

# IOA INVESTORS FOR OPIOID ACCOUNTABILITY

November 26, 2018

Dr. Sol Barer  
Chairman of the Board  
Teva Pharmaceutical Industries Limited  
Basel Street,  
P.O. Box 3190,  
Petach Tikva 4951033, Israel

Dear Dr. Barer,

We write to you as members of the Investors for Opioid Accountability (IOA) which represents a diverse global coalition of public, faith-based, labor, and sustainable funds, as well as asset managers with \$2.2 trillion in assets under management.<sup>1</sup> The IOA came together in 2017 out of concern for the potential risks that opioids present for the companies in which we invest. As global investors, we are writing to request a meeting with you to discuss potential financial, legal and reputational risks Teva Pharmaceutical Industries Limited (“Teva”) is facing related to the manufacturing and sale of opioids, and to ask that the Board consider adopting governance reforms designed to mitigate those risks.

Opioid abuse is undeniably a public health crisis across North America and now spreading outside the U.S. as well. The U.S. Centers for Disease Control and Prevention (“CDC”) report that in 2016 alone, opioid abuse caused 42,249 deaths in the United States, or 115 people per day. In Canada, there were approximately 4,000 opioid-related deaths in 2017, a 34% increase from the prior year and a rate of 10.9 deaths per 100,000 people. In the UK and Wales, people dying from opioids related deaths in 2016 reached a record high of 3,700.

In the U.S., the economic and social effects of the opioid crisis have been profound. Economist Alan Krueger has estimated that nearly 50% of prime age non-labor force men take prescription medication on a daily basis, with almost two-thirds of these being prescription pain medication. In fact, over the last 15 years, men’s labor force participation fell more in counties where more opioids were prescribed. Such significant opioid use and dependency is a key factor in why many men of prime working age in the U.S. are unable or unwilling to find work, lowering worker productivity and increasing healthcare and criminal justice costs to nearly \$80 billion in 2013. The opioid crisis is also straining the foster care systems of nearly every U.S. state, and opioid-related costs consume an increasing share of public resources.

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<sup>1</sup> Information about the IOA can be found at <http://www.uawtrust.org/IOA> and <https://www.iccr.org/our-issues/health/opioid-crisis>

Recently, opioid manufacturers have come under scrutiny for their role in the crisis. Criticism has focused on promotional practices that may have downplayed the highly addictive nature of opioids and overstated their efficacy in treating chronic pain. In some cases, it has been publicly reported that manufacturers encouraged off-label use by prescribers in an effort to raise sales, using lucrative “kick back” schemes for doctors.<sup>2</sup> Manufacturers have been investigated by federal regulatory agencies for failing to report to the Drug Enforcement Administration suspicious spikes in sales to distributors. Over half of the United States’ state attorneys general have joined a bipartisan coalition to investigate the manufacturing industry for its role in the crisis.

The sheer number of opioid drugs sold as a result of the industry’s sales tactics is alarming. The amount of opioids prescribed per person tripled between 1999 and 2015. In 2015, enough opioid pills were sold to medicate every American “around the clock for 3 weeks.” Just in West Virginia, manufacturers reportedly produced and sold to drug wholesalers over 780 million pills over the course of six years, which translates into over 400 pills per person. Prescription opioids accounted for \$10 billion per year in sales in 2016.

In light of the alarming increase in opioid abuse, physicians and other prescribers are facing pressures to cut back on opioid prescriptions. In 2016, the CDC issued new guidelines for primary care physicians using opioids to treat chronic pain, emphasizing use of non-opioid pharmacologic therapies and encouraging disclosure to patients of full information on the limitations and risks of opioids and avoidance of high dosages. Further, states have begun to adopt measures designed to reduce inappropriate opioid prescriptions, and prescription drug monitoring program (PDMP) databases are now authorized in 49 states, with 29 states requiring prescribers to check PDMP databases before prescribing certain controlled substances and in workers compensation cases.

