

TOBACCO-FREE INVESTMENT: HARNESSING THE POWER OF THE FINANCE INDUSTRY IN COMPREHENSIVE TOBACCO CONTROL

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Leveraging the power of the global financial sector is emerging as a powerful, targeted strategy in tobacco control. The tobacco epidemic has been in decline in many high income nations since the 1960s but shows few signs of abating in low and middle income nations, with the tobacco industry offsetting regulatory restrictions and shrinking markets in industrialised countries by actively promoting tobacco use in poorer countries with weaker tobacco control. Lung cancer rates and tobacco-related mortality statistics reflect these changes with levels declining in high income countries but yet to peak in low and middle income countries. This contrast calls for new approaches that can cross borders, transcend the barriers between legislative domains and offer a truly international approach. Tobacco Free Portfolios works collaboratively with the global finance sector to inform, advance and prioritise tobacco-free investment. This initiative aims to encourage finance leaders to reflect on and reconsider commercial relationships with the tobacco industry, urging them to be part of the solution when it comes to addressing one of greatest global challenges of our time.

I INTRODUCTION

The concept of harnessing the power and support of the finance industry is a relatively new approach to tobacco control and is the focal activity of Tobacco Free Portfolios. Tobacco Free Portfolios is a young organisation that identified that the global finance sector had largely been absent from global tobacco control efforts. In 2010, oncologists at the Peter MacCallum Cancer Centre in Melbourne discovered that some of their superannuation funds were being invested in tobacco companies. Further investigation revealed that nearly all Australian superannuation funds invested money in the tobacco industry, primarily via acquisition of international equities. This remains a common investment strategy of which many superannuation contributors are likely to be unaware.

Tobacco Free Portfolios engages professionally and discreetly with the finance sector. As the initiative progressed, the Australian finance industry gradually moved to consider and then implement tobacco-free investment policies. As at December 2017, there are 41 Australian superannuation funds with tobacco-free policies that cover all investment options. Those 41 funds have a total of approximately AU\$900 billion funds under management, which accounts for approximately 60 per cent of all Australian Prudential Regulation Authority approved superannuation funds. In 2015, Tobacco Free Portfolios extended its reach globally and has now been active in more than a dozen leading economies. To date, a total of approximately

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AU\$12 billion of tobacco industry assets has been divested by financial institutions in ten countries.

Whilst tobacco-free investment is not a new phenomenon, it has not received mainstream interest until recently. Organisations such as those related to health, with religious affiliations, and those with ethical screening have long excluded tobacco from portfolio selection as it does not align with espoused values, and customers and clients have selected such organisations and financial products based on this investment philosophy. Demonstrating the early inter-connection of health and finance, MD Financial Management, a financial management company owned by the Canadian Medical Association, has excluded tobacco since inception, stating, ‘The decision for the fund to avoid tobacco products, from its inception, showed leadership on an important social issue that was not yet in the mainstream’.¹

Each time a financial institution implements and publicises a tobacco-free investment policy, the tobacco industry is stigmatised and de-normalisation of the industry increases. Momentum escalates and new voices — in this case, from the finance sector — contribute to comprehensive tobacco control. Sceptics of applying financial exclusion policies may cite the argument that ‘others just buy the stock’. However, the status quo — whereby money is routinely invested in tobacco companies on behalf of Australian and global workers — needs to be challenged, even if a direct financial impact on tobacco companies may not be seen until the movement achieves substantial global scale.

It should be noted that, as tobacco-free investment gains momentum and publicity there are also other tobacco control initiatives working concurrently to stigmatise the sector and educate the community. The combined force of such initiatives is already having an impact, seen in the reduction of tobacco consumption in developed nations where tobacco control is advanced and the public is educated better than previous generations. Education of the broader community is an important aspect of tobacco control initiatives. The work of Tobacco Free Portfolios serves not just to create a narrative of tobacco control, but also to highlight the deceptive and harmful tactics of the tobacco sector. Financial institutions then repeat this narrative as they discuss tobacco-free investment internally and make public announcements, thus strengthening tobacco control messaging and weakening the tobacco sector in the eyes of the broader public.

An understanding of the scale and impact of the tobacco epidemic is crucial for effective discussions with finance leaders and several key questions routinely arise when financial organisations are considering the issue. This paper will provide an overview of the tobacco epidemic and will examine the international treaties and global health data that help provide answers to these key questions. The complex and entrenched links between the tobacco industry and the finance sector demand our collective scrutiny. Focusing on informed decision-making can bridge health and finance and bring together two major but previously independent forces in tobacco control.

II THE TOBACCO EPIDEMIC

Tobacco use is a global public health issue of profound scale, increasingly seen in economic and geopolitical terms as well as in the more traditional context where it is considered a purely

¹ MD Financial Management <<https://mdm.ca/about-md/news-and-events/md-market-updates/md-growth-investments>>.

health matter.² The link between tobacco smoking and lung cancer emerged in the first decades of the twentieth century.³ However, it was not until the publication of pivotal studies in the mid-20th century that the association achieved widespread recognition.⁴ Tobacco has a delayed effect on health, with peak smoking mortality observed three to four decades after peak smoking prevalence.⁵ Lung cancer is now the most common cause of cancer deaths worldwide, with almost 1.6 million fatalities in 2012,⁶ predicted to rise to nearly 3 million worldwide by 2035.⁷ In most regions of the world, lung cancer cases are predicted to increase for the next few decades, in particular in the Western Pacific region, largely driven by China.⁸ Globally, tobacco smoking is currently causing an estimated 7 million deaths per year.⁹ The major ailments responsible include cardiovascular disease, chronic obstructive pulmonary disease and lung cancer.¹⁰ In addition to the dire consequences for smokers themselves, World Health Organization ('WHO') data indicate that over 800 000 deaths across the globe result from second hand smoke exposure.¹¹

Clearly, the tobacco epidemic is having an extraordinary impact on worldwide public health, first experienced in the industrialised world and now inflicted upon emerging nations. Rigorous restrictions placed both on the availability of tobacco and on the activity of the tobacco industry, coupled with education and better smoking cessation services have the potential to temper the catastrophe. However, this will require vigilance, intensified efforts and new collaborations.

