

## **Coca-Cola Company Shareholder Proposal:**

### **Report on Bisphenol A**

Submitted by Domini Social Investments, As You Sow, and Trillium Asset Management

#### **COCA-COLA FAILS TO DISCLOSE MATERIAL INFO ON BPA TO INVESTORS**

- In recent years, the endocrine-disrupting chemical bisphenol A (BPA) has become a focus of regulatory and public concern.
- Companies are increasingly phasing BPA out of their products on a voluntary basis in response to consumer apprehension and anticipated regulatory changes.
- The U.S. Food and Drug Administration (FDA) has issued guidance encouraging companies to phase BPA out of products.
- Coca-Cola has failed to provide investors with sufficient evidence that it is addressing or mitigating BPA-related risks in its SEC filings, on its website, or in other public documents.

Coca-Cola is the world's largest beverage company, annually selling almost 570 billion servings of beverages. A significant part of Coca-Cola's business includes selling beverages in aluminum cans that contain BPA.

*Shareholders are being asked to vote FOR a report updating investors on how the company is responding to the public policy challenges associated with BPA, including summarizing what the company is doing to maintain its position of leadership and public trust on this issue, the company's role in adopting or encouraging development of alternatives to BPA in can linings, and any material risks to the company's market share or reputation in staying the course with continued use of BPA.*

#### **Rationale for a "FOR" vote:**

1. Coca-Cola's use of bisphenol A in cans exposes the company to significant financial and regulatory risks. The company's opposition statement states its reliance on current (but decades old) regulations that conclude BPA is not a risk. It completely ignores advances in scientific research,, newly stated regulatory agency reviews and concerns about BPA as a health risk, and the proposed federal legislative bills looking to ban BPA.
2. Coca-Cola is doing nothing to position itself for a changing market. Unlike other major can users, the company has shown no evidence that it is actively searching for alternatives. The companies reactive policy will place it behind its more proactive competitors.
3. The growing body of science showing health hazards linked to BPA increases the likelihood of litigation on this issue. Coca-Cola, as the world's largest beverage company, would likely be facing significant legal risk
4. Coca-Cola's disclosure on this issue is insufficient. The company does not disclose efforts it is taking to explore alternatives to BPA for its packaging. The company does not disclose information on risks related to BPA or how it is mitigating those risks. Coca-Cola is a laggard in disclosure compared to other companies similarly exposed to BPA-related risks.

**BOTTOM LINE FOR SHAREHOLDERS: Coca-Cola’s Use of Bisphenol A in Cans Exposes the Company to Significant Regulatory, Competitive and Legal Risks**

**1. REGULATORY RISKS:**

Regulatory action to ban or limit the use of BPA has grown significantly over the past several years. While legislation has mostly focused on BPA in plastic, it is clear that the BPA issue is not going away quickly and that consumers and regulators alike will soon demand BPA-free cans. The proponents of this resolution have been in contact with nearly 20 companies on the issue of BPA and have found that several of the largest companies anticipate regulatory change and growing consumer concern and are developing BPA-free can linings. Companies that proactively start changing their linings to BPA-free, even if incrementally, are better positioned to succeed in a volatile regulatory climate, while laggards, such as Coca-Cola face the risk of “toxic lockout” if they are not prepared to transition to safer alternatives.

