



**William J. Mostyn, III**  
Senior Vice President and  
Corporate Secretary  
Tel: (617) 788-5969  
Fax: (617) 788-5959  
wmostyn@tiaa-cref.org

March 22, 2011

**VIA HAND DELIVERY**

William J. Kotapish, Esq.  
Assistant Director  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549



Re: The College Retirement Equities Fund – 2011 Annual Meeting  
Omission of Shareholder Proposal of Aaron Levitt *et al.*

Dear Mr. Kotapish:

The College Retirement Equities Fund (“CREF”) hereby gives notice to the staff (“Staff”) of the Securities and Exchange Commission (“Commission”) of CREF’s intention to omit from its proxy statement and form of proxy (“2011 Proxy Materials”) a shareholder proposal and supporting statement that were submitted to CREF by Aaron Levitt (the “Proponent”), dated February 11, 2011 (the “Proposal”),<sup>1</sup> for CREF’s 2011 annual meeting.<sup>2</sup>

The Proposal requests certain investment-related actions in regard to portfolio companies in which CREF invests that, according to the Proposal, “profit from their complicity in human rights abuses and violations of law committed to maintain and expand Israel’s occupation of the West Bank.” Specifically, the Proposal requests shareholder action on the following resolution:

THEREFORE BE IT RESOLVED that the participants request CREF to engage with corporations in its portfolio, such as Caterpillar, Veolia, and Elbit, that operate on the West Bank and East Jerusalem with the goal of ending all practices by which they profit from the Israeli occupation. If, by the annual meeting of 2012, there is no commitment

<sup>1</sup> Several CREF participants submitted identical proposals for inclusion in the 2011 Proxy Materials. In related correspondence, the participants indicate that Mr. Aaron Levitt will act as the lead filer. CREF intends to omit all of these proposals and the term “Proposal,” as used in this letter, refers to these proposals as well. If CREF were to include Mr. Levitt’s proposal, CREF intends to exclude all of the other proposals on the grounds that they are duplicative.” See Rule 14a-8(i)(11).

<sup>2</sup> CREF expects to file definitive Proxy Materials on or about June 10, 2011.

to cooperate, CREF should consider divesting as soon as market conditions permit.

The Proposal would interfere with CREF's investment decision making process, by allowing shareholders to direct or influence CREF's selection of portfolio securities and its ongoing efforts to promote long-term investment value by engaging portfolio companies in dialogue on environmental, social, and governance issues. The Proposal advocates one side in a highly controversial and complex geopolitical dispute, and makes assertions of immoral and illegal conduct that are subject to widespread disagreement. Requiring CREF to include the Proposal in its proxy materials, and to respond to these statements, would make the CREF proxy materials a forum for debate and referendum on this political issue. This would be contrary to the purpose of the Commission's proxy rules and its longstanding interpretations of those rules.

As more fully discussed below, we believe that Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Exchange Act"), permits CREF to omit the Proposal from the 2011 Proxy Materials based on three express exclusions: (1) the Proposal deals with a matter relating to CREF's ordinary business operations, and thus is excludable pursuant to subparagraph (i)(7) of Rule 14a-8; (2) the essential objective of the Proposal has already been substantially implemented, and thus the Proposal is excludable pursuant to subparagraph (i)(10) of Rule 14a-8; and (3) the Proposal is misleading in contravention of Rule 14a-9 under the Exchange Act, and thus is excludable pursuant to subparagraph (i)(3) of Rule 14a-8.

For these reasons, we request the Staff to confirm that it will not recommend that enforcement action be taken if CREF omits the Proposal from its 2011 Proxy Materials.

Please be advised that, pursuant to paragraph (j) of Rule 14a-8, CREF has simultaneously notified the Proponent of its intent to omit the Proposal from its 2011 Proxy Materials by a copy of this letter.

CREF is a non-profit corporation established under the laws of New York State and registered with the Commission as a diversified management investment company under the Investment Company Act of 1940, as amended.<sup>3</sup> CREF and Teachers Insurance and Annuity Association of America ("TIAA") form the principal retirement system for the nation's education and research communities. The financial services organization of which both companies are a part is sometimes referred to as "TIAA-CREF."<sup>4</sup>

<sup>3</sup> CREF has eight different investment accounts: the Stock Account, Social Choice Account, Growth Account, Global Equities Account, Equity Index Account, Money Market Account, Bond Market Account, and Inflation-Linked Bond Account.