III TOBACCO AND PENSION FUNDS

Compulsory superannuation has been in place in Australia since 1992.¹² Employers supplement an employee's baseline salary by paying an additional 9.5 per cent¹³ into his or her

² National Cancer Institute (US) and World Health Organization, 'The Economics of Tobacco and Tobacco Control' (Tobacco Control Monograph 21, National Cancer Institute; NIH Publication No 16-CA-8029A, National Institutes of Health, 2016).

³ Isaac Adler, *Primary Malignant Growths of the Lungs and Bronchi: A Pathological and Clinical Study* (Longmans, Green, 1912) <<http://archive.org/details/primarymalignant00adle>>; A Ochsner, 'Tremendous Increase in Cancer of the Lung: Is Tobacco a Cause?' (1946) 62(10) *Life and Health* 6.

⁴ Ernest L Wynder and Everts A Graham, 'Tobacco Smoking as a Possible Etiologic Factor in b\Bronchogenic Carcinoma: A Study of Six Hundred and Eighty-Four Proved Cases' (1950) 143 *Journal of the American Medical Association* 329. R Doll and A B Hill, 'Smoking and Carcinoma of the Lung: Preliminary Report, 1950.' (1999) 77 *Bulletin of the World Health Organization* 84.

⁵ Alan D Lopez, Neil E Collishaw and Tapani Piha, 'A Descriptive Model of the Cigarette Epidemic in Developed Countries' (1994) 3 *Tobacco Control* 242.

⁶ International Agency for Research on Cancer, *Globocan 2012: Estimated Cancer Incidence, Mortality and Prevalence Worldwide in 2012* <<http://globocan.iarc.fr/Default.aspx>>.

⁷ Ibid.

⁸ Joanna Didkowska et al, 'Lung Cancer Epidemiology: Contemporary and Future Challenges Worldwide' (2016) 4(8) *Annals of Translational Medicine* doi:10.21037/atm.2016.03.11.

⁹ World Health Organization, 'Tobacco' (WHO Fact Sheet, May 2017) <<http://www.who.int/mediacentre/factsheets/fs339/en/>>; National Cancer Institute and World Health Organization, above n 2.

¹⁰ Majid Ezzati and Alan D Lopez, 'Estimates of Global Mortality Attributable to Smoking in 2000' (2003) 362 *The Lancet* 847.

¹¹ World Health Organization, above n 9.

¹² Australia's Future Tax System Review, *Retirement Income Consultation Paper* (2008) <https://taxreview.treasury.gov.au/content/ConsultationPaper.aspx?doc=html/publications/Papers/Retirement_Income_Consultation_Paper/Appendix_B.htm>.

¹³ Australian Taxation Office, *Super Guarantee Percentage*, ATO (12 January 2018) <<https://www.ato.gov.au/Rates/Key-superannuation-rates-and-thresholds/?anchor=Superguaranteepercentage#Superguaranteepercentage>>.

superannuation fund. The money is invested, with a long-term vision of providing financial security during retirement years. Most Australian pension funds — and indeed the majority of pension funds around the world — allocate a portion of funds to equities. Many acquire equities by investing in an index. Indices consist of listed companies in a specific region: for example, the Standard & Poor 500 (‘S&P 500’) is an index consisting of 500 of the largest listed companies traded on American stock exchanges;¹⁴ the Morgan Stanley Capital International (‘MSCI’) World Index is a global list.¹⁵ When investing in an index, shares of all companies in the index are purchased. Tobacco companies are usually included in major world indices. For example, at the time of writing, the Financial Times Stock Exchange 100 (‘FTSE 100’)¹⁶ includes two tobacco companies: British American Tobacco, and Imperial Brands. If index investing is the method used for acquiring shares, tobacco will most likely be included in the portfolio, even though tobacco shares have not been specifically selected for purchase.

In addition to this incidental exposure to tobacco, active investment occurs when tobacco company shares are intentionally sought and purchased. Pension funds might be responsible for active investment decisions or, more commonly, they may outsource such decisions to fund managers. The extent to which fund managers actively purchase and hold tobacco stocks varies greatly, with exposure generally ranging from 0–25 per cent of total assets under management. There may also be some exposure to tobacco companies via corporate bonds, fixed interest and derivatives. The diversity of financial instruments that can lead to the holding of tobacco stock demonstrates that tobacco companies tend to be regarded by the finance sector in the same way that any other product or industry is viewed.

The work undertaken by Tobacco Free Portfolios with dozens of Australian pension funds has revealed tobacco exposure ranging from 0.108 per cent to 1.28 per cent of total assets. While this exposure may appear low in percentage terms, the large size of the Australian superannuation industry — approximately AU\$2.3 trillion¹⁷ — means that at least AU\$2.484 billion (and possibly 10 times that amount) of Australians’ money is being invested in tobacco. This investment in tobacco companies on behalf of Australian workers stands in sharp contrast to Australia’s global leadership on tobacco control and the dramatic declines in the number of smokers in Australia in recent decades.