***Regulatory action in the United States in 2009-2010:***

- **FEDERAL AGENCY:** The U.S. FDA is the federal agency responsible for potential regulation of BPA in food- and beverage-contact applications. In January 2010, the FDA reversed decades of silence on the possible dangers of BPA and issued statements declaring that the agency had “some concern” about the potential effects that BPA has on the brain, behavior and prostate gland in fetuses, infants and young children.<sup>1</sup> In this same announcement, the FDA sends a clear signal to industry that it should transition out of BPA can linings when it states: “FDA will support changes in food can linings and manufacturing to replace BPA or minimize BPA levels where the changes can be accomplished while still protecting food safety and quality. FDA will support efforts to develop alternatives for other can lining applications similar to those which are already being tested for liquid infant formula packaging.”
- **FEDERAL LEGISLATIVE:** Multiple bills have been introduced in Congress to ban or limit the use of BPA. During the 2009-2010 Congressional period, the following bills have been introduced:
  - BPA-free Kids Act of 2009 (S.753): A bill to prohibit the manufacture, sale, or distribution in commerce of children's food and beverage containers composed of bisphenol A, and for other purposes.
  - BPA Consumer Information Act of 2009 (H.R. 4341): To amend the Federal Food, Drug, and Cosmetic Act to require a warning on the label of any food container that is composed, in whole or in part, of bisphenol A or could release bisphenol A into food.
  - Ban Poisonous Additives Act of 2009 (S.593 & H.R.1523): A bill to ban the use of bisphenol A in food containers, and for other purposes
  - Food Safety Enhancement Act of 2009 (H.R. 2749): To amend the Federal Food, Drug, and Cosmetic Act to improve the safety of food in the global market, and for other purposes.
- **STATE AND LOCAL:** Four states have passed legislation banning or limiting the use of BPA through both state congressional chambers. In 2009, over 20 states introduced legislation that would ban or limit the use of BPA.
  - Connecticut and Minnesota have passed legislation banning or limiting the use of BPA. The Minnesota legislation, which took effect on January 1, 2010, bans the chemical from children’s drink containers. The Connecticut legislation, which will go into effect in

2011, addresses BPA in infant formula and baby food cans and jars, as well as the full range of reusable food and beverage containers. As of the drafting of this memo, BPA-related legislation is pending in 10 states: California, Maryland, Missouri, New Jersey, New Mexico, New York, Pennsylvania, Vermont, Washington State, and Wisconsin.<sup>2</sup>

- California has initiated the process of evaluating BPA for listing BPA as a reproductive toxicant under Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986.<sup>3</sup> This listing would require warning labels on any products containing BPA.
- The City of Chicago passed an ordinance in March 2009 banning food or drink containers containing BPA intended for children under 3.

### ***Regulatory action in other countries:***

- CANADA: Environment Canada concluded in 2008 that “bisphenol A be considered as a substance that may be entering the environment in a quantity or concentration or under conditions that constitute or may constitute a danger in Canada to human life or health.”<sup>4</sup> Following this announcement, Health Canada declared its intent to prohibit the importation, sale and advertising of polycarbonate baby bottles that contain bisphenol A (BPA).<sup>5</sup> In June 2009, Canadian government announced that it is moving forward with proposed regulations to prohibit the advertisement, sale and importation of polycarbonate plastic baby bottles that contain BPA.<sup>6</sup>

## **2. COMPETITIVE RISK:**

Many companies that use BPA in their products are eagerly searching for alternatives to the chemical to avoid the regulatory and litigation risks, but also to mitigate potential reputational and competitive risks. Companies that publicly move toward BPA-free packaging are being recognized as putting their consumers’ health first, while other companies refusing to phase out BPA may find themselves punished in the marketplace.

### ***BPA Alternatives***

For example, as concern of the safety of BPA rose, major retailers including Wal-Mart and Toys “R” Us, along with Whole Foods Market, announced that they would stop selling baby bottles made with BPA.<sup>7</sup> In March 2009, the six largest manufacturers of baby bottles announced that they will phase out BPA from all bottles sold in the U.S.<sup>8</sup>

A BPA-free can lining that works for acidic products, including many of Coca-Cola’s beverages, is often viewed as the ultimate goal by food and beverage companies. In dialogues with shareholders, many companies have shared the fact that they have been testing alternatives for several years and hope to bring an alternative to market within the next few years. According to a food packaging expert from the University of Georgia quoted in a February 2010 *Washington Post* article, even if health concerns are not valid, “if they had an economic can coating that could be applied to food and/or beverage cans today, the coatings industry, the canning industry, would have applied it instantly to get this monkey off their back.”

