THE SHAREHOLDER COMMONS INVITES SHAREHOLDERS TO SUBMIT PROPOSALS THAT MOVE BEYOND THE BUSINESS CASE

The Shareholder Commons seeks to refocus our capital markets on the interests that investors hold in common with one another and with other citizens. We have several shareholder proposal concepts that designed not simply to address a single issue at a company, but to help to reimagine the capital markets as an engine for protecting all of our common interests. These common interests range from overall stock market performance to the quality of life on our planet and the durability of our civilization, and far outweigh the interests that your clients and beneficiaries have in the relative financial performance of individual companies. This is true even if we limit the analysis to portfolio performance, as 80%+ of your return on equities derives from overall market performance.

We invite asset owners to sponsor proposals along the lines of the attached models. We are have retained legal counsel to review these and will provide support to create the best chance we can to facilitate inclusion in proxy statements, as well as to explain the importance of these proposals to stakeholders.

CORE BELIEF: Despite recent regulatory developments and continued market activity suggesting that individual company profits are the only marker of business success, diversified investors have a strong pecuniary interest in protecting critical economic, social and environmental systems from harms caused when individual companies externalize costs in order to generate profit, as these costs can far outweigh the benefits from a portfolio perspective. Institutional investors thus have a responsibility to limit extractive behavior in order to protect returns to their beneficiaries.

The purpose of this project is to improve returns for diversified investors by raising the visibility of this issue with proposals that focus on external costs. Submitting proposals that require boards and asset managers to address this issue will help the market to move beyond the limited company business case for ESG and towards the recognition that investors have both the means and the responsibility to protect critical systems that their beneficiaries depend upon. This responsibility means insisting that companies seek profit only from innovation and efficiency, rather than the depletion of common resources and the exploitation of vulnerable communities.

While proposals that address external costs may be excluded or defeated in 2021, bringing them will force companies to take positions on externalizing costs that can be used to make “the case against the business case” over time. Additionally, if included on the ballot, they will force asset managers to take a position on the critical question of externalities, which they have avoided to date by focusing on the “win-win” of ESG integration. This will set the stage for additional action in subsequent proxy seasons and for making the public case for laws and regulations that grapple with the investor conundrum of externalities and the business case. All of this will redound to the benefit of your beneficiaries and clients.

This effort could play a critical role in forcing companies to own up to the true cost of their operations. It could identify which investment managers are actually interested in ensuring responsible company behavior, rather than wanting to put their heads in the sand or hide behind corporate greenwashing.

Below are several concepts for proposals (which are included as exhibits). While these are conceptualized as stand-alone proposals, it should also be noted that the cost of externalities to diversified shareholders can be used to support many existing proposals. Conversely, there are of course many existing examples of proposals related to the corporate practices addressed in the proposals, but these are distinct because they focus on the effect that the external costs generated by these practices have on diversified shareholders.

Proposals

1. Generalized externalities study: costs. Request that a board commission a study to explore the magnitude of the material social and environmental costs that a corporation is externalizing.

2. Specific externality study: costs. Request that a company study the material social and environmental costs of a specific practice (e.g., pipeline lending for a bank; publishing anti-vax material for a social media company; advertising sugary foods to children for a food company). We have provided two examples.

    a. Oil and gas industry
    b. Social Media
    c. Political spending/lobbying

3. Public benefit conversion. Propose that a company that signed onto the BRT statement or has otherwise indicated that it is "stakeholder" oriented study/consider conversion to a public benefit corporation.

Exhibit 1: General External Costs Proposal

RESOLVED, shareholders ask that the board consider commissioning and disclosing a report on the external costs created by its operations and the extent to which such costs arise from racial injustice, inequality, human right violations, and environmental damage and the manner in which such costs may harm its shareholders who rely on a healthy stock market.

In September of 2020, Citibank released a report showing that systemic racism had cost the US economy more than $16 trillion. In 2019, Heather Boushey released her book, *Unbound: How Inequality Constricts Our Economy and What We Can Do about It,* detailing the economic harm created by inequality. That same year, an IMF working paper was published showing that real world per capita GDP would be reduced by more than 7% in the absence of climate mitigation policies. Finally, a recent study by a major asset manager was able to discern that 55% of the $4.1 trillion in profits attributed to publicly listed companies in 2018 globally were consumed by external costs absorbed by the rest of the economy:

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallized as financial costs, and one third of companies would become loss-making.*

In other words, when companies ignore the external costs they create, they increase their profits but harm the economy. If our company participates in this practice of ignoring external costs, it will harm most of our company's shareholders, who are almost all broadly diversified (except perhaps for the executives, who have received generous amounts of stock and options.) Such diversified shareholders are hurt when companies maximize their own value by engaging in behavior that contributes to threats to our economy like climate change, inequality, and racial injustice. As one finance professor explained, when companies can create external costs without penalty, a company working for its shareholders "[s]hould not maximize its value, but rather be concerned with the value of the investors' portfolio."