IV THE AUSTRALIAN FINANCE INDUSTRY

Early discussions with finance leaders highlighted a gap between the health and finance sectors in attitudes to the tobacco industry. Finance leaders were not necessarily thinking about tobacco companies with the same disdain as the health community. Nevertheless, the presentation of public health data on smoking, combined with the framing of discussions through a finance lens, drew attention to the issue. As finance leaders have become more informed about tobacco, many have examined the role they can play in global tobacco control. In 2012, First State Super became the first mainstream Australian pension fund to publicly declare that it would implement a tobacco-free investment policy. By the end of 2017, a total of 41 Australian pension funds had tobacco exclusions, representing 60 per cent of Australian institutional investors, divesting a combined total of approximately AU\$3.5 billion in tobacco industry

¹⁴ *S&P Bond Index*, S&P Global (2018) <<https://www.spglobal.com/our-insights/SP-500-Bond-Index-Simplifying-the-US-Corporate-Bond-Market.html>>.

¹⁵ *MSCI ACWI Index*, MSCI (2018) <<https://www.msci.com/acwi>>.

¹⁶ *FTSE UK Index Series*, FTSE Russell (2018) <<http://www.ftse.com/products/indices/uk>>.

¹⁷ *Superannuation Statistics*, Association of Superannuation Funds of Australia (December 2017) <<https://www.superannuation.asn.au/resources/superannuation-statistics>>.

assets. The momentum continues and has spread beyond the pension sector. In 2016, Australia's largest health insurer, Medibank, went tobacco-free.¹⁸ Some banks are re-examining their lending policies and fund managers are increasingly coming to market with tobacco-free products to meet the accelerating demand for tobacco-free investment. In 2017, AMP Capital, one of the largest fund managers in Australia, announced that it was moving to exclude tobacco across all of its products.¹⁹

One of the first international milestones for Tobacco Free Portfolios came from collaboration with the Paris-based global insurance giant AXA, which adopted a tobacco-free investment policy in May 2016, resulting in the divestment of €1.8 billion of tobacco industry assets.²⁰ In 2017, BNP Paribas, the world's seventh largest bank, announced a tobacco-free policy spanning lending, investment and insurance.²¹ When OP Trust, a large Canadian pension fund, announced a move to tobacco-free, it marked the 10th country where the initiative had made an impact. Tobacco Free Portfolios is currently working with more than 100 financial organisations in more than a dozen countries, spanning all aspects of the finance system including pension funds, Sovereign Wealth Funds, fund managers, insurers, banks and rating agencies. The conversation has become more comprehensive, expanding beyond investment into commercial relationships more broadly. AXA, for example, has not only ceased investing in the tobacco industry, but will also run off and not renew corporate insurance covering tobacco manufacturers' products, assets and liabilities. Furthermore, no new corporate business covering tobacco manufacturers will be undertaken.²² Finance leaders frequently lend their support to the initiative, volunteering strategic advice and opening networks to facilitate greater engagement and tobacco-free decisions.

One of the most influential aspects of conversations pertaining to tobacco-free investment lies in alerting finance leaders to the provisions of the World Health Organization Framework Convention on Tobacco Control ('FCTC').²³ This is the world's first legally binding health treaty. It was crafted in 2004 in response to the tobacco epidemic and has 181 parties.²⁴ WHO data project 1 billion tobacco-related deaths this century.²⁵ Unfortunately, despite the elevated standing of the FCTC in the public health sector and its celebration by the health ministries of most governments, very few in the finance sector are aware of its existence and many do not know if their own governments are parties to the Treaty. While the focus for implementation of the FCTC has, justifiably, been placed on prohibiting the sale of cigarettes to minors, banning tobacco product advertisements and increasing taxes on cigarettes, elements of the

¹⁸ 'Medibank Moves to Tobacco Free Investment Fund', Media Release, 24 October 2016 <<https://www.medibank.com.au/content/about/media-centre/2016/10/medibank-moves-toto.html>>.

¹⁹ 'AMP Capital Introduces New Ethical Framework', Media Release, 16 March 2017 <<http://www.ampcapital.com.au/article-detail?alias=/site-assets/articles/media-releases/2017/2017-03/ampc-introduces-new-ethical-investment-framework>>.

²⁰ 'AXA Group Divests Tobacco Industry Assets', Press Release, 23 May 2016 <<https://www.axa.com/en/newsroom/press-releases/axa-divests-tobacco-industry-assets>>.

²¹ BNP Paribas Australia & New Zealand, 'BNP Paribas Announces New Measures Regarding the Financing of Tobacco Companies', Press Release, 24 November 2017 <<http://www.bnpparibas.com.au/en/2017/11/24/bnp-paribas-announces-new-measures-regarding-the-financing-of-tobacco-companies/>>.

²² 'AXA Group Policy on the Tobacco Industry' AXA Group, 2016 <https://cdn.axa.com/www-axa-com%2F306deba3-5cd0-4b3c-aa44-ea27e93399fb_axa_tobacco_policy_2016.pdf>.

²³ *WHO Framework Convention on Tobacco Control*, opened for signature 16 June 2003, 2302 UNTS 166 (entered into force 27 February 2005).

²⁴ *WHO Framework Convention on Tobacco Control, Parties to the WHO Framework Convention on Tobacco Control*, FCTC (23 November 2017) <http://www.who.int/fctc/signatories_parties/en/>.

²⁵ WHO Tobacco Free Initiative, *WHO Report on the Global Tobacco Epidemic 2013*, World Health Organization (July 2013) <http://www.who.int/tobacco/global_report/2013/en/>.

Treaty as it relates to the finance sector have largely remained unaddressed. In the Guidelines for implementation, Article 5.3, Provision 4.7 states: ‘Government Institutions and their bodies should not have any financial interest in the tobacco industry...’. Similarly, Provision 7.2 asserts: ‘Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry...’.²⁶ Several European government-controlled financial institutions have recently adopted tobacco-free investment policies after reviewing the FCTC and considering the position of their respective organisations in the context of society more broadly. There are hundreds more finance organisations in which the same discussions — discourse that serves to shine a spotlight on the FCTC — would likely be equally influential.

