

June 2010

# SUDAN DIVESTMENT

## U.S. Investors Sold Assets but Could Benefit from Increased Disclosure Regarding Companies' Ties to Sudan



GAO

Accountability \* Integrity \* Reliability



Highlights of [GAO-10-742](#), a report to congressional requesters

## Why GAO Did This Study

Recognizing the humanitarian crisis in Darfur, Sudan, Congress enacted the Sudan Accountability and Divestment Act (SADA) in 2007. This law supports U.S. states' and investment companies' decisions to divest from companies with certain business ties to Sudan. It also seeks to prohibit federal contracting with these companies. GAO was asked to (1) identify actions that U.S. state fund managers and investment companies took regarding Sudan-related assets; (2) describe the factors that these entities considered in determining whether and how to divest; and (3) determine whether the U.S. government has contracted with companies identified as having certain Sudan-related business operations and assess compliance with SADA's federal contract prohibition provision. GAO surveyed states, analyzed data on investment companies and companies with Sudan-related business operations, assessed federal contracts, and reviewed documents and interviewed officials from the Securities and Exchange Commission (SEC), among other federal agencies.

## What GAO Recommends

GAO recommends that the SEC consider issuing a rule requiring companies that trade on U.S. exchanges to disclose their business operations tied to Sudan, as well as possibly other state sponsors of terrorism. The SEC's Division of Corporation Finance agreed to present GAO's recommendation to the commission.

View [GAO-10-742](#) or [key components](#). For more information, contact Thomas Melito at (202) 512-9601 or [melitot@gao.gov](mailto:melitot@gao.gov).

## SUDAN DIVESTMENT

### U.S. Investors Sold Assets but Could Benefit from Increased Disclosure Regarding Companies' Ties to Sudan

#### What GAO Found

Since 2006, U.S. state treasurers and public pension fund managers have divested or frozen about \$3.5 billion in assets primarily related to Sudan in response to their states' laws and policies; U.S. investment companies, which also sold Sudan-related assets, most commonly cited normal business reasons for changes in their holdings. State fund managers GAO surveyed indicated that their primary reason for divesting or freezing Sudan-related assets was to comply with their states' laws or policies. Thirty-five U.S. states have enacted legislation or adopted policies affecting their investments related to Sudan, primarily in response to the Darfur crisis, as well as in response to Sudan's designation by the U.S. government as a state sponsor of terrorism. GAO also found that the value of U.S. shares invested in six key foreign companies with Sudan-related business operations declined by almost 60 percent from March 2007 to December 2009. The decline cannot be accounted for solely by a reduction in stock prices for these companies, indicating that U.S. investors, on net, decided to sell shares in these companies. Investors indicated that they bought and sold Sudan-related assets for normal business reasons, such as maximizing shareholder value.

U.S. states and investment companies have often considered three factors when determining whether and how to divest. First, they have considered whether divesting from Sudan is consistent with fiduciary responsibility—generally the duty to act solely and prudently in the interest of a beneficiary or plan participant. Second, they have considered the difficulty in identifying authoritative and consistent information about companies with Sudan-related business operations. GAO analyzed three available lists of these companies and found that they differed significantly from one another. While information directly provided by companies through public documents such as disclosures required by the SEC is a particularly reliable source of information on these companies, federal securities laws do not require companies specifically to disclose business operations in state sponsors of terrorism. The SEC has the discretionary authority to adopt a specific disclosure requirement for this information, but has not exercised this authority. Third, investors have considered the effect that divestment might have on operating companies with Sudan-related business activities, such as prompting companies interested in promoting social responsibility to leave Sudan, creating room for companies that do not share that interest to enter the Sudanese market.

GAO's analysis, including a review of a non-random selection of contracts, indicates that the U.S. government has complied with SADA's contract prohibition provision. Specifically, the U.S. government has contracted with only one company identified on a widely-used list of companies with business ties to Sudan, and the contracts awarded to this company did not violate SADA. The U.S. government has contracted with subsidiaries and affiliates of companies with business ties to Sudan, as permitted under SADA.

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## Abbreviations

ERISA	Employee Retirement Income Security Act
FAR	Federal Acquisition Regulations
OFPP	Office of Federal Procurement Policy
ORCA	Online Representation and Certifications Application
PERS	Public Employee Retirement System
SADA	Sudan Accountability and Divestment Act
SEC	Securities and Exchange Commission

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United States Government Accountability Office  
Washington, DC 20548

June 22, 2010

The Honorable Barney Frank  
Chairman  
Committee on Financial Services  
House of Representatives

The Honorable Michael E. Capuano  
House of Representatives

The Honorable Barbara Lee  
House of Representatives

Since 1993, the U.S. Secretary of State has included Sudan on the “State Sponsors of Terrorism” list for repeatedly providing support for acts of international terrorism.<sup>1</sup> In 2003, U.S. concerns grew, as militias supported by the Sudanese government in Khartoum began waging what the U.S. government has characterized as genocide against the civilian population of Darfur. According to several nongovernmental groups and experts, this campaign may be financed, in part, by revenue collected from companies with business operations in Sudan (“operating companies”), particularly in four key economic sectors—power production, mineral extraction, oil-related activities, and production of military equipment. In 2007, the U.S. Congress enacted the Sudan Accountability and Divestment Act<sup>2</sup> (SADA), which supports U.S. states’ voluntary decisions to divest from foreign companies conducting certain business operations in Sudan in these four key economic sectors.<sup>3</sup> The act also contains a “safe harbor” provision,

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<sup>1</sup>The U.S. Secretary of State designates countries as state sponsors of terrorism pursuant to three laws — section 6(j) of the Export Administration Act; section 40 of the Arms Export Control Act; and section 620A of the Foreign Assistance Act. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items (items that have commercial uses as well as military or nuclear proliferation uses); and miscellaneous financial and other restrictions.

<sup>2</sup>P.L. No. 110-174, 121 Stat. 2516-23.

<sup>3</sup>Under U.S. sanctions, U.S.-based companies are prohibited from doing business in Sudan (31 C.F.R. Part 538). Certain exemptions to this rule exist. For example, nongovernmental organizations involved in humanitarian or religious activities in Sudan are generally allowed to perform these activities.

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which gives investment companies that divest<sup>4</sup> from these companies safe harbor from lawsuits “based solely upon the investment company divesting from, or avoiding investment in, securities issued by persons<sup>5</sup> that conduct or have direct investments in business operations” designated under SADA, provided the investment companies file disclosure forms with the SEC in accordance with SADA. In addition, the act seeks to prohibit the U.S. government from contracting with companies that conduct certain business operations in Sudan. To that end, section 6 of the act (Prohibition on United States Government Contracts) requires all U.S. government agencies to ensure that each contract entered into for the procurement of goods or services includes a clause requiring the contractor to certify that it does not conduct certain business operations in Sudan in the four key economic sectors. The federal rule implementing this requirement stipulates that, in most cases, the required certification must be included in the solicitation for each new federal contract.<sup>6</sup>

At your request, we (1) identified actions that U.S. state fund managers and U.S.-based investment companies have taken regarding their Sudan-related assets and attempted to determine the reasons for these actions; (2) described the factors that these entities considered in determining whether and how to divest; and (3) determined whether the U.S. government has contracted with companies identified as having Sudan-related business operations and assessed compliance with the contract prohibition provision of SADA.

To address the first two objectives regarding U.S. states’ actions, we conducted a survey of treasurers and public pension fund managers in all 50 states and the District of Columbia.<sup>7</sup> Specifically, we surveyed (1) the 51 state treasurers or their equivalents; (2) the 51 state-run public employee retirement system funds; and (3) managers of 50 other state-run

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<sup>4</sup>SADA does not define divestment. For the purposes of this report, we use the term “divestment” to mean the relinquishment of all assets held in specified companies in order to reduce financial or political support for an entity and change that entity’s behavior.

<sup>5</sup>Under SADA, the term “person” includes, among others, a corporation, company, business association, and their successors, subunits, parent companies, or subsidiaries.

<sup>6</sup>Federal Acquisition Regulation (FAR) § 25.702.

<sup>7</sup>Throughout this report, the term “state” refers to the 50 states and the District of Columbia.

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public pension funds, such as teacher retirement funds.<sup>8</sup> (In some states, holdings are contained in several funds managed by different individuals.) We chose the first and second categories because they were frequently identified in state laws as the entities responsible for implementing any divestment actions. We chose the third category to include the funds with the largest asset values after the funds managed by public employee retirement systems and treasurers, since some state laws also affected these state-run funds. For the purposes of this report, we refer to the individuals in each of these categories as “state fund managers.” We administered the survey between February and April 2010. Ninety-one percent (or 138 of 151) of fund managers responded to our survey, with at least 1 fund manager from each of the 51 states providing responses. We also reviewed state laws and policies<sup>9</sup> regarding investment of their Sudan-related assets.<sup>10</sup>

To identify the actions that investment companies took regarding their Sudan-related assets, we first had to identify foreign operating companies with business ties to Sudan as a way to isolate and track U.S. investors’ holdings in these companies. We obtained and compared three lists of such operating companies, including those that are widely used by states in determining whether and how to divest from Sudan. From these lists, we selected six operating companies that appeared on all three lists, including companies that have been targeted through public divestment campaigns, and have operations in Sudan’s oil sector, which plays a central role in that country’s economy. To analyze U.S. investment companies’ holdings in these six key foreign operating companies, as well as the stock prices of these companies, we used shareholder ownership and market data (purchased from Thomson Reuters). We also interviewed investment companies regarding Sudan-related assets. We identified these companies by selecting those that had spoken publicly about the issue of Sudan divestment, as well as by issuing an invitation through a large national association of investment companies to all of its

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<sup>8</sup>We discovered 1 fund from our third population to be out of our scope because it was a municipal-run fund, not a state-run fund. The removal of this fund reduced our third population from 50 to 49 funds and our total population from 152 to 151 funds.

<sup>9</sup>For the purposes of this report, we use the term “policy” to refer to a written statement outlining actions or positions that a government entity intends to take.

<sup>10</sup>For the state treasuries and pension funds, our analysis is based primarily on equities, but also includes some debt. For the investment companies, our analysis is based exclusively on equities.

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members.<sup>11</sup> Six investment companies agreed to speak with us, and one provided written answers anonymously from 31 of its sub-advisers. In addition, we interviewed eight foreign operating companies that have Sudan-related business operations or had previously operated in Sudan. We identified and contacted 22 companies that appeared on at least one of the lists we analyzed and represented a mix of both Western (primarily European) and Eastern (or Asian) companies. Nine agreed to speak with us, all of them Western.<sup>12</sup> Finally, we reviewed documents and interviewed agency officials from the SEC and the Departments of Justice, State, and Treasury. (States are required to submit written notice of divestment to the Department of Justice; investment companies seeking to rely upon the safe harbor provision of SADA are required to disclose their divestment in a filing with the SEC.) The SEC is responsible for overseeing the federal securities laws, which require public companies to disclose information about their operations, among other things, to investors. Through its Office of Global Security Risk, the SEC monitors operating companies' disclosure of material<sup>13</sup> business activities in or with ties to state sponsors of terrorism and issues comments to these companies when appropriate. The Department of State oversees U.S. foreign policy toward Sudan, and the Department of the Treasury administers and enforces U.S. sanctions against Sudan.

To address the third objective, we searched the Federal Procurement Data System—Next Generation on March 2, 2010, to determine whether the U.S. government awarded federal contracts from June 12, 2008, to March 1, 2010, to foreign companies identified as having business ties to Sudan, as well as to some of their subsidiaries and affiliates. (We determined that this data system was sufficiently reliable for the purposes of our review because we did not need to identify the universe of contracts subject to SADA in order to complete our analysis.)<sup>14</sup> We then selected the highest

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<sup>11</sup>According to this association, its members represent about 98 percent of all investment companies registered with the Securities and Exchange Commission (SEC).

<sup>12</sup>Ultimately, we spoke with only eight of these companies because the ninth company did not respond to our last communication attempting to schedule the meeting.

<sup>13</sup>The meaning of “material information” is not explicitly defined by law, but the Supreme Court has determined that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or the information would significantly alter the total mix of available information.

<sup>14</sup>GAO has identified data reliability weaknesses in the Federal Procurement Data System. For example, see GAO, *Federal Contracting: Observations on the Government's Contracting Data Systems*, [GAO-09-1032T](#) (Washington D.C.: Sept. 29, 2009).



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dollar amount contract or contract modification for each of the 31 companies we identified and, if the solicitation was issued on or after June 12, 2008—when the interim implementing regulations took effect—reviewed the solicitation or other relevant documentation for presence of the applicable Sudan-related certification clause.<sup>15</sup> We also reviewed federal rules related to the requirement and interviewed U.S. officials at the Office of Management and Budget, the Department of the Treasury, and the General Services Administration.

We conducted this performance audit from August 2009 to June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. (App. I provides a detailed discussion of our objectives, scope, and methodology.)

