



C O R P O R A T E S O C I A L I S S U E S R E P O R T E R

Impartial Research on Companies and Shareholders Worldwide

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Climate Negotiators Achieve Limited Victory at Bali

This month, at international negotiations in Bali on action to curb global warming, the United States agreed to formally participate in a successor treaty to the Kyoto Protocol, which is set to expire in 2012.

This is being heralded as a victory of sorts for international climate action, because the Bush administration had opted out of this climate treaty in 2001. But the reality is that tough negotiations on a new agreement are not going to take place until 2009, after President George W. Bush leaves office. And virtually all of the candidates to succeed him in the White House have acknowledged the need to re-enter the post-Kyoto negotiating process.

So, in effect, the Bush administration is running out the clock on its term in office, while sparing the United States the further ignominy of being the last industrialized nation to embrace the need for greenhouse gas controls. (Australia had been the other holdout, but it endorsed Kyoto earlier this month after electing a new prime minister.) On the domestic front, President Bush did sign new energy legislation on Dec. 19 that will slow the rate of growth of the nation's greenhouse gas

emissions though it is only a small—and some say long overdue—down payment in a larger effort to shrink emissions well below current levels (see box, next page).

No Deal on Emissions Cuts

What did not happen at Bali was an

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What Bali means for investors is that carbon will come with a market price on emissions, which will have a profound effect on future investment decisions.

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agreement on how much to cut the rate of future greenhouse gas emissions. The European Union had been calling for industrialized countries to achieve a 25 to 40 percent cut below 1990 levels by 2020. But the United States, Canada and Japan insisted

that this figure should be worked out in the next two years of negotiations, not decided at Bali. These are among the industrialized nations whose emissions have grown the most since 1990, so they'll have the hardest time achieving such cuts.

Nevertheless, the U.S. delegation at Bali did agree to language that calls for "deep cuts in global emissions," as recommended in the latest report from the Intergovernmental Panel on Climate Change (IPCC), whose authors share the 2007 Nobel Peace Prize with former Vice President Al Gore. And by deep cuts, the IPCC means *really deep*.

If the goal becomes to hold the global temperature increase below 5.5 degrees F (or 3 degrees Celsius), the IPCC says industrial nations will need to achieve emissions cuts in a range of 40 to 90 percent below 1990 levels by 2050. And if the goal is to hold the increase below 3.6 degrees F—which the IPCC believes would be much better for the climate and global environment—then industrialized nations would need to achieve cuts of 25 to 40 percent below 1990 levels by 2020, as the E.U. is advocating, and cuts of *80 to 95 percent*

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by 2050. For all practical purposes, this would mean a virtual “de-carbonization” of industrial economies over the next half-century.

The reason why already industrialized and relatively wealthy nations will have to make such deep cuts, according to the IPCC projections, is because developing countries—including China and India—will vastly increase their energy use—and greenhouse gas emissions—over the next several decades. Under these estimates, energy demand could triple by 2050, with developing countries accounting for about 90 percent of the increase.

Aid for Developing Nations

Put another way, if industrialized countries’ emissions of carbon dioxide, the primary greenhouse gas, went to zero tomorrow, the expected growth from developing countries would still be enough to raise the atmospheric concentration of carbon dioxide to 450 parts per million by 2070, enough to raise global temperatures by as much as 5.5 degrees F—thought by many scientists to be dangerously high in terms of causing irreversible climate changes. If the industrial nations also keep emitting along their current path, the 450 ppm threshold could be reached by 2040 and approach 1000 ppm by 2100, according to Richard Richels, a highly regarded economist at the Electric Power Research Institute.

This atmospheric arithmetic underscores the need to ensure that developing nations have the benefit of cutting edge technology for clean energy. Thus, one final but very important result of the Bali climate negotiations—and a sticking point that almost derailed these talks—is that industrialized nations agreed to provide technical and financial assistance to developing nations so that their greenhouse gas emissions also are reduced from baseline forecasts

Energy Bill Will Make a Dent in Emissions

President George W. Bush signed into law an energy bill on Dec. 19 that will raise U.S. fuel economy standards on vehicles, require more use of ethanol and promote more efficient appliances and office buildings. The energy bill had broad bipartisan support, with the House passing the bill by a 314-100 vote. That came after the Senate removed provisions, however, that would have rescinded \$13 billion in tax breaks for domestic oil producers and set a national renewable energy portfolio standard of 15 percent by 2020 to lessen dependence on fossil fuels by the nation’s power producers.

At the signing ceremony, Bush highlighted that the bill “could reduce projected carbon dioxide emissions by billions of metric tons.” Throughout most of his two terms in office, Bush has opposed government controls on greenhouse gas emissions, saying they would harm economic growth.

Major provisions of the energy bill are as follows:

- Automakers will increase the fuel efficiency of their light-duty fleets by 40 percent to an industry average 35 miles per gallon by 2020, up from an average of 25 mpg today. This is the first legislated increase in auto fuel economy standards since 1975. When the more efficient fleet is on the road, motorists are expected to save \$700 to \$1,000 a year in fuel costs and reduce oil demand by 1.1 million barrels a day, according to an analysis by the Union of Concerned Scientists.
- Refiners will increase production of ethanol fuel as a substitute for gasoline to 36 billion gallons a year by 2022, up from about 6 billion gallons a year today. By the end of the period, at least 21 billion gallons are to come from feedstocks other than corn, spurring the the development of ethanol from cellulosic sources such as prairie grass and wood chips. This is expected to cut U.S. oil demand by 4 million barrels a day by 2030, more than twice the current daily imports from the Persian Gulf.
- Manufacturers of appliances such as refrigerators and dishwashers will raise the energy efficiency ratings of their products, and builders of commercial and federal buildings will make energy efficiency improvements as well. Incandescent light bulbs will be phased out between 2012 and 2014. The new lighting standards alone—which will raise average efficiency by 70 percent—are projected to lower consumers’ annual electricity bills by \$13 billion in 2020 and remove the need for 60 mid-size power plants that otherwise would emit 100 million tons of carbon dioxide a year, according to the Alliance to Save Energy.

One day later, however, the Bush administration rejected a request from California to tighten rules on greenhouse gas emissions from motor vehicles. Under the California proposal, new cars and light trucks would have to cut their tailpipe emissions by 30 percent between 2009 and 2016, a more aggressive timetable than the one in the federal energy bill. At least 16 other states want to follow the California standard to cut emissions and achieve fuel economy gains. This is the first time the U.S. Environmental Protection Agency has ever completely rejected such a request; it has granting California more than 50 other waivers under the Clean Air Act.

as their economies grow. The U.S. delegation objected to this language,

but finally relented after other delegates accused it of abrogating its

leadership role in these talks.

The Challenge for Investors

What does Bali mean for investors? First, it means that global warming is no longer a debate about science, but rather one about politics and economics. Second, it means that carbon emissions are going to become a big factor in global trade, with industrial countries earning credits for clean technologies that they help finance and deploy in emerging markets. And third, and most important, it means that carbon will come with a market price on emissions, which will have a profound effect on future investment decisions.

An analysis released this month

by Deutsche Bank (“Bali Bearings: Reading the Roadmap to a Post-Kyoto Deal”) projects that carbon dioxide emissions now being traded in Europe will rise to 35 euros (\$50) per metric ton for allowances traded in 2008 and beyond. In the power sector, that would have the effect of making new gas-fired power plants competitive with new coal-fired ones, even though coal fuel costs are 50 percent cheaper than natural gas. The ripple effects would be felt throughout many industries that are heavy electricity or fossil energy consumers.