In addition to the FCTC, the United Nations Sustainable Development Goals (‘SDGs’)²⁷ have provided a valuable, constructive platform on which to base dialogue regarding tobacco-free investment. The SDGs are a set of 17 global goals with targets. Formally adopted by the UN General Assembly in September 2015, they officially came into force on 1 January 2016. While it is easy to appreciate the importance of tobacco control in pursuit of SDG 3, ‘Good Health and Well-Being’, some may not be aware that dramatic improvements in comprehensive tobacco control are in fact vital for achievement of 13 of the 17 SDGs.²⁸ For example, SDG 1 calls for ‘No Poverty’. However, money spent on tobacco often accounts for an alarming percentage of household income. In Thailand, 13.6 per cent of the household income of low income families is spent on tobacco, displacing money that could be used to pay for food, clothing and education.²⁹ SDG 2 focuses on ‘Zero Hunger’, but for example in Kenya and Bangladesh, tobacco cultivation has replaced food crops and has led to local food insecurity.³⁰ SDG 17 calls for ‘Partnerships for the Goals’, which most clearly articulates the importance of cross-sector collaboration when addressing major global issues and is the underlying philosophy of the work of Tobacco Free Portfolios.

There are several other United Nations instruments and agencies that provide impetus and rationale to consider the issue of tobacco, including the United Nations Guiding Principles for Business and Human Rights, the United Nations Global Compact (which expelled tobacco companies from their membership in 2017),³¹ the United Nations Environment Programme Finance Initiative, the UN-backed Principles for Responsible Investment (‘PRI’) and Principles for Sustainable Insurance. In association with the PRI, the world’s first ‘Investor Statement on Tobacco’ was launched in May 2017, and in just three weeks, received 54 signatories with combined assets under management of US\$4 trillion.³²

²⁶ WHO Framework Convention on Tobacco Control, *Guidelines for Implementation of the WHO FCTC* (2013) <http://www.who.int/fctc/guidelines/adopted/guidel_2011/en/>.

²⁷ United Nations *Sustainable Development Goals: 17 Goals to Transform Our World* (2016) <<http://www.un.org/sustainabledevelopment/>>.

²⁸ Framework Convention Alliance, *How to Take ‘FCTC Implementation’ from the Sustainable Development Goals (SDGs) and Translate it into Action In-country: An Advocacy Toolkit* (2015) <www.fctc.org/images/stories/SDGs_ToolkitFINAL.pdf>; Unfair Tobacco, *Every Tobacco Is Unfair Tobacco*, Unfairtobacco.Org <<https://www.unfairtobacco.org/en/>>.

²⁹ Southeast Asia Tobacco Control Alliance, *Status of Tobacco Use and Its Control: Thailand Report Card* (2008) <<http://seatca.org/dmdocuments/Thailand%20Report%20Card%202008.pdf>>.

³⁰ Wardie Leppan, Natacha Lecours and Daniel Buckles, *Tobacco Control and Tobacco Farming: Separating Myth from Reality* (Anthem Press, International Development Research Centre, 2014) <<https://www.idrc.ca/en/book/tobacco-control-and-tobacco-farming-separating-myth-reality>>.

³¹ United Nations Global Compact, *Who Should Join?* <<https://www.unglobalcompact.org/participation/join/who-should-join>>.

³² UN Principles for Responsible Investment, *Investor Statement in Support of World No Tobacco Day* (2017) <https://www.unpri.org/download_report/30847>. See also: ‘Global Investors Support Government Action on

V FIVE KEY CONCERNS OF THE FINANCE INDUSTRY WHEN DISCUSSING TOBACCO-FREE INVESTMENT

Introducing the topic of tobacco-free investment to finance leaders generally gives rise to common concerns and beliefs that may initially be seen as potential barriers to action. Five such concerns are addressed here.

1. *Shouldn't adults be able to use and enjoy a legal product?*

For adults the consumption of tobacco remains legal. The issue, however, is that informed adults rarely choose to start smoking. Most smokers commence the habit as children, with the average age of onset between 11 and 15 in the United States. Over 80 000 children begin smoking every day, and half of them live in Asia.³³ To argue that these children — essentially the world's poorest and most vulnerable — are fully informed about the serious long-term health consequences is simply implausible. There are many examples of tobacco companies intentionally targeting children in their advertising. In 2012, Phillip Morris was forced to remove billboards in Germany as the courts determined that the marketing campaign aimed to lure teenagers.³⁴ There are further examples of cigarette sale points being deliberately placed close to schools.³⁵ Cultural themes such as sport, movies and fashion have been exploited by the tobacco industry to successfully target the young and impressionable in Asian countries.³⁶ It is important to note that cigarettes have been modified over time to become more addictive through higher nicotine yield.³⁷ In countries with advanced tobacco control policies, many adult smokers are indeed reluctant smokers. A survey of smokers in Canada, the United States, the United Kingdom and Australia revealed that approximately 90 per cent agreed when presented with the statement, 'If you had to do it over again, you would not have started smoking'.³⁸ Smoking cessation might be seen as the simple answer, but quitting is difficult, usually requiring multiple attempts and a number of approaches incorporating pharmacotherapy and cognitive behavioural therapy.³⁹ Moreover, vulnerable groups such as the homeless, mentally ill, incarcerated, indigenous people, or at-risk youth face particular

Tobacco Control' (Press Release, 31 May 2017), <<https://www.unpri.org/press-releases/global-investors-support-government-action-on-tobacco-control>>.

³³ World Health Organization, Regional Office for the Western Pacific, 'Smoking Statistics' (Fact Sheet, WPRO, 27 May 2002) <http://www.wpro.who.int/mediacentre/factsheets/fs_20020528/en/>.