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## Results in Brief

U.S. state fund managers reported that, since 2006, they have divested or frozen<sup>16</sup> about \$3.5 billion in assets primarily related to Sudan in response to their state laws and policies; U.S. investment companies, which also sold Sudan-related assets, most commonly cited normal business reasons for changes in their holdings. We found that, from 2006 to 2010, 23 states divested their assets from a total of 67 operating companies, with New Jersey's divestment of almost \$2.2 billion representing about 62 percent of the total. The fund managers responding to our survey who had divested or frozen or planned to divest or freeze their states' Sudan-related assets indicated that their primary reason for doing so was to comply with their states' laws or policies, rather than out of concern for the situation in Darfur. Thirty-five U.S. states have enacted legislation or implemented policies affecting investments related to Sudan, primarily in response to the Darfur crisis, as well as in response to Sudan's designation by the U.S. government as a state sponsor of terrorism. They also reflect a variety of approaches, such as mandating or encouraging divestment and prohibiting state contracts with certain companies that have business operations

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<sup>15</sup>Our findings related to this analysis cannot be generalized to the entire universe of new contracts awarded to these companies since June 12, 2008.

<sup>16</sup>For the purposes of this report, freezing assets means withholding additional or new investments from one's current investments.

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related to Sudan. Data indicate that U.S.-based investment companies have also reduced their Sudan-related holdings. Specifically, we determined that, from March 2007 to December 2009, the total value of U.S. shares invested in six key foreign companies with Sudan-related business operations declined by almost 60 percent. This decline cannot be accounted for solely by a reduction in stock prices for these companies, indicating that U.S. investors, on net, decided to sell shares in these companies. Most commonly, U.S. investment companies told us or reported that they bought and sold Sudan-related assets for normal business reasons, such as maximizing shareholder value consistent with the guidelines in each fund's prospectus, as well as in response to specific client instructions.

U.S. states and investment companies have often considered the following three factors when determining whether and how to divest from companies tied to Sudan:

- *Whether divesting from Sudan is consistent with fiduciary responsibility.*<sup>17</sup> For example, of the 29 state fund managers responding to our survey who had divested or frozen their Sudan-related assets, or planned to do so, 17 (or 59 percent) said they were concerned to a moderate or large extent that “it would be difficult to divest while ensuring that fiduciary trust requirements were not breached and my office/state was not made vulnerable to law suits.” Private investment companies expressed differing views on their fiduciary duty in the context of Sudan-related divestment. Some expressed the view that taking social concerns into account when making investment decisions, rather than focusing on maximizing returns on investment, is inconsistent with fiduciary responsibility. Other companies, particularly those identifying themselves as socially responsible, expressed the view that divesting from Sudan is consistent with fiduciary responsibility, provided that the divested assets are placed in alternative investments that can compete financially. Despite the different views expressed on fiduciary responsibility in the context of divesting for social reasons, several investment companies told us that SADA’s safe harbor provision from lawsuits alleging breach of fiduciary duty was not necessary, either because they viewed divesting for social concerns as consistent with fiduciary responsibility or because they would

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<sup>17</sup>State fiduciary law varies from state to state through state constitutions, statutes, and common law. However, for the purposes of this report, fiduciary responsibility is defined as the duty to act solely in the interest of a participant or beneficiary and for the exclusive purpose of providing benefits to the participant and beneficiary.

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not characterize their decision to sell shares related to Sudan as divestment. As of May 2010, two investment companies have taken advantage of the safe harbor provision.

- *The difficulty in identifying authoritative and consistent information about companies with Sudan-related business operations.* Under SADA, states that divest from operating companies with business operations in Sudan must use credible information to identify those companies. However, there is no single, authoritative list of operating companies with business ties to Sudan, and the three lists we analyzed differed significantly from one another. Although information provided directly by companies is particularly useful to investors, companies' SEC disclosure filings do not consistently contain all information about their operations in Sudan because federal securities laws do not specifically require companies to report all activities in or ties to U.S.-designated state sponsors of terrorism, including Sudan. Although the SEC has the discretionary authority to request additional information from companies that trade on U.S. exchanges, it has not exercised this authority by adopting a specific disclosure requirement and has indicated that it is committed to the practice of relying on companies to ensure that their disclosures contain all material information about their operations in these countries.
- *The effect that divestment might have on operating companies with Sudan-related business activities.* Some advocates and investors have raised concerns that divestment campaigns can prompt companies interested in promoting corporate social responsibility to leave, creating room for companies that do not share that interest to enter the Sudanese market. As a result of this concern about divestment, some advocacy groups, as well as some U.S. states and investment companies, have increasingly focused on engaging with operating companies to improve their business practices. For example, they have written letters to or met with companies' senior management encouraging them to fund humanitarian programs that aid the Sudanese people, conduct human rights assessments of their business operations in Sudan, or pressure the Sudanese government to change its practices.

Our search of federal contract awards since June 12, 2008, as well as our review of a selection of contracts, indicates that the U.S. government has complied with SADA's federal contract prohibition provision. We determined that, of 88 companies identified on a widely used list of companies that have business ties to Sudan, only 1 has received federal contracts since the requirement took effect. However, because of the contract type, the Sudan-related certifications were not required for these

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particular contracts, and therefore there was no violation of SADA. The U.S. government has contracted with subsidiaries and affiliates of companies with business ties to Sudan, as permitted under SADA. We found that all contracts that we selected for review complied with federal rules implementing SADA. We also found that no contracting agency has requested a waiver from the contract prohibition requirement. Such a waiver, if granted, would allow a company to obtain federal contracts even while conducting business operations in Sudan that are normally prohibited under SADA. Finally, we determined that no companies had been included on the list of contractors barred from federal contracting for falsely certifying that they did not conduct prohibited business operations in Sudan.

In order to enhance the investing public's access to information it needs to make well-informed decisions when determining whether and how to divest Sudan-related assets, we recommend that the SEC consider issuing a rule requiring companies that trade on U.S. exchanges to disclose their business operations related to Sudan, as well as possibly other state sponsors of terrorism.

The SEC's Division of Corporation Finance provided written comments on a draft of our report, which are reprinted in appendix IV. The Division of Corporation Finance agreed that it would present our recommendation to the commission for its consideration. However, the division expressed concern that adopting a disclosure requirement that is excessively broad and beyond what GAO recommends could possibly lead to a volume of information that would overwhelm the investor and possibly obscure other material information.

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## Background

Since gaining independence from Britain and Egypt in 1956, Sudan has endured civil war rooted in cultural and religious divides. The North, which has traditionally controlled the country, has sought to unify it along the lines of Arabism and Islam, whereas non-Muslims and other groups in the South have sought, among other things, greater autonomy. Since 1993, the Secretary of State has included Sudan on the "State Sponsors of Terrorism" list for harboring and supporting local and international terrorists. In 1997, the U.S. government imposed a trade embargo against the entire territory of Sudan and a total asset freeze against the Government of Sudan,<sup>18</sup> and in 2006 it blocked the property and interests

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<sup>18</sup>Executive Order 13067.

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in property of certain persons connected with the conflict in Darfur,<sup>19</sup> where militias supported by the Sudanese government led a “campaign of genocide” and forced displacement. The Department of the Treasury’s Office of Foreign Assets Control administers and enforces these sanctions in part through its Specially Designated Nationals list, which identifies individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries, including Sudan.<sup>20</sup>

As awareness of the Darfur conflict and the role of the Sudanese government in perpetuating the conflict grew, activists at U.S. colleges and universities and political officials at city and state levels in the United States initiated campaigns to encourage divestment from Sudan. This Sudan divestment movement was coordinated, in part, by the Sudan Divestment Task Force, a U.S.-based initiative established in 2005 and incorporated in 2006 as a project of the Genocide Intervention Network, a nonprofit organization based in Washington, D.C. This task force developed a divestment approach called “targeted” divestment, which aims to maximize impact on the Sudanese government and minimize potential harm to Sudanese civilians. It also created model legislation for use by U.S. states based on this approach.

SADA, enacted in December 2007, appears to incorporate many of the elements of this targeted divestment approach. For example, SADA applies to companies operating in four key economic sectors—power production, mineral extraction, oil-related activities, and production of military equipment—and outlines several exceptions to operations in these sectors. Specifically, it exempts business operations that

- are conducted under contract directly and exclusively with the regional government of southern Sudan [which is autonomous from the Khartoum-based government of Sudan];
- are conducted under a license from the Department of the Treasury’s Office of Foreign Assets Control or are expressly exempted under federal law from the requirement to be conducted under such a license;

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<sup>19</sup>Executive Order 13400.

<sup>20</sup>It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country specific. Collectively, these individuals’ assets are blocked and U.S. persons are generally prohibited from dealing with them.

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- consist of providing goods or services to marginalized populations of Sudan;
  - consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
  - consist of providing goods or services that are used only to promote health or education; or
  - have been voluntarily suspended.

In addition, business operations in the oil sector are exempted if the company is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other oil-related activity, or if the company is involved in leasing, or owns, rights to an oil block in Sudan but is not involved in any other oil-related activity. For the purposes of this report, the term “prohibited business operations” refers to business operations in Sudan in the sectors of oil, power production, mineral extraction and production of military equipment, provided that they do not qualify for one of the exceptions listed above.

Under SADA, the SEC was directed to prescribe regulations that require disclosure by each registered investment company that divests itself of securities in accordance with SADA. Under the SEC’s regulations, investment companies seeking to rely upon the safe harbor provision of SADA must disclose the divestment on their next form N-CSR or form N-SAR<sup>21</sup> that it files following the divestment.<sup>22</sup> The information disclosed must include, among other things, the specific securities divested, the magnitude of divestment, and the dates that the securities were divested. In addition, if the investment company continues to hold any securities of the company from which it divested, it will be required to disclose, among other things, the total number of shares or, for debt securities, the principal amount of such securities, held on the date of filing.

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<sup>21</sup>The N-CSR filing is the certified shareholder report of registered management investment companies. The N-SAR filing is the semi-annual report for registered management companies.

<sup>22</sup>73 Fed. Reg. 23328, 23330 (Apr. 30, 2008).

## U.S. State Fund Managers and Investment Companies Have Sold Sudan-related Assets for Varying Reasons

Our survey responses show that state fund managers have divested or frozen about \$3.5 billion in assets primarily related to Sudan in response to their states' laws and policies. The value of U.S. investment companies' Sudan-related asset holdings has declined considerably since March 2007, and companies told us that their decisions regarding these shares were motivated primarily by normal business reasons.

### State Fund Managers Reported That They Have Divested or Frozen about \$3.5 Billion in Assets Primarily Related to Sudan in Response to Their States' Laws and Policies

Fund managers from 23 of the states responding to our survey reported that, from 2006 to January 2010, they divested or froze almost \$3.5 billion in assets held in 67 operating companies they identified as related either to Sudan specifically or to a larger category of divestment targets, such as state sponsors of terrorism. New Jersey accounted for almost \$2.2 billion, or about 62 percent, of this total. (See table 1.) Illinois was 1 of the 23 states that reported divesting or freezing its Sudan-related assets, but it did not provide the value or dates of these actions.

**Table 1: Total Sudan-related Assets Divested or Frozen by States, 2006 to January 2010**

State	Total amount divested or frozen	Earliest divestment or freezing action	Most recent divestment or freezing action
New Jersey	\$2,162,564,000	<sup>a</sup>	May 2006
Oregon	362,000,000	2006	2009
Texas	225,990,790	October 2008	January 2009
Massachusetts	164,489,806	March 2008	March 2008
Florida <sup>b</sup>	154,947,926	April 2008	July 2008
California	81,739,949	May 2006	September 2008
Colorado	76,066,122	July 2007	January 2010
Indiana <sup>b</sup>	67,203,695	December 2008	December 2009
Maryland <sup>b</sup>	35,430,790	September 2007	April 2008
Michigan <sup>b</sup>	24,332,285	May 2009	December 2009
Maine <sup>c</sup>	21,500,000	April 2006	June 2009
Connecticut <sup>b</sup>	15,388,947	May 2007	September 2009
Kansas	13,378,022	<sup>a</sup>	June 2008
Hawaii	13,288,052	February 2008	December 2008
New York <sup>b</sup>	12,300,000	June 2009	June 2009

State	Total amount divested or frozen	Earliest divestment or freezing action	Most recent divestment or freezing action
New Mexico	12,000,000	<sup>a</sup>	January 2008
Iowa	10,576,749	October 2007	October 2008
New Hampshire	5,636,966	September 2008	March 2009
Ohio <sup>b</sup>	2,341,595	November 2009	November 2009
Minnesota	1,012,038	January 2008	April 2009
Pennsylvania	945,247	January 2008	January 2008
Arizona <sup>b</sup>	727,480	November 2009	November 2009
<b>Total<sup>d</sup></b>	<b>\$3,463,860,458</b>		

Source: GAO's survey of states and public state investment reports.

<sup>a</sup>States with no entry for "earliest date" did not provide us with this information.

<sup>b</sup>The state has a law or policy, which either focuses on both Sudan and Iran or targets state sponsors of terrorism.

<sup>c</sup>Maine's law on Sudan-related investments, enacted in 2005, expired July 1, 2009.

<sup>d</sup>This total reflects the amounts divested or frozen as reported in responses to our survey or in public documents. There may be additional fund managers whose funds were not included in our survey population or who divested but did not respond to our survey.