At the same time, carbon pricing is also going to have a profound effect on commodities trading, investment and lending decisions, asset li-

abilities and credit ratings. Just last week, four major banks teamed up with the New York Mercantile Exchange to announce the formation of the **Green Exchange**, a new commodities exchange that will offer a range of environmental futures, options and swap contracts for climate change-focused markets, starting early next year.

—Doug Cogan

Stay tuned for a RiskMetrics Group report to be released next month—commissioned by Ceres and the Investor Network on Climate Risk—that analyzes how climate change will affect all facets of the banking industry.

Investors Ask SEC To Instruct Issuers on Climate Risk

A panel of legal experts convened at Georgetown University last month to discuss the prospects for a petition that an investor coalition filed with the U.S. Securities and Exchange Commission in September improve corporate disclosure on climate change risk. The petition is one of several regulatory, legal and other avenues that investors and others have pursued in the last year to encourage better disclosure by companies traded on U.S. exchanges.

Seeking Better Disclosure

Although the quantity and quality of major corporations’ climate change-related risk disclosure—in their sustainability reports and responses to the five-year-old international Carbon Disclosure Project survey—have improved considerably over time, a number of investors would like to see more comparable information from one company to the next.

Carbon Disclosure Standards Board: One development along these

lines is the just-released draft report standard of the Carbon Disclosure Standards Board, which seven business and environmental organizations founded at this year’s meeting of the World Economic Forum. CDSB’s founders believe that a unified approach to requests for climate-related information is vital to ease the reporting burden and encourage corporate disclosure in securities filings and elsewhere. CDSB will not make information requests; instead it hopes to harmonize existing requests and ultimately seeks consistent, comparable climate disclosure in companies’ audited annual reports or securities filings. Its new draft standard will be refined through stakeholder consultation and testing with final publication expected in 2009.

Petition to the SEC: Some CDSB board members are also turning to the regulatory arena. In a petition filed with the Securities and Exchange Commission on Sept. 18, a coalition of 22 investors and environmental organizations asked the SEC to provide interpretive guidance on corporate

climate change risk disclosure in securities filings (File No. 4-547). This is the third time investor groups have asked for guidance from the SEC on climate change disclosure. Jim Coburn, Program Manager for Investor Programs at Ceres, which is both a petitioner and a CDSB board member, hopes that the third time is the charm. He noted in a telephone interview that the 2004 and 2006 requests were by letter, not petition. Although the SEC does not have to respond to petitions, they are posted on the SEC website (unlike letters) and open to public comment. Seven comments have been received to date, all in support of the petition.

At the panel discussion on the petition at the Georgetown University Law School, lead petitioner and counsel for Environmental Defense Sean Donahue noted that the petition purposefully avoids asking for rulemaking or new legal standards. Instead the petition states that the SEC should signal to corporate issuers that, “corporations should assess their climate risk,

analyze whether that risk is likely to have a material impact on them, and if so, disclose it to the public as required under the Commission's rules."

Legal action: One petitioner, New York Attorney General Andrew Cuomo, also took legal action to promote better corporate risk disclosure. In September, acting on behalf of the state's employee pension funds, Cuomo filed subpoenas against five large power companies that did not attempt to "evaluate or quantify" the possible effects of future greenhouse gas regulations in their most recent Form 10-K filings with the Securities and Exchange Commission. "Selective disclosure of favorable information or omission of unfavorable information concerning climate change is misleading," Cuomo wrote in his letters to the firms.

Senate committee hearing: On the heels of that legal action, the U.S. Senate Banking Committee's Subcommittee on Securities, Insurance and Investment held a hearing in which leading institutional investors reiterated their calls for more detailed climate risk disclosure in securities filings. In his opening remarks, Subcommittee Chairman Sen. Jack Reed (D-R.I.) argued that more Form 10-K disclosure would help financial markets "to price climate risks and opportunities efficiently." Reed also took note of the investor petition filed with the SEC.

Sen. Robert Menendez (D-N.J.) said an alternative course of action might be to insert additional language in a climate bill being sponsored by Sen. Joseph Lieberman (I-Ct.) and Sen. John Warner (R-Va.). Menendez said the bill (S.2191) might have "room for improvement" in requiring more climate risk disclosure from companies, especially in terms of estimating the materiality of costs of adaptation to climate change.

Jeffrey Smith, an environmental law partner at Cravath, Swaine & Moore, testified, "It would be a mis-

take to believe that [voluntary reporting on climate change] could be a permanent substitute for mandatory reporting." Smith said the SEC could use its experience under the Superfund law to provide a road map on disclosure, issuing new guidance to keep pace with changing circumstances. In any case, the agency should "move with deliberate speed," he said.

Commentary at Georgetown

However, other legal experts and a former SEC commissioner that spoke at the Georgetown panel discussion do not anticipate speedy action by the SEC.

Former SEC commissioner Roel Campos is supportive of the petition and has even met with institutional investors in the past on climate change disclosure, but he does not think the petition will become a priority item this coming year. Campos noted that the current commission has just one year left in the Bush administration and many issues to address in that short timeframe. Commissioners are political appointees, and while the SEC should not be viewed as a political agency, "politics do weigh on them."

Perhaps hoping that the issue will not rest entirely in the hands of political appointees, the petition also asked that the SEC's dedicated professional staff in the Division of Corporation Finance, which scrutinizes annual and quarterly filings review climate risk disclosure in regulatory filings. If disclosure is insufficient, Corporation Finance staff can instruct the issuer to provide more. Campos thought that this strategy gets it "exactly right" and builds a foundation that will be ready for the next administration's commission.

Other legal experts on the panel agreed with Campos. Securities lawyer and Georgetown professor Donald Langewoort believes that the petition is "extraordinarily well-crafted" but he noted that there are limitations to the SEC's ability to determine if compar-

nies' disclosure of possible future events is sufficient under current regulation. Under existing securities law, the disclosure of *all* material information, which the petition requests, is only an aspiration. The SEC has historically backed away from such a requirement, specifically banning companies until 1970 from talking about the future in their securities filings. Langewoort explained that the test for disclosure about future events is *not* materiality, but simply whether the event is "reasonably likely to occur." Since anything beyond this is not verifiable, SEC staff would be unable to determine if a company is in compliance with regulations.

Private practice environmental attorney Kevin Ewing stumbled over the same sentence that gave Langewoort pause. He explained that the SEC is not, and should not be, in the business of determining what information is material—that is the job of the registrant. Moreover, he noted "Materiality is not a static analysis." When the SEC made Superfund disclosure a requirement, the result was that disclosure trumped the materiality test. As it happens that may please some investors, but it is not the intent of SEC regulations.

Petitioners themselves, including panelist Dr. Julie Gorte from Pax World Management Corp., agreed that immediate SEC action is unlikely. Still, petitioners have had larger and more productive meetings with SEC staff this time around said Coburn of Ceres. They met with John White, the current head of the Division of Corporation Finance and other senior division staff. Coburn suspects that SEC interest and internal expertise in climate change matters has been limited but is increasing. Since the SEC does not have to respond to a petition, the meetings may indicate that the issue has some traction, he says.