As institutional investors, we are concerned that opioid manufacturers’ unsustainable business practices may have a significant impact on not only public health and safety, but the overall economy, straining public resources and community and local budgets that are faced with increasing costs. In addition, we believe that reputational costs of adverse litigation, regulatory findings, and investigations, may impact opioid manufacturers, like Teva, in ways that could harm the Company’s long-term performance and stifle growth over the long-term.

Teva has been named as a defendant in lawsuits that are part of over 1,000 consolidated cases in Ohio, known as the National Prescription Opiate Litigation,<sup>3</sup> which includes claims that that the Company improperly marketed and distributed opioids.<sup>4</sup> In addition to claims by states, municipalities and cities, the Company is also currently facing five class action lawsuits filed by individuals and businesses who paid for health insurance, claiming that Teva understated the risks

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<sup>2</sup> Joseph Walker, Ex-Insys Saleswoman Plead Guilty in Opioid Prescription Kickback Schemes, *Wall Street Journal*, July 11, 2017, available at <https://www.wsj.com/articles/ex-insys-saleswomen-plead-guilty-in-opioid-prescription-kickback-schemes-1499814105>

<sup>3</sup> [https://www.conwaydailysun.com/news/local/conway-selectmen-mull-opioid-lawsuit-again/article\\_40d95db2-9b19-11e8-a027-83c630524b93.html](https://www.conwaydailysun.com/news/local/conway-selectmen-mull-opioid-lawsuit-again/article_40d95db2-9b19-11e8-a027-83c630524b93.html)

<sup>4</sup> Form 10-Q, filed on August 2, 2018, p. 37, available at <https://www.sec.gov/Archives/edgar/data/818686/000119312518236536/d581454d10q.htm#tx58145413>.

of addiction to opioids which caused insurance companies to factor in the cost of the opioid crisis which resulted in higher premiums, deductibles and co-payments that were ultimately paid for by insureds.<sup>5</sup> The Company, in its own word, has stated that it is the “world’s leading provider generic drugs”<sup>6</sup> and with 90% of the opioid market comprised of generic drugs,<sup>7</sup> we worry that these lawsuits may result in significant reputational and financial cost to the Company’s business.

One of these concerning marketing strategies included spending thousands of dollars on free meals to doctors. According to a study published earlier this year, Teva was among a number of companies evaluated that found a correlation between the cumulative amount opioid manufacturers spent on meals to doctors and the number of opioid prescriptions written by doctors.<sup>8</sup> The study found that while the total number of claims decreased from 2014 and 2015, “the doctors that received marketing actually increase the number of prescriptions they wrote from 2014 to 2015.”<sup>9</sup> In 2014, Teva spent \$869,155 on such marketing. While we understand that Teva no longer actively markets its opioid product lines, we worry that these historical practices may have undermined efforts under way now to reduce opioid dependency and abuse.

Lastly, Teva is the subject of Congressional inquiries from Senator Claire McCaskill, who has requested information regarding the Company’s anti-diversion and suspicious order practices. Senator McCaskill recently published a report regarding the level of opioid prescriptions in Missouri, noting that Teva’s lack of responsiveness to her request for information was effectively “stonewalling a Senate investigation examining a national public health crisis,” despite responses from competitors such as Mallinckrodt and Endo Pharmaceuticals and all three major distributors.<sup>10</sup> We understand that the Company is involved in ongoing litigation, however, as shareholders, we believe that transparency as to the Company’s compliance and anti-diversion procedures would be informative in determining the level of risk that the aforementioned lawsuits present.

We believe that Teva’s exposure to the various concerns described above requires Board-level action. To this end, we request a meeting with you and other relevant members of the Board to discuss how the Board is responding to and overseeing opioid-related risks. In particular, we are interested in learning more about the current and anticipated future role of opioids in Teva’s business strategy, the extent to which the Board engages Company stakeholders regarding opioid-

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<sup>5</sup> Sara Randazzo, “New Front on Opioid Litigation: Suits Over Rising Premiums,” *Wall Street Journal*, May 2, 2018, available at <https://www.wsj.com/articles/new-front-on-opioid-litigation-suits-over-rising-premiums-1525279402>.