³⁴ Alianca de Controle do Tabagismo Brazil et al, *You're the Target: New Global Marlboro Campaign Found to Target Teens* (Campaign for Tobacco-Free Kids, 2014) <<https://www.global.tobaccofreekids.org/what-we-do/industry-watch/stop-marlboro>>.

³⁵ Michael O Chaiton et al, 'Tobacco Retail Outlets and Vulnerable Populations in Ontario, Canada' (2013) 10 *International Journal of Environmental Research and Public Health* 7299; Cheryl Bettigole and Thomas A Farley, 'Retail Stores and the Fight Against Tobacco: Following the Money' (2016) 176 *JAMA Internal Medicine* 1520.

³⁶ J Knight and S Chapman, "'Asian Yuppies...Are Always Looking for Something New and Different": Creating a Tobacco Culture among Young Asians' (2004) 13(Suppl 2) *Tobacco Control* ii22.

³⁷ Thomas Land et al, 'Recent Increases in Efficiency in Cigarette Nicotine Delivery: Implications for Tobacco Control' (2014) 16 *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco* 753.

³⁸ J Cooper, R Borland R and HH Yong, 'Australian Smokers Increasingly Use Help to Quit, but Number of Attempts Remains Stable: Findings from the International Tobacco Control Study 2002–09' (2011) 35 *Australian and New Zealand Journal of Public Health* 368.

³⁹ Tobacco Use and Dependence Guideline Panel (US), *Treating Tobacco Use and Dependence: 2008 Update* (US Department of Health and Human Services, 2008) <<https://www.ncbi.nlm.nih.gov/books/NBK63952/>>.

barriers to smoking cessation, including stress, competing needs, poor motivation and ready access to tobacco.⁴⁰

2. *Shouldn't we engage with the tobacco industry to change their behaviour?*

Engagement with companies by their shareholders is now a common strategy within the finance sector, to try to create change, especially when the company's activities are questionable or have known negative impacts. There are many examples of effective engagement of this nature, across a broad range of industries, however, tobacco companies present an exception to useful engagement. In July 2017, Dr Vera da Costa e Silva, the Head of the WHO's FCTC Secretariat stated 'Engagement with the tobacco industry is contrary to the United Nations system's objectives, fundamental principles and values'.⁴¹ In recognition of both the futility of collaborating with the tobacco industry and the inherent conflict of interest, the WHO issued a directive stating, 'The tobacco industry cannot be an effective partner in tobacco control'.⁴² These views on the futility of engagement with the tobacco industry are not well appreciated outside the health sector.

3. *If we go tobacco-free, won't we just open ourselves to never-ending requests to exclude other products and industries sending us down a 'slippery slope'.*

There are many industries and products that might be regarded as controversial, sensitive, unethical, immoral or undesirable. A concern of finance leaders is that taking a strong position on tobacco will, over time, lead to an endless expectation that other companies or industries should be excluded from investment portfolios. It is important to acknowledge that applying exclusions to investment policies is something that should only be considered in the most exceptional circumstances. Tobacco is often viewed as the quintessential example. A framework of three questions provides the rationale:

(1) Can the product that the company makes be used safely?

With respect to tobacco companies, the answer is an unequivocal 'no'. The only safe number of cigarettes for human consumption is zero. Even smoking an average of less than one cigarette per day increases the risk of death from lung cancer nine-fold compared to non-smokers.⁴³ When used precisely as intended, tobacco will result in the early death of two out of three smokers.⁴⁴ The evidence demonstrating the categorical and unconditional danger of smoking tobacco is irrefutable.

(2) Is there a UN Treaty regarding the issue?

⁴⁰ Laura Twyman et al, 'Perceived Barriers to Smoking Cessation in Selected Vulnerable Groups: A Systematic Review of the Qualitative and Quantitative Literature' (2014) 4(12) *BMJ Open* <<https://www.ncbi.nlm.nih.gov/wwwproxy1.library.unsw.edu.au/pmc/articles/PMC4275698/>>.

⁴¹ Vera da Costa e Silva, 'Engagement with Tobacco Industry Conflicting with UN Principles and Values' (WHO FCTC Secretariat Statements, 11 July 2017) <<http://www.who.int/fctc/secretariat/head/statements/2017/ungc-integrity-review-tobacco-industry/en/>>.

⁴² WHO Tobacco Free Initiative, *Tobacco Industry Interference with Tobacco Control* (WHO, 2008) <<http://www.who.int/tobacco/resources/publications/Tobacco%20Industry%20Interference-FINAL.pdf>>.

⁴³ Maki Inoue-Choi et al, 'Association of Long-term, Low-intensity Smoking With All-cause and Cause-specific Mortality in the National Institutes of Health–AARP Diet and Health Study' (2017) 177 *JAMA Internal Medicine* 87.

⁴⁴ Emily Banks et al, 'Tobacco Smoking and All-cause Mortality in a Large Australian Cohort Study: Findings from a Mature Epidemic with Current Low Smoking Prevalence' (2015) 13 *BMC Medicine* 38.

For tobacco, the answer is ‘yes’. There is indeed a UN tobacco treaty, the WHO FCTC. As previously noted, the WHO has estimated that there will likely be 1 billion tobacco-related deaths this century.⁴⁵

- (3) Can investors use engagement with the company as an effective tool to create change? As it pertains to tobacco companies, the answer is ‘no’.

When these questions and answers are considered collectively, a clear framework emerges. As such, applying an exclusion to investment in tobacco companies can be viewed as both rational and pragmatic.