All of the states that reported having divested or frozen Sudan-related assets had laws or policies regarding their Sudan-related assets, and the state fund managers who responded to our survey cited compliance with these laws and policies as their primary reason for divestment. In response to our survey, 29 fund managers from 23 states<sup>23</sup> reported that they had divested or frozen their Sudan-related assets or planned to do so. Nineteen of these fund managers said they were required to divest by their state's law or policy; eight said they were not required to divest.<sup>24</sup> When asked in our survey to consider various possible reasons for divesting and characterize them as major, moderate, or minor reasons, all of the fund managers responding to these questions who indicated they were required to divest cited their state's requirement as a major reason for divesting. In comparison, only two of the managers who indicated they were required to divest said they divested in order to reduce the financial risk their fund was exposed to, and only seven said that concerns about supporting

<sup>23</sup>There are more fund managers than states because the pension holdings in some states are contained in several funds managed by different individuals.

<sup>24</sup>Two of the 29 fund managers who indicated that they had divested or frozen their Sudan-related assets or planned to do so did not respond to our questions about the reasons for their divestment.



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genocide or supporting state sponsors of terrorism were a major or moderate consideration when divesting.

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### 35 States Have Enacted Laws or Adopted Policies Affecting Sudan-Related Investments, Largely out of Concern Regarding Darfur

Thirty-five U.S. states have enacted legislation, adopted policies, or both affecting their Sudan-related investments.<sup>25</sup> Specifically, 26 states have current legislation that affects their Sudan-related investments, and 9 states without Sudan-related legislation have policies regarding Sudan-related investments.<sup>26</sup> In three of the states with such legislation, individual funds not covered by the legislation also issued their own policies affecting their Sudan-related investments. For example, Indiana's law requires the Teachers Retirement Fund and the Public Employees Retirement Fund (both overseen by the governor) to divest from Sudan-related companies. In addition, the Indiana state treasurer issued a policy statement prohibiting all state funds under the treasurer's management (such as the State Police Pension Fund) from investing in any debt issued by a state sponsor of terrorism.

The 35 states that enacted or adopted these laws and policies did so often out of concern for the genocide in Darfur, as well as some concerns about terrorism. Specifically, 29 states' laws or policies identify the genocide in Darfur (or in Sudan) as a finding in enacting the measure or say that the measure may expire or cease to be effective after the genocide in Darfur has halted.<sup>27</sup> For example, California's law requiring divestment from companies with Sudan-related business operations states that the law will remain in effect until "the government of Sudan halts the genocide in Darfur for 12 months as determined by both the Department of State and the Congress of the United States" or until "the United States revokes its current sanctions against Sudan." Some states, including some that target Sudan, have laws or policies that target countries or entities due to

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<sup>25</sup>Some state fund managers reported having issued policy guidance regarding how state law affects their funds. While we consulted these policies when necessary, we focused our analysis on state laws and non-legislative policies because the legislative policies generally reflected the state laws.

<sup>26</sup>One additional state had a law that expired. Maine enacted legislation in 2005, which expired in July 2009. Fifteen states considered but failed to pass bills related to Sudan and Sudan-related investments.

<sup>27</sup>Maryland's law states that, notwithstanding any other provisions, the act may not be applied to certain investments or divestment actions if the U.S. Congress or President affirmatively declare, among other things, that the government of Sudan has ceased attacks on civilians.

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terrorism concerns. For example, Colorado’s law requiring Sudan divestment by public pension plans begins with eight declarations regarding Darfur, genocide, and human rights abuse.<sup>28</sup> The law then cites concerns about U.S. sanctions against Sudan and the designation of Sudan as a state sponsor of terrorism in 1993, as well as a statement regarding the “financial risk posed by investments in companies doing business with a terrorist-sponsoring state.” In contrast, Pennsylvania’s Treasurer’s policy does not mention Sudan specifically, but requires the state treasurer to “determine whether a company in which it is considering investing, or a company in which it already holds a position, is doing sufficient business—directly, or through contractual or ownership interests—in or with a state sponsor of terrorism.” Six states have laws or policies that target both Sudan and Iran. In addition, a few states have laws or policies focusing on companies identified by the U.S. Department of the Treasury’s Office of Foreign Assets Control in its list related to sanctions, or the Department of State’s list of Foreign Terrorist Organizations.<sup>29</sup>

The 35 states’ laws and policies we identified vary in the specificity with which they address the sale and purchase of Sudan-related assets. For example, only one law explicitly defines “divestment action,”<sup>30</sup> while most of the laws describe only the actions required to achieve divestment. In addition, two laws state that a “public fund shall sell, redeem, divest or withdraw all publicly traded securities of the company” on their “scrutinized companies list,” with certain exceptions. Other laws simply state that the public fund in question “shall divest” from or “shall not be

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<sup>28</sup> Arizona targets Sudan specifically but also targets all state sponsors of terrorism. The District of Columbia and Maryland have laws mandating divestment from Sudan- and Iran-related companies. Florida and Louisiana have laws requiring some of their public retirement systems to offer a terror-free index fund option to their retirees. Georgia targets “any corporation that is included in the terrorism sanctions issued by the Office of Foreign Assets Control of the United States Department of the Treasury.”

<sup>29</sup> According to the Department of State, this list identifies foreign organizations that the U.S. government has determined engage in terrorist activity, as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), or terrorism, as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. § 2656f(d)(2)), or that retain the capability and intent to engage in terrorist activity or terrorism. In addition, the organizations’ terrorist activities or terrorism must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.

<sup>30</sup> Maryland state code, Division II, Title 21, Subtitle 1, says “divestment action” means “selling, redeeming, transferring, exchanging, otherwise disposing of, and refraining from further investment in certain investments.”

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invested in” companies with ties to Sudan. Most states with laws and policies requiring divestment also prohibit or restrict future investments in Sudan-related companies. However, some laws and policies only mention prohibiting future investments but do not require divestment of Sudan-related investments held prior to enactment of the measures.

In addition to divestment, many state laws and policies also mandate or encourage engagement—identifying companies and leveraging power as a shareholder or potential shareholder in an effort to change the investment or operating behavior of that company. Notably, most states that require or encourage divestment also require or encourage the state funds to communicate with companies prior to divesting. Eight laws state that if, after a certain number of days following a public fund’s first engagement with a company, the company continues to have scrutinized active business operations a “public fund shall sell, redeem, divest or withdraw all publicly traded securities of the company” on their “scrutinized companies list,” with certain exceptions.<sup>31</sup> Arizona’s law requires the public fund to review the list of companies it invests in directly and identify those companies that may have both business in specific sectors and ties to Sudan. The public fund must put the identified companies on a “scrutinized companies” list and send a written notice informing the company of its scrutinized status and that it may become subject to divestment by the fund. If the company fails to respond with information about its activities or does not cease its scrutinized business operations within 180 days, the fund “shall sell, redeem, divest or withdraw all publicly traded securities of the company.” Finally, a limited number of states prohibit state contracting with companies operating in Sudan.<sup>32</sup> Table 2 outlines the laws and policies in effect with regard to Sudan-related investments in 35 states.

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<sup>31</sup>This wording is used in the state codes of Arizona, Colorado, Florida, Hawaii, Massachusetts, New Hampshire, North Carolina, and Rhode Island.

<sup>32</sup>These states include Arizona, California, Georgia, and Utah. Although Utah has a law that prohibits state contracts, it does not appear in table 2 because it does not have any laws or policies specifically regarding investment of Sudan-related assets.

**Table 2: State Laws and Policies Regarding Sudan-related Assets Effective as of April 2010**

	State	Has law(s)	Has non-legislative policy	Requires engagement	Requires divestment	Encourages engagement	Encourages divestment	Prohibits future direct investment	Prohibits state contracts with firms operating in Sudan
1.	Arizona	•		•	•			•	•
2.	California	•		•	•			• <sup>a</sup>	•
3.	Colorado	•		•	•			•	
4.	Connecticut	•		•	• <sup>b</sup>		• <sup>b</sup>	• <sup>b</sup>	
5.	District of Columbia	•		•	•			•	
6.	Florida	• <sup>c</sup>		•	•			•	
7.	Georgia	•						•	•
8.	Hawaii	•		•	•			•	
9.	Illinois	•			•			•	
10.	Indiana	•	•	• <sup>d</sup>	• <sup>d</sup>			• <sup>d</sup>	
11.	Iowa	•		•	•			•	
12.	Kansas	•		•	•			•	
13.	Louisiana	• <sup>c</sup>							
14.	Maryland	•		•	•			•	
15.	Massachusetts	•			•	•		•	
16.	Michigan	•	•	• <sup>e</sup>	• <sup>e</sup>		• <sup>e</sup>	• <sup>e</sup>	
17.	Minnesota	•		•	•			•	
18.	New Hampshire	•		•	•			•	
19.	New Jersey	•			•			•	
20.	North Carolina	•		•	•			•	
21.	Ohio	•		•	•				
22.	Oregon	•		•			•	•	
23.	Rhode Island	•		•	•			•	
24.	South Carolina	•	•		• <sup>f</sup>			• <sup>f</sup>	
25.	Tennessee	• <sup>g</sup>							
26.	Texas	•		•	•			•	
27.	Missouri		• <sup>h</sup>						
28.	Nevada		•		•			•	
29.	New Mexico		•		•			•	
30.	New York		•	•			•		

State	Has law(s)	Has non-legislative policy	Requires engagement	Requires divestment	Encourages engagement	Encourages divestment	Prohibits future direct investment	Prohibits state contracts with firms operating in Sudan
31. Pennsylvania		•	• <sup>i</sup>		• <sup>i</sup>	• <sup>i</sup>		
32. Vermont		•				•	•	
33. Washington		•			•	•		
34. Wisconsin		• <sup>j</sup>			• <sup>j</sup>			
35. Wyoming		•		•			•	
<b>35 Total States Affected</b>	<b>26</b>	<b>12</b>	<b>21</b>	<b>25</b>	<b>4</b>	<b>7</b>	<b>27</b>	<b>3</b>

Source: GAO analysis of state legislation, policies, and survey responses.

Notes: We believe our review of states' laws and policies and survey responses from relevant state officials provides a reasonable basis for the numbers in the table. The vague language in some states' laws and policies, as well as their interpretation as indicated by some state officials' survey responses, can impact the conclusion about whether a law or policy contains a provision that falls within one of the designated categories.

These laws and policies affect different funds within each state (e.g., some affect the state treasurers' assets; others affect the state investment boards' assets; and others affect multiple funds). The chart summarizes the approaches taken by the various laws and policies that are in effect in each state, since several states, including Arizona, California, Florida, Illinois, Indiana, Michigan, South Carolina, and Pennsylvania, have more than one law or policy.

<sup>a</sup>In addition, California's law regarding the University of California system indemnifies the regents and other officials and employees of the University of California for decisions not to invest in the future.

<sup>b</sup>While Connecticut law mandates divestment from government of Sudan-owned debt and securities and prohibits future direct investment in these assets, it only encourages (but does not require) divestment from Sudan-related companies and recommends avoiding future direct investment in them.

<sup>c</sup>In addition, Florida's laws require that the Municipal Police Pensions, the Public Employee Optional Retirement Plan, and the Firefighter Pensions create a terror-free index. Louisiana's law requires public funds to invest an unspecified portion of their assets in a similar terror-free index.

<sup>d</sup>While Indiana's Public Retirement and Disabilities Benefits law requires engagement and divestment and prohibits future direct investment, the Indiana treasurer's policy only prohibits future investment.

<sup>e</sup>While Michigan's law requires the public employee retirement system authorities to engage and divest, the Municipal Employees Retirement System's policy does not mention engagement, and encourages divestment and the prohibition of future direct investment.

<sup>f</sup>Both South Carolina's Retirement System law and Investment Commission policy prohibit future direct investment. While the law requires divestment, the policy does not mention divestment.

<sup>g</sup>Tennessee's law requires the treasurer to monitor the state's holdings related to state sponsors of terrorism and report them to the Council on Pensions and Insurance, but does not mention any further action.

<sup>h</sup>According to a Missouri State Employee Retirement System official, if they receive a list of terrorist-sponsoring companies from a federal agency, they are obligated to divest in accordance with their policy.

<sup>i</sup>A Pennsylvania Public School Employees Retirement Board resolution mandates engagement and another encourages divestment. The Pennsylvania Treasury's policy encourages engagement first. If engagement does not elicit an acceptable response, Treasury will consider either making no new investments or pursuing divestment consistent with sound investment practice.

<sup>j</sup>Wisconsin's Investment Board policy "opposes divestment, whether total or targeted." The policy encourages engagement and the sale of assets based on "risk and economic factors."

