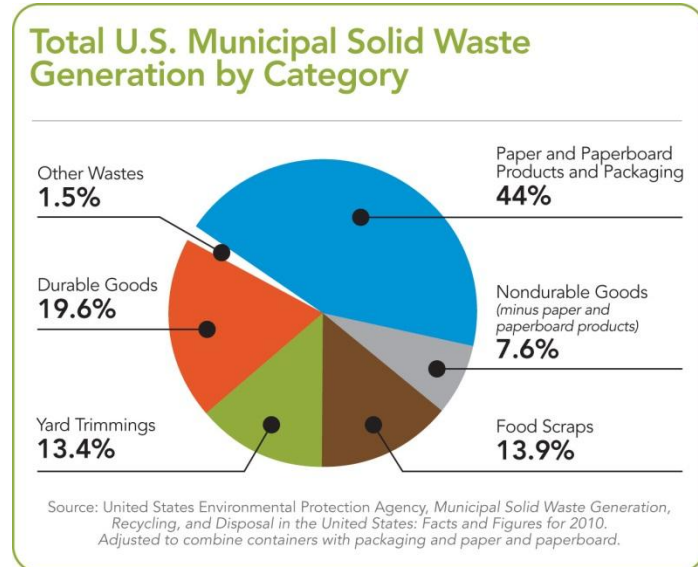




The proposal asks Whole Foods Market to issue a report assessing the feasibility of adopting a policy of extended producer responsibility (EPR) for post-consumer product packaging as a means of increasing low U.S. packaging recycling rates, and to achieve other environmental benefits. Shareholders are asking the company to articulate a position on a material public policy issue. Recyclable packaging waste comprises nearly one-half of all solid waste in the U.S. (see chart below). Less than half of these materials, with an estimated market value exceeding \$11 billion, are recycled. EPR programs have demonstrated the ability to increase recycling rates and divert billions of dollars of valuable materials away from landfills and into recycling markets.<sup>1</sup>

### Why This Proposal is Different

Companies can substantially control the design, production and marketing of products and packaging. They can control how much packaging is created and whether the packaging is recyclable or non-recyclable. Although companies do not directly control their packaging waste after sale, they *can* take **financial responsibility for recycling of that post-consumer packaging**. This proposal is different from other proposals



where a company can substantially fulfill the request on its own because implementing EPR requires companies to band together to finance, plan or operate recycling programs for packaging waste. Thus, the proposal Supporting Statement asks the company to report on the feasibility of (a) endorsing the principle of producer responsibility for post-consumer package recycling, which it can do on its own, but (b) participate in development of producer financed EPR systems, which needs to be done in concert with peers and stakeholders.

EPR “extends” the responsibility of users of packaging materials – such as Whole Foods Market and its food manufacturing and grocery peers – through the end stage of the packaging’s

<sup>1</sup> Conrad MacKerron, *Unfinished Business: The Case for Extended Producer Responsibility for Post-Consumer Packaging*, (As You Sow, 2012), 25, <http://www.asyousow.org/sustainability/eprreport.shtml>.



lifecycle (preferably a recycling phase). For a company to address EPR, it means: affirming partial or full financial responsibility for recycling of packaging materials, and working with other producers to finance and optimize the current curbside recycling systems in U.S. communities. Under a producer responsibility system, brand owners work together to enhance market-driven recycling solutions.

**How a Producer Responsibility System Works**

One way that such a program could work, which is currently being discussed by several leading corporate proponents of EPR programs, is that new legislation would be enacted under which a state government sets recycling targets and creates a level playing field for all packaging producers, allowing regulated businesses flexibility to devise the most efficient and cost-effective means of meeting the targets. Producers typically develop a non-profit producer responsibility organization (PRO) to determine how to set fees for each covered packaging material according to market share, recyclability of materials used, and other factors. The PRO then contracts with waste haulers, recycling facilities, and municipalities to cover their cost for collection at negotiated rates. The producers operating the PRO are incentivized to identify opportunities for efficiency to reduce system costs.

**A Major Public Policy Issue**

Producer responsibility systems for packaging are already operating in the United Kingdom and Ontario, Canada and are about to start operation in British Columbia, Canada – all locations where Whole Foods operates stores. In the U.S., and EPR for packaging legislation is pending in Rhode Island and similar legislation is expected in up to six states.<sup>2</sup> The company has given no indication of having formulated a reasoned position on a legislative program that could have significant impact on its operations.