<sup>4</sup> TIAA-CREF Investment Management, LLC, a subsidiary of TIAA, serves as CREF's investment manager.

## II. ANALYSIS

- A. The Proposal may be excluded under Rule 14a-8(i)(7) because it deals with matters relating to CREF's ordinary business operations.

A proposal may be omitted under Rule 14a-8(i)(7) if it "deals with a matter relating to the company's ordinary business operations." This paragraph of the rule is captioned "management functions." The Commission has explained that the policy underlying the ordinary business exclusion under Rule 14a-8(i)(7) rests on two central considerations. The first consideration is that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which stockholders, as a group, would not be in a position to make an informed judgment."<sup>5</sup>

1. The Proposal impermissibly seeks to subject fundamental management functions – the selection and ongoing assessment of portfolio investments – to an inappropriate level of shareholder oversight and micro-management.

As the Staff has recognized in numerous Rule 14a-8 no action letter responses, "the ordinary business operations of an investment company include buying and selling portfolio securities."<sup>6</sup> Omitting the Proposal thus fits squarely within the purpose of the exclusion for "management functions."

The proposal seeks to affect how and when CREF purchases and sells portfolio securities. These matters are fundamental to the day-to-day management of CREF. The Proposal thus amounts to the micro-management of essential business functions by shareholders, which is exactly what the ordinary business or "management functions" exclusion under Rule 14a-8 is designed to prevent.<sup>7</sup> The argument for excluding the Proposal is particularly strong in this case, since the Proposal names three specific issuers – Caterpillar, Veolia and Elbit. The Staff has previously granted similar no-action assurance to CREF in connection with a proposal relating to investment in a specific portfolio company under the ordinary business

<sup>5</sup> Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, Fed. Sec. L. Rep. (CCH) ¶ 86,018 (May 21, 1998).

<sup>6</sup> College Retirement Equities Fund, SEC No-Action Letter (pub. avail. May 3, 2004) ("2004 CREF Letter"); *see also*, Morgan Stanley Africa Investment Fund, Inc., SEC No-Action Letter (pub. avail. Apr. 26, 1996) ("Morgan Stanley Letter") (noting that an investment company's ordinary business operations include "the purchase and sale of securities and the management of the [fund's] portfolio securities"); State Street Corp., SEC No-Action Letter (pub. avail. Feb. 24, 2009).

<sup>7</sup> The Staff has concurred on numerous occasions that exclusion of a proposal may be proper where the proposal attempts to subject technical aspects of a company's ordinary business operations to shareholder oversight. *See, e.g.*, Merck & Co., Inc., SEC No-Action Letter (pub. avail. Jan 23, 1997).

operations exclusion.<sup>8</sup> The Staff has also allowed for exclusion when a group of specific companies is at issue.<sup>9</sup>

The Proposal requests that CREF engage with specific portfolio companies on a specific issue and that CREF consider divesting from companies that do not “cooperate” within a time frame set forth in the Proposal. Thus, not only does it seek to interfere with CREF’s buying and selling of portfolio securities, the Proposal seeks to micro-manage TIAA-CREF’s ongoing engagement with portfolio companies, which is an integral part of CREF’s investment activities. TIAA-CREF communicates directly (using “quiet diplomacy”) with hundreds of companies each year on matters of corporate governance and social responsibility, and has established policies and processes that guide the selection of both portfolio companies and engagement objectives.<sup>10</sup> The Proposal seeks to micro-manage this process by defining the subject matter and goals of company discussions, identifying the companies with which to engage, and setting a deadline beyond which CREF should consider divestment. As a group, shareholders lack sufficient information about the companies or issues to make these decisions on CREF’s behalf, and allowing this resolution to proceed could subject these specific business judgments to decision-making by referendum in the future. Further, this resolution seeks to force TIAA-CREF to publicly confront certain portfolio companies, which contradicts TIAA-CREF’s stated and well-tested policy of quiet diplomacy.<sup>11</sup>

Importantly, our choice of quiet diplomacy policy is related to our core investment function. Forcing us to change or disrupt our quiet diplomacy policy could, among other adverse consequences, make it more difficult for our portfolio managers to have productive ongoing communications with portfolio companies on financial and other fundamental investment matters and could jeopardize beneficial relationships with these companies.