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The Value of U.S. Investment Companies' Sudan-related Asset Holdings Has Declined Considerably since March 2007; Investment Companies Cited Normal Business Reasons as Their Motivation for Buying or Selling These Assets

Our analysis shows that U.S.-based investment companies have sold some or all of their Sudan-related shares in six key foreign companies with Sudan-related business operations. Specifically, we found that U.S. holdings in these six companies fell from \$14.4 billion at the end of March 2007 to \$5.9 billion at the end of December 2009, a decline of nearly 60 percent. The number of investors holding these assets also declined, from 303 in March 2007 to 272 in December 2009, a 10 percent drop. While hundreds of U.S. investors have held shares in these six companies, 80 percent of the value of these shares, on average, has been held by the top 20 investors.<sup>33</sup>

This decline of nearly 60 percent in the value of Sudan-related shares held cannot be accounted for solely by changes in share prices, indicating that U.S. investors, on net, chose to sell shares in these companies. In order to determine whether the decline in value of Sudan-related equities was due solely to fluctuations in the market value of shares we constructed price indices for the U.S. holdings. Any decline in the value of the Sudan-related holdings not explained by a decline in prices indicates selling, on net, of Sudan-related equities. We constructed three different price indices using three standard methods to estimate changes in prices.<sup>34</sup> All three price indices indicate that U.S. investors, on net, sold shares of Sudan-related companies. Based on the price index weighted to the U.S. portfolio of Sudan-related equities, prices rose by roughly 7 percent from March 2007 to December 2009, while equity holdings fell by nearly 60 percent (see fig. 1). This suggests that net selling of Sudan-related equities explains the majority of the decline in U.S. holdings. However, it is not certain if this selling is related to conditions specific to Sudan or represents a more general reallocation of assets by U.S. investors.<sup>35</sup> Nevertheless, some

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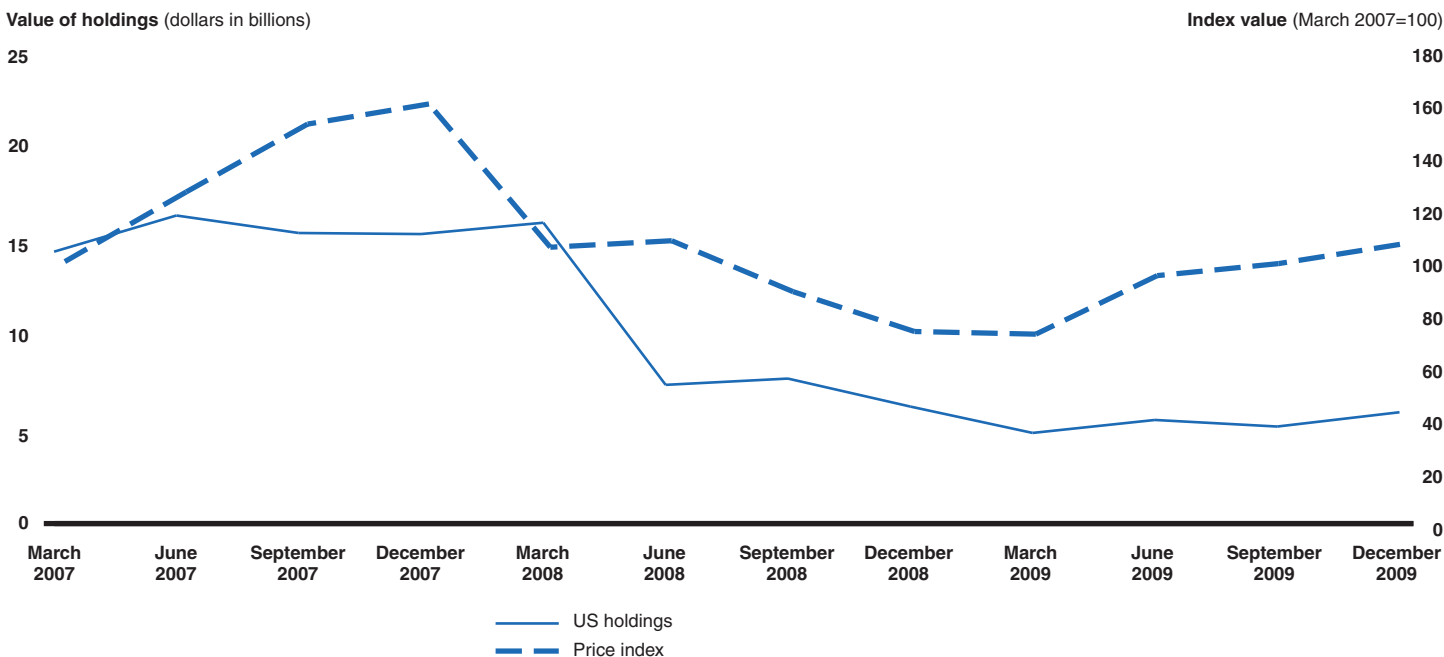
<sup>33</sup>Many of the same investment companies have appeared frequently in the group of top 20 investors from March 2007 to December 2009. For example, 15 firms appeared in more than half of the 12 financial quarters during this time period, including 4 that were in the top 20 for each of the 12 quarters.

<sup>34</sup>The three index types we chose were based on standard price index methods used to aggregate many prices into a single index value: a capitalization weighted index, a LasPeyres index, and a Paasche index. Using Thomson Reuters Datastream (a financial database that includes global equity markets), we were able to identify price and market value data for 18 securities (corresponding to five different companies) that we used to calculate our price indices. See app. II for more information on our price index methodology.

<sup>35</sup>To construct a control or comparison group would require more frequent and timely data than were readily available.

evidence suggests that Sudan-specific factors may have influenced investors' decisions to sell. Specifically, from December 2007 to December 2008, U.S. holdings in Sudan-related equities declined as a percentage of foreign oil and gas equity holdings (the proportion fell from 3.4 percent to 2.3 percent) and as a percentage of all foreign equity holdings (the proportion fell from 0.3 percent to 0.2 percent).

**Figure 1: U.S. Holdings and Prices of Sudan-related Companies, March 2007 to December 2009**



Source: GAO analysis of Thomson Reuters data.

Investors said they weighed various factors in their decisions regarding their Sudan-related assets.<sup>36</sup> We interviewed or obtained information from 37 institutional advisers on their views regarding Sudan-related assets. Most commonly, investors stated that they bought and sold Sudan-related assets for normal business reasons, such as maximizing shareholder value consistent with the guidelines in each fund's prospectus, as well as in response to specific client instructions. In the process of assessing an

<sup>36</sup>Some investors we interviewed did not directly hold Sudan-related assets because, as self-designated socially responsible investment companies, they screen out these assets or because the nature of the funds they managed precluded the inclusion of Sudan-related assets.

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investment, “normal business reasons” could incorporate, as appropriate, information related to the target company’s environmental, social, governance, and other practices.

Each of the investment companies we interviewed issued a corporate statement regarding Sudan-related investing, and these corporate statements reflect a variety of investor perspectives.<sup>37</sup> For example, one firm’s corporate statement observed that “The situation in Darfur is the most urgent human rights and humanitarian crisis in the world right now...and we resolved to make the most appropriate contribution we could—above and beyond ensuring that our own funds do not invest in companies materially involved in Sudan.” Another company’s statement expressed its sensitivity to the ongoing tragedy in Darfur and respected the request by some investors to divest holdings in companies that have Sudan-related activities as one way to bring pressure to bear on the Sudanese government. This company, however, explained that “when it is appropriate to remain actively invested in a company, we will do so, thus retaining the ability to oppose company practices that we do not condone. This, in the long term, may have the greatest chance of ending those practices.”

Only one investment company we spoke with indicated that it was considering the sale of its Sudan-related assets for socially-motivated reasons. Specifically, this company stated that it would pressure companies that maintain business relations with the Sudanese government to cease those relations or to attempt to end genocide and ease suffering in Darfur. It would divest from these companies if they failed to take meaningful steps to respect human rights within a reasonable amount of time.<sup>38</sup> Another investment company issued a public statement regarding its sale of shares in a specific company with business ties to Sudan saying that it “sold shares based on valuation, reputational, and commodity risk.” This company also decided to exclude certain companies from future investments because they posed high risk due to their ties to the Sudanese government and its connection to human rights abuses. Other investment

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<sup>37</sup>One investment company’s policy was not Sudan-specific, but more generally worded regarding social concerns and investing.

<sup>38</sup>Data indicate that, as of April 22, 2010, this firm sold its shares of three of the companies it identified as having business relations with the Sudanese government. This firm decided to retain or increase its shares in another company it had identified because it said that this company was receptive to its efforts to encourage the company to improve its business practices in Sudan.



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companies similarly expressed the view that their investment processes (or financial assessments) consider all risk factors relevant to a company's long-term sustainability, including those related to social and political issues, though this may or may not result in the sale of Sudan-related assets.

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## U.S. Investors Have Often Considered Three Factors When Determining Whether and How to Divest from Companies Tied to Sudan

Investors we contacted (including both state fund managers and private investment companies) told us they consider whether a decision to divest Sudan-related assets is consistent with fiduciary responsibility—generally the duty to act solely and prudently in the best interest of the client.<sup>39</sup> These investors, particularly state fund managers, have also faced challenges in identifying which foreign companies have business ties to Sudan and may warrant divestment. Finally, investors we spoke with have taken into account the effects of divestment on foreign operating companies with business ties to Sudan.

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## Investors Weighing Sudan Divestment Options Have Considered Their Fiduciary Responsibilities

### State Fund Managers Responsible for Sudan Divestment Have Been Concerned about Fiduciary Responsibility

Representatives from organizations that advocate for the interests of state fund managers told us that fiduciary duty could be a disincentive to divesting but that it depends on how each individual state's law is written. For instance, they expressed concerns that if the laws place emphasis on maximizing returns first and on divesting as a secondary priority, then fiduciary responsibility can be a disincentive to divesting.<sup>40</sup> While some states make no explicit mention of fiduciary responsibility in their divestment policies and laws, some state constitutions describe this responsibility and emphasize its priority above all other responsibilities. For example, California's state constitution says the retirement board of

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<sup>39</sup>Managers of state investment funds are generally responsible for meeting the duties established by applicable state law. Fiduciary responsibilities for other investment fund managers may be established by the underlying investment fund documents and applicable law, including common law.

<sup>40</sup>State fiduciary law varies from state to state. Therefore, we did not make any broad generalization regarding these laws.

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public pension systems must maximize benefits and minimize employer contributions and administrative costs, concluding that “a retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.” In 2009, the New Hampshire Retirement Plan and the New Hampshire Judicial Retirement System sued the state, arguing that complying with the state’s Sudan divestment legislation would have been inconsistent with their fiduciary trust obligations under the state constitution.<sup>41</sup>

State policies vary in how they characterize fund managers’ fiduciary responsibilities in divesting Sudan-related assets. For example, the State of Wisconsin Investment Board’s Sudan-related policy describes its fiduciary responsibility as the duty to “invest in the best financial interest of the trust funds it manages” and concludes that “this means that the [board] may not make investments based on political, social, or personal reasons.”<sup>42</sup> In contrast, the Washington State Investment Board’s policy states that its “fiduciary responsibilities include watching for potential impacts on the valuations of its investments that may result from reputational risks to the companies in which the [board] invests that may flow from companies doing business in Sudan.” In addition, the Vermont Pension Investment Committee determined that it would be prudent to refrain from investing in certain companies identified as having prohibited business operations in Sudan because the value of its portfolio could suffer if it continued to hold these securities while other investors took affirmative action to sell them.

Many state laws allow fund managers to stop divesting or to reinvest if there is a drop in the fund’s value. For example, under Hawaii law, the board of trustees of the state employees’ retirement system can stop divesting from and reinvest in scrutinized companies if, in the board’s good faith judgment, the value of the assets managed by the board drops 50 basis points (or 0.5 percent). Additional states that have laws with a 50 basis point threshold for ceasing divestment and reinvesting include Colorado, the District of Columbia, and Indiana. Other states have similar

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<sup>41</sup>The Board of Trustees of the New Hampshire Judicial Retirement Plan and the New Hampshire Retirement System v. Gardner, New Hampshire Supreme Court (No. 2009-0621). This case was still pending as of May 11, 2010.

<sup>42</sup>While the Wisconsin Investment Board concluded that it is against “total or targeted” divestment, it screens each investment related to Sudan, engages with companies, and reserves the right to sell Sudan-related investments depending on the estimated cost of the sale versus the risk-related cost of keeping the investment.

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provisions with lower thresholds. For example, under Arizona law, the threshold is 25 basis points.<sup>43</sup>

While most of the 35 states' Sudan-related measures generally require divestment of Sudan-related assets consistent with the investing authority's fiduciary responsibilities, laws and policies enacted or implemented by 6 states—California, Hawaii, Kansas, Maryland, Ohio, and South Carolina—include clauses explicitly stating that the investing authority should only divest if doing so will not constitute a breach of fiduciary trust. For example, Kansas's law states that, "Nothing in this section shall require the board to take action...unless the board determines, in good faith, that the action...is consistent with the fiduciary responsibilities of the board..." Notably, some fund managers responding to our survey indicated that they believed their fiduciary responsibilities allowed them not to divest, even though their laws and policies did not include provisions specifically exempting them from divestment requirements.

Our survey results demonstrate that state fund managers, when expressing concerns about fiduciary responsibility, focused on the impact that divestment might have on a fund's returns and administrative costs. Respondents who divested and those who did not frequently cited fiduciary responsibility as a concern. Specifically, 17 of the 29 fund managers (or 59 percent) who had divested or frozen their Sudan-related assets, or planned to do so, said they were concerned to a moderate or large extent that "it would be difficult to divest while ensuring that fiduciary trust requirements were not breached and my office/state was not made vulnerable to law suits." This same concern was also cited as a moderate to large concern for 25 of the 41 (or 61 percent) fund managers who did not divest. In contrast, only 5 of the 29 (17 percent) managers who divested or planned to divest and 3 of the 41 (7 percent) who did not divest were concerned to a large or moderate extent that divesting might force an operating company out of the Sudanese market, leaving room for one with more questionable business practices.