Our proposal asks the board to study this issue and report on it, so that both the shareholders and the board can better understand the company's value proposition. We recognize that precise measurement may not be possible, but as the cited report shows, there is already evidence that external costs can reduce GDP, and certainly the future prospects of many of our shareholders as investors depend in part on GDP growth.

Our company does not have a policy to be carbon neutral by 2050, a policy to hire and retain employees in a manner that addresses racial injustice or to address inequality throughout its supply chain. Indeed, our CEO makes X compared to the median employee. In order for the vast majority of our shareholders, who are broadly diversified, to know whether they are being served by the companies decisions with respect to externalizing costs on society and the environment, we request the board to commission a report, using the methodology used in the study of 2018 profits or other methodology that the board determines to be appropriate, that measures certain economic, social, environmental and other costs imposed on the economy by its operations. Such a study will help the shareholders to determine whether they want to seek a change in corporate direction, structure, or form in order to better serve their economic interests.

Exhibit 2a: Proposal for Study of External Cost of Expanding Oil & Gas Production

RESOLVED, shareholders ask that the board consider commissioning and disclosing a report on the external costs created by its continued contribution to increasing the capacity for production of fossil fuels through [PRODUCTION/LENDING/OIL FIELD SERVICES/MIDSTREAM] and the manner in which such costs harm its shareholders who rely on a healthy stock market.

In 2019, an IMF working paper was published showing that real world per capita GDP would be reduced by more than 7% by 2100 in the absence of climate mitigation policies. More broadly, a recent study by a major asset manager was able to discern that 55% of the $4.1 trillion in profits attributed to publicly listed companies in 2018 globally were consumed by external costs absorbed by the rest of the economy:

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallized as financial costs, and one third of companies would become loss-making.*

In other words, when companies ignore external costs, they increase their own profits but harm the economy. If our company does this, it will actually harm most of its shareholders, who are almost all broadly diversified (except perhaps for the executives, who receive generous amounts of stock.) Diversified shareholders are hurt when companies maximize their own value with behavior that contributes to economic threats like climate change. As one finance professor explained, when companies can create external costs without penalty, a company working for its shareholders "[s]hould not maximize its value, but rather be concerned with the value of the investors' portfolio."

While our company may individually profit from helping to expand the petroleum industry's capacity, these profitable activities may also harm the economy by lowering carbon fuel prices and increasing its use, thereby slowing the transition away from such fuels and increasing the cost of climate change by delaying a transition to a low carbon economy. We recognize precise measurement may not be possible, but as the cited report shows, there is already evidence that climate costs can reduce GDP, and certainly the future prospects of many of our shareholders as investors depend in part on GDP growth.

Prior studies by the company do not satisfy this need, because they failed to focus on costs to the diversified vast majority of our shareholders who have no way of knowing whether they are being served by the company decisions that would create external costs absorbed by the stock market. We therefore request the board commission a report, using a methodology similar to the 2019 study or any other methodology that the board determines to be appropriate, that measures the costs imposed on the economy by its contributions to increasing industry capacity and thus carbon concentration in the atmosphere. Such a study will help the shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their interests.

Exhibit 2b: Proposal for Study of External Cost of Disinformation/Anti-Vax Message

RESOLVED, shareholders ask that the board consider commissioning and disclosing a report on the external costs created by its continued propagation of disinformation of antivaccination propaganda on its platform and the manner in which such costs harm its shareholders who rely on a healthy stock market.

In September of 2020, Citibank released a report showing that systemic racism had cost the US economy more than $16 trillion. In 2019, Heather Boushey released her book, *Unbound: How Inequality Constricts Our Economy and What We Can Do about It,* detailing the economic harm created by inequality. That same year, an IMF working paper was published showing that real world per capita GDP would be reduced by more than 7% in the absence of climate mitigation policies. Finally, a recent study by a major asset manager was able to discern that 55% of the $4.1 trillion in profits attributed to publicly listed companies in 2018 globally were consumed by external costs absorbed by the rest of the economy:

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallized as financial costs, and one third of companies would become loss-making.*

In other words, when companies ignore the external costs, they increase profits but harm the economy. If our company participates in this practice, it will harm most of its shareholders, who are almost all broadly diversified (except perhaps for the executives, who receive generous amounts of stock.) Such diversified shareholders are hurt when companies maximize their own value with behavior that contributes to economic threats like climate change, inequality, and racial injustice. As one finance professor explained, when companies can create external costs without penalty, a company working for its shareholders "[s]hould not maximize its value, but rather be concerned with the value of the investors' portfolio."

While our company may profit from allowing disinformation such as anti-vaccine rhetoric on its platform these profitable activities may also increase risks to the economy by, for example, increasing the risk that our population will lose the herd immunity built up with respect to many once-deadly, but now largely dormant diseases and be unable to fully take advantage of new vaccines, including for COVID-19.