### **Coca-Cola lags behind its peers in communicating with consumers about BPA.**

Some companies that sell food and beverage cans containing BPA freely discuss their efforts to find alternative can coatings, demonstrating to their consumers that they acknowledge concern about the chemical and are taking action to allay those concerns. For example, Whole Foods Market states on its website:

“Polycarbonate plastic is still used in certain bottles and in aluminum can linings in our stores; we are currently working with manufacturers to strongly encourage the development of packaging using alternative materials. We have asked our major manufacturers of canned goods to present us with their plans for transitioning away from BPA-containing materials.

At this time, BPA-based epoxy lining is the industry standard for the lining of canned foods, with very few exceptions. This lining material works very effectively to protect the integrity of food. We are actively working with experts in the field to find an alternative material that works just as well without the presence of BPA or any other substances of concern.”<sup>9</sup>

Heinz Company states on its website and its Corporate Sustainability Report:

“Heinz also is pleased to be recognized for our leadership in moving to alternative materials that are Bisphenol A (BPA) free. Heinz has been a leader in food safety ever since our founder started this company in 1869. Although scientific bodies worldwide have concluded that minute levels of BPA are safe, Heinz is proactively exploring alternatives to BPA in response to consumer opinion.”<sup>10</sup>

Coca-Cola’s website, on the other hand, states:

“Do Coca-Cola packages contain Bisphenol A, which has been said to have health risks?

Bisphenol A (BPA) is a chemical used to make epoxy resins, which are used as can liners for food and beverage containers. The consensus among regulatory agencies in Canada, the United States, the European Union, Japan, Australia, and New Zealand and is that the level of exposure to BPA that results from consuming canned foods and beverages poses no risk to the health of consumers.

The beverage packaging produced by Coca-Cola does not pose a public health risk -- including any alleged risks associated with BPA. Indeed BPA is used to make the linings of cans to prevent spoilage and protect foods and beverages from direct contact with the can. BPA is not used in the manufacture of the PET (polyethylene terephthalate) plastic water and soft drink bottles used by The Coca-Cola Company.”<sup>11</sup>

***Coca-Cola’s failure to demonstrate to its consumers that it is taking their concerns into account presents potential reputational and competitive risks to the company.***

Furthermore, Coca-Cola’s Product Safety Policy states that Coke uses “the highest standards and processes for ensuring consistent product safety and quality -- from our concentrate production to our bottling and product delivery. We measure key product and package quality attributes to ensure our beverage products in the marketplace meet Company requirements and consumer expectations.”

Coca-Cola announced in its 2008 Annual Report that it will meet the needs of its future customers by continuing to “advance our commitment to sustainable business practices.” Coke includes “Sustainable Packaging” as a “core element that [is] key to our business sustainability.”

Coca-Cola does not provide its shareholders or consumers with evidence that it is adequately executing its Product Safety Policy because the company fails to provide information on how it is addressing consumer concern on BPA.

### Coca-Cola provides insufficient disclosure to investors about BPA.

Beyond the short paragraph mentioned above that assures its consumers that BPA “poses no risk to the health of consumers,” Coca-Cola includes no mention of BPA in its SEC filings, on its website, or in other public documents.

This level of disclosure is insufficient for investors to draw conclusions on Coca-Cola’s activities to mitigate the risks associated with BPA in its products, and leads shareholders to request a report updating investors on how the company is responding to the public policy challenges associated with BPA, including summarizing what the company is doing to maintain its position of leadership and public trust on this issue, the company’s role in adopting or encouraging development of alternatives to BPA in can linings, and any material risks to the company’s market share or reputation in staying the course with continued use of BPA.