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<sup>43</sup> Furthermore, many state laws allow for alternative Sudan-free investments to replace any investments in Sudan-related companies. For example, California law allows investment of public employee retirement funds in an "alternative fund or account" which excludes the targeted Sudan-related companies. If the state's public employee retirement fund's board determines that the new investment fund or account is "financially equivalent" to the existing fund or account, then the board may transfer its investments from the existing fund or account to the new fund or account.

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Survey results also showed concern among state fund managers, regardless of whether they divested, regarding the financial risk of divesting. Specifically, 20 of the 29 managers (or 69 percent) who divested or planned to divest and 18 of the 41 (44 percent) who did not divest were concerned to a large or moderate extent that divestment could cause their funds to incur high transaction costs, earn reduced returns on investment, or both. Finally, only 4 of the 29 fund managers (14 percent) who divested or planned to divest said that reducing the exposure of their funds' investments to financial risk was a major reason for divestment. (Two more managers said it was a minor or moderate reason.) Likewise, only 3 of the 29 (10 percent) said divestment would improve returns on their offices' investments.

Although fiduciary responsibility was the primary concern for state fund managers in considering divestment, only a few managers responded that they took advantage of applicable state laws or policy provisions explicitly allowing them not to divest if they determined that doing so would conflict with their fiduciary responsibility. Specifically, only 4 of the 41<sup>44</sup> fund managers who did not divest or freeze any of their Sudan-related assets said their state had a law or policy containing such an explicit provision. Eleven fund managers who divested did so even though they said their state's law or policy contained such an explicit provision.

Investment Companies  
Expressed Differing  
Perspectives on Their Fiduciary  
Responsibilities, Based on  
Their Institutional Focus and  
Investment Approach

Private investment companies expressed differing perspectives on whether divesting from Sudan is consistent with their fiduciary responsibilities. The investment companies we interviewed or obtained information from generally explained fiduciary responsibility to mean making investment decisions in the best interests of their clients, consistent with the guidelines in their funds' published prospectuses. However, investment companies' determination as to what constitutes the best interest of the client differs, depending on their investment approach.

According to investment companies whose primary goal is maximizing returns, ceasing to invest in companies with Sudan-related operations based on criteria other than financial merit is inconsistent with their fiduciary responsibilities, unless their clients established these restrictions. Some of these investors stated that limiting the number of investment opportunities based on non-financial criteria can result in

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<sup>44</sup>This number does not include those respondents who said they had no Sudan-related assets to divest.

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lower investment returns. These firms indicated that they may take factors, such as a company’s environmental, social, and corporate governance standards, into account in order to assess the financial strength of that company as a possible investment. The results of these firms’ financial analyses of these risk factors vary. For example, several investment companies cited Sudan-related risk factors in their decisions to remove select securities from their portfolios. Others evaluated the risks and chose to continue to hold or increase their Sudan-related asset holdings.

Other investment companies, particularly those identifying themselves as socially responsible, maintained that divesting from Sudan based on non-financial criteria is consistent with fiduciary responsibility, as long as alternative equities selected can compete on the basis of financial criteria.<sup>45</sup> According to these investment companies, creating financially viable investment options that respond to social concerns, such as genocide or the environment, is the primary goal. As one firm’s prospectus explains, “socially responsible investors seek to use their investments to create a more fair and sustainable world...and encourage greater corporate responsibility.” Another’s prospectus states that it seeks to invest in companies and other enterprises that demonstrate positive environmental, social and governance performance as they address corporate responsibility and sustainability challenges. The self-designated socially responsible investment companies we interviewed typically described a two-part process for selecting investments—screening them according to their particular fund’s social criteria and evaluating investments for their financial soundness. These firms also expressed confidence that taking non-financial factors into account results in an investment product that is competitive with other investments.

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<sup>45</sup>For example, SADA incorporates 29 C.F.R § 2509.94-1, which is the Department of Labor’s “Interpretive Bulletin relating to the fiduciary standard under ERISA [the Employee Retirement Income Security Act] in considering economically targeted investment.” This guidance states that the fiduciary standards applicable to economically targeted investments, which would include Sudan divestment activities under SADA, are no different than the standards applicable to plan investments generally. Under this guidance, fiduciaries may generally take social issues into account as long as the alternative investments are not expected “to provide a plan with a lower rate of return than available alternative investments with commensurate degrees of risk or [to be] riskier than alternative available investments with commensurate rates of return.” The Department of Labor has issued more recent guidance (see 29 C.F.R. § 2509.08-1). However, 29 C.F.R. § 2509.94-1 remains applicable to ERISA plan divestments made under SADA.

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As of May 2010, two companies that sold their Sudan-related assets had relied upon SADA's "safe harbor" provision by filing disclosures of such divestments with the SEC. Most companies told us that this provision, which limits the civil, criminal, and administrative actions that may be brought against firms that divest from, or avoid investing in, companies with prohibited business operations in Sudan, was not necessary to their decision-making regarding Sudan-related assets.

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## U.S. Investors Have Faced Difficulties Identifying Operating Companies with Ties to Sudan, including Those Monitored by the SEC

States Have Relied Heavily on Nongovernmental and Private Lists of Companies with Business Ties to Sudan, Which Often Conflict

SADA requires that, before divesting from Sudan-related companies, responsible entities must use credible, publicly available information to identify which companies have prohibited business operations related to Sudan. Nongovernmental organizations and private companies have sought to create and, in some cases, sell their lists of operating companies with business ties to Sudan to the public. Our survey results indicate that state treasurers and public pension fund managers have relied heavily on these sources of information to identify companies with ties to Sudan. For example, 42 out of 61 fund managers (or 69 percent) who attempted to identify companies with ties to Sudan used private research firms and 48 out of 61 fund managers (or 79 percent) used nongovernmental advocacy organizations. Thirty-two of the 42 fund managers (or 76 percent) who used private research firms found them to be "very useful" or "useful." Similarly, 32 of the 48 fund managers (or 67 percent) who consulted nongovernmental groups found them to be "very useful" or "useful." However, some fund managers, even those that considered the sources they consulted to be sufficient or somewhat sufficient for identifying companies tied to Sudan, also reported concerns with the lists. For example, one treasurer stated that "Commercial sources of information are only moderately reliable. We are never confident that we are receiving complete and accurate information on companies in emerging markets." Another respondent noted that "Information was dated, not current or incomplete. Information also was often misleading as to the effect of the company's involvement." Finally, one respondent concluded that "It is difficult for anyone to get accurate information in this regard. Our sources did as well as possible."

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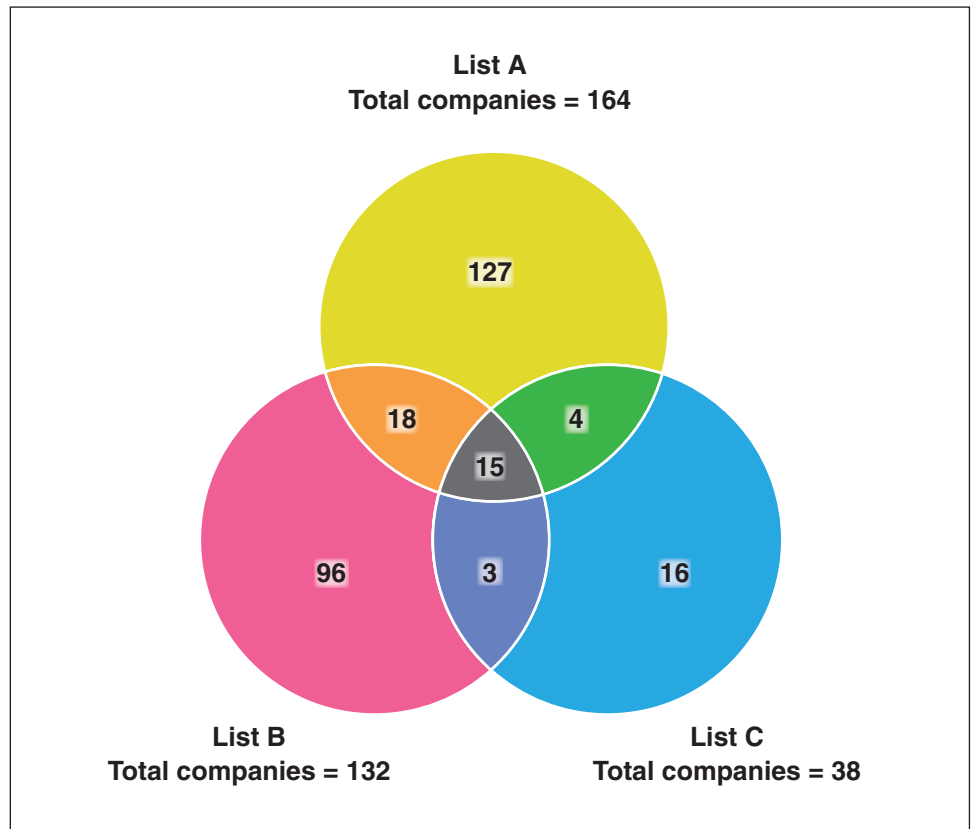
These concerns have been echoed in other public statements. For example, in 2005, representatives from 50 public employee retirement systems wrote to the Departments of State, Treasury, and Commerce, as well as the SEC, requesting assistance in identifying any publicly traded companies that are of concern to the U.S. government. Specifically, they cited a need for adequate information to determine whether companies in which their funds are invested are doing business in Sudan so that they can make informed investment decisions.<sup>46</sup> In addition, the Pennsylvania Public Employee Retirement Commission observed in an October 2007 report that the cost of monitoring investment in companies tied to Sudan is “compounded by the fact that no governmental agency provides a list of such companies and the pension systems are compelled to purchase that service from private contractors, thereby delegating substantial administrative discretion.”

Our analysis of available lists indicates that they differ significantly from one another. We compared three lists of companies with business ties to Sudan—one from a widely-used nongovernmental organization, one from a widely-used private research company, and one from an investment company that has designated itself as socially responsible. We found that, of the over 250 companies identified on one or more of these lists, only 15 appeared on all three. Figure 2 illustrates the extent to which these lists differ from one another.

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<sup>46</sup>In June 2007, the SEC experimented with a Web site to provide direct access to public companies’ 2006 annual report disclosures concerning past, current, or anticipated business activities in state sponsors of terrorism, including Sudan. The SEC indefinitely suspended the site after 1 month, citing concerns about the timeliness of data contained in the disclosures, as well as the possible negative connotation that could attach to a company, even though the company’s disclosures may have concerned benign activities. See 72 Fed. Reg. 65862 (Nov. 23, 2007). Other U.S. agencies have declined to publish lists of companies with business ties to Sudan, citing concerns that creating such a list would impose an ongoing, burdensome requirement on them; risk alienating U.S. allies by “blacklisting” companies based in those countries; subject the agencies to legal challenges; and present difficult issues in determining what type and amount of evidence would suffice to include a company on the list.

**Figure 2: Comparison of Three Lists Identifying Operating Companies with Ties to Sudan**



Source: GAO analysis of three lists of companies with business ties to Sudan.

Note: Some of the companies that appear in only one list are mentioned in profiles of other companies identified in another list. For example, some companies identified in List A are mentioned in profiles of other companies included in List B.

Some of these discrepancies are likely due to the lists' different criteria for including companies. For example:



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- List A focuses on public and private companies<sup>47</sup> that the list's creator has determined have material<sup>48</sup> Sudan-related business operations, primarily in the areas of oil, mineral extraction, power, and defense.
  - List B includes companies (primarily those that are publicly-traded) that have any business ties to Sudan, regardless of the industries in which they operate.
  - List C focuses only on publicly-traded companies that the list's creator has determined provide certain direct benefits to the government of Sudan, particularly in the areas of oil, mining, electricity infrastructure, and military or where the company is otherwise complicit in human rights abuses in Sudan.

These varying criteria, however, cannot explain fully the discrepancies in the lists, indicating that the lists' creators differ in their judgment regarding which companies' ties to Sudan warrant scrutiny. For example, lists B and C both include companies that, according to list A, have ceased their Sudan-related business operations. Five companies that do not appear on list C are companies that, according to list A, are publicly-traded and have material Sudan-related business operations in the same industries that list C covers and that have been largely unresponsive to engagement by shareholders or unwilling to alter problematic practices in Sudan. Similarly, list C, which appears to have the narrowest criteria, includes 16 companies that do not appear on either of the broader two lists.<sup>49</sup>

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<sup>47</sup>For a publicly-traded company, this list also identifies parent and subsidiary companies (public or private), provided that ownership stake in these vertical relationships is greater than 50 percent. In this case, the company with Sudan-related operations is the primary company listed. For a private company, the list also identifies its vertical structure and its parent company's vertical structure, provided the ownership stakes in these vertical relationships is greater than 50 percent. In this case, the parent company is the primary company listed.

<sup>48</sup>This organization assesses materiality based on four factors: (1) whether a company has a business relationship with the government of Sudan, is contracted on a government-created project, or is affiliated with a government-created project or armed groups in Sudan; (2) whether a company's industry sector has a direct relationship with the government of Sudan or armed groups in Sudan; (3) whether a company is complicit in acts of violence; and (4) the question of who benefits from a company's investment in Sudan (e.g., marginalized populations or military entities).

<sup>49</sup>Six of these 16 companies were removed from prior versions of List A.