Because the Proposal deals with matters that are fundamental to CREF’s ordinary business operations, the Proposal may be excluded from CREF’s proxy materials under Rule 14a-8(i)(7).

<sup>8</sup> College Retirement Equities Fund, SEC No-Action Letter (pub. avail. Sept. 7, 2000) (finding that a proposal requesting divestment from a portfolio company that allegedly created environmental hazards was excludable because it related to CREF’s ordinary business operations).

<sup>9</sup> College Retirement Equities Fund, SEC No-Action Letter (pub. avail. March 31, 2005) (“2005 CREF Letter”) (finding that exclusion was allowable where the proposal related to divestment of shares in a group of issuers).

<sup>10</sup> See TIAA-CREF Policy Statement on Corporate Governance 4 (6th ed.) [*hereinafter* Policy Statement], stating, “Our preference is to engage privately with portfolio companies when we perceive shortcomings in their governance or environmental and social policies and practices that we believe impacts their performance. This strategy of ‘quiet diplomacy’ reflects our belief and past experience that informed dialogue with board members and senior executives, rather than public confrontation, will most likely lead to a mutually productive outcome.”

<sup>11</sup> As discussed below, because TIAA-CREF already has a defined policy and strategy for the engagement of portfolio companies with regard to corporate governance and social responsibility issues, the Proposal may also be omitted under Rule 14a-8(i)(10), the “substantial implementation” exclusion.

2. The proposal does not raise significant “social policy” issues that would justify an exception from the ordinary business exclusion.

We recognize the Commission’s view that a shareholder proposal that relates to certain types of management functions may not be excludable under Rule 14a-8(i)(7) if the proposal “would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”<sup>12</sup> That is not the case here.

The Proposal does not “transcend day-to-day business matters.” It goes to the very core of the management function for CREF, which is investing participant assets in accordance with the investment objectives of the CREF accounts.<sup>13</sup> Moreover, the Proposal does not raise “policy issues” that “are appropriate for a shareholder vote.” On the contrary, the Proposal takes sides – and asks CREF and its other participants to take sides – in a highly controversial geopolitical dispute of enormous complexity. This dispute is not the type of policy issue that should prevent exclusion.<sup>14</sup>

In applying this aspect of the ordinary business exclusion, the Staff often looks to the nature and level of public concern and debate on the issue.<sup>15</sup> In this connection, it is instructive to compare the Proposal with the human rights situation in Sudan, where public attention and debate led to the passing of legislation by the United States government,<sup>16</sup> condemnation by the United Nations,<sup>17</sup> and widespread divestiture by a broad spectrum of university endowments, public pension funds and other entities.<sup>18</sup> By contrast, the United

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<sup>12</sup> See Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018, Fed. Sec. L. Rep. (CCH) ¶ 86,018 (May 21, 1998).

<sup>13</sup> Not every “significant social policy issue” takes management functions out of the ordinary business exclusion. See, e.g., General Electric Co., SEC No-Action Letter (pub. avail. Feb 3, 2005) (finding that a proposal relating to the relocation of U.S. jobs to foreign countries was excludable because it related to “management of the workforce,” an ordinary business matter, even though it also addressed a significant social policy issue).

<sup>14</sup> The Staff has in the past permitted the exclusion of shareholder proposals dealing with the Israeli-Palestinian conflict under Rule 14a-8(i)(5), based in part on the view that “the policy issue raised by the proposal, Israel’s treatment of Palestinians, is not significant, and in fact is not related to the Company’s business.” AT&T Inc., SEC No-Action Letter (pub. avail. Jan. 30, 1992); see also, Hewlett-Packard Co. (Reik), SEC No-Action Letter (pub. avail. Jan 7, 2003); Motorola Inc., SEC No-Action Letter (pub. avail. Feb. 21, 1995). In an earlier letter to AT&T, the Staff had declined relief under Rule 14a-8(i)(7) based on the policy issue. See AT&T Inc., SEC No-Action Letter (pub. avail. January 16, 1991). However, the Staff’s 1992 response to AT&T, while addressing a different exclusion, effectively reverses this position, and in any case the 1991 AT&T letter addresses different facts and circumstances.