**Lost Revenue and Resources**

A recent assessment by As You Sow concluded that wasted packaging materials represented a loss of \$11.4 billion in potential market revenue in 2010<sup>3</sup>. The size of these potential lost assets should be of material interest to shareholders and management (see chart).

**The Value of Landfilled Packaging**

Paper	\$1,294,625,417
Glass	\$97,325,060
Steel	\$285,000,000
Aluminum	\$1,446,228,571
PET	\$2,917,345,309
HDPE	\$2,854,896,000
PVC	\$136,000,000
LDPE/LLDPE	\$726,000,000
PP	\$1,273,600,000
PS	\$371,000,000
<b>Total:</b>	<b>\$11,402,020,357</b>

<sup>2</sup> Rhode Island legislation is at <http://webservice.rilin.state.ri.us/BillText/BillText13/HouseText13/H5264.pdf>.

<sup>3</sup> *Unfinished Business: The Case for Extended Producer Responsibility for Post-Consumer Packaging*, 1, <http://www.asyousow.org/sustainability/eprreport.shtml>.



## **The Public Supports Producer Responsibility**

This waste of packaging materials is also of great concern to the public. The cutting of forests, mining of minerals, drilling for oil, pollution of air and water, and a host of other harms occur with the development of virgin resources in addition to the harms caused by landfilling or incinerating packaging waste. EPR provides a system for companies to equitably internalize packaging recycling costs that have been unfairly borne for decades by taxpayers. A recent survey by Shelton Group indicates that almost three quarters (74%) of green consumers think that a company has some or very much responsibility for end-of-life disposal of the products it manufactures, and a majority said that retailers have some or very much responsibility for end-of-life disposal of the products they sell.<sup>4</sup>

## **Current System Forces Whole Foods to Bear Additional Costs**

Producer Responsibility programs have proven successful in the U.S., with 70 laws in 32 states requiring EPR for product categories such as batteries, carpet, electronics, paint, and pesticides. These programs, however, have been applied in a discriminatory way with regard to product packaging. Ten states require a form of EPR known as container deposits, mandating that beverage manufacturers pay for recycling of their bottles and cans. However, while most other types of consumer packaging is made from the same materials – plastic, aluminum, and glass – no other consumer product sector is required to finance recycling of packaging, resulting in a system that forces beverage companies to bear disproportionate costs. Since Whole Foods Market manufactures several of its own private label beverage brands, it is paying fees for package recycling in states with deposit laws that a food or clothing manufacturer does not bear.

An EPR system would deal with the disproportionate costs borne by Whole Foods by providing an equitable industry financing mechanism -- a mandated level playing field for all users of packaging, who would pay fees to fund collection and recycling of packaging based on the volume of materials they put on the market. Such a system has already been publicly endorsed by Nestlé Waters NA, Coca-Cola Co., and New Belgium Brewing and brands want to be able to control costs and increase the efficiency of recycling systems.<sup>5</sup>

Under EPR, users of packaging designed to be more easily recycled will have lower recycling fees than users of non-recyclable or toxic packaging. If brands know they are liable for end-of-life

---

<sup>4</sup> Shelton Group, "Perceived Corporate Responsibility for Product Disposal," 2012, [http://sheltongrp.com/files/2012/10/GreenLivingPulse2012\\_page43.pdf](http://sheltongrp.com/files/2012/10/GreenLivingPulse2012_page43.pdf).

<sup>5</sup> Amy Galland, *Waste & Opportunity: U.S. Beverage Container Recycling Scorecard and Report 2011*, (As You Sow, 2011), [http://www.asyousow.org/sustainability/bev\\_survey.shtml](http://www.asyousow.org/sustainability/bev_survey.shtml)



costs, they will be less likely to place hard to recycle packaging on the market because it would result in higher processing costs. As an added benefit, consumers will see a reduction in taxes and view companies positively for shifting the burden from consumers.

Waste is inefficient by definition. Producer Responsibility programs are about improving efficiencies. Businesses that are financially responsible for managing their discarded products and packaging find ways to reduce waste, reduce operating costs, and positively impact their bottom lines.

### **Hedge against Volatility**

Higher levels of materials recovery will serve as a hedge against the volatility of virgin commodity prices. For metals and non-food agricultural items, volatility levels in the first decade of this century were higher than in any decade in the 20th century.<sup>6</sup> Abundant recycling of packaging materials will help keep packaging costs low when paper, plastic, glass or metal prices spike.