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Federal Securities Laws Do Not Specifically Require Operating Companies to Disclose Business Ties to Sudan

Representatives from the organizations that created these lists told us that obtaining and evaluating information on operating companies with business ties to Sudan is difficult. Because companies do not typically publicize details of their business dealings in state sponsors of terrorism, researchers must comb through several different sources of data to extract information on specific companies and then use their judgment to evaluate that information for reliability and accuracy. The researchers we spoke to told us that they rely on a combination of information from company Web sites, personnel, and documents; industry wide publications, such as oil industry newsletters; financial databases, such as Thomson Reuters or Bloomberg; local media reports; and advocacy group publications. Analyzing information from these sources and determining how to use it can be difficult. For example, one researcher told us that it is not clear how to describe a company if it has a dormant interest in an oil lease, but is also running a gas station. In addition, companies change their names, create new subsidiaries or affiliates, or enter and exit different marketplaces.

Research groups we spoke to said that they find information that comes directly from the companies they are examining to be particularly useful. For example, they would consider an SEC disclosure filing to be a reliable source of information. However, the federal securities laws do not require companies specifically to disclose operations in countries designated as state sponsors of terrorism. Nevertheless, SEC regulations require disclosure of such operations if they constitute “material information” that is necessary to prevent a company’s SEC statements from being misleading.<sup>50</sup> The meaning of “material information” is not explicitly defined by law, but the Supreme Court has determined that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or the information would significantly alter the total mix of available information.<sup>51</sup> This is a question of both law and fact, and the company is ultimately responsible for the accuracy and adequacy of the information it discloses to investors. According to SEC officials, companies have a strong incentive to make appropriate judgments about materiality because they may face significant federal securities law

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<sup>50</sup>17 C.F.R. §§ 230.408, 240.12b-20. The SEC discusses this issue in *Concept Release on Mechanisms to Access Disclosures Relating to Business Activities in or with Countries Designated as State Sponsors of Terrorism*, 72 Fed. Reg. 65862 (Nov. 23, 2007).

<sup>51</sup>*TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

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liability for disclosure that includes material misstatements or material omissions that make the information provided misleading.

The SEC's Office of Global Security Risk, created in 2004, monitors whether the documents public companies file with the SEC include disclosure of material information regarding global security risk-related issues. According to officials from this office, they focus their reviews on companies with business activities in U.S.-designated state sponsors of terrorism, including Sudan. This office has suggested to companies that any operations they have in state sponsors of terrorism might be considered material because divestment campaigns and legislation mandating divestment from Sudan indicate that investors would consider this information important in making investment decisions. For example, the office has repeatedly noted that "various state and municipal governments, universities, and other investors have proposed or adopted divestment or similar initiatives regarding investment in companies that do business with U.S.-designated state sponsors of terrorism" and has instructed companies that their materiality analysis "should address the potential impact of the investor sentiment evidenced by such actions directed toward companies that have operations associated with Cuba, Iran, Syria, and Sudan." The office also asks companies, in assessing materiality, to take both quantitative factors (such as the amount of company revenue associated with a state sponsor of terrorism) and qualitative factors (such as the potential impact of corporate activities upon a company's reputation and share value) into account.

However, in their correspondence with the SEC, companies have raised concerns about these instructions. For example, one energy company wrote that, "We are concerned that the SEC seems to be implying a ... disclosure obligation with respect to business dealings with Sponsor Countries [state sponsors of terrorism] even though we are not aware of such a rule or regulation." Furthermore, the company wrote that "it is [the company's] view that its business dealings in the Sponsor Countries may be of interest to certain [company] investors but are not material to [company] investors in general or the general investing public. As such, it remains [the company's] view that its dealings in the Sponsor Countries do not need to be further disclosed in its annual reports...." Another oil company wrote to the SEC that, "We believe that any actual divestments of our securities for reasons related to [our limited contacts with state sponsors of terrorism] are isolated incidents and not representative of the overall investment climate and the Company's reputation among investors." Unlike the first company, this company agreed to revise its

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annual report for the following year to include information on purchases of crude oil sourced from Sudan and other state sponsors of terrorism.

In general, the Office of Global Security Risk's monitoring of these companies appears limited. For example, SEC officials told us that they have corresponded with 59 of the 74 companies that file periodic reports with the SEC and that they have identified as having ties to Sudan.<sup>52</sup> However, many of these companies operate in industries not covered under SADA, such as food services, telecommunications, and pharmaceuticals. In addition, our analysis shows that the office has only corresponded with 5 of the 15 companies that are identified in all three of the lists we analyzed and that file with the SEC. All 15 of these companies operate in the four key economic sectors identified in SADA. Furthermore, the office has not always followed up with companies concerning their correspondence, even when it has disagreed with companies' assessments of their operations. For example, in September 2007, the Office of Global Security Risk requested that an oil company whose parent company has extensive Sudan-related business operations disclose in future filings information regarding measures it has taken to ensure that investments in it cannot be used to fund the parent company's operations associated with Sudan. The company replied later that month that it had "concluded that such disclosure is not material information about the company that its investors are entitled to know" and "respectfully disagree[d] with the need for this disclosure." The Office of Global Security Risk responded a little over a month later, stating that it had completed its review of this matter and did not have any further comments at that time. According to an SEC official, this letter does not indicate that the staff agreed with the company's decisions, but rather that the information presented did not appear to be materially misleading. The office did not correspond again with the company until February 2010, after we inquired about the status of communication with the company. In another instance, in December 2005, the Office of Global Security Risk asked an oil company that was reported to have possible ties to Sudan to describe all current, historical, and anticipated operations in, and contacts with Sudan, including through subsidiaries, controlling shareholders, affiliates, joint ventures, and other direct and indirect arrangements. The company did not provide a response

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<sup>52</sup>The Office of Global Security Risk contracts with a private vendor to obtain its list of companies with ties to state sponsors of terrorism, including Sudan. This list is the SEC's primary tool for identifying companies that it will monitor. We contacted the private vendor to obtain a copy of this list, but it declined to provide one free of charge.

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to the request; the office reiterated its question to the company in December 2009.

Office of Global Security Risk officials told us that, if they believe a company is not disclosing material information, they will exercise their authority to extensively question the company and continue to comment, with the goal of working with the company to produce the best disclosure for investors. Correspondence with a company ends when the office has no further questions and has determined that the company has provided a reasonable argument as to why its disclosure is not materially incomplete or misleading, even if the office does not fully agree with the company's judgment. These officials also told us that, in cases where the office determines that its comment process has not resulted in full disclosure of material operations by a company, it will refer the company to the SEC's Division of Enforcement for possible investigation. According to SEC officials, the Office of Global Security Risk has referred one company to this division since the office was created in 2004.

The SEC has the discretionary authority to adopt a specific disclosure requirement for companies that trade on U.S. exchanges (such as requiring disclosure of any operations in state sponsors of terrorism). Although the SEC has not done so, it could exercise this authority by issuing an interim rule for comment and a final rule in the *Federal Register*. However, the agency has indicated that it is committed to the practice of relying on companies to ensure that their disclosures contain all material information about their operations in these countries.<sup>53</sup>

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<sup>53</sup>At an April 2010 hearing before the Senate Appropriations Committee Subcommittee on Financial Services and General Government, however, the SEC Chairman noted that the agency is considering whether public companies should be required to disclose business conduct without regard to materiality between them and one of the four countries designated as state sponsors of terrorism.

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## Investors We Spoke with Have Considered the Possible Effects of Divestment on Operating Companies and the Sudanese People

### Some Operating Companies That Ceased Operating in Sudan Warned of a Negative Effect on the Sudanese People

The companies we spoke with that ceased operating in Sudan expressed concerns about the effect of their departure from the Sudanese market.<sup>54</sup> For example, one company we spoke with told us that when it decided to leave Sudan and sell its stake in the project in which it was involved to another company, that company refused to sign the sales agreement until language conferring responsibility for continuing the seller's humanitarian programs was removed from the agreement. This same company also told us that it had worked out an agreement with the government of Sudan to monitor planes landing on a company air strip, which a human rights group alleged that the Sudanese military had been using to carry out military campaigns against the South during the civil war. Once the company left Sudan, it could no longer monitor such flights. Another company that left the Sudanese market stated that it had been involved in a nationwide anti-AIDS program in Sudan, which it could no longer participate in after leaving Sudan.<sup>55</sup> A company that continues to operate in Sudan told us that, should it decide to cease operations, its stake in the project in which it is involved would be taken over by the government of Sudan, which would then own 96 percent of the project. The company indicated that this would not only result in more revenue for the government of Sudan, but also would likely mean the end of humanitarian programs, such as building schools and medical clinics for the local population, in addition to its contribution to charities working in Darfur. Another company that continues to operate in Sudan told us that if it only considered its financial stake in Sudan, it would have likely left Sudan. However, the company decided to stay because it believed that it was important to continue its humanitarian efforts there.

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<sup>54</sup>We spoke with eight foreign operating companies, all of them Western.

<sup>55</sup>This company transferred its business operations to another company that it said it trusted, rather than one that would engage in "unethical" business practices.

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Some Investors Have Shifted Their Focus away from Divestment and toward Engagement

Because of their concerns with divestment, some investors have shifted their approach toward engaging with companies in order to leverage their resources as shareholders to influence companies' behavior and promote efforts aimed at improving the lives of the Sudanese people. Some advocacy groups that were originally at the forefront of the divestment campaign also have shifted their focus toward engagement. One advocacy group we spoke with stated that it believed that divestment was too blunt of an approach because it targeted a wide array of companies, some of which may not have had material operations in Sudan. Instead, this group argued for an approach that targets companies involved in the industries that are most lucrative for the Sudanese government and that provides alternatives to divestment, such as engaging companies to try to influence their behavior. This group uses a three-step engagement process, which (1) reviews the potential human rights and environmental impact of the company's operations in Sudan, (2) encourages companies to interact outside of their normal sphere of influence, and (3) gains support for programs aimed to help the Sudanese population negatively affected by the Sudanese government or the company's operations. This approach uses the leverage that shareholders have to influence companies to make positive contributions that help the people of Sudan, such as building hospitals and schools, providing training and job opportunities, and contributing to a microfinance loan program.

Like advocacy groups, some U.S. investment companies have also embraced the idea of engagement and increasingly view divestment as a last resort because engagement allows companies to continue operating and provides positive incentives for them to use their resources to help the Sudanese people. The investment companies we spoke to took a variety of different actions to engage operating companies, such as developing a formal engagement policy with a list of actions required to avoid divestment and writing letters to companies. While investment companies stated that these engagement actions did not always result in meaningful changes in company behavior, those companies that were open to engagement often took positive steps and implemented humanitarian projects aimed at helping the people of Sudan. For example, one investment company told us that nearly half of the companies it engaged with were responsive to its outreach efforts and made efforts to address its concerns. In cases where companies continued to be unresponsive to engagement, investment companies had the option to divest their holdings, which some decided to do.

U.S. states have also endorsed engagement as a viable alternative to divestment, with a few states identifying divestment as a last resort.

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Nineteen of the 25 states whose laws or policies require divestment also encourage or require engagement. For example, Minnesota law mandates that the State Board of Divestment identify “scrutinized companies” with Sudan-related business operations and send written notice to each company notifying it of possible future divestment if the company does not cease its scrutinized operations within 90 days.<sup>56</sup> However, under the law, a company can take “substantial action” by conducting humanitarian activities in proportion to its Sudan-related business operations, engaging with the government of Sudan, or formalizing and executing a plan to cease operating in Sudan within 1 year. If a company undertakes these actions, it may no longer be considered a scrutinized company targeted for divestment. Investing authorities of the states with investment laws or policies that provide for engagement believe that they gain more leverage by pressuring companies to change their behavior than by outright divestment, since other investors without the same concerns about Sudan might purchase the divested shares. Twenty of the 29 managers responding to our survey who had divested or frozen their Sudan-related assets, or planned to do so, stated that they could retain these investments if companies changed their behavior in Sudan. However, according to the results of our survey, 10 of the 29 fund managers that answered the related survey question indicated that, to a large to moderate extent, engaging with companies was too difficult or costly. Furthermore, representatives from state advocacy organizations told us that, due to time and resource constraints faced by many states, engagement with companies is a large undertaking for them, and some states may not be able to manage engagement campaigns.

Western Foreign Operating Companies We Spoke with Said They Generally Welcomed Engagement Efforts and Took Actions in Sudan as a Result

The eight foreign operating companies we spoke with generally agreed that, for them, engagement is preferable to divestment because it allows them to continue operating in Sudan and to discuss possible ways to improve the situation there. For example, one company we spoke with argued that divestment ultimately separates the people who advocate for positive change in Sudan from the companies that have the capacity and desire to be constructive actors in Sudan. This company told us that, after a visit to Sudan, the company’s home government issued a report arguing that the company should stay in Sudan so that its humanitarian presence could be maintained. When the company ultimately decided to leave Sudan, advocacy groups stated that losing this company’s presence was a missed opportunity to continue developing and implementing

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<sup>56</sup>Subdivision 3, Minnesota Statute 11A.243 (2009).



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humanitarian projects in Sudan. Another company argued that the choice to engage companies does not inhibit stakeholders from future divestment, should companies ultimately be unwilling to take positive actions and change the way they conduct their Sudan-related business operations.