<sup>15</sup> See AT&T Inc., SEC No-Action Letter (pub. avail. Feb. 2, 2001).

<sup>16</sup> See Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, 121 Stat. 2516 (2007).

<sup>17</sup> See United Nations Human Rights Council Report (March 12, 2007) available at [http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/12\\_03\\_07\\_un\\_sudan.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/12_03_07_un_sudan.pdf).

<sup>18</sup> See also, Int’l Business Machines Corp., SEC No-Action Letter (pub. avail. Mar. 2, 2000) (permitting the exclusion of a proposal that implicates the political process, rather than social issues).

States has vetoed proposed resolutions in the United Nations Security Council that would have supported condemnation of the activities at the heart of the Proposal.<sup>19</sup>

Accordingly, we urge the Staff not to conclude that the Proposal raises an issue of social policy so significant that a shareholder vote is appropriate.

- B. The Proposal may be excluded under Rule 14a-8(i)(10) because the essential objectives of the Proposal have already been substantially implemented.

Rule 14a-8(i)(10) permits omission of a shareholder proposal if “the company has already substantially implemented the proposal.” Because TIAA-CREF has implemented a policy for identifying portfolio companies to engage on a broad range of matters, including human rights matters, and divesting from companies when judged appropriate, CREF has substantially implemented the essential objectives of the Proposal.<sup>20</sup>

The Staff has stated that “a determination that [a] [c]ompany has substantially implemented the proposal depends upon whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal.”<sup>21</sup> Significantly, when applying the substantial implementation standard, a proposal need not be “fully effected.”<sup>22</sup> Rather, the Staff will grant no-action assurance when a company has implemented the *essential objective* of a proposal, even in cases where the company’s actions do not fully comply with the specific dictates of the proposal.<sup>23</sup>

In this case, the essential objectives of the Proposal are two-fold. First, the Proposal asks CREF to engage specific issuers in its portfolio and encourage them to cease practices by which they allegedly profit from their complicity in human rights abuses.<sup>24</sup> Second, the

<sup>19</sup> See *U.S. vetoes U.N. draft condemning Israeli settlements* REUTERS, February 18, 2011, available at <http://www.reuters.com/article/2011/02/18/us-palestinians-israel-un-vote-idUSTRE71H6W720110218>.

<sup>20</sup> By way of background TIAA-CREF, organization-wide, has three strategies regarding socially responsible investing, depending on the investing portfolio involved: (1) the CREF Social Choice Account implements social screening that gives special consideration to companies’ environmental, social and governance (“ESG”) records; (2) all public equity portfolios seek to promote long-term investment value by exercising shareholder rights to influence the ESG policies of the companies in which they invest (shareholder advocacy); and (3) the TIAA General Account and Social Choice Account use focused community and impact investing programs, including microfinance and community bank deposits with the goal of delivering competitive returns and positive social impact. See 2010 Socially Responsible Investing Report 3 [*hereinafter* Investing Report].

<sup>21</sup> See *Texaco Inc.*, SEC No-Action Letter (pub. avail. March 28, 1991).

<sup>22</sup> SEC Release No. 34-20091, 48 FR 35082 (August 16, 1983).

<sup>23</sup> See, e.g., *Freeport-McMoran Copper & Gold, Inc.*, SEC No-Action Letter (pub. avail. Mar. 5, 2003) (company already had implemented a human rights policy, even though the specific elements of the policy did not meet the shareholder proponent’s objectives); see also, *AMR Corp.*, SEC No-Action Letter (pub. avail. April 17, 2000); see also, *Kmart Corp.*, SEC No-Action Letter (pub. avail. Mar. 12, 1999).

<sup>24</sup> As stated in the supporting statement of the Proposal, CREF invests in companies “that profit from their complicity in human rights abuses and violations of law...”

Proposal asks CREF to consider divestment from those companies that continue to profit from these asserted human rights abuses after engagement, if the issuers do not cooperate within a stated time frame.