—Geri Kantor

SEC Commissioners Vote Against Proxy Access

The U.S. Securities and Exchange Commission Nov. 28 turned aside pleas from activist investors and voted 3-1 for a rule that would definitively deny shareholders access to management's proxy statement to nominate corporate directors. The vote was another marker in a long losing fight for proxy access, a concept that corporate interests detest.

One Commissioner Short

The commission is short one Democrat. The remaining Democrat, Annette Nazareth, who is also retiring, voted against the rule, while the Republicans, Kathleen Casey, Paul Atkins and Chairman Christopher Cox, voted in favor.

Public pension fund and labor activists pressed the commission to delay a decision until the commission was at full strength, but Cox insisted that court cases had made it necessary to clarify the legal issue before the 2008 proxy season, and he said the discussion would be reopened in the New Year. Nazareth, though, was skeptical that the commission would revisit the issue next year, and she lamented that "corporate governance in the United States is not well served by inattentive boards that are effectively unaccountable to shareholders."

At the same time that the commission approved the rule, it unanimously adopted amendments to the proxy rules to allow shareholders to communicate with one another and with company managements through electronic forums without running afoul of strictures against proxy solicitation. Cox painted the move as a gift to shareholders, but, unlike proxy access, it was not one they had widely sought.

A Complicated History

The concept of proxy access has been bruited about since at least the 1970s, but drew new advocates after Enron and similar scandals spotlighted the failings of passive boards. In 2003, the SEC put out for comment a proposal providing for limited proxy access, but never voted on a final rule. That proposal would have required companies to include in their proxy statements nominations from large shareholders of one to three directors, depending on the size of the corporation, if either of two triggering mechanisms was set off.

Public pension funds and socially responsible investment funds considered the 2003 proposal much too weak, but for the corporate community any access is too much, and it pulled out all the stops in opposition. At the open meeting when the draft rule was approved, it appeared to have strong support from the two Democratic commissioners and also from then Chairman William Donaldson. But later, despite a preponderance of comments favoring proxy access, Donaldson began dropping hints that the proposal was losing his support, and a final rule never appeared.

With proxy access stalled, groups of shareholders filed resolutions for 2005 annual meetings asking companies, including American International Group, to amend their bylaws to give large shareholders the right to nominate up to two directors. Among the cosponsors were major state pension funds and the American Federation of State, County and Municipal Employees' Pension Plan. The SEC, which in 2003 had said such proposals would be viable until the proxy access debate was settled, reversed itself and issued "no-action" letters saying the firms could omit the proposal under section (i)(8) of its

rule governing shareholder proposals (Rule 14a-8), which allows companies to exclude a shareholder resolution that "relates to an election for membership on the company's board of directors" from their proxy statements.

Consequently, AFSCME, in a test case, sued AIG to require it to include the resolution in its proxy statement even though the SEC had issued a no-action letter. The Second U.S. Court of Appeals, which covers Connecticut, New York and Vermont, ruled in favor of the union in September 2006. The appeals court disagreed with the core point in the no-action letter, holding that "a shareholder proposal that seeks to amend the corporate bylaws to establish a procedure by which shareholder-nominated candidates may be included on the corporate ballot does not relate to an election within the meaning of [Rule 14a-8(i)(8)] and therefore cannot be excluded from corporate proxy materials."

The court observed that the SEC had changed its view on what proposals are excludable under the "relate to an election" exclusion. As the court noted, the agency interpreted that language more narrowly in a 1976 guidance to allow proposals that, like AFSCME's, would establish procedural rules governing elections generally. In 1990, the SEC staff began to apply that language more broadly to allow companies to exclude such proposals, but the agency never explained why it changed its position, the court pointed out.

Following the court ruling, pension funds submitted proxy access proposals to Hewlett-Packard, United Health and Cryo-Cell International for 2007 annual meetings. This put the SEC on the spot to speak further on proxy access, but it

cancelled open meetings on the subject in October and December 2006, putting off a decision for another proxy season and issuing letters saying it took “no view” on the pending resolutions. A hedge fund also filed an access proposal at Reliant Energy, and the company sought a court ruling that it was not bound by the AIG decision because it was not located in the Second Appeals Court circuit. The proposal was withdrawn before that legal dispute was settled.

Access Proposals of 2007

That left the proxy access issue still up in the air for 2008, with two GOP commissioners on the record as opposing proxy access, the two Democratic commissioners in favor, and Chairman Christopher Cox in the middle. In May, the commission held three panel discussions on possible changes to the proxy process. Then, at an open meeting July 25, the commission ended up putting out for comment two contradictory proposals—the “short proposal” that it adopted Nov. 28, which reinstates and clarifies the post-1990 SEC interpretation of (i)(8) and disallows all proxy access proposals, and a “long proposal” that would have allowed shareholders owning at least 5 percent of a company’s stock for at least a year to submit bylaws providing for shareholder nomination of directors. Proposing shareholders would have been required to file a Schedule 13G report that made extensive public disclosures, including their material relationships with the target company and its competitors.

The two GOP commissioners voted for the short proposal, and the two Democratic commissioners voted for the long proposal. Chairman Cox voted for both in order to get the issue out for comment. Early in the comment period one of the two Democratic commissioners, Roel Campos, the strongest advocate of proxy ac-

cess, announced that he was leaving the commission, and the second, Nazareth, announced her intention to resign before year’s end.

Pension funds and other activists who had been pushing for proxy access were dismayed with both proposals, finding even the long proposal too restrictive. But the corporate world continued to see in proxy access the reddest of red flags, arguing that it would burden boards with fractious, special interest directors.

At the same time, the access debate got somewhat overshadowed by controversies over other issues broached in the notice of rulemaking that could have enabled companies to bypass the SEC-supervised process for non-binding shareholder resolutions and substantially raised the thresholds for resubmission of shareholder proposals, which had not been changed since 1954.

These issues were not presented as a rule, and a further proposal would have been necessary before any changes could have been made, but they may have distracted attention from the core proxy access issue. Many of the 34,000 letters to the SEC and congressional banking committees engendered during the comment period focused on those side issues. The Social Investment Forum, which rallied its members on these issues, thus had a mixed reaction to the commissioners’ vote, as discussed in the box on p. 9. (For more background, see the lead stories in the August-September and October issues of the *Corporate Social Issues Reporter*.)

Hearings, Other Pressure

But if proxy access got pushed a bit to the side, there was no question that most of the 34,000 letters favored it. Hearings before the congressional banking committees also showed strong support. At a hearing of the House Financial Services Committee Sept. 27, Chairman Barney Frank

(D-Mass.) sharply criticized Business Roundtable President John J. Castellani for his insistence that proxy access was only a wedge for special interests.

Cox himself testified at a Senate Banking Committee hearing Nov. 14. When the comment period closed Oct. 2, access advocates had been hopeful that the SEC would continue to express “no view” on the issue until the Democratic vacancies were filled, but Cox’s testimony made clear he was not willing to wait. Arguing that the AIG decision “applies in only one of the 12 judicial circuits in America,” Cox asserted that “it has created great uncertainty and danger for every stakeholder in our public markets.” He said letting the AIG decision stand without a follow-up rule would create a “law of the jungle” for shareholder proposals and toss anti-fraud and disclosure rules “out of the window.”