### **Whole Foods Market Statement in Opposition**

Whole Foods Market, like other companies who have received this proposal, uses its entire statement in opposition to discuss individual actions it is taking to minimize waste in its manufacturing plants and retail stores rather than directly addressing the topic of taking responsibility for **post-consumer packaging**. This argument misleads shareholders and proxy analysts by diverting attention to issues not germane to the proposal and creates the perception that if the company has taken actions in other areas relating to recycling, it has significantly addressed the subject of the proposal. That is not the case.

The text of As You Sow's proposal asserts repeatedly that the focus is responsibility for **post-consumer packaging** -- the packaging materials from the products Whole Foods sells. The resolved clause clearly asks the company to report on "assessing the feasibility of adopting a policy of Extended Producer Responsibility for **post-consumer product packaging** as a means of increasing rates of packaging recycling..." [emphasis added]

We fully support company efforts to reduce production waste, lightweight materials, and use recycled content in packaging, but **the focus of this proposal is responsibility for its packaging after the consumer has used it**. Specifically, the proposal addresses who pays for collection of used packaging deposited in curbside recycling bins and how recycling systems can be operated

---

<sup>6</sup> Ellen MacArthur Foundation, *Towards the Circular Economy: Economic and Business Rationale for an Accelerated Transition*, 2012, 18, <http://www.thecirculareconomy.org/>.



more efficiently to achieve far higher recycling rates for all product packaging. **We can find no mention of responsibility for post-consumer recycling in any company materials**, and the company ignored repeated requests by proponents over several months to engage in a dialogue on this topic; that is why we filed this proposal.

The first paragraph of the company's statement in opposition mentions the company's Green Mission report, which discusses laudable actions to use environmentally preferable packaging. We have reviewed the report; it does not discuss post-consumer recycling of packaging materials.

The second paragraph discusses recycled content in paper bags provided for customers, discontinuing use of plastic customer bags, and improving prepared foods packaging, all good programs, but does not discuss post-consumer recycling of packaging.

The third paragraph discusses store recycling programs for production waste and food waste, but again no discussion of responsibility for recycling of post-consumer packaging. The fourth paragraph strays even further, discussing energy consumption.

The final paragraph makes several sweeping statements that deserve brief discussion. It states that:

- *Compliance with the proposal would incur unnecessary costs.* We disagree. The costs to prepare the report are modest and are necessary so shareholders understand the company's position on a material issue. Further, failure to comply with the proposal by weighing in on EPR and joining with peers on system development could result in a less than optimal system being imposed on the company because of its failure to participate in the public policy process.
- *The company will continue to strive to find innovative ways to minimize the environmental impacts of its products and stores.* This proposal does not ask for this, it asks the company to address responsibility for recycling of post-consumer packaging.
- *Implementing the proposal will not further its recycling goals.* One of the company's stated goals is increasing the recycled content of its packaging. Many brands are unable to obtain enough post-consumer materials from current recycling systems to be assured of long-term supplies. EPR systems, by boosting recycling rates, will assure sufficient levels of these materials are available to meet and strengthen Whole Foods' recycled content goals.
- *Company management should have discretion to act in this area.* We totally agree. We are not seeking to limit its discretion. But the company has no position on an emerging U.S. public policy issue already in effect in other countries where it operates. The company has several stores in two countries with EPR for packaging programs, the



AS YOU SOW

2013 Proxy Memo: WHOLE FOODS  
Shareholder Resolution: Extended Producer Responsibility for  
Packaging

United Kingdom and Canada (British Columbia and Ontario). We are asking the company to study the issue and articulate a position.

In summary, proponents believe both shareholders and the company would benefit from the report requested by the proposal because:

- The current system forces Whole Foods to bear additional costs not required of other companies, which could be relieved under an EPR system;
- Higher levels of materials recovery will serve as a hedge against the volatility of virgin commodity prices;
- The company would for the first time provide a reasoned policy position on responsibility for post-consumer packaging;
- The topic is material to shareholders as packaging waste comprises \$11.4 billion worth of recyclable materials that is now burned or landfilled; and
- Public opinion supports the principle of producer responsibility and it has been enacted in some form for various products under 70 laws in 32 U.S. states.