These concerns relate to policies and practices that TIAA-CREF has already put in place to engage with portfolio companies, including on human rights matters. The policies and practices are included in the TIAA-CREF Policy Statement on Corporate Governance (the “Policy Statement”), and are addressed in the TIAA-CREF 2010 Socially Responsible Investing Report (the “Investing Report”).<sup>25</sup> In providing guidance to portfolio companies, as well as participants, about corporate governance and social responsibility practices that TIAA-CREF expects of portfolio companies, the Policy Statement provides:

“companies *should strive to respect [human] rights* by developing policies and practices to avoid infringing on the rights of workers, communities and other stakeholders throughout their global operations. . . . Companies should pay heightened attention to human rights in *regions characterized by conflict* or weak governance. . . .”<sup>26</sup>

In this connection, TIAA-CREF’s Corporate Governance group has established procedures for monitoring and engaging portfolio companies. In selecting issues for engagement, the Corporate Governance group utilizes a defined process to systematically identify issues for engagement based upon, among other factors, their relevance to the market, potential impact on performance, governance practices, and public interest.<sup>27</sup> The engagement strategy reflects TIAA-CREF’s dedication to good governance and social responsibility, and certainly encompasses the Proposal’s request that CREF “engage with corporations in its portfolio.” In fact, in 2010, TIAA-CREF specifically engaged Caterpillar, one of the three companies identified in the Proposal, by voting in favor of a shareholder proposal requesting Caterpillar to institute a human rights code of conduct.<sup>28</sup>

Moreover, the Policy Statement addresses divestment, noting that:

“[TIAA-CREF] may, as a last resort, *consider divesting from companies* we judge to be complicit in genocide and crimes against humanity, the most serious human

<sup>25</sup> Policy Statement at 25; *see also*, Investing Report at 8.

<sup>26</sup> Policy Statement at 26 (emphasis added).

<sup>27</sup> *Id.* at 5.

<sup>28</sup> As part of the engagement process, TIAA-CREF is a member of an expert group organized by the United Nations Global Compact and the United Nations Principles for Responsible Investment. The group published the “Guidance on Responsible Business in Conflict-Affected and High Risk Areas,” *available at* [http://www.unglobalcompact.org/docs/issues\\_doc/Peace\\_and\\_Business/Guidance\\_RB.pdf](http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf). This guidance assists companies in implementing responsible business practices in conflict-affected areas, which, although not specifically referenced, would include the West Bank and Gaza. Veolia, one of the companies identified in the Proposal, is also a member of the expert group.

rights violations, *after sustained efforts at dialogue have failed* and divestment can be undertaken in a manner consistent with our fiduciary duties.<sup>29</sup>

This policy is not a mere formality. In 2009, after an extended campaign to persuade certain companies to change their business strategies, CREF divested from several companies with ties to the government of Sudan in order to ease suffering and end genocide in Darfur.<sup>30</sup>

In this case, the Policy Statement and TIAA-CREF's practices thereunder address the Proposal's essential objectives of engaging portfolio companies on human rights matters, and, considering, as a last resort in cases of the most serious human rights violations, divesting from companies that do not respond favorably. Accordingly, TIAA-CREF has already developed and implemented a comprehensive policy that "compares favorably with the guidelines of the [P]roposal" and that implements the essential objective of the Proposal. Therefore, the Proposal may be omitted from CREF's 2011 Proxy Materials pursuant to Rule 14a-8(i)(10).

C. The Proposal may be excluded under Rule 14a-8(i)(3).

An issuer may omit a shareholder proposal or supporting statement from its proxy materials under Rule 14a-8(i)(3) when the proposal or supporting statement is "contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has recognized that a proposal may be excluded under Rule 14a-8(i)(3) when it makes charges concerning improper, illegal, or immoral conduct or association without a factual basis.<sup>31</sup>

The Proposal includes factual assertions that are, at best, highly controversial and subject to widely differing views as to their accuracy and implications and, at worst, on their face untrue and contrary to positions taken by the United States government.<sup>32</sup> As discussed above, the Proposal makes these statements in connection with asking shareholders to take sides on a complex, controversial geopolitical dispute. CREF could not include the Proposal and these asserted facts without a response. However, CREF does not believe it would be possible to provide, in the 2011 Proxy Materials, a fair and balanced presentation on these facts and issues that would provide a basis for shareholders to reach an informed

<sup>29</sup> Policy Statement at 27 (emphasis added).