<sup>6</sup> [https://www.tevapharm.com/our\\_products/generic\\_products/](https://www.tevapharm.com/our_products/generic_products/), accessed October 29, 2018.

<sup>7</sup> Zachary Brennan, FDA Charts Spike in Opioids Retail Sales from 1992 to 2016, *Regulatory Affair Professionals Society*, March 6, 2018, available at <https://www.raps.org/news-and-articles/news-articles/2018/3/fda-charts-spike-in-opioid-retail-sales-from-1992>.

<sup>8</sup> German Lopez, “Drug companies bought doctors fancy meals-and then those doctors prescribed more opioids,” *Vox News*, May 15, 2018, available at <https://www.vox.com/science-and-health/2018/5/15/17355722/opioid-epidemic-doctor-pharma-insys>.

<sup>9</sup> Jeannie Baumann, “How doctor’s free meals could be spurring opioid prescribing,” *Bloomberg Law*, May 14, 2018, available at <https://www.bna.com/doctors-free-meals-n73014475891/>.

<sup>10</sup> U.S. Senate Homeland Security and Governmental Affairs Committee, Ranking Member’s Office, “Fueling an Epidemic: Report 3,” July 12, 2018, p. 4 and 5, available at <https://www.mccaskill.senate.gov/media-center/news-releases/breaking-mccaskill-report-shows-16-billion-opioid-doses-entered-missouri-from-2012-2017>.

related matters and the measures Teva has taken, or plans to take, to create a culture in which ethical behavior and legal compliance are valued.

We also ask that Teva consider adopting the following governance reforms:

- Disclosure of Clawback Use: The Company's current clawback policy allows for recoupment of incentive compensation in the event of conduct by executives that may result in a financial restatement based on a violation of Company policy or misconduct. We believe that the Company should also disclose the circumstances surrounding any recoupment to shareholders. Greater transparency on whether the Company has recouped pay is beneficial to shareholders as it shows that the Company's clawback policy is being enforced appropriately. By way of example, McKesson, Assertio (formerly Depomed), Insys, Endo and Cardinal Health have adopted a robust clawback provision that includes disclosure of the use of a clawback for executive officers.
- Independent Investigation and Report: Teva's disclosure to shareholders about opioid-related matters is inadequate, with no mention of the Company's opioid related risks in its most recent proxy and only a brief mention of the litigation discussed above in its most recent annual report.<sup>11</sup> In light of this issue, the Board should create a special committee of independent directors to investigate and report to shareholders about Teva's role in the opioid epidemic, how the Board is managing and/or mitigating the legal, financial and reputational risks that Teva is exposed to as a result of its manufacturing, marketing and sale of opioids. The report should include a description of the extent to which liabilities related to opioid product lines have been assumed through Teva's acquisition of Barr Pharmaceutical, Cephalon, and Actavis' generics, among others. The committee should have access to independent legal and financial advisors. We note that McKesson, Cardinal Health and Assertio have all provided similar reports, and this past year a similar proposal received 52% support from investors at Rite Aid and 62% of outside shareholder support at AmerisourceBergen.
- Refrain from Excluding Legal/Compliance Costs from Compensation Metrics: Compensation metrics communicate behavioral expectations to employees, and adjusting metrics for items that are related to the Company's core business suggests a lack of accountability. The Company currently uses adjusted metrics in both its annual and long term incentive plan, such as non-GAAP EPS, which excludes legal settlements.<sup>12</sup> We believe that given the mounting litigation concerns facing Teva as a result of the opioid crisis, the Company should refrain from excluding such costs from its compensation metrics going forward.
- Report on Lobbying Activity: Lobbying spending disclosure helps to safeguard corporate reputation and protect shareholder value. The Company should commit to produce an annual lobbying disclosure report that includes federal and state lobbying payments, payments to trade associations used for lobbying, and payments to and membership in any tax-exempt organization that writes and endorses model legislation. With specific reference to opioids, we urge the board to adopt a policy that the Company will refrain from making

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<sup>11</sup> Teva Pharmaceuticals Industries Ltd., Form 10-K, filed on February 1, 2018, p. 163, *available at* <https://www.sec.gov/Archives/edgar/data/818686/000119312518039076/d529462d10k.htm>.