4. *We can only examine financial issues. We cannot take moral or ethical considerations into account.*

Some executives and trustees remain exclusively focused on framing investment decision-making around financial metrics. This positioning tends to be justified on the basis of fiduciary duties. Trustees of superannuation funds and other financial service providers are subject to statutory obligations to act in the best interests of their clients. The term ‘best interests’ is one of continuing inquiry within the sector, with a growing belief that it implies the pursuit of more than a purely financial benefit. According to lawyer Michelle Levy, a Partner at Allens, ‘What really does matter is that the best interests duty is not interpreted as a duty to obtain the best outcome’.⁴⁶ In 2014, the UK Law Commission Report offered further clarification on fiduciary duties when it concluded, ‘the law is sufficiently flexible to allow other, subordinate concerns to be taken into account...provided that: they have good reason to think that scheme members share the concern; and there is no risk of significant financial detriment to the fund’.⁴⁷ In 2016, a report on fiduciary duties was released by the PRI⁴⁸ in conjunction with the United Nations Environment Programme Inquiry into the Design of a Sustainable Financial System. Fiona Reynolds, the Managing Director of PRI stated:

Recent studies have broadened the interpretation of fiduciary duty away from the narrow confines of past definitions, and have emphasised that there is no conflict between fiduciary duty and ESG [Environmental, Social, Governance] considerations — there is a growing recognition that ESG issues are in fact financially material to a portfolio. Using the status quo as a reason for not integrating ESG is no longer acceptable.⁴⁹

The growing tobacco-free investment movement has seen hundreds of trustees and directors exercise their decision-making to exclude tobacco investment explicitly while abiding by their fiduciary obligations. The decision of such finance leaders to embrace tobacco-free investment has yet to be formally challenged in terms of fiduciary duty. However, it is evident that some trustees and directors remain cautious in their decision-making, conducting predictive financial modelling in addition to investigating and verifying ethical considerations and risks. However, taking a long-term view, analysis of the prospective risks faced by the tobacco industry

⁴⁵ WHO Tobacco Free Initiative, above n 25.

⁴⁶ Michelle Levy, Allens Linklaters, ‘The Best Interests Duties — Process or Outcome’, *Unravalled* (5 February 2015) <<http://www.allens.com.au/pubs/fsr/150205-unravalled-02.htm>>

⁴⁷ Law Commission (UK), *Fiduciary Duties of Investment Intermediaries*, Report, Law Com No 350 (2014) <<http://www.lawcom.gov.uk/project/fiduciary-duties-of-investment-intermediaries/>>

⁴⁸ Principles for Responsible Investment, UNEP Finance Initiative and the United Nations Global Compact *Fiduciary Duty in the 21st Century*, (PRI, 2015) <https://www.unpri.org/download_report/6131>.

⁴⁹ Quoted in ‘New Report Aims to End Debate about ESG and Fiduciary Duty’ (PRI Press Release, 7 September 2015) <<https://www.unpri.org/page/new-report-aims-to-end-debate-about-esg-and-fiduciary-duty>>.

suggests that avoiding tobacco stocks may be considered a prudent financial decision. There are four main risks to the long-term future of the tobacco industry:

- (1) The risk of a changing regulatory environment that will reduce tobacco consumption: 181 parties to the WHO FCTC have committed to the implementation of comprehensive and robust regulatory changes. In May 2016 alone, over 30 countries adopted significant additional tobacco control measures. These include the entire European Union, the United States and Australia.⁵⁰
- (2) Litigation risk: legal action has long overshadowed the tobacco industry. Although it might seem that the industry can survive ad hoc and even occasionally large settlements, class actions continue. In June 2015, a Canadian court ordered three tobacco companies to pay C\$15.5 billion (£8 billion), the largest award for damages in the country's history. The plaintiffs were Quebec smokers who argued that the companies did not warn their customers properly of the inherent dangers of cigarettes and thereby failed in their general duty to not cause injury to another person.⁵¹ The case is currently on appeal. However, if upheld, a precedent will have been set for other Canadian jurisdictions, for other Commonwealth countries and for the world in general. The business model of the tobacco industry, one that externalises an estimated \$1 trillion in costs each year⁵² — costs borne by governments across the world — yet internalises profits, is being challenged.
- (3) Supply chain risk: scrutiny of supply chains is a major threat for the tobacco industry. Analysis of supply chains has revealed a disturbing reality, with the International Labour Office issuing a report in March 2017 stating that 'in tobacco growing communities, child labor is rampant'.⁵³ The US Department of Labor currently lists 15 countries that use child labour in tobacco farming.⁵⁴ Reports from 2014, 2015 and 2016 detail child labour practices on tobacco farms in the United States itself.⁵⁵ In many cases, children work without the required protective equipment, putting them at risk of

⁵⁰ Matthew Thomas, 'Tobacco Excise Increase: Budget Review 2016–17 Index' (Research Paper Series 2015–16, Parliamentary Library, 4 May 2016)

<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/Budget_Review201617/Tobacco>; Tom Brooks-Pollock, 'Menthol Cigarettes Banned by EU under Stringent New Tobacco Laws', *The Independent* (online) 19 May 2016 <<http://www.independent.co.uk/news/uk/home-news/the-eu-is-banning-menthol-cigarettes-a7037346.html>>; US Food and Drug Administration, 'FDA Takes Significant Steps to Protect Americans from Dangers of Tobacco Through New Regulation' (FDA News Release, 5 May 2016) <<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm499234.htm>>.

⁵¹ *Letourneau v JTI-MacDonald Corp, Imperial Tobacco Canada Limited, and Rothmans Benson & Hedges Inc* 2015 QCCS 2382 (Superior Court Province of Québec, Riordan JSC, 9 June 2015) <<http://tjl.quebec/wp-content/uploads/2015/05/2015-06-09-AA-Jmt20150609CORRECTED.pdf>>; BBC, 'Tobacco Firms to Pay Billions in Damages in Canada', *BBC News* (online), 2 June 2015, <<http://www.bbc.com/news/world-us-canada-32969338>>.

⁵² National Cancer Institute and World Health Organization, above n 2.

