmach recently stated that “environment takes precedence over the economy” in policy considerations related to the expansion of oil sands production. Some of Canada’s largest oil

sands producers—including **Petro-Canada Corp., Suncor Inc., Husky Energy Ltd., Shell Canada, and Imperial Oil**—also paid lip service to environmentalism in a letter they sent to Alberta’s government late last month calling for a partial moratorium on oil sands development in order to reserve land for conservation areas.

Several observers have commented, though, that the proposed conservation areas are of minimal commercial interest to the companies, and a partial moratorium on expanded production may in fact be financially advantageous to current producers.

—Emily McAteer

## Nucor Agrees To Review Brazilian Agreement on Labor

**E**arlier this month, a group led by Domini Social Investments withdrew a shareholder proposal asking steelmaker Nucor to review its global operations and supply chain to ensure the protection of fundamental human rights after Nucor agreed to consider signing a Brazilian agreement banning the use of forced labor. The proposal also asked for Nucor to report on its policies toward downstream suppliers, notably those Nucor uses in Brazil to procure pig iron for its steel products sold in the United States. The shareholders' concern arose specifically from past reports of forced labor in Brazilian logging camps that burn trees to create a sought-after type of charcoal used to stoke fires when crafting pig iron.

Nucor, which describes itself as the United States' largest recycler, reported nearly \$17 billion in sales for the year ended Dec. 31, 2007. Based in Charlotte, N.C., it mills hot- and cold-rolled steel and makes steel products such as joists, girders and decks.

### Pig Iron Production

Pig iron production in Brazil requires iron ore and charcoal that's obtained from thousands of small plants that burn trees from native forests in the Amazon, according to a 2004 report by Instituto Observatório Social, a watchdog for globalization efforts in Brazil. The charcoal serves both as fuel to generate enough heat for the furnaces and as a chemical agent to remove oxygen in the fabrication of the pig iron. Pig iron from Brazil is especially prized as a component of steel made by companies such as Nucor because it uses vegetable- and not mineral-based charcoal, the watchdog's report quoted a researcher from the Center for High Studies in the Amazon as saying. Mineral-based charcoal contaminates the pig

iron with high sulfur levels that make it less suitable for use by Nucor's automaker customers.

### Dialogue

Meetings in recent months between Nucor representatives and the Domini-led shareholders started with clarifying Nucor's relationship with Brazilian suppliers two or three levels removed from the end products made by the huge U.S. steelmaker, Adam Kanzer, managing director and general counsel at Domini, told RiskMetrics.

The company pointed out that it doesn't have a contractual relationship with any of the charcoal camps that sell to its pig iron contractors, including any that may have been found by human rights watch groups to be using workers recruited in debt-bondage situations.

"Our goal was to get the company engaged in dialogue" on the issue, Kanzer said.

Mike DeLaney, an attorney with Moore & Van Allen law firm in Charlotte, which Nucor retained as outside counsel to negotiate with the shareholders, agreed. "The company and proponents share the same common goal. The talks were a way that the company can share what it's doing now, and the proponents could share ways the company could enhance that policy. The company has adopted very significant steps and the proponents weren't aware of that until our opposition statement prepared for the proxy on their resolution was shared." DeLaney declined to disclose the details of the opposition statement.

The attorney said that Nucor plans "soon" to put in writing a company code of conduct spelling out policy it currently follows, including mention of opposition to forced labor in its supply chain. He also said Nucor would

review the Brazilian national labor agreement and investigate it further. "We need to understand what it is and if it would be appropriate, and to have a further educational session with the proponents and our own Brazilian counsel."

Nucor agreed in early March after discussions with Kanzer's group to review a 2005 Brazilian pact called the "National Agreement to Eradicate Slave Labor in Brazil." If Nucor becomes a signatory, it would join more than 50 large multinationals and joint ventures doing business in different industries in Brazil, including Wal-Mart Brasil, Brazilian state oil company Petrobras and Shell Brasil, that already have joined the agreement. Compliance by suppliers in the country is monitored locally by nongovernmental organizations Reporter Brasil and the Pastoral Land Commission.

The pact lists several ways that its signatories can boost efforts at "dignifying and modernizing all labor relations in the productive chain ..." in Brazil. Among them are formalizing labor rules that ensure basic security for workers and prevent conditions analogous to slavery and monitoring implementation of these campaigns to aid freed workers.

"This issue presents an opportunity to test some basic assumptions about supply-chain issues," Kanzer said. "Companies say, 'It's impossible to monitor, it's so far down our supply chain.' These issues, however, have a way of bubbling up to the surface. Companies are going to be held accountable for what goes on at the very bottom of their supply chains. I don't think we've begun to confront the question of what's truly possible to achieve," Kanzer said.

—Jane Meacham