In order for the vast majority of our diversified shareholders to know whether they are being served by the company's decisions with respect to disinformation that would create external costs absorbed by the stock market, we request the board to commission a report, using the methodology similar to the 2018 study or any other methodology that the board determines to be appropriate. We recognize that precise measurement may not be possible, but as the cited report shows, there is already evidence that external costs can reduce GDP, and certainly the future prospects of many of our shareholders as investors depend in part on GDP growth. Such a study will help the shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their economic interests.

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Exhibit 2c: Political Spending Proposal

RESOLVED, shareholders ask that the board consider commissioning and disclosing a report on the potential external costs created by its political spending and lobbying on _______________and the manner in which such activity, if successful, may harm its shareholders who rely on a healthy stock market.

In September of 2020, Citibank released a report showing that systemic racism cost the US economy more than $16 trillion. In 2019, Heather Boushey released *Unbound: How Inequality Constricts Our Economy and What We Can Do about It,* detailing economic harm created by inequality. That same year, an IMF working paper showed that real world per capita GDP would be reduced by more than 7% in the absence of climate mitigation. Finally, a study by an asset manager discerned that 55% of the $4.1 trillion in profits of public companies in 2018 globally were consumed by external costs absorbed by the economy

> *In total, the earnings listed companies generate for shareholders currently total US$4.1 trillion, which would fall by 55% to US$1.9 trillion if those social and environmental impacts crystallized as financial costs, and one third of companies would become loss-making.*

In other words, when companies ignore the external costs, they increase profits but harm the economy. If our company participates in this practice, it will harm most of its shareholders, who are almost all broadly diversified (except perhaps for the executives, who receive generous amounts of stock.) Such diversified shareholders are hurt when companies maximize their own value with behavior that contributes to economic threats like climate change, inequality, and racial injustice. As one finance professor explained, when companies can create external costs without penalty, a company working for its shareholders "[s]hould not maximize its value, but rather be concerned with the value of the investors' portfolio."

Our company contributes to political campaigns and efforts to affect the law, including through contributions to third parties. While these costs may be small compared to our company's budget, and may increase our company's profits, those efforts may also harm the economy, by limiting regulation of business behaviors that _____________________________.

In order for the vast majority of our shareholders, who are diversified, to know whether they are being served by the company's decisions with respect to political spending that may create external costs absorbed by the stock, we request the board to commission a report, using the methodology from the 2018 study or any other methodology that the board determines to be appropriate, that measures the costs that would be imposed on the economy by its successful political spending and lobbying efforts so that the board and shareholders can understand the company's value proposition. We recognize that precise measurement may not be possible, but as the cited report shows, there is already evidence that external costs can reduce GDP, and certainly the future prospects of many of our shareholders as investors depend in part on GDP growth. Such a study will help the shareholders determine whether to seek a change in corporate direction, structure, or form in order to better serve their economic interests.

<u>Exhibit 3: Benefit Corporation Proposal</u>

[For Delaware corporations that signed BRT pledge, but could be modified]

RESOLVED, shareholders ask that the board obtain and disclose a report on the effect on stakeholders of the company's failure to become a public benefit corporation <u>("PBC") in light of its commitment to them.</u>

In August of 2019, our company signed onto the Business Roundtable's "Statement on the Purpose of a Corporation," which declared that:

> *While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders . . . . Each of our stakeholders is essential. We commit to deliver value to all them, for the future success of our companies, our communities, and our country.*

This commitment is admirable, but as a conventional Delaware corporation, the company cannot fulfill it: the company is caught in the trap of "shareholder primacy," a theory that puts shareholders' financial interests in the company above all other considerations. Indeed, when another signer of the Statement sought advice about rejecting shareholder primacy in order to follow through with its stakeholders, a leading Delaware law firm advised it to stick with shareholder primacy, so that stakeholders would never take precedence:

> *there would likely be some uncertainty regarding decision-making in a public benefit corporation. . . where the interests of stockholders and other stakeholders or the public benefit diverge.*

Ironically, shareholder primacy hurts most shareholders, who are broadly diversified and suffer when corporations profit from behavior that damages the economy. Thus, rejecting it could benefit the company's diversified shareholders: a study by an asset manager discerned that 55% of the $4.1 trillion in profits of public companies in 2018 globally were consumed by external costs absorbed by the economy. This gross inefficiency is encouraged by shareholder primacy, which ignores external costs because they do not affect the company's financial performance.

But when companies ignore external costs, they increase profits but harm the economy. If our company participates in this practice, it will harm most of its shareholders, who are almost all broadly diversified (except perhaps for the executives, who receive generous amounts of stock.) Such diversified shareholders are hurt when companies maximize their own value with behavior that contributes to economic threats like climate change, inequality, and racial injustice. As one finance professor explained, when companies can create external costs without penalty, a company working for its shareholders "[s]hould not maximize its value, but rather be concerned with the value of the investors' portfolio."

As the law firm report points out, Delaware corporations can now reject shareholder primacy by becoming PBCs. Delaware law provides that a PBC "shall be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation."