

Ethical Investing Policy

Guidelines for Proxy Voting and Divestment

The Yale Corporation has adopted the “Suggested Guidelines for the Consideration of Factors Other than Maximum Return in the Management of the University’s Investments” contained in *The Ethical Investor* (the Guidelines). At the heart of the policy’s approach to voting and divestment procedures, as recommended by the Guidelines, is the concept of *social injury*:

Social injury is the injurious impact which the activities of a company are found to have on consumers, employees, or other persons, particularly including activities which violate, or frustrate the enforcement of, rules of domestic or international law intended to protect individuals against deprivation of health, safety, or basic freedoms; for purposes of these Guidelines, social injury shall not consist of doing business with other companies which are themselves engaged in socially injurious activities.

The university will not vote its shares on any resolution which advances a position on a social or political question unrelated to the conduct of the company’s business or the disposition of its assets.

The university will vote for a proposition which seeks to eliminate or reduce the social injury caused by a company’s activities, and will vote against a proposition which seeks to prevent such elimination or reduction, where a finding has been made that the activities which are the subject of the proposition cause social injury. This paragraph will not apply to any proposition which seeks to eliminate or reduce social injury by means which are found to be ineffective or unreasonable.

In 1989, the CCIR advised the ACIR that shareholder action may be taken only in response to issues that involve “substantial social injury” and that are “susceptible to competent evaluation by the University under criteria reflecting broad moral consensus within the academic community.” Votes in favor of proxy resolutions “should be preceded by a determination that the issue is one on which it is appropriate for the University to take a formal position as a shareholder.”

In 2013, the CCIR reaffirmed this policy and noted, among other things, that proxy initiatives should not be supported where the “resolution would impose a serious competitive disadvantage on the company in relation to other companies in the same industry which are engaging in similar social injury,” or “the activity in question neither violates nor frustrates the intent of governing laws and regulations that represent a balance struck in the context of competing political influences in a democratic society.” These general principles may be superseded by specific guidance on a particular issue, as occurred in the case of tobacco companies and private prisons.

With respect to divestment, the Guidelines go on to provide that:

Notwithstanding a finding of social injury or grave social injury – a) The university will not exercise its shareholder rights under the foregoing paragraphs, but will instead sell the securities in question, if a finding is made that ... (i) it is unlikely that, within a reasonable period of time, the exercise of shareholder rights by the university (together with any action taken by others) will succeed in modifying the company's activities sufficiently to eliminate at least that aspect of social injury which is grave in character ...

Thus, the Guidelines provide circumstances in which shareholder engagement is set aside in favor of divestment, although only as a last resort. As explained in *The Ethical Investor*: “The recommended approach only says that if the harm caused is grave and if there is *nothing* the university as a shareholder – or anyone else – can do about it in any reasonably near future, then the university should disaffiliate.”¹

Not all findings of social injury or grave social injury give rise to immediate shareholder engagement and/or divestment. The Guidelines take into account the context of the industry, the role of government action, and the university's academic mission:

Notwithstanding a finding of social injury or grave social injury ...

b) If a finding is made that correction of such social injury will impose a serious competitive disadvantage on the company involved (in relation to other companies in the same industry which cause similar social injury), the university will defer taking shareholder action to compel the company to correct the social injury on a unilateral basis until the university has determined that it will not be possible for it or others to induce the management of the company to bring about industrywide corrective action within the constraints, if any, imposed by the antitrust laws.

c) If a finding is made that correction of such social injury cannot reasonably and appropriately be undertaken by company or industrywide action, as compared to government action, the university will not exercise its shareholder rights under the foregoing paragraphs except to communicate with the management of the company to urge it to seek necessary action from the appropriate government agencies.

d) If a finding is made that, because of extraordinary circumstances, university action otherwise indicated under these Guidelines is likely to impair the capacity of the university to carry out its educational mission (for example, by causing

¹ John Simon, Charles Powers, Jon Gunnemann, *The Ethical Investor* (New Haven, CT: Yale University Press, 1972), p.93 (italics in original). The authors provide a colorful illustration: “Divestment, after all other corrective steps have failed, does remind us of war movies in which the beleaguered infantryman, having exhausted his ammunition, finally hurls his rifle at the advancing hordes. It is, from his point of view, a terminal act which may help slightly; divestment seems to have similar characteristics.” *Ibid.*

adverse action on the part of governmental or other external agencies or groups, or by causing deep divisions within the university community), then the university will not take such action.

Thus, the Guidelines take into account the broader societal and academic context in recommending the university's course of action. Indeed, fulfilment of Yale's academic mission remains paramount.

Ethical Oversight of Private Investments

In 2002, the ACIR and the Yale Investments Office took up the issue of ethical oversight of private investments. Applying existing policies to private holdings posed a challenge, because the shareholder resolution activity of the ACIR had no analog in private investment holdings. In the realm of private assets, where corporate control rests with a highly concentrated investment group, shareholder resolutions do not exist.

To address this issue, the Yale Investments Office, in consultation with the ACIR, developed a framework to address ethical issues relating to private investments. In particular, ethical investing policies recommended by the ACIR and adopted by the Yale Corporation are to be applied to both marketable securities and private investments. The University's response to ethical issues in private investments would differ in some respects from the response for publicly-traded securities, due to the nature of the investment structures and potential remedies. Oversight of policy implementation would remain with the CCIR for both marketable and private positions.

The Yale Corporation has articulated the following policy with regard to private investments:

When the Yale Corporation, upon recommendation of the Corporation Committee on Investor Responsibility after its consultation with the Advisory Committee on Investor Responsibility, adopts policies regarding ethical investing, those policies will apply to both public and private investments. In the event that the Corporation concludes that Yale's private investment managers have engaged in socially injurious activity, the University will fashion an appropriate remedy including use of voice, disassociation from the offending investment manager, and, as a last resort, disposition of the tainted partnership interests.