Cox also pointed to a 2007 Supreme Court decision, *Long Island Care v. Coke*, which held that an agency’s power to administer a program created by Congress includes the ability to create rules that fill legislative gaps. The case in question involved labor, not securities law, but Cox maintained that it could at some point be seen as a precedent to strike down the Second Circuit’s decision in *AFSCME v. AIG*. Cox stuck to his guns, even though Sen. Jack Reed (D-R.I.), who was chairing the meeting, said Cox was “putting a lot of weight on a case that doesn’t involve laws you’re responsible for.” Reid and other senators urged the SEC to take the time to get proxy access right, with the benefit of a full commission. Dennis Johnson, senior portfolio manager of the California Public Employees’ Retirement System, also urged delay, noting that only three proxy access proposals had come to votes in 2007 and arguing that “there will be no tsunami of harm in the

marketplace if the AIG decision is left in place through the 2008 proxy season.”

Calpers also hosted a telephonic press conference Nov. 19 with representatives of other public pension funds in the United States and abroad and the Council of Institutional Investors, all of which urged the SEC to delay. But Cox, while he had seemed flustered by the ferocity of comments at the Senate hearing, pressed ahead.

The New Rule, ‘Chat Room’ Amendments

The rule on proxy access adopted at the open meeting Nov. 28 amended Rule 14a-8 (i)(8) to allow omission of a resolution “If the proposal relates to a nomination or an election of membership on the company’s board of directors or analogous governing body or a procedure for such nomination or election.”

In an SEC press release issued that day, entitled “SEC Votes to Codify Longstanding Policy on Shareholder Proposals on Election Procedures,” Cox was quoted as saying that the rule preserved “every right that shareholders presently enjoy while ensuring there is no unintended breach in the disclosure and antifraud protections applicable to proxy contests.”

Cox also said, “Now that we have accomplished our investor protection objectives, I believe we can move forward and re-open this discussion in 2008 to consider how to strengthen the proxy rules to better vindicate the fundamental state law rights of shareholders to elect directors.” While Cox stressed this point both at the meeting and under questioning by reporters afterwards, Nazareth expressed skepticism that anything would happen in 2008, wondering why, if the new rule was meant as a temporary fix, it did not contain a sunset provision.

The amendments to ease the path for “chat rooms,” or electronic shareholder forums, also adopted Nov. 28, provided that posts by companies and shareholders on these electronic forums—whether established by the firm or by investors—would be exempt from proxy solicitation rules, except for a 60-day period before a company’s annual meeting. Moreover, shareholders will be able to continue to post on electronic forums during the 60-day “dark period,” unless they are sponsoring a proposal that is on the ballot or are collaborating with other investor groups on a proxy initiative.

To encourage issuers to participate in electronic chats with investors, the rule protects companies from legal liability for any information posted by an affiliate or a third party on a forum.

“Today’s action is intended to tap the potential of technology to help shareholders communicate with one another and express their concerns to companies in ways that could be more effective and less expensive,” said Chairman Cox. “The rule amendments are intended to remove legal concerns, such as the risk that discussion in an online forum might be viewed as a proxy solicitation, that might deter shareholders and companies from using this new technology.”

Cox was careful to note that electronic forums would serve as an addition to—and not a substitute for—the shareholder proposal process under SEC Rule 14a-8. A suggestion at the first of the SEC’s May roundtables that electronic forums could replace non-binding resolutions received widespread criticism from investors. Corporate representatives, on the other hand, seemed unenthusiastic unless they were a 14a-8 substitute.

The chat room amendments will take effect 30 days after they are published in the *Federal Register*.

Reaction

While business interests were predictably happy with the proxy access rule, Cox came in for strong words from activist groups and even the supposedly neutral press. *The Wall Street Journal* headline on the story describing the action read, “Cox, in Denying Proxy Access, Puts His SEC Legacy on Line.” *The Washington Post* business section described the vote as “the most controversial action in the two year tenure of the agency’s chairman.” Former SEC Chairman Arthur Levitt (who also is a RiskMetrics Group board member) told Bloomberg News that the SEC’s action is “probably the most important vote the commission has taken in nearly 15 years.”

The chairmen of both congressional banking committees issued statements criticizing the action. House Financial Services Committee Chairman Frank said:

I am disappointed by the Commission’s action today to restrict shareholder access to company proxies. The amendments to the Commission’s proxy rules will leave shareholders with inadequate recourse to influence insular boards that are unresponsive to shareholder concerns, by effectively precluding shareholders from proposing changes to director election procedures. I believe the Commission should have waited until it was able to deal comprehensively with the issue of proxy access. There was no need to take this piecemeal approach to a problem that should be dealt with comprehensively, as the Commission itself has recognized by proposing broader changes to the proxy access rules. The result of today’s vote is a step backwards for shareholders, as evidenced in part by the thousands of comments received in opposition to the rule, prima-

Social Investment Forum Reacts to Commissioners' Vote

Social Investment Forum (SIF) Board Chair Tim Smith and SIF CEO Lisa Woll issued a joint statement Nov. 28 that commended the SEC commissioners for not restricting the right of shareholders to file advisory shareholder proposals, but criticized the denial of further rights to shareholders to nominate directors. Their statement is as follows:

Socially responsible investors and shareholder advocates applaud the decision by the Securities and Exchange Commission (SEC) not to pursue its controversial process to curtail or even eliminate the right to file shareholder resolutions. Organizations in our ranks helped to organize many of the 34,000 comments the SEC has reported that it received in opposition to limiting shareowner proposals thus stifling shareholder speech. However we note that the Commission has left the door open to such changes in 2008. Thus, we will remain vigilant in safeguarding the rights of American investors.

At the same time, we strongly oppose the SEC decision to limit the rights of shareholders to participate in the nomination of directors. We join with those investors who urge the Commission to reconsider immediately this anti-investor decision. Nominating Directors for a vote is a basic shareowner right that deserves respect – not intrusive government limits that harm shareholders.

Most U.S. investors, when polled, believe that the SEC should be further opening up corporate boardrooms, rather than shielding them from the scrutiny and feedback legitimately offered by the investors who are stakeholders in these publicly owned companies.

The SEC made the right decision today in not abridging the ability of shareholders to sponsor proxy resolutions. We urge the Commission to reverse itself on the director nomination process question.

rily from those representing shareholder interests.

In his statement, Banking Committee Chairman Christopher Dodd (D Conn.) noted that Cox “has said that he intends to revisit this issue in the New Year and I will hold him to his word.” Reuters quoted Dodd as saying that he might introduce legislation to reverse the SEC action.

Global Proxy Watch Nov. 30 predicted that the proxy access decision would “transform the 2008 U.S. annual general meeting season into the most bitter and polarized one in recent memory.” While a number of filing deadlines for the spring proxy season had passed before Nov. 28, many targets remain. Immediately

after the commission’s vote, AFSCME submitted the same proxy access by-law proposal that has been at issue in the AIG case to JPMorgan and Bear Stearns, both of which have been troubled by subprime lending losses. The North Carolina state treasurer co-sponsored both proposals and the New Jersey Division of Investments also filed at Bear Stearns. “We’ll be urging those companies not to omit proxy access from their ballot,” Richard Ferlauto, director of pension and benefit policy for AFSCME, said in a statement. “But if they seek relief from the SEC, we are prepared to go to court to preserve the [AFSCME v. AIG] decision.” Both companies are incorporated in New

York, home of the Second Circuit. AFSCME is also filing at *Countrywide Financial*, which is implicated in the subprime mortgage crisis (see next story).