The operating companies we spoke with generally appreciated the opportunity to “set the record straight” and to explain their business activities to groups with whom they engaged. These companies consistently told us that they believe their business operations positively impact the Sudanese people. For example, one company told us that 90 percent of its workforce is hired in-country. The company gives these local employees opportunities to receive an education outside of Sudan. Many of the companies we spoke with also explained that their presence is beneficial for the Sudanese people because they often choose to engage in community development. For example, a mining company told us that it built seven schools and a medical clinic, brought water and power supplies to the area around the mine, and started agricultural training programs for the local population. This company said it also convinced its business partners from the Sudanese government to contribute some of their profits from the mine to support a humanitarian organization operating in Darfur.

Almost all of the companies we spoke with said they donated to or became directly involved in humanitarian projects as a direct result of their engagement with various advocacy groups and shareholders. After engaging with an advocacy group, one operating company decided to contribute funding to develop hospital facilities in South Sudan. In addition, a few of the companies we spoke with also engaged with the government of Sudan on politically sensitive issues after being advised to by an advocacy group. For example, as a part of one company’s engagement process with a number of advocacy groups and investors, the company launched an official protest with the government of Sudan when members of the militia opened fire on the local Sudanese population living in the vicinity of the company’s project site. Some companies we spoke with also underwent independent human rights impact assessments of their business operations as a result of engaging with advocacy groups. One company told us that its assessment helped it identify ways to further improve its business operations by promoting more ethnic diversity in the workplace and offering HIV/AIDS testing for employees.

A few of the companies we spoke with decided to limit their business activities in Sudan as a result of engagement processes. For example, one company we spoke with committed to not pursue any new business in

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Sudan until the situation in Darfur changes and United Nations peacekeepers are allowed in the country. The company indicated that this commitment sent a strong signal to the government of Sudan, which depends on the company to explore and identify natural resource deposits.

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## Our Analysis Indicates That the U.S. Government Has Complied with the Federal Contract Prohibition Provision of SADA

We found no evidence to suggest that the U.S. government has awarded contracts to companies identified as having prohibited business operations in Sudan. The U.S. government has, as allowed under federal law, contracted with subsidiaries and affiliates of companies with Sudan-related business operations. We found that for a non-random selection of contracts awarded to these companies, the contractors provided the necessary certification, when required. Furthermore, the U.S. government has not waived this requirement or determined that any contractors submitted false certifications under SADA.

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## Our Analysis Indicates the U.S. Government Has Not Awarded Contracts That Violate SADA

Section 6 of SADA requires the heads of federal agencies to ensure that each contract for the procurement of goods or services includes a clause requiring the contractor to certify that it does not conduct prohibited business operations in Sudan. SADA's contract prohibition section also contains remedies for false certifications, such as suspending or debaring the contractor from receiving future federal contracts, and provides for waivers in certain situations. Section 6 was implemented in subpart 25.7 of the Federal Acquisition Regulation (FAR) via an interim rule on June 12, 2008,<sup>57</sup> and a final rule on August 11, 2009.<sup>58</sup> The FAR rule also includes a solicitation provision whereby parties seeking federal contracts (offerors) certify that, by submission of an offer, they do not conduct any restricted business operations in Sudan.<sup>59</sup>

Based on our analysis of one of the most widely used lists of companies with prohibited business ties to Sudan,<sup>60</sup> we found that only 1 of 88 companies identified in the list has received federal contracts since the

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<sup>57</sup>73 Fed. Reg. 33636.

<sup>58</sup>74 Fed. Reg. 40463.

<sup>59</sup>FAR § 52.225-20 and FAR § 52.212-3(m) for commercial item acquisitions.

<sup>60</sup>We chose to use this list because it focuses on companies identified in the four business sectors targeted in SADA and identifies subsidiaries and affiliates of those companies.

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FAR requirements took effect in June 2008. However, the contract certification provision was not required for these particular contracts because they were purchase orders under simplified acquisition procedures,<sup>61</sup> which generally do not require the SADA certification under the FAR.<sup>62</sup> Therefore, these contract awards were not in violation of SADA's implementing regulations.

In addition to the purchase orders with the company that has business ties to Sudan, we found that from June 12, 2008, to March 1, 2010, the U.S. government awarded 756 contracts to 29 affiliates and subsidiaries<sup>63</sup> of the companies identified in the list as having prohibited business ties to Sudan. While SADA aims to prevent companies with prohibited business operations in Sudan from receiving federal contracts, it does not restrict contracting with these companies' affiliates and subsidiaries, provided that the affiliates and subsidiaries certify that they do not have prohibited business operations in Sudan. (Only the company directly bidding on a contract has to certify that it does not have any restricted business operations in Sudan.) Our review of a non-random selection of contracts awarded to these affiliates and subsidiaries indicates that the contractors provided the necessary certification, when required. Therefore, for these specific contracts, the U.S. government has complied with the contract

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<sup>61</sup>Simplified acquisition procedures under FAR part 13 allow agencies to use a streamlined procurement process for certain acquisitions under specific dollar thresholds, usually \$100,000. Under these procedures, many contractor certifications and representations are not required.

<sup>62</sup>Contract certifications and representations, including the SADA certification, are usually found in the contract solicitation. Purchase orders do not have solicitations, and so the certifications and representations may not be required. In certain circumstances, agencies using simplified acquisition procedures may still require offerors to submit and maintain their FAR certifications and representations, including the SADA certification, via the Online Representations and Certifications Application (ORCA)—a Web-based application that replaces most of the representations and certifications located directly in the solicitation, allowing contractors to enter this information once for use on all federal contracts.

<sup>63</sup>These affiliates and subsidiaries were identified by the list that also identified the 88 companies with prohibited business ties to Sudan. The list defines affiliates and subsidiaries as companies where there is a 50 percent or greater ownership stake. For example, for a publicly-traded company with Sudan-related operations, the list identifies as subsidiaries and affiliates those companies of which the parent company owns 50 percent or more.

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prohibition section of SADA.<sup>64</sup> Contract actions to these subsidiaries and affiliates totaled almost \$335 million.<sup>65</sup>

Some advocacy groups have disagreed with the FAR councils' decision to apply the requirement only to the entity directly contracting with the government because it allows companies that have certified to the federal government that they do not conduct prohibited business operations to continue operating in Sudan through their subsidiaries or affiliates. One of these groups expressed particular concern that affiliates and subsidiaries can still receive contracts, but may also receive revenue from or contribute to the operating budget of their parent companies, particularly if they are majority-owned. In their comments on the interim FAR rule, they argued that SADA defines "person" to include subsidiaries, parent companies, and other affiliates and that the FAR councils should implement the contract prohibition provision with this definition in mind. However, the FAR councils concluded that the contract prohibition provision of SADA did not use the term "person" and instead used the term "contractor." Since these terms were not defined in SADA as being synonymous, the FAR councils decided to stay as close as possible to the requirements and definitions used in the statute. The FAR councils also stated that expanding the scope of the rule would require offerors to attest to the business operations of parent companies, subsidiaries, and other affiliates about which they may not have information. In addition, the FAR councils noted that the company may not have any influence over the affairs of its related companies.

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<sup>64</sup>We identified the highest dollar amount contract or contract modification for each of the 29 subsidiaries and affiliates. The solicitations for 22 of these contracts were issued after June 12, 2008, and, therefore, were subject to section 6 of SADA. The government complied with SADA by either including the required FAR provisions in the solicitation or incorporating the Sudan certification through other means, such as ORCA. If the contracting officer relied on the electronic ORCA certification and representation submissions, the SADA certification provision may not appear in the solicitation. See FAR subpart 4.12.

<sup>65</sup>Contract actions include new contract awards, modification to those contracts, and modifications to contracts with these entities where the original contract was awarded prior to June 12, 2008.

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## U.S. Government Has Not Granted Any Waivers to SADA or Determined That Any Companies Submitted False Certifications under SADA

Under section 6(c) of SADA, the certification requirement can be waived on a case-by-case basis if the president determines that it is in the national interest to do so and notifies the appropriate congressional committees in writing. Under the FAR, agencies can seek waivers by submitting requests to the Office of Federal Procurement Policy (OFPP). OFPP reported that no waivers have been issued pursuant to SADA and no agencies have requested such waivers as of May 2010.<sup>66</sup> OFPP opened a FAR case to consider FAR revisions to establish a process and criteria for waivers.

The U.S. government has not identified any contractors that have submitted false certifications under SADA. Section 6(b) of SADA states that if the agency head determines that a contractor has falsely certified that it did not conduct prohibited business operations in Sudan, he or she may impose a number of penalties. Specifically, the agency head may decide to terminate the contract, suspend or debar the contractor from being eligible for federal contracts for a period of no more than 3 years, or pursue other remedies. In cases where the contractor is suspended, debarred, or proposed for suspension or debarment, SADA requires the Administrator of General Services to add these contractors to the Excluded Parties List System, which tracks companies barred from entering into contracts with the U.S. government.<sup>67</sup> Based on information we obtained regarding the U.S. government's Excluded Parties List System, we determined that no contractors have been included on the list because of a false certification under SADA.

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## Conclusions

As global awareness of the genocide in Darfur has grown, so too have efforts to combat this humanitarian crisis. Divestment from Sudan has been at the forefront of these efforts, with activists, students, and politicians from throughout the United States calling on shareholders to pull their funds from companies that directly or indirectly support the

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<sup>66</sup>Some advocacy groups have written to OFPP requesting that certain companies be considered for blanket waivers because these companies have agreed to discontinue their operations in Sudan or had taken actions in Sudan that the groups considered positive. However, OFPP staff told us that they only consider waiver requests directly submitted by the executive agency and would only use the letters from advocacy groups as supplemental support for any future waiver requests regarding the companies.

<sup>67</sup>The Excluded Parties List System is an electronic database maintained and posted by the General Services Administration that contains the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified from federal contracting.

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Sudanese government. However, in deciding whether and how to divest, stakeholders must consider how divestment affects foreign companies operating in Sudan, particularly those that strive to make a positive contribution to the Sudanese people. They must also ensure that divestment is consistent with their fiduciary responsibility. Additionally, they must identify and evaluate conflicting sources of information about which companies have Sudan-related business operations. Requiring companies to disclose their own operations in Sudan (as well as other state sponsors of terrorism) would provide more accurate and transparent information to investors carefully weighing whether and how to divest from Sudan. Furthermore, the strong demand for this information from states that require divestment, as well as from other investors, indicates that this information could be considered material—a judgment that the SEC has suggested in its correspondence with operating companies.

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## Recommendation for Executive Action

In order to enhance the investing public's access to information it needs to make well-informed decisions when determining whether and how to divest Sudan-related assets, we recommend that the SEC consider issuing a rule requiring companies that trade on U.S. exchanges to disclose their business operations related to Sudan, as well as possibly other U.S.-designated state sponsors of terrorism.

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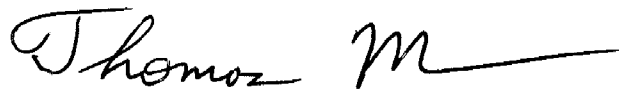
## Agency Comments and Our Evaluation

We provided a draft of this report to the SEC and the Office of Management and Budget. Both provided technical comments, which we incorporated into the report as appropriate. The Office of Management and Budget chose not to provide written comments. The SEC's written comments, provided by the SEC Division of Corporation Finance, as well as our responses to these comments, are reprinted in appendix IV. The Division of Corporation Finance agreed that it would present our recommendation to the commission for its consideration. However, the division expressed concern that adopting a disclosure requirement that is excessively broad and beyond what GAO recommends could possibly lead to a volume of information that would overwhelm the investor and possibly obscure other material information.

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As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9601 or [melitot@gao.gov](mailto:melitot@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other contacts and major contributors are listed in appendix V.

A handwritten signature in black ink that reads "Thomas M" followed by a long horizontal flourish.

Thomas Melito  
Director, International Affairs and Trade

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# Appendix I: Scope and Methodology

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## GAO Survey of U.S. States

To identify the actions that U.S. state fund managers took regarding their Sudan-related assets and the factors they considered when determining whether and how to divest, we designed and administered a Web-based survey of state treasurers and state-run pension fund managers.

The survey asked about (1) Sudan-related state investment laws and/or policies; (2) whether or not the fund engaged with companies that did business in Sudan, the methods used, and the outcomes; (3) whether the fund froze or divested its Sudan-related assets and the reasons for the decision; (4) if the fund froze or divested assets, the names of the companies, dates, and total U.S. dollar values of the assets; and (5) the sources of information the fund used to identify companies with ties to Sudan. Appendix III contains a copy of our questionnaire.

We included three populations in this survey: (1) the 51 state treasurers or their equivalents; (2) the 51 state public employee retirement system (PERS) funds; and (3) managers of 50 other state-run public pension funds, such as teacher retirement funds. For the first two populations, we sent surveys to all of the state treasuries and PERS funds. For the third population, we selected the 50 largest funds based on total asset values from the 2007 Annual Retirement Survey of State Retirement Systems conducted by the U.S. Census Bureau. These 50 funds included in the survey represented approximately 96 percent of the total asset value of all funds in this group. We received responses from 138 of the 151 treasuries and state-run pension funds in our population (see table 3). We discovered 1 fund from our third population of 50 state-run pension funds with the greatest amount of assets under management to be out of our scope because it was a municipal-run fund, not a state-run fund. The removal of this fund reduced our third population from 50 to 49 funds and our total population from 152 to 151 funds. The overall response rate, adjusted for the known and estimated funds that were out of our scope, was 91 percent. Response rates varied slightly among population groups.