<sup>12</sup> *Id.* at 83-84; Teva Pharmaceuticals Industries Ltd., DEF 14-A, filed on April 25, 2018, p. 42, *available at* <https://www.sec.gov/Archives/edgar/data/818686/000119312518130745/d562596ddef14a.htm>.

dues, sponsorship or other payments to patient advocacy groups and medical professional organizations that engage in political activity that is not aligned with the Company's stated values and objectives regarding the opioid epidemic.

- Stakeholder Advisory Council: The Board should establish a multi-stakeholder advisory council composed of outside issue-area experts and stakeholder advocates specializing in the opioid epidemic, including healthcare providers, pharmacy representatives, treatment providers, health economists and academics. The advisory council would: (a) meet regularly with management and the Board; (b) serve as a point of contact for external and internal stakeholders to raise concerns regarding the opioid epidemic; and (c) assist in overseeing the Company's monitoring of community engagement, stakeholder relationships, and corporate reputation.

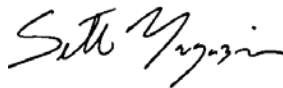
We would benefit from a deeper understanding of the Board's oversight practices and policies related to opioid manufacturing and your views on the governance reforms we have proposed. To that end, we would appreciate an opportunity to schedule a meeting with you and a written response to this letter by December 12, 2018 directed to Meredith Miller, Chief Corporate Governance Officer, UAW Retiree Medical Benefits Trust, at mamiller@rhac.com (ph: 734-887-4964).

Thank you in advance for your consideration of this request.

Sincerely,



Denise L. Nappier, Treasurer,  
State of Connecticut



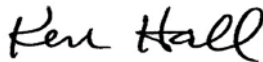
Seth Magaziner, Rhode Island  
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Michael W. Frerichs, Illinois State  
Treasurer



Scott M. Stringer, New York City  
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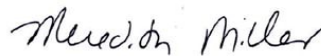
Ken Hall, General Secretary  
Treasurer, International  
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Richard Stensrud, Executive  
Director of the School  
Employees, Retirement System  
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Aisha Mastagni, Director of  
Corporate Governance California  
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System



Meredith Miller, Chief Corporate  
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Donna Meyer, PhD Director of  
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Maureen O'Brien, Vice President and Corporate Governance Director, Segal Marco Advisors

Judy Byron, OP Northwest Coalition for Responsible Investment

Kathleen Woods, Co-Chair of Portfolio Advisory Board, Adrian Dominican Sisters

Michelle de Cordova, Director of Corporate Engagement & Public Policy, NEI Investments

Cathy Rowan, Director of Socially Responsible Investments, Trinity Health

Corey Klemmer, Director of Engagement, Domini Impact Investments LLC

Rabbi Joshua Ratner, Director of Advocacy, JLens Investor Network

Stu Dalheim, Director of Shareholder Advocacy, Calvert Research and Management

Heike Cosse, Engagement Manager Responsible Investment, Aegon Assest Management Holding B.V.

Dieter Waizenegger, Executive Director, CtW Investment Group

Anna Falkenberg, PhD Executive Director of Socially Responsible Investment Coalition

Thomas McCaney, Associate Director of Corporate Social Responsibility, Sisters of St. Francis of Philadelphia

Karen Watson, CFA Chief Investment Officer, Congregation of St. Joseph

Christopher Cox, Associate Director, Seventh Generation Interfaith

Sr. Teresa George, D.C. Provincial Treasurer Daughters of Charity, Province of St. Louise

Josie Chrosniak, HM Coordinator, Region VI Coalition for Responsible Investment

Rev. Séamus P. Finn, OMI Chief of Faith Consistent Investing, OIP Investment Trust / Missionary Oblates