Looking Ahead

Ann Yerger, executive director of the **Council of Institutional Investors**, termed the SEC vote a step in the wrong direction. “It makes no sense for the commission to do the wrong thing now but promise to try to do the right thing next year,” Yerger said in a press release. “This is a sad day for shareowners.”

But Cox, who said he voted to bar access because it was the only one of two draft rules released by the SEC that could muster a three-vote majority, insisted that the debate was not over. “Today is not the end, and I hope all stakeholders will continue to work with us,” he said. “If we use the time between now and the next proxy season wisely, we can act on a new rule proposal next year that does more than just perpetuate the status quo.”

The possibility that the SEC would revisit the issue in 2008 raises the question of whether it would move further on any of the other issues relating to Rule 14a-8 that it asked for comment on in the notice of rulemaking on the proxy access “long proposal,” especially raising the thresholds for resubmission of shareholder proposals. These have been set at 3 percent for the first year, 6 percent the second, and 10 percent after that since 1954, as efforts to change them have been sidetracked by missteps and related controversies. (See the August-September issue of the *Corporate Social Issues Reporter*.) RiskMetrics records show that of the 679 resolutions in 2007 for which vote results are available, only 20 have failed to achieve 3 percent support—nine corporate governance proposals and 11 in the social issues category.

—Carolyn Mathiasen

Investors Enter 10th Year of Action on Predatory Loans

While shareholder activists were no more prescient than other Wall Street analysts that the subprime mortgage crisis would threaten the overall economy, they were filing resolutions as early as 1999 warning that predatory lending in the subprime mortgage market posed significant financial and reputational risks for companies and their shareholders. That history is worth reviewing as shareholder activists gear up for the 2008 proxy season, with resolutions focusing on subprime lending at **Beazer**, **Cash America** and **Wells Fargo**.

Shareholder proponents also warned of insufficient regulatory oversight, which the U.S. Congress is now scrambling to address. Both the Senate and House recently passed legislation to reform mortgage and anti-predatory lending practices, including replacing the current patchwork of state laws with a national standard and holding Wall Street firms accountable at the federal level for their actions in the mortgage market. Other attempts to address the current turmoil in the subprime lending market include an agreement brokered by the White House in mid-December to freeze interest rates on some subprime loans for five years, and the Federal Reserve's proposed sweeping new standards that dramatically toughen lending practices to mortgage borrowers with poor credit histories.

Early Predatory Lending Resolutions

Shareholder interest in financial institutions' domestic lending policies dates back to the 1990s, when shareholder proponents began pressuring banks to strengthen their community reinvestment policies and broaden

lending in minority and low-income communities. Proponents based these resolutions in part on data that had become available through 1989 amendments to the Home Mortgage Disclosure Act on the race, sex and income of mortgage applicants. Beginning in 1996, shareholder resolutions also began urging companies to comply with the Equal Credit Opportunity Act, which Congress passed in 1974 to prohibit lenders from discriminating in any aspect of a credit transaction. Most of these early fair lending resolutions were withdrawn following discussions and/or agreements with the companies.

Shareholder proponents filed the first resolution focusing specifically on predatory lending in the home mortgage markets in 1999, and the first resolution came to a vote the following year. Altogether, shareholders proposed 19 resolutions on this subject from 1999 through 2007. In recent years, shareholder activists have returned their attention to the fair lending aspect of the subprime housing market, focusing on new government data that has revealed wide disparities between the interest rates charged by lending institutions to African American and Latino families seeking home mortgages compared with those to white families. Between 2001 and 2005, other shareholders employed a different tack—filing eight resolutions seeking to link executive pay to efforts to address predatory lending in the subprime markets.

Associates First Capital, which **Citigroup** acquired in November 2000, was the first company to hold a vote on a predatory lending proposal. The resolution, which received 9 percent of the shares voted in May 2000, was a second attempt as the SEC allowed Associates to omit

an earlier version of the resolution in 1999. The SEC had agreed with the company's argument that the "general conduct of a legal compliance program" was an ordinary business question. The 1999 resolution asked the board to form an independent committee of outside directors "to oversee the development of policy and its enforcement to prevent predatory lending practices." The resolution also asked the committee to provide a report covering these policies "together with information to help assure shareholders of the adequacy of the policy and its enforcement." The filing of a similar resolution in 1999 at **First Union** (now **Wachovia**) resulted in that company agreeing to revise its fair lending policy and to provide more information to the proponents, who then withdrew the proposal.

The 2000 resolution to Associates differed in that it asked the board to establish a committee of outside directors to ensure that "accounting methods and financial statements adequately reflect the risks of subprime lending" and that "employees do not engage in predatory lending practices" and to report to shareholders on policies and their enforcement. Filed by religious investors and **Walden Asset Management** (a division of **Boston Trust & Investment Management Co.**), the resolution argued that the practice not only was being used to prey on elderly and minority customers but also was financially risky for banks and shareholders. Pointing to bankruptcies among subprime mortgage lenders in 1998 and 1999, the resolution reported that the 1999 bankruptcies accounted for more than 5 percent of 1998 subprime lending. The proponents further warned that the overall problem was illustrated by the following

survey results encompassing more than one-third of the top 50 subprime services:

These servicers averaged 7.3 percent of their servicing volume as past due, of which 2.5 percent was in foreclosure. These losses were magnified by gain-on-sale accounting, which raised profits at the time of origination but does not adequately take into account possible costs of delinquencies and foreclosures.

While Associates' challenge to the 2000 resolution at the SEC did not win the day, **Conseco** and **Household International** omitted the same resolution after successfully arguing that questions about accounting were ordinary business issues.

Early Investor Views

Investor reaction in 2000 to this new resolution was decidedly mixed. As part of its annual survey of institutional investors' voting decisions, the Investor Responsibility Research Center found that although less than half of its voting pool held stock in Associates, the remaining 12 investors were closely divided, with five supporting the resolution, six opposing it and Harvard abstaining. Two state funds, one corporate fund, a bank/investment adviser, a university and a college voted against the resolution, with one state fund commenting that "internal controls were in place" and that the measure constituted a waste of time and resources. Another state fund thought the issue was one for federal and state regulation, not shareholders.

TIAA-CREF, Calpers, two other public funds and a pension fund for a religious denomination voted in favor of the resolution. Calpers expressed concern that "predatory lending could lead to costly litigation and a tarnishing of the company's reputation." TIAA-CREF told IRRC that "Our trustees fully acknowledged the in-

creased risk involved in subprime lending. They also acknowledge that, for some individuals, subprime lenders may be the only source for much needed loans. However, our trustees are concerned about the potential for setting interest rates and fees that exceed the amount needed to compensate the lenders for risk." Members within Harvard's advisory committee that supported the resolution argued that "it is widely recognized that the current system of oversight in the subprime lending industry is inadequate" and that the company could "face substantial liability if it does not take action to avoid unfair lending practices."