<sup>30</sup> TIAA-CREF Statement on Former Holdings in Companies with Ties to Sudan (Jan. 4, 2010), available at [http://www.tiaa-cref.org/public/about/press/about\\_us/releases/pressrelease313.html](http://www.tiaa-cref.org/public/about/press/about_us/releases/pressrelease313.html).

<sup>31</sup> See Staff Legal Bulletin 14B (Sept. 14, 2004).

<sup>32</sup> For example, the Proposal asserts that maintaining and expanding Israel's "occupation of the West Bank" involves "violations of law," including "unlawful land expropriation." Compare action by the United States on Friday February 18, 2011, vetoing a United Nations Security Council resolution that would have declared Israeli settlements in the West Bank illegal. See *U.S. vetoes U.N. draft condemning Israeli settlements*, *supra* note 19.

view on this controversy and the merits of the Proposal.<sup>33</sup> Even if it were possible to provide a balanced discussion of the facts asserted, CREF does not believe that the Commission's proxy rules are intended to subject issuers to the severe burdens and expense of attempting to make their proxy materials a full and fair forum for debate on Middle East politics.

In addition, the Proposal materially mischaracterizes CREF's beliefs and policies relating to activities of its portfolio companies in a manner that is likely to be confusing and misleading to CREF shareholders.

The Proposal states that:

"TIAA-CREF believes that avoiding complicity in human rights abuses and violations of law committed by others is both ethical and financially sound avoidance of unstable, insecure investments."

However, although the Proponent cites the Investing Report for this assertion, this language is not in the Investing Report. Furthermore, in the context of the Proposal, the statement seems intended to mean that TIAA-CREF believes that ownership of a company is tantamount to "complicity" in the activities of that company. As a fiduciary charged with investing in the best interests of all its shareholders, CREF does not and cannot take that view. While many companies in which CREF invests may report violations of law and/or engage in other activities with which management (or individuals within management) would not agree, this does not mean that ownership of the portfolio companies represents "complicity." If that were the case, there would be few investment opportunities for CREF to select without being accused of violating its own policy and being complicit in those violations and activities. This approach does not represent CREF's views of investing, and it would be misleading for its 2011 Proxy Materials to include statements to that effect.

## II. CONCLUSION

In view of the fact that (1) the Proposal deals with matters relating to CREF's ordinary business operations, (2) the Proposal is already substantially implemented, and (3) it contains false and misleading statements, it is our opinion that CREF, in accordance with Rules 14a-8(i)(7), 14a-8(i)(10), and 14a-8(i)(3) is permitted to exclude the Proposal from its 2011 Proxy Materials. Based on the foregoing, CREF respectfully requests confirmation from the Staff that it will not recommend enforcement action to the Commission if CREF excludes the Proposal from its 2011 Proxy Materials.

<sup>33</sup> Consider, in connection with the difficulties such a presentation would impose on CREF, the so-called Negroponte Doctrine, set forth by John Negroponte, former U.S. Ambassador to the United Nations. In 2002, the Ambassador stated that the United States will oppose Security Council resolutions concerning the Israeli-Palestinian conflict that condemn Israel without also condemning terrorist groups. See United States Mission to the United Nations, Negroponte Doctrine on Security Council Resolution on the Middle East (Oct. 6, 2003).

If the Staff disagrees with our conclusion that the Proposal may be excluded from CREF's 2011 Proxy Materials, we would appreciate an opportunity to discuss the matter with the Staff prior to issuance of its formal response. As required by Rule 14a-8(j), six copies of this letter and its attachments are enclosed and a copy is being forwarded concurrently to the Proponent.

Yours truly,

A handwritten signature in black ink that reads "William J. Mostyn, III". The signature is written in a cursive style with a small circular mark at the end.

