

# Sudan Divestment

FF Proposed Divestment of University  
Holdings in Companies with Business  
Operations in Sudan

# RE-63 Committee on Investments

## November 14, 2005

- Request for a thorough presentation on the divestment of University holdings in four foreign companies engaged in substantial business in Sudan and thereby assisting the Government of Sudan in its genocidal campaign in western Darfur

# RE-63

- “Divestment ...should rarely be pursued.”
- Proposed new policy: divest “when the United States government declares that a foreign regime is committing acts of genocide”
- Sudan divestment qualifies under this criteria.
- Divest 4 companies with significant business relations with Sudan.

# U.C. Divestment History

- No regental policy on divestment
- Calls for divestment related to corporate products, corporate behavior, business location
- Tobacco 2001
  - Investment rationale
  - Adverse financial impact
- South Africa 1986
  - Indemnification legislation
  - Legislative findings regarding prudence of investment
  - Supreme Court ruling on Federal preemption

# Impact of Tobacco Exclusion

- Treasurer's Office calculated the impact of excluding Tobacco stocks from the indexed portfolio.
- In the 59 month period from January 1, 2001 to November 30, 2005, the Russell 3000 Tobacco Free Equity Index has underperformed the entire index by 14 basis points. Utilizing the actual monthly returns on each index and actual amounts of passive investments, the opportunity cost on the passive portfolio has been \$109 million.

# Rationale for Divestment

- Affect behavior of political entity
- Change behavior of corporate entity
- Avoid association with/profitting from inappropriate activities
  
- Exit over voice

# Proposed Criteria for Divestment

- Principles versus ad hoc
- Genocide
  - Comfort with criteria
- Determined by U.S. Congress
  - U.N. Commission

# Sudan

- Independence from Great Britain and Egypt in 1956
- Constant political turmoil subsequently except for period of relative calm, 1972-83
- Continuous tribal/religious/ economic friction between North and South
- Formation of Sudanese Peoples Liberation Army in 1983 accelerated tensions
  - Southern self-determination
  - Islamic law



# Sudan (continued)

- North – South Peace Treaty in 2002, a framework for self-determination, exemptions from Islamic law, oil revenue sharing, future referendum on Southern self-determination
- Separate rebellion in Darfur, western Sudan, with new instability in 2003
- Sudanese Liberation Movement and Justice and Equality Movement in Darfur
- Harsh Khartoum reaction

# Sudan – A Ravaged Country

- Library of Congress study (12/04) estimated 4 million displaced by North/South conflict with 2 million deaths in 2 decades of war
- Darfur in 12/04 estimated at 1.6 million displaced and 70,000 dead
- One of poorest countries in the world, but oil exports started in 1999 offer opportunity for economic development

# Impact of Sudan Divestment

- UC alone, not significant, but could launch national divestment program
- Broad divestment action could cause companies to cease doing business in Sudan
- Foreign corporate exit (U.S. companies are generally precluded from doing business in Sudan) could force change in Government processes
- Uncertainty regarding impact
- Unintended negative consequences

# University Divestments

- Harvard University: Divested PetroChina stock
- Stanford University: Divested direct holdings in PetroChina, Sinopec, Tatneft, and ABB, Ltd; sent letters to managers indicating concerns about these companies
- Samford: Divested holdings in PetroChina

# State Pension Plan Divestments

- Illinois plans to divest all holdings of
  - Sudan Govt or entities controlled by Govt
  - Entities incorporated in or with principal place of business in Sudan
  - Companies identified by U.S. Office of Foreign Assets Control (OFAC) as a sponsor of terrorist activities, or fined or sanctioned by OFAC for Sudan violations
  - Companies identified by independent research firm as doing business in Sudan (it appears that Illinois plans to use a very broad definition of “doing business”)
  - Non-publicly traded companies that fail to provide an affidavit that they do not do business in Sudan

There are certain humanitarian exclusions

Law effective 1/06; divest 60% in 12 mos; 100% in 18 mos.

# State Pension Fund Divestment continued

- Oregon divestment statute includes all entities that maintain equipment, facilities, personnel, real or personal property, or any other apparatus of business in Sudan with certain humanitarian exclusions. Reportedly, Oregon has instructed active managers to divest four stocks of the Stanford list. Statute effective 8/2005. Annual reporting.
- New Jersey statute requires divestment from companies doing business in or with equity ties in Sudan.

# CalPERS

- CalPERS sought data on companies doing business in Sudan and discussed nature and level of such activities with management of five companies.
- The CalPERS Board approved a resolution demanding that three companies end dealings with government of Sudan.

# Number of Targeted Companies

- PetroChina 1
- Stanford 4
- Genocide Information Network 16
- NYC Comptroller 24
- Institutional Shareholder Services 75
- Composite of all above 101
- UC Student Task Force 17
- KLD Sudan Compliance Service 120



# Impact on Portfolio

- UC investments in targeted companies range from \$19.9 million in Stanford list to \$2.6 billion in the ISS list or \$2.8 billion in the comprehensive list.
- Costs of divestiture include the transactional costs associated with portfolio readjustment, monitoring costs, costs of establishing and maintaining separately managed accounts, potential adverse returns from utilizing non-economic factors in portfolio development, and potential limitations on selection of managers who will manage a restricted portfolio. (Note the services are continually updating their lists of companies – KLD does it twice a month)

# Legal Considerations

- Memo from the General Counsel

# Options

- Do nothing
- Investigate and exercise voice
- Investigate, exercise voice, study/decide on divestment
- Divest now

# Divestment Options I

- Select targeted entities:
  - Specified companies (1-Petro-China, 4-RE 63, 17-Student Group alternative)
  - All entities doing business in Sudan with humanitarian exclusion (+/-75 – ISS, +/-120-KLD)

# Divestment Options II

- Securities to be divested:
  - Directly held
  - Directly held and separate accounts
  - Directly held, separate accounts, indexed accounts
  - All directly and indirectly held securities

# Divestment Options III

- General Endowment Pool (GEP)
- UC Retirement Plan (UCRP)
- Retirement Savings 403b/457/DC
  - Restrictions on external funds
- Foundations

# Recommendation for Today

- Contact firms and managers expressing concerns about Sudan activities, noting consideration of divestment, and seeking information regarding Sudan activities and responses to our concerns
- Condition any divestment decision on enactment of legislation providing indemnification for individual Regents for all costs and defense of any claim arising from the decision to divest.
- Form study group with attached charge. Study group shall meet as necessary, not less than three times. Report to Regents in March.
- Regents vote on study group report in March.

# Charge to Sudan Divestment Study Group

- The Task Force shall analyze the issues implicated by proposals for the University to divest investments in companies doing business in Sudan. The issues to be addressed shall include: criteria for identifying companies to be divested and identification of companies proposed for divestment; the scope of the proposed divestment (including direct and indirect investments); the financial impacts of the proposed divestment; and the legal implications of any proposed divestment.



# Proposed Study Group

- Regents
- Investment Advisory Committee
- Treasurer
- General Counsel
- SVP – Business & Finance
- Student Study Group
- Faculty
- UCRP Advisory Board
- Supported by Regents' Investment Advisor