Sample Board Resolution on Abolishing Investment

For nonprofits and foundations

Background: 501(c)(3) nonprofits and foundations exist to benefit the public, not to harm the public. While it has long been a generally accepted practice for 501(c)(3)s to invest their assets to generate a return, it's becoming increasingly obvious that **it is impossible to turn money into more money without causing harm to communities and ecosystems.** Investment, in all or nearly all of its forms, is antithetical to the purpose for which charities are formed. Even most so-called "social" and "impact" investments still operate within the framework of capitalizing off of accumulated wealth – the very framework that makes the rich keep getting richer!

How can 501(c)(3)s take a stand against the harmful practice of turning money into more money, at least with regard to their own assets? It requires that we navigate the Uniform Prudent Management of Institutional Funds Act (UPMIFA), a law adopted by nearly all U.S. states (except Pennsylvania and Puerto Rico). In our opinion, UPMIFA would be a great name for a fluffy cat. It is not so great as a law governing the management of charitable assets! UPMIFA imports the profit-maximizing logic of so-called "prudent" investment fiduciaries found under other areas of law (such as pension funds). In light of its application to charities, UPMIFA softens the profit-maximizing mandate to some degree, but it retains a mandate to engage in many of the same practices found in harmful investment sectors. Elsewhere, we have made extensive fun of the rules on prudent investment, and we generally think it's best to avoid being subject to those rules. There are very few court cases, administrative rulings, or other interpretive materials exploring the nuances of what management practices and investments are or are not prudent for a nonprofit, so it's hard to say exactly how much latitude nonprofits have. Nevertheless, what we observe across the foundation sector, in particular, is the widespread practice of making profit-maximizing investments into the very corporations that are destroying communities and the planet. We want to free foundations and other nonprofits from any belief that they are legally required to engage in such harmful investments.

Thankfully, not all charitable assets are subject to those prudent management mandates, and this is where a Board Resolution can be helpful. Under UPMIFA, charities effectively have two kinds of assets: 1) Funds held primarily to accomplish a charitable purpose ("Program-related assets"), and 2) Funds used primarily for investment ("Institutional funds"). Program-related assets are not subject to the requirements for prudent management under UPMIFA. And because UPMIFA lets organizations specify which funds are "program-related," the below Board Resolution aims to clarify that most or all of the organization's assets are program-related.

In the unlikely event that this approach is found to be invalid by a court or Attorney General, this Board Resolution has a back-up plan: It declares that, if some assets are subject to prudent management rules, it lets the nonprofit Board express its own understanding of what is or isn't prudent. Specifically, it states that efforts to turn money into more money is imprudent, and it makes a list of reasons why. The Uniform Law Commission, a non-legislative body that wrote UPMIFA before it was adopted by any state legislatures, wrote a guidance document about what it deemed "program-related." Thankfully, this is not binding legal authority, because it comes to the annoying conclusion that most cash assets are not program-related. At the same time, that guidance document might be persuasive if or when a court or other authority is called upon to decide whether prudence rules apply to particular nonprofit assets. That is why the second part of this resolution is important as a back-up—it provides the organization's argument for why its approach to asset management (i.e. rejecting investment) is prudent under UPMIFA.

The second part of the resolution is also where you and your organization can get creative: Think of as many reasons as you can why it would not be prudent to endlessly engage in capitalism! 😃

Sample Board Resolution: Taking a Stand Against the Harms of Investment Practices

The Board of _______ hereby resolves:

1. **None of our assets are being held for investment.** All of our assets are "Program-related assets" and not "Institutional funds," under the Uniform Prudent Management of Institutional Funds Act. Our organization is formed for charitable purposes and all of our assets are to be channeled – now and in the near future – toward accomplishing our purposes. Any funds that may appear to be "invested," such as in an interest-bearing savings account, are not investments being made for the purpose of turning money into more money. Those funds are simply making a pit stop on their path to more tangibly accomplishing charitable purposes.

2. **If any of our assets are deemed – by a court or government authority – to be held for investment purposes, it would be imprudent for us to engage in any capitalist practices to turn our money into more money.** After doing our research, we have concluded that all or nearly all financial schemes or products labeled as "investments" are causing harm to the world, and it would be imprudent of us to accelerate the world's crises by engaging in such investment. We have determined that the most prudent thing to do with money we are not currently spending is to ______ [fill in the blank, such as with "put it into stable FDIC-insured savings accounts and CDs in a credit union, which is a democratically controlled nonprofit financial institution"]. We believe that this is the best way to protect

our assets and ensure their availability for our charitable purposes, while greatly reducing the harms that add to global instability.

Here we provide several points of information and context for why we believe it is imprudent to turn money into more money using most conventional investment strategies:

a. **Investment perpetuates colonization and genocide:** The Global North has, for centuries, plundered the Global South, appropriating land, forests, water, labor, and fossil fuels, all for the comforts and conveniences of affluent people. In early days of colonization, this was done with violence, theft, and genocide. Today, it is mostly done in the benign-looking disguise of free enterprise, and the surpluses of this modern-day colonization are channeled to some people through a scheme called "investment." The harms of such investments are generally concealed to the investor, who is largely unaware of and therefore not able or willing to take responsibility for the harms caused.

b. **Many harms are caused by turning money into more money:** Any scheme that consents to turning money into more money means consenting to a scheme where the rich get richer. This deprives a growing number of people and other living beings on Earth the means to survive. The rich, in turn, finance elections and lobbying, growing their power and undermining democracy. The idea that money should turn into more money is a lethal pattern that leads to countless imbalances and losses on this planet. By refusing to participate in this scheme, we are opening the possibility for money to flow according to life-giving patterns.

c. **"Green," "social," "ESG," and "impact" investments are misleading:** Upon closer examination, most investments that claim to do good in the world are still perpetuating harms. So-called "green" mutual funds, which purport to invest only in companies that avoid fossil fuel extraction or deforestation, are engaging in other kinds of extractive practices, such as buying and flipping residential properties in gentrifying cities. Other so-called "social" or "impact" investments purport to "balance" profit and social purpose. But in a world with countless ills and crises, we believe balance can only be achieved if our society commits all of its resources toward creating health and wellbeing. Any profit-oriented component of a social enterprise is, again, rewarding people who already have money by giving them even more money.

d. **Financial products rely on policing and violence:** Investment and other financial products are regulated and enforced by a legal system that ultimately uses force and violence to protect private property and to take the homes, wages, and other assets of everyday people who cannot meet financial obligations. While most people rarely make this connection in their minds, it is important to trace the path of our dollars to see how they come to us by means of violence. If we buy into a mutual fund that invests in commercial or luxury properties, then we are relying on policing and private security to use violence to "cleanse" those properties of impoverished, homeless, or people of color whose presence could deter wealthy customers and ultimately lower the profit generated on our investment. And even if we have a modest interest-bearing savings account with a bank, and if that does mortgage lending, it is ultimately the police who will show up and evict families in the event of foreclosure. This is so that the bank can get money and continue to pay us interest on our savings account. When we look closely, we will see that most of our dollars are stained with blood.

e. **"Return on investment" is misleading:** You can never get a "return on investment" unless you coercively take (i.e., steal) something tangible from someone, somewhere. The financial "return" always has to come from extraction that happens somewhere in the real world, and the extracted resources or labor are never freely given in the true sense, because only a relationship of reciprocity would allow for that.

f. [**So many reasons!** This list could go on endlessly. Feel free to revise the above list or continue adding to this list with your own thoughts. You can give more examples of the ways that conventional investments cause harm. Or you could describe so-called "good" investments and discuss why those are still causing harm.]

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