Passing SEC Scrutiny

By 2001, the proponents had designed a predatory lending proposal that could withstand SEC scrutiny and filed six resolutions that year and another two in 2002. Only two came to votes, both at insurance company Conseco in 2001 and 2002; proponents reached withdrawal agreements at five other firms. The proponents filed at Conseco because in 1998 it had acquired Green Tree Financial, then the largest U.S. financial company serving the subprime market and one dogged by rumors of predatory lending. The resolution asked that a committee of outside directors "oversee the development and enforcement of policies to ensure that no employee or broker...engages in predatory lending practices and that no loan originated or purchased is entailed by predatory practices." Support for the resolution reached 8 percent of the shares voted in 2001 but dropped a bit in 2002, despite continued bad publicity over the acquisition of Green Tree.

Withdrawals of four similar resolutions took place at **Citigroup**, **First Tennessee National**, **Household International** and **Lehman Brothers Holdings** in

2001 and at **Wells Fargo** in 2002.

The resolution got particular attention at Citigroup because of its acquisition of Associates, which had been named as a defendant in more than 700 private lawsuits. By October 2002, without admitting wrongdoing, Citigroup had agreed to the largest consumer protection settlement in the history of the Federal Trade Commission—\$215 million—in response to charges that Associates had engaged in "systematic and widespread abusive lending practices" prior to the acquisition. Then in 2004, the Federal Reserve Board assessed another record fine—\$70 million—at Citigroup in connection with subprime loans from 2000 and 2001, after Citigroup took over Associates. The Federal Reserve eventually determined the penalty could be reduced by as much as \$20 million, depending on the amount of restitution Citigroup paid to affected borrowers.

Religious investors did not file any direct proposals on predatory lending in 2003, although Responsible Wealth, a division of United for a Fair Economy (UFE), filed a resolution at Citigroup seeking to link executive pay to progress on predatory lending that year. In 2004, religious investors filed a resolution at **KeyCorp**, which originates subprime loans, and **Lehman Brother Holdings**, which serves as a manager/underwriter for the securitization of subprime loans.

The resolution to Lehman warned that secondary market purchasers and underwriters may have liability for allegedly fraudulent practices of an originator. The proponents pointed to a June 2003 judgment that held Lehman responsible for 10 percent of a \$51 million judgment by a federal jury because it "substantially assisted" **First Alliance Corp.**, a subprime lender that went bankrupt, in perpetrating alleged fraud when Lehman provided a credit line to First Alliance and

Proxy Season

SHAREHOLDER RESOLUTIONS ON PREDATORY LENDING IN THE SUBPRIME MORTGAGE MARKET				
Year	Company	Resolution	Proponents	Vote
2008	Beazer Homes	Mortgage business review	Laborers	Pending
2008	Wells Fargo	Report on fair housing lending policy/record	Northstar Asset Management, UFE/Responsible Wealth	Pending
2007	Wells Fargo	Report on fair housing lending policy/record	Northstar Asset Management, UFE/Responsible Wealth	8.3%
2006	Bank of America	Take steps to prevent predatory lending	Catholic Healthcare West	Withdrawn
2006	Wells Fargo	Report on fair housing lending policy/record	Northstar Asset Management, UFE/Responsible Wealth	7.3%
2005	Wells Fargo	Link executive pay to social criteria	Northstar Asset Management, UFE/Responsible Wealth	5.9%
2004	AIG	Link executive pay to social criteria	Northstar Asset Management, UFE/Responsible Wealth	2.8%
2004	Capital One Financial	Take steps to prevent predatory lending	New York City Funds	Withdrawn
2004	KeyCorp	Take steps to prevent predatory lending	Evangelical Lutheran Church of America (ELCA)	Withdrawn
2004	Lehman Brothers	Take steps to prevent predatory lending	Presbyterian Church	Withdrawn
2004	Wells Fargo	Link executive pay to social criteria	Northstar Asset Management	5.9%
2003	Citigroup	Link executive pay to social criteria	UFE/Responsible Wealth, Trillium Asset Management	6.8%
2002	Citigroup	Link executive pay to social criteria	UFE/Responsible Wealth, Trillium Asset Management	7.3%
2002	Conseco	Take steps to prevent predatory lending	Episcopal Church, Trinity Health, Walden	7.4%
2002	Countrywide Financial	Link executive pay to social criteria	UFE/Responsible Wealth	Withdrawn
2002	Household International	Link executive pay to social criteria	UFE/Responsible Wealth, Northstar Asset Management, Domini Social Investments	30.5%
2002	Wells Fargo	Take steps to prevent predatory lending	Episcopal Church, ELCA, Jesuits/Maryland	Withdrawn
2001	Associates First Capital (now Citigroup)	Take steps to prevent predatory lending	General Board of Pension and Health Benefits of the United Methodist Church (GBPUMC), Walden	Meeting canceled
2001	Citigroup	Take steps to prevent predatory lending	Presbyterian Church, GBPUMC, Trillium, Walden	Withdrawn
2001	Conseco	Take steps to prevent predatory lending	Episcopal Church, Walden	8.0%
2001	First Tennessee National	Take steps to prevent predatory lending	Episcopal Church	Withdrawn
2001	Household International	Take steps to prevent predatory lending	Sisters of Charity of the Incarnate Word, GBPUMC	Withdrawn
2001	Household International	Link executive pay to social criteria	UFE/Responsible Wealth	4.9%
2001	Lehman Brothers	Take steps to prevent predatory lending	GBPUMC, Walden	Withdrawn
2000	Associates First Capital	Take steps to prevent predatory lending	GBPUMC, Walden	9.0%
2000	Conseco	Take steps to prevent predatory lending	Maryknoll Fathers and Brothers	Omitted
2000	Household International	Take steps to prevent predatory lending	Presbyterian Church, Srs. Charity/Inc. Word	Omitted
1999	Associates First Capital	Take steps to prevent predatory lending	Catholic Healthcare West, GBPUMC	Omitted
1999	First Union (now Wachovia)	Take steps to prevent predatory lending	Catholic Healthcare West, Oblates Mary Immaculate	Withdrawn

Resolutions in shaded rows sought to link executive pay to progress in avoiding predatory lending.

bundled its mortgages for the secondary market. A federal appeals panel upheld the jury's decision, which marked the first time a securities firm had been found liable for aiding fraud through business dealings with a predatory lender. (The appeal panel instructed the trial court to recalculate the dollar award, however, and that decision is still pending.) Notably, the legislation recently passed by the U.S. House of Representatives contains unprecedented federal consumer protections that will subject Wall Street firms to liability if they buy, sell and

securitize loans that consumers cannot repay.

Proponents withdrew the resolutions at both KeyCorp and Lehman Brothers after the companies entered into discussions with the proponents and provided information. New York City withdrew a third resolution on predatory lending at **Capital One Financial** because of a technicality.

New Directions

Religious investors took another break in 2005 on filing direct predatory lending resolutions, although

UFE continued to seek a link between executive pay and predatory lending (see below). In addition, the Community Reinvestment Association of North Carolina stepped in and filed three related resolutions at **Bank of America**, **Republic Bancorp** and **Wells Fargo** on payday lending. A type of subprime loan, payday loans are small-dollar, short-term, unsecured loans that borrowers promise to repay out of their next paycheck or regular income payment, such as a social security. Two of the 2005 payday lending resolutions came to

votes, but three payday lending resolutions filed in 2006 and 2007 at Wells Fargo, **H&R Block** and **Cash America International** were omitted. Christian Brothers Investment Services, which filed the payday lending resolution at Cash America, has rewritten the resolution in hopes of bringing it to a vote at the company's 2008 annual meeting.