William J. Mostyn, III  
Senior Vice President and Corporate Secretary  
TIAA Overseers, TIAA and CREF

Cc: Jeffrey S. Puretz, Esq. Dechert LLP  
Ruth S. Epstein, Esq. Dechert LLP

February 11, 2011

William J. Mostyn III  
Senior Vice President and Corporate Secretary  
TIAA Overseers, TIAA and CREF

One Beacon Street  
Boston, MA 02108  
p 617-788-5969  
f 617-788-5959

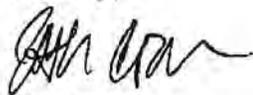
I hereby file the following proposal which requests that CREF engage with corporations in its portfolio, such as Caterpillar, Veolia, and Elbit, that operate on the West Bank and East Jerusalem with the goal of ending all practices by which they profit from the Israeli occupation, and if, by the annual meeting of 2012, there is no commitment to cooperate, CREF consider divesting as soon as market conditions permit.

This proposal is filed for inclusion in the proxy statement in accordance with Rule 14-a8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

A number of CREF participants are filing this proposal. Aaron Levitt is the lead filer; his contact information is [aaronjlevitt@gmail.com](mailto:aaronjlevitt@gmail.com), 917-658-8157.

I have over \$2,000 worth of investments in CREF, which I have held continuously for more than one year prior to the proposal filing date. I intend to continue to hold the required number of shares through the date of the company's annual meeting in 2011 and will be present in person or by proxy at that meeting.

Sincerely,



Josh Connor

**PROPOSAL:**

WHEREAS, we and many other TIAA-CREF participants place respect for human rights and the rule of law at the top of our list of important social concerns;[1] and

WHEREAS, TIAA-CREF believes that avoiding complicity in human rights abuses and violations of law committed by others is both ethical and financially sound avoidance of unstable, insecure investments;[2] and

WHEREAS, CREF nevertheless invests in companies, such as Caterpillar, Veolia, and Elbit, that profit from their complicity in human rights abuses and violations of law committed to maintain and expand Israel's occupation of the West Bank, including East Jerusalem;[3] and

WHEREAS, CATERPILLAR profits from the destruction of Palestinian homes, farms, and orchards by supplying the bulldozers that are used for such demolition work; and

WHEREAS, the number of Palestinian homes demolished on occupied territory was in 2010 triple the number of such demolitions in 2009, despite condemnation by numerous human rights organizations;[4] and

WHEREAS ELBIT profits from regular attacks on the civilian Palestinian population, by providing military equipment, such as unmanned drones, despite condemnation of Israel's use of unmanned drones by Amnesty International and Human Rights Watch;[5] and

WHEREAS ELBIT also profits by providing electronic surveillance systems that are built into the Separation Wall, despite the finding by the International Court of Justice in 2004 that Israel's construction of more than 80% of the Separation Wall on Palestinian land, instead of Israeli land, was an unlawful land expropriation under international law; [6] and.

WHEREAS VEOLIA profits from the building and growth of Israeli settlements in the West Bank, by operating a landfill that serves the settlements and contracting to operate an illegal light rail system connecting settlements with West Jerusalem, despite the call by Human Rights Watch for all businesses profiting from settlements to mitigate any corporate involvement in abuses of human rights and international law caused by these settlements and, when necessary, end these business operations altogether.[7]

THEREFORE BE IT RESOLVED that the participants request CREF to engage with corporations in its portfolio, such as Caterpillar, Veolia, and Elbit, that operate on the West Bank and East Jerusalem with the goal of ending all practices by which they profit from the Israeli occupation. If, by the annual meeting of 2012, there is no commitment to cooperate, CREF should consider divesting as soon as market conditions permit.

- [1] TIAA-CREF 2010 SOCIALLY RESPONSIBLE INVESTING REPORT, page 8.
- [2] TIAA-CREF 2010 SOCIALLY RESPONSIBLE INVESTING REPORT, page 8.
- [3] See <http://jewishvoiceforpeace.org/tiaa-cref>
- [4] 'Demolition of Palestinian homes in West Bank's Area C tripled in 2010'. Haaretz, January 26, 2011, <http://www.haaretz.com/print-edition/news/demolition-of-palestinian-homes-in-west-bank-s-area-c-tripled-in-2010-1.339216>
- [5] Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles. Human Rights Watch, Jun 30, 2009. Amnesty urges suspension of UK arms sales to Israel as evidence revealed that Israel military drones may use British-built engines. Amnesty International, Jan 9, 2009
- [6] International Court of Justice. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&case=131&k=5a>
- [7] Human Rights Watch, Separate and Unequal, Dec 2010, <http://www.hrw.org/en/node/95059/section/3>