⁵³ International Labour Office, Fundamental Principles and Rights at Work Branch, *ILO Cooperation with the Tobacco Industry in the Pursuit of the Organization's Social Mandate*, ILO Governing Body, 329th session, Agenda item 6, GB329/POL/6 (28 February 2017) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_545944.pdf>.

⁵⁴ Bureau of International Labor Affairs, *List of Goods Produced by Child Labor or Forced Labor* (30 September 2016) US Department of Labor <<https://www.dol.gov/ilab/reports/child-labor/list-of-goods/>>.

⁵⁵ *Ibid*; ASH: Action on Smoking & Health, *Tobacco's Hidden Children: Hazardous Child Labor in United States Tobacco Farming* (2014) <<http://ash.org/tobaccos-hidden-children/>>; Human Rights Watch, *Teens of the Tobacco Fields: Child Labor in United States Tobacco Farming* (9 December 2015) <<https://www.hrw.org/report/2015/12/09/teens-tobacco-fields/child-labor-united-states-tobacco-farming>>.

Green Tobacco Sickness, an illness caused by absorbing nicotine through the skin.⁵⁶ Such abuse of human rights appears unlikely to continue unchecked in a world that increasingly demands improved transparency, responsibility and sustainability. The employment only of adults, under fair and safe work conditions would require dramatic systemic change in the industry and escalate costs immeasurably.

- (4) Reputation risk: increased potential for damage to reputation by association also threatens the long-term future of the tobacco industry. Two aspects must be considered. The first is the risk of an association with the tobacco industry. The Reputation Institute compiled a report in 2010, based on 80 000 consumer interviews in 32 countries in which tobacco was listed as the world's least reputable industry. Professor Mike Daube, then President of the Australian Council on Smoking and Health, said in relation to that report: 'The public around the world rate this lethal industry exactly where it belongs — at rock bottom. The tobacco industry richly deserves its place as the world's most disreputable industry.'⁵⁷ Dr Margaret Chan, Director General of the WHO, declared during her opening speech at the Conference of the Parties of the FCTC in 2010: 'The tobacco industry has vast financial resources, lawyers, lobbyists, and no values whatsoever beyond the profit motive'.⁵⁸ The second aspect for consideration is the risk of failing to take part in the global shift away from tobacco companies, demonstrated by notable financial institutions in 10 countries, in the past two years alone, including: AXA; AP4, one of Sweden's most influential pension funds; Fonds de Reserve pour les Retraites, the largest French pension fund; CalPERS, the largest pension fund in the United States; the Irish Sovereign Wealth Fund; multiple Dutch pension funds; Bank of New Zealand; OP Trust, a large Canadian pension fund; BNP Paribas, a leading global bank; and the majority of the Australian pension fund industry.

5. *The tobacco industry performs well in 'sustainability' ratings so why would we address this issue?*

The recognition of Environmental, Social, and Governance ('ESG') considerations has continued to gain support and acceptance within the finance sector. Many funds have staff dedicated to ESG analysis. Increasing recognition of the broad community impacts of the deployment of capital has encouraged financial organisations to look beyond traditional metrics when analysing companies in which they may or may not choose to invest. However, there is a paradox. On many occasions, despite the sense of advancement resulting from the incorporation of ESG considerations into investment decision-making, the pure application of ESG principles to the issue of investment in tobacco companies has proven to be a hindrance. To determine which companies perform best according to ESG criteria, rating systems have evolved and rankings and awards are regularly issued and distributed. In the most incongruous circumstances, some methodologies currently employed by mainstream rating agencies perversely propel tobacco companies to the top ranks of classification systems that were designed to showcase good corporate behaviour. How does this happen? The following examples illustrate this irony.

⁵⁶ ASH: Action on Smoking & Health, above n 55.

⁵⁷ Quoted in: Australian Health News Research Collaboration University of Sydney School of Public Health, 'Tobacco Industry is the World's Least Reputable Industry' (Media Release, 17 June 2010) <<http://www.tobacco-facts.net/2010/06/tobacco-industry-is-the-world-least-reputable-industry>>.

⁵⁸ Margaret Chan, 'Address by Director-General of WHO', Conference of the Parties to the WHO Framework Convention on Tobacco Control, 4th session, Agenda item 1, FCTC/COP/4/DIV/3 (18 November 2010) <http://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4_DIV3-en.pdf>.

The Dow Jones Sustainability Index ('DJSI') is designed to highlight companies with superior sustainability metrics. Like many rating systems, it employs a 'best of sector' strategy. This sees tobacco companies exclusively compared to other tobacco companies. While the overall or absolute ESG scores for all tobacco companies may be poor, the one with the least deficient grade is included in the DJSI. In September 2016, Reynolds American Inc issued a press release stating,

...the company has been recognised again as a leader in corporate sustainability by being awarded membership in the 2016–2017 Dow Jones Sustainability North America Index, effective Sept. 8, 2016. This is the third consecutive year, and eighth out of the last nine years, that RAI has been recognised as a leader in corporate sustainability efforts. In addition, this is the first year that RAI has attained the DJSI World designation for the top-performing tobacco company worldwide.⁵⁹