In 2006, Catholic Healthcare West filed and then withdrew one resolution on predatory lending in the subprime mortgage market at **Bank of America**, which had served as an underwriter or manager for the securitization of subprime loans amounting to about \$20 billion (about 5 percent of the subprime loans that were securitized in 2004). The proponents warned that “if so-called predatory lending loans are included in the securitization of the underwriter, the underwriter may need to protect its reputation.” The resolution requested the board to “develop higher standards for the securitization of subprime loans” and urged the company to perform adequate re-underwriting of the loans and verification of the originator's methods, including screening every subservicer about predatory practices in the servicing of the loans even after securitization.

Also in 2006 and in 2007, NorthStar and UFE filed a related resolution asking Wells Fargo to prepare a report explaining racial and ethnic disparities pertaining to high cost home mortgage loans revealed through 2002 amendments to the Home Mortgage Disclosure Act data. These resolutions, prompted by analysis of data generated by government reporting requirements, are reminiscent of the fair lending resolutions proposed in the 1990s. The resolutions to Wells Fargo got 7.3 percent support in 2006 and 8.3 percent in 2007.

Executive Pay Links

A crop of resolutions seeking to link executive compensation to progress in addressing predatory lending in the subprime mortgage market came to votes between 2001 and 2005, with a second-year resolution at **Household Financial** (now **HSBC Finance**—the consumer lending arm of British **HSBC Holdings**) garnering support from an impressive 30.5 percent of the shares voted. The 26 point gain in support from its first year made the resolution at Household Financial the fifth highest vote-getter for a social issues resolution in 2002.

The increase resulted in large part from three class action lawsuits filed against the company over alleged predatory lending. Among the lawsuits was one filed by then New York state controller Carl McCall, who announced a week before the annual meeting that he might sell the state retirement fund's 2.5 million shares in Household if the company didn't come to grips with its predatory lending. In 2002, Household was the country's second largest provider of subprime/nonprime home equity loans, and some consumer activists had labeled Household as “one of the most abusive” subprime lenders in the country. Also in 2002, Household eventually reached agreement with the attorneys general of 20 states to pay a record \$484 million and to adopt “best practices” to settle predatory lending complaints.

The resolution's proponents—NorthStar Asset Management, working with Responsible Wealth, and Domini Social Investments—reasoned that because executive officers had made public statements committing to business practices free of predatory lending, it was appropriate that “our corporate leaders should be evaluated based on their success in meeting these commitments.” Recommended factors to be considered included “implementation of policies to prevent predatory lending, constructive meetings with

concerned community groups and reductions in the levels of predatory lending complaints filed with government bodies.” NorthStar and Domini also warned that the subprime lending industry, and the company specifically, were coming under increasing public scrutiny for predatory lending directed at low-income, elderly and minority customers and that a growing number of states and cities were considering legislation to outlaw predatory practices by consumer finance firms.

In contrast to the Household proposal, a similar resolution from Responsible Wealth to Citigroup garnered only 7.3 percent support in 2002 and 6.8 percent in 2003. Scott Klinger, who represented Responsible Wealth, speculated that the lower vote probably reflected a widespread investor perception that Citigroup had taken responsibility for cleaning up the practices of the subprime lending operations it acquired with the purchase of Associates First Capital in 2000. Concerns about Citigroup's role in the subprime lending industry was one of three key issues that also promoted Responsible Wealth to file a related resolution in 2001 at Citigroup that garnered 5.1 percent support. The resolution broadly asked Citigroup's board to consider incorporating social responsibility performance as one of the variables in executive pay.

Also in 2002, Responsible Wealth withdrew a predatory lending resolution at **Countrywide Financial** after discussions led the proponent to conclude that Countrywide was not as bad an actor as other lenders on the issue. While still concerned about a lack of openness at the company, Responsible Wealth withdrew the resolution when Countrywide agreed to continued meetings and to express public support for the goals of the federal Homeownership Tax Credit Act. Countrywide, which has been hard hit by the U.S. mortgage crisis, is likely to see a number pay-related proposals

for the company's 2008 annual meeting. In September, the company announced it would lay off up to 20 percent of its work force, or 12,000 workers, and in October announced it would refinance approximately \$10 billion in loans and lower interest rates on an additional \$4 billion in loans for those homeowners who do not qualify for refinancing.

The American Federation of State, County and Municipal Employees and the CtW Investment Group, the investment arm of the Change to Win labor federation, both recently urged the company to improve pay practices, undertake reforms and root out possible fraud. "In the wake of the subprime market turmoil, investor questions have been raised over whether poorly designed compensation policies are at the core of a lax oversight structure that contributed to the situation in which Countrywide and its investors find themselves," AFSCME Chairman Gerald McEntree wrote to Countrywide in an October letter.

In 2004, Responsible Wealth and NorthStar turned their attention to **American International Group** and **Wells Fargo**. The proponents were concerned that AIG's American General Finance (AGF) subsidiary lagged other major industry players in developing policies to protect borrowers and shareholders from predatory lending complaints. The resolution at AIG failed to gather enough support for resubmission; the resolution to Wells Fargo received nearly 6 percent support in 2004 and 2005.

Upcoming Resolutions

In October, the CtW Investment Group filed its first shareholder proposal on subprime lending, asking **Beazer Homes** to conduct a review of potential risks and liabilities relating to its mortgage business. The resolution, which asks Beazer's board to evaluate how many of its mortgage loans could be classified as

SEC Rejects Safety Proposal; NYC Tries A New Tack

When Family Dollar holds its annual meeting next month, the agenda won't include a vote on the New York City pension funds' new proposal on product safety. The SEC staff concluded, without elaboration, that the company could omit it from its proxy statement on grounds that it dealt with mundane, "ordinary business" issues.

The funds filed the resolution last summer, intending that it would begin a campaign responding to recent reports of toxic and hazardous products imported into the United States from overseas. The resolved clause of the proposal to Family Dollar asked for "a report evaluating company policies and procedures for systematically minimizing customers' exposure to toxic substances and hazardous components in its marketed products." (See the August/September issue of the *Corporate Social Issues Reporter*.)

With that resolution declared off-limits, New York went to work on a new proposal that it hopes will pass muster at the SEC. This one has already been submitted to **Home Depot**, **JC Penney**, **Mattel**, **Target** and **Wal-Mart**, and further filings are likely.

The resolution asks for a report on product safety by December 2008. As described in the proposal to Target, "The report should summarize attempts by the company to secure its supply chain of goods marketed, which, if any product lines and categories sold in Target stores may be affected by the new product safety concern..., and the options for new initiatives or actions management is taking to respond to this public policy challenge, beyond those initiatives or actions already required by law." The resolution notes that 38 recalls of potentially hazardous Target products, ranging from toys to electrical appliances, have taken place since 2005.

The state of Connecticut Retirement Plans and Trust Funds is co-filing the proposals at Mattel and Target.

"subprime" and to detail those regions where the company did most of its subprime lending, recently survived a challenge at the SEC. CtW also is seeking information on the purchasers of Beazer's subprime loans on the secondary market, what percentage of the loans might require a buyback in case of default and how many loans the company expects to repurchase in the current and upcoming fiscal year. Atlanta-based Beazer is under investigation by federal authorities and the SEC in connection with its lending practices and financial transactions. CtW sent a

letter to Beazer and 10 other major U.S. homebuilders in September asking them to address compliance and the subprime mortgage crisis. CtW has not indicated if it plans to file similar proposals for 2008 at other homebuilders.

