Dear

Pharmaceutical companies, access to medicines and potential threats to investment returns

I am writing to introduce you to a campaign presently being run by Oxfam which is relevant to some of your equity investments, and to outline why the issue may significantly affect future investment returns.

According to Oxfam, there are presently a number of legal and political efforts by pharmaceutical companies to challenge patent legislation in developing countries. This legislation seeks to make affordable medicines available, in line with the WTO’s “Doha Declaration on TRIPS1 and Public Health”. The case detailed below is one of a number of examples of such challenges.

Oxfam and others, including Médecins Sans Frontières (MSF) and a large number of organisations in India, are particularly concerned about the impact on public health that would result from a legal challenge by Novartis to section 3(d) of the Indian Patent Act, in a case concerning the patent status of imatinib mesylate (marketed as Gleevec™ / Glivec™).

You may recall that in 2001 a number of companies took legal action against the South African government on a similar issue (concerning access to antiretrovirals). The case was dropped following pressure from investors, who appreciated the risks of reputational damage to the companies concerned and the potential to provoke unwelcome legislation in important markets. We believe that the issues which prompted investors to oppose legal action in the South African case are also relevant to the present situation, and a number of these have already been raised by members of the ICCR group of institutional investors.

Because Novartis’ action seeks to remove part of the Indian Patent Act, the action will lead to imatinib mesylate and a large number of other medicines being given patent protection and thus becoming unaffordable to the majority of patients in India and other developing countries. Oxfam believes this would affect treatments for conditions with major public health implications, such as HIV/AIDS2. The effect is further multiplied because a successful action by Novartis would encourage other companies to challenge patent legislation in other countries.

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1 Trade-Related Aspects of Intellectual Property Rights
2 See attached briefing

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Such a prospect is already threatening to cause serious reputational damage to Novartis in the eyes of the public, clinical practitioners and legislators in affected markets (bearing in mind that India is an extremely important growing market, and that up to 26% of Novartis’ 2005 pharmaceuticals sales come from outside of the US and Europe). The outcry from NGOs like Oxfam and MSF also threatens Novartis’ reputation among clinicians in western markets, as a recent editorial in the *Lancet* medical journal attests.3

Already, and partly as a result of these cases, developing countries are looking to implement strong domestic legislation which seeks to protect public health safeguards. This is the case in the Philippines, where such a bill has been introduced to Congress against the background of a patent related court case brought by Pfizer. Developments such as this may therefore mean that reputation-damaging legal actions prove counter-productive for those wishing to extend patent protection.

With the above points in mind, we recommend that you engage with pharmaceutical companies in your portfolio to urge them to respect the spirit and letter of the Doha Declaration and, specifically, to press Novartis to withdraw their legal challenge to section 3(d) of the Indian Patent Act.

I enclose a briefing from Oxfam on the direct and indirect effects on public health in India and other developing countries if Novartis’ action is successful.

If you would like to receive more information on this issue, including a report on transparency and accountability within the pharmaceutical industry that Oxfam is planning to release in April, please email info@fairpensions.org.uk. Please also feel free to contact us with any questions, or for more information on managing environmental, social and governance risks to investments.

Yours sincerely,

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3 “Undermining TRIPS: protectionism at its worst”. In the *Lancet*, 6 January 2007