### 3. LITIGATION RISK:

A growing body of science links Bisphenol A to serious health risks

- The *Journal of the American Medical Association* published the first-ever study of the chemical conducted on humans and confirmed previous reports linking the chemical to potential for causing heart disease, diabetes, and unusually high levels of particular liver enzymes. According to the authors, their findings link BPA to “some of the most significant and economically burdensome human diseases.”<sup>12</sup>
- A study funded by the U.S. National Institute of Occupational Safety and Health conducted on workers in China found that high exposure to BPA led to significantly increased levels of sexual dysfunction.<sup>13</sup>
- The Yale School of Medicine and Ontario Veterinary College conducted a study on nonhuman primates and found that exposure to low-dose BPA may have widespread effects on brain structure and function.<sup>14</sup>
- Studies on female rodents found that oral exposure to BPA during lactation increased mammary cancer and that maternal exposure to BPA can cause chromosomes to sort incorrectly in offspring. Incorrect sorting of chromosomes can lead to birth defects such as Down’s syndrome.<sup>15</sup>
- While many studies focus on the susceptibility of infants to BPA exposure, prenatal exposure in the womb has been linked to health effects in infants including alteration of mammary gland development, greater risk of cancer, intestinal problems, and an increase in aggressive or hyperactive behavior.<sup>16</sup>

History shows that toxic liabilities in a company’s portfolio can lead to significant litigation risk that has a substantial negative impact on shareholder value. Recent examples include:

- On February 22, 2006, shares of Sherwin-Williams fell as much as 22% after a Rhode Island jury ruled that the company was guilty in creating a public nuisance that was poisoning children.<sup>17</sup>
- According to a report from the RAND Institute for Civil Justice, through the end of 2002 companies had paid \$70 billion in response to 730,000 personal injury claims related to asbestos, and 66 companies had been driven into bankruptcy.<sup>18</sup>

- DuPont has faced multiple high-cost cases associated with its Teflon® products that contain the chemical PFOA (perfluorooctanoic acid).<sup>19</sup> The company reached a \$100 million settlement with EPA over PFOA facility discharge allegations and another \$16.5 million settlement in response to an EPA complaint that DuPont had failed to report adverse PFOA effects “in a timely manner.” Furthermore, a \$5 billion class action lawsuit was filed claiming that the company did not warn its consumers about health risks associated with its Teflon® cookware.<sup>20</sup>

Lawsuits claiming damages related to BPA exposure have already been filed in the U.S.

- Nalgene: Nalge Nunc, Inc., the maker of Nalgene sports bottles, was sued because “the company knew, but downplayed risks, that a toxic substance in its popular Nalgene plastic sports bottles could leach into the bottles' contents and sicken consumers.”<sup>21</sup> The attorney representing the plaintiff states: “They address the issue of BPA in their bottles (on their Web site); they cite the (Food and Drug Administration) stating that they see no problem with it. The problem is they didn't cite the many other studies that show there is a risk and there is a great concern about the issue.” **Coca-Cola also states that there is no problem with BPA on its website and acknowledges that the chemical is present in its can linings.**
- Playtex: A May 2008 lawsuit seeking nationwide class-action status accused Playtex of failing to adequately disclose that its plastic bottle products are formulated using BPA.<sup>22</sup> The plaintiff argues that the claim represents thousands of people who bought plastic bottles containing BPA.

## **CONCLUSION:**

An increasing number of studies and reports underscore that BPA may present health risks to humans. The movement towards additional limits or bans on use of BPA, public sentiment across the country, and recent high-profile incidences of companies voluntarily phasing the chemical out of their products suggest that the sector as a whole is placing itself at greater risk by not addressing this issue in an aggressive and transparent way.

Coca-Cola in particular, due to its use of BPA in the can linings of a significant number of its product lines that are iconic brands for the company, may face serious risks associated with health hazards resulting from its packaging.

The information that Coca-Cola posts on its website is distressing and suggests that the company lags behind its peers in addressing potential risks associated with BPA and aggressively exploring alternative packaging options.

Investors are not being given adequate disclosure as to how the significant risks associated with Coca-Cola's use of BPA in beverage cans are and will be managed. Coca-Cola needs to report to investors on how the company is responding to the public policy challenges associated with BPA, including summarizing what the company is doing to maintain its position of leadership and public trust on this issue, the company's role in adopting or encouraging development of alternatives to BPA in can linings, and any material risks to the company's market share or reputation in staying the course with continued use of BPA.

## NOTES

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