As noted earlier, NorthStar Asset Management told the Social Issues Service that it plans to refile a resolution on HMDA at Wells Fargo in 2008, and CBIS plans to file a payday lending resolution at Cash America.

—Susan Williams

Crackdown in Burma Spurs U.S. Activists

Recent developments in Burma—the first large-scale protests there in over a decade, followed by a harsh government crackdown—have spurred a new wave of activism in the United States. U.S. activists are pledging to engage in a campaign of pressure on corporations that do business there. Several major jewelry retailers have already pledged to stop selling gems mined in Burma but processed in other countries, and the U.S. Congress is considering tightening laws that currently allow the import of such gems.

The protests, which began in late September, were initially led by young Buddhist monks (many of whom traditionally spend a few years in a monastery before rejoining society and marrying). The Burmese military, which has ruled the nation in a series of juntas since 1962 (with the most recent coup occurring in 1988), initially allowed some demonstrations, but proceeded to crack down on the demonstrators. Hundreds of young monks have been reported missing.

Activists and Investment

Burma has been subject to U.S. government sanctions for over a decade, and those sanctions increased most recently in 2003, when a ban on imports and the providing of financial services joined a ban on U.S. companies investing in Burma. U.S. companies that entered Burma before the imposition of sanctions are, however, allowed to continue doing business there. The continued presence of U.S. companies has led to heightened interest among activists in discouraging endowment and pension fund money from being invested in Burma. The Free Burma Coalition has announced a campaign to encourage

students to advocate for campus divestment. In October, trustees at Colby College pledged to engage with the one company in the college's portfolio that has a presence in Burma.

The biggest U.S. company in Burma now is **Chevron** as a result of its 2005 acquisition of Unocal. Unocal was among the developers of the Yadana pipeline project, which transports natural gas from offshore Burma to Thailand.

The construction of the pipeline was reportedly marred by significant human rights abuses (corroborated by a number of independent human rights organizations), and in 2004 Unocal settled a lawsuit brought by villagers along the pipeline route who said that they had been displaced from their homes and farmland, required to feed soldiers who carried no food supplies with them and forced to labor as porters for the military (and, in isolated cases, forced to work on the pipeline project itself). Villagers also alleged that they and their neighbors were subject to rape and murder by some soldiers. Unocal was accused of being aware of the human rights abuses and said to have effectively "aided and abetted" the army in their commission. Unocal said that the settlement "will compensate plaintiffs and provide funds enabling plaintiffs and their representatives to develop programs to improve living conditions, health care and education and protect the rights of people from the pipeline region," providing "substantial assistance to people who may have suffered hardships."

In early December, the AFL-CIO hosted a conference call between representatives from Chevron and labor advocacy groups. The call included a presentation by Chevron officials detailing the company's community

development and aid projects in Burma, which the company's website says support "critical health, economic development, and education programs that make substantive and positive improvements to the lives of 50,000 people in the Yadana project communities." Activists have said that these humanitarian projects represent only a tiny portion of Chevron's spending in Burma.

Legislation approved by the U.S. House of Representatives in December encourages Chevron to divest of its holdings in Burma. Chevron has said that divestment "would not affect Yadana operations or the revenues produced by the project"; instead, the sale of Chevron's stake "could generate hundreds of millions of dollars in additional revenue for the Government of Myanmar and endanger important social and economic development programs."

'Blood Bling' Activism

Activists have also said that Burmese gems—particularly rubies, of which Burma supplies an estimated 90 percent of the world's supply—can be imported into the United States if they are cut in a third country. **Tiffany & Co.** announced in 2003 that it would no longer sell rubies of Burmese origin, and **Kay Jewelers** announced a similar policy in October. The U.S. Campaign for Burma is undertaking a boycott of "Burmese Blood Bling" rubies, and is encouraging activists to contact **Walmart**—the largest jewelry retailer in the United States—urging the retailer to stop selling Burmese rubies.

In December, the U.S. House of Representatives passed a bill designed to prevent the importation of Burmese stones. The bill, sponsored by Rep. Tom Lantos (D-Calif.) had the support of the Jewelers of America, a

SRI Firms File Sudan-Related Proposals for 2008

Socially responsible investment firms Trillium Asset Management and Walden Asset Management are filing shareholder proposals for 2008 at three financial firms over their portfolio investments in companies operating in Sudan, whose government has abetted a conflict in Darfur province that many observers say has reached genocidal proportions.

Although the Sudan divestment movement has gained ground on U.S. campuses and in state legislatures, it has had relatively few U.S. corporate targets. The U.S. State Department for several years has listed Sudan's government in Khartoum as a sponsor of terror, and U.S. sanctions already restrict corporate activity there. This year, though, an individual investor brought a shareholder resolution to a vote at **Berkshire Hathaway** concerning its substantial portfolio investment stake in **PetroChina**. Although PetroChina does not have direct operations in Sudan, it is traded on international exchanges and therefore viewed as the capital-raising arm for its parent company, the China National Petroleum Co. (CNPC), which does have oil operations in the country. Although the proposal received only 2.4 percent support, Berkshire later sold off a part of its stake.

Trillium and Walden are asking the boards of **Merrill Lynch**, **Morgan Stanley** and **T. Rowe Price**

to "authorize and prepare a report to shareowners which discusses how our investment policies address or could address human rights issues." The proposal adds that the report "should review the current investment policies of the company with a view toward adding appropriate policies and procedures to apply when a company in which we are invested, or its subsidiaries or affiliates, is identified as contributing to human rights violations through their businesses or operations in a country with a clear pattern of mass atrocities or genocide." The supporting statement notes the widespread and brutal human rights abuses in Sudan's Darfur region, and argues that revenues from the country's oil industry—dominated by **CNPC**, **Petronas** (Malaysia), **Oil and Natural Gas Corp.** (India) and **Sinopec** (China)—help to fuel the conflict.

In the meantime, the Sudan divestment movement may get a further boost from the U.S. government. In recent days, both houses of Congress have passed, by voice vote, a bill that would prevent companies from receiving federal contracts unless they certify that they do not work with the energy or military sector in Sudan, and would provide legal cover to states and fund managers that divest their portfolios of Sudan-related companies. The bill now proceeds to the desk of President George Bush for signature.

national association of over 11,000 retail jewelers. The association had contacted its members in October, urging them to stop selling gems that they knew or suspected to have originated in Burma. "Members should also seek, on all future orders placed, written assurances from their suppliers that they will not knowingly supply any gems mined in Burma, until the process of democratic reform has started in that country," a

JA press release reads. Boycotting Burmese gems "is the quickest way possible to make certain our members can assure themselves, and their customers, that they are doing their part to help end the human rights abuses ongoing in Burma."

JA member Kay Jewelers posted a statement on its website saying that the company has "issued instructions to our suppliers, requiring that they confirm on all future orders placed

that the gemstones provided were not knowingly mined in Myanmar/Burma," and has "implemented an independent, third-party country-of-origin quality assurance random testing program of our ruby jewelry." Tiffany & Co. also took out a full-page advertisement in the *Washington Post* reaffirming its ban on Burmese gems.

—Jan Fetter-Degges