The website for British American Tobacco states: 'We were the first company to be included in the Dow Jones Sustainability Index and we've been included every year since'.⁶⁰ With tobacco companies now severely restricted in relation to advertising and product promotion, their inclusion in globally recognised indices provides a positive promotional opportunity. Global ratings agencies, considered experts in research and evaluation of listed companies, regularly award tobacco companies such as British American Tobacco (Malaysia) the maximum ratings (either green dots, stars, or As) for categories measuring social impact, such as 'Supply Chain Labor Standards' and 'Product Safety and Quality'. Under this system, overall ESG Ratings for tobacco companies can be 'AA' — that such outcomes can be explained by 'best of sector' ratings, regardless of absolute scores, demands urgent revision. In another example, the Good Governance Report published by the Institute of Directors in the UK in September 2016⁶¹ focused on five key attributes: board effectiveness, audit accountability, remuneration, relations with shareholders, and relations with other stakeholders. The number one ranking was awarded to British American Tobacco.⁶² This begs the question: why are the governance metrics of a company lauded when the company manufactures a product that kills two thirds of its customers?⁶³ That both mortality rate and societal impact of the product are not captured by such ranking methodologies must be challenged. It is evident that in their current form, ratings systems can obscure the truth, misleading investors and diverting attention from the most crucial detail, one which demands our urgent and collective examination, namely, the impact of the company's primary business. To sideline 7 million annual deaths in any system of corporate analysis is an extraordinary oversight, which, understandably, is having adverse consequences.

Rankings exert considerable influence on the finance sector and investment community. When investors and potential investors are presented regularly with such outstanding score sheets, finance leaders might very reasonably hesitate to even consider the issue of the real cost of

⁵⁹ Reynolds American Inc, 'RAI Selected to Dow Jones Sustainability North America Index for 8th Time', (Press Release No RAI 2016–24, 8 September 2016) <http://s2.q4cdn.com/129460998/files/doc_news/2016/2016-24-Press-Release-RAI-selected-to-DJSI.pdf>.

⁶⁰ British American Tobacco, *A Sustainable Approach: Investing in a Sustainable Future* (2017) <http://bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9DCFJG>.

⁶¹ Institute of Directors (UK), *The 2016 Good Governance Report: The Great Governance Debate Continued* (2016) <<https://www.iod.com/Portals/0/PDFs/Campaigns%20and%20Reports/Corporate%20Governance/The%202016%20Good%20Governance%20Report.pdf?ver=2016-09-07-102637-003>>.

⁶² *Ibid.*

⁶³ Banks et al, above n 44.

tobacco. The problem lies in rating system methodologies. ‘Best of sector’ is not an appropriate way to measure tobacco companies. All tobacco companies make products that cause death. A blanket exclusion of the industry from rating systems may be required. In 2017, Vigeo Eiris, a ratings agency based in France and the UK, downgraded the scores of all tobacco companies and as a consequence, tobacco companies are no longer eligible for inclusion in Vigeo Eiris’s ‘best of class’ listings.⁶⁴ This change is a very welcome development and may prompt other ratings agencies to revise their methodologies.

VI SUMMARY AND CONCLUSIONS

The deep and complex links between the global finance sector and the tobacco industry were established long before the true impact of tobacco on human health was understood. These links have gone largely unnoticed, unexamined and unchallenged. If the finance system were to be created from scratch today, it is hard to imagine that tobacco companies would escape our scrutiny, would be deemed to be worthy of the same treatment as other companies, and slip their way into our investment portfolios by matter of routine. We need only consider the changed attitudes to slavery to understand how far society can move. Social attitudes and cultural acceptances can shift, as can legislation and regulation. Tobacco should be considered in a new light that of our new technological age where the impact of tobacco across health, government, the environment and human rights can be both tracked and measured. What would we do if tobacco companies asked to be listed on the newly formed stock exchanges of the world, to be included in global indices, to be part of standard benchmarks against which financial returns are measured? What would we say if banks were to lend tobacco companies money, if pension funds were to invest in them and insurers were to insure their deadly cargo lest it be spoiled or damaged on route to intended customers? Current thinking would not tolerate an industry whose products are responsible for 7 million deaths per year, an industry in which growing and manufacturing are interlaced with unacceptable working conditions including child labour, an industry that was built on a business model where costs are externalised but profits internalised. Indeed, we need to acknowledge this shift in thinking and standards and act on it.

Forging strong networks in the finance sector is vital to comprehensive tobacco control and has, until now, been a missing piece to the puzzle. The world’s health community is committed to tobacco control, as are 181 state parties to the FCTC. The sobering reality, though, is that such efforts are not enough, with an estimated eight million deaths projected for the year 2030.⁶⁵ If the global finance sector continues to invest in, and seeks to profit from the tobacco industry, major sectors of society will continue to work against each other, forgoing a crucial opportunity to address the tobacco epidemic collaboratively. Clinicians can play a major role in bridging the gap between the health and finance sectors. Recounting real life examples of the extraordinary suffering inflicted by tobacco may seem like a simple task to doctors, yet the power of these shared stories is enormous, especially when delivered in the boardrooms of the world’s largest financial institutions.

⁶⁴ Vigeo Eiris, ‘Vigeo Eiris Downgrades the Scores of Tobacco Sector Companies’ (Press Release, 23 May 2017) <<http://www.vigeo-eiris.com/vigeo-eiris-downgrades-the-scores-of-tobacco-sector-companies/>>.

⁶⁵ National Cancer Institute and World Health Organization, above n 2.

In 1964, the US Surgeon General made the first public announcement acknowledging the unequivocal relationship between smoking and serious disease and death.⁶⁶ As a global community, we have known for more than 50 years that tobacco is not merely another product and that tobacco companies are not just ordinary companies. A different approach is now required to address every facet of their existence. The health sector treats the tobacco industry differently. Governments, too, treat the tobacco industry differently. It is heartening to see another sector of the global community — the finance sector — join collective efforts to confront one of the most extraordinary problems of our era. Disentangling the finance sector from tobacco will take some time, but the unravelling has already begun. A tobacco-free future depends on it.

⁶⁶ United States Surgeon General's Advisory Committee on Smoking and Health, *Smoking and Health* (Public Health Service Publication No 1103, US Public Health Service, Office of the Surgeon General, 1964) <<http://profiles.nlm.nih.gov/NN/B/B/M/Q/>>.