We included 117 fund managers in the survey and received responses from 105 managers representing 138 state funds. During data collection, we discovered that several of the funds we surveyed were managed by 1 fund manager. Specifically, 23 fund managers were responsible for more than one fund selected for the survey. Of these 23 managers, 22 completed the survey for one of their funds instead of all of their funds. In all cases, the state fund managers later confirmed that their survey responses would be the same for all funds under their management. We then copied the completed survey responses into each remaining survey that the fund



manager was asked to fill out. The copied responses were independently verified for accuracy.

**Table 3: Summary Response Table**

	Total number surveyed	Number of respondents	Percent responding
<b>Total number of funds:</b>	<b>151</b>	<b>138</b>	<b>91</b>
(1) State treasuries	51	45	88
(2) PERS funds	51	49	96
(3) Other pension funds	49	44	90
<b>Total number of fund managers</b>	<b>117</b>	<b>105</b>	<b>90</b>
States for which at least one treasurer or pension fund manager responded	51	51	100

Source: GAO analysis of survey response data.

After the survey was closed, we analyzed the survey results to determine what differences existed between the responding and the nonresponding funds. We performed this analysis for three characteristics— total asset holdings, state, and population group. We found no indications of significant bias caused by unit non-response. On the basis of the 91 percent response rate and this analysis, we chose to include the survey results in our report and consider them sufficiently reliable for our purposes.

The practical difficulties of conducting any survey may introduce nonsampling errors, such as difficulties interpreting a particular question, which can introduce unwanted variability into the survey results. We took steps to minimize nonsampling errors by pretesting the questionnaire over the telephone with two state treasurers and five pension fund representatives in December 2009 and January 2010. We conducted pretests to make sure that the questions were clear and unbiased, the data and information were readily obtainable, and the questionnaire did not place an undue burden on respondents. An independent reviewer within GAO also reviewed a draft of the questionnaire prior to its administration. We made appropriate revisions to the content and format of the questionnaire after the pretests and independent review.

We administered the Web-based survey from February 25, 2010, to April 14, 2010. Respondents were sent an e-mail invitation to complete the

survey on a GAO Web server using a unique username and password. Throughout the data collection period, nonrespondents received a reminder e-mail, letter, and telephone call. We also conducted follow-up with respondents by e-mail and telephone to confirm the value and dates of divestment or freezing of Sudan-related assets. Two survey questions gave the respondents the option to submit documentation on the following information instead of entering it on the Web—the list of companies with which the fund engaged and the names of companies, dates, and values of assets from which the fund divested. We entered this information into a spreadsheet, which was later merged with the survey data set for analysis. The data entered were independently verified for accuracy. All data analysis programs were independently verified for accuracy.

#### State Laws and Policies

To identify state laws and policies enacted regarding Sudan-related investments and state contracts with companies tied to Sudan, we analyzed state legal codes, non-codified laws, state bills, and policies applicable to state treasurers and state-run pension fund managers. Our scope covered all measures (laws and policies) enacted or implemented since 1993 and effective as of April 2010. Using two legal databases, Lexis/Nexis and Westlaw, we searched for (1) all states that had relevant legislation and/or non-legislative policies in effect as of April 23, 2010; (2) states with legislation that was enacted but no longer in effect or repealed by the report issuance date; and (3) states with legislation that was introduced but not passed. As one way to verify this analysis, the team compared the search results to descriptions of state laws and policies provided by survey respondents. To identify non-legislative policies, we used online searches for such policies on state treasurers' and pension funds' Web sites, as well as survey responses. (Several survey respondents provided policies to us by e-mail.) We reviewed state laws and policies to identify provisions that address common subject matter or themes and did not independently interpret those laws or policies. Instead, we relied on survey responses and interviews with the state treasurers and other officials knowledgeable of and responsible for implementing their respective laws and policies in carrying out their duties to manage state employee pension funds.

#### U.S. Investment Companies

To determine how U.S. investors' Sudan-related asset holdings changed since March 2007, we analyzed volume, value, and other related data of U.S. firms' equity holdings, as reported in the Thomson Reuters ThomsonONE ownership database. The ThomsonONE ownership database is a Thomson Reuters database module that provides ownership and financial information on shares held by institutions (such as investment companies), reflecting the latest filings from stock exchanges

worldwide. After extensive discussions with Thomson Reuters staff about their aggregation methodology for institutions and the funds they manage, sources and frequency of data for non-U.S. traded equities, use of data prior to 2007, and other specific data issues, we determined that the data obtained from Thomson Reuters provide a reasonable basis for our findings on U.S. investors' holdings of certain Sudan-related equities. Our scope covered U.S. investors' holdings of 20 securities of six key foreign companies for each quarter from March 2007 to December 2009. We chose these six key companies with Sudan-related assets because they (1) appear on all three lists we analyzed of companies with business ties to Sudan; (2) include companies that have been targeted through public divestment campaigns; and (3) have operations in Sudan's oil sector, which plays a central role in the country's economy. Included among the 20 securities we analyzed for these six companies are the securities of affiliates where the parent company ownership stake was identified as being greater than 50 percent.<sup>1</sup> We chose this approach because, under the "structure of responsibility," a parent company can use a publicly traded subsidiary in which it has a controlling interest (i.e., greater than 50 percent), to fund other projects, such as operations in Sudan. This relationship is relevant in additional situations, such as

- when the parent company has a Sudan-related business operation, but the parent company is state owned and not publicly traded or
- when the affiliate doing business in Sudan is a private company.

Since equities are not traded in these situations, shareholders may try to gain influence through the publicly traded parent or, if the parent is not publicly traded, through a publicly traded affiliate company over which the parent has a controlling influence.

To attempt to determine the reasons behind U.S. investors' actions regarding Sudan-related assets, we obtained information from investment companies. We identified investment companies by selecting those that had spoken publicly about the issue of Sudan divestment, as well as by issuing an invitation through a large national association of investment companies to all of its members. Six firms agreed to speak with us, and one, which chose to remain anonymous, addressed our questions with written responses from 31 of its 34 sub-advisers. The views these seven

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<sup>1</sup>One of the three lists we analyzed identified these affiliates.

investment companies expressed are not generalizable to all investment companies. To determine if changes in the value of investor holdings were due to price changes or buying or selling of Sudan-related assets, we constructed price indices for U.S. holdings of Sudan-related equities. (Further information on constructing a control or comparison group to assess whether U.S. investor behavior was driven by Sudan-specific conditions or a general reallocation of assets is in app. II.)

### Factors Related to Divestment Decisions

To describe the factors that U.S. states and investment companies considered in determining whether and how to divest, we analyzed relevant data, reviewed documents, and interviewed key individuals.

- For the first factor regarding fiduciary responsibility, we analyzed the results of our state survey, reviewed state laws and policies to identify provisions explicitly allowing fiduciaries to not divest, and interviewed or obtained information from the seven U.S.-based investment companies and from national associations that advocate for the interests of state fund managers.
- For the second factor regarding the difficulty identifying information on operating companies with business ties to Sudan, we analyzed three available lists of these companies—one from an advocacy group (which provided its list in October 2009, January 2010, and February 2010), one from a private research firm (which provided its list in February 2010), and one from a socially-responsible investment company (which provided its list in March 2010). Each of these three groups provided its list at no cost to GAO.<sup>2</sup> The three lists we analyzed are widely used by investors divesting from companies tied to Sudan or seeking to avoid investing in these companies. We compared the lists to determine which companies appeared on any or all three lists and we interviewed the individuals who created the lists to understand their methodologies, as well as their criteria for including companies on their lists. To examine this second factor, we also reviewed SEC correspondence with foreign operating companies that have business ties to Sudan and interviewed SEC officials about their efforts to monitor these companies. In addition, we analyzed the results of our survey of state fund managers, and interviewed and reviewed information from advocacy groups that represent state investment officials.

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<sup>2</sup>We asked another private research firm to provide a copy of its list, but this firm would not do so free of charge.

- For the third factor regarding the effects of divestment on operating companies in Sudan, we interviewed advocacy groups and investment companies, analyzed the results of our survey, and reviewed provisions of state laws and policies that address engagement with these companies. We also interviewed representatives from eight companies that have or used to have business operations in Sudan. (We sent e-mails or letters to 22 companies soliciting an opportunity to speak with them about their operations in Sudan. We non-randomly selected companies that have appeared on at least one of the lists we analyzed and that represented a mix of both Western and Eastern companies. Of the 22 companies that we contacted, 9 responded that they were willing to speak with us, all of them Western. Ultimately, we spoke with only eight of these companies because the ninth company did not respond to our last communication attempting to schedule the meeting.) The views expressed by these eight operating companies are not generalizable to all operating companies that have or used to have business operations in Sudan. In addition, we reviewed human rights impact assessments conducted for some of these companies.

## Contract Prohibition

To determine whether the U.S. government had contracted with companies identified as having business ties to Sudan and to assess compliance with the contract prohibition provision of SADA, we searched for federal contracts awarded to specific companies and obtained and reviewed contract solicitations to see if they contained the applicable Sudan-related certification as required by the Federal Acquisition Regulations (FAR).

- First, we used one of the most widely used lists of companies identified by an outside research organization as having restricted business ties to Sudan. This list identified 88 such companies and also identified affiliates and subsidiaries of these operating companies. While we recognize that available lists of companies with business operations in Sudan are difficult to develop and often conflict with each other, we chose to use this particular list because it focuses on companies identified in the four economic sectors targeted in SADA and identifies subsidiaries and affiliates of those companies.
- We then searched the Federal Procurement Data System—Next Generation on March 2, 2010, for these companies to determine if any federal contracts had been awarded to them from June 12, 2008, when the FAR rule regarding contract prohibition went into effect, to March 1,

2010.<sup>3</sup> (We determined that this data system was sufficiently reliable for the purposes of this report because we did not need to identify the universe of contracts subject to SADA in order to complete our analysis.) Our search identified several dozen contractors, of which one is identified on the above-mentioned list as having restricted business ties to Sudan. The remaining contractors are subsidiaries and affiliates of the companies identified as having restricted business ties to Sudan. Twenty-nine of these contractors were awarded a new contract during the time period of June 12, 2008–March 2, 2010. Of those 29, 7 contractors had contract solicitations—where the certification provision would appear—dated before June 12, 2008, and therefore were not included in our selection assessing compliance with SADA.

- For each of the remaining 22 contractors, we then identified the highest dollar amount contract or contract modification and obtained and reviewed the solicitation to verify that the Sudan-related certification was either present or not required. The applicable certification provision varied depending on whether the contract was for commercial items or not and whether the contracting officer relied on electronic Online Representations and Certifications Application certifications for the particular procurement. Other procurements, such as those conducted under simplified acquisition procedures and those that did not use a solicitation, are not required under the FAR to have any Sudan-related certification.

The findings related to our analysis of this selection of contracts cannot be generalized to the entire universe of new contracts awarded to these companies since June 12, 2008.

In addition, we interviewed agency officials who have responsibilities related to SADA’s contract prohibition provision. The agencies they represented included the General Services Administration, the Office of Management and Budget’s Office of Federal Procurement Policy (OFPP), and the Treasury Department’s Office of Foreign Assets Control.

To learn about the development of the FAR rules implementing the contract prohibition provision in SADA and the government’s process for

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<sup>3</sup>This initial search not only identified contracts awarded to these companies from June 12, 2008, to March 1, 2010, but also any modifications to existing contracts that were issued during the time period. These modifications may have been associated with contracts that were awarded before SADA was implemented and therefore would not have contained any Sudan certification.

granting waivers to SADA, we spoke with officials from OFPP. We also spoke with Office of Foreign Assets Control officials regarding U.S. sanctions on Sudan and the process for issuing general and specific licenses that allow businesses to conduct specified operations in Sudan. In addition, we obtained and reviewed documentation of the specific licenses granted for non-humanitarian work in Sudan. We had officials from the General Services Administration search the Excluded Parties List System database in order to determine whether any contractors had been included on it due to the suspension, debarment or proposed suspension or debarment of the contractor for submitting a false certification under SADA. Finally, we interviewed officials from the contracting agencies associated with the 31 contract solicitations we obtained and reviewed in order to understand how they implement the contract prohibition provision. These agencies included the Departments of Defense, Interior, State, and Homeland Security; and the U.S. Agency for International Development.

We conducted this performance audit from August 2009 to June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: Sudan-related Equities Price Index Methodology

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This appendix describes the techniques we used to estimate three price indices for Sudan-related equities and challenges in constructing a control or comparison group to assess whether U.S. investor behavior was driven by Sudan-specific conditions or a general reallocation of assets away from foreign equity markets.

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## Price Index Approaches

We estimated three price indices for select foreign companies with Sudan-related business operations to ensure that our results were not driven by our choice of price index. The three index types we chose were based on standard price index methods: a capitalization weighted index, a LasPeyres index, and a Paasche index. For six select companies, we identified 20 equity securities in which U.S. investors had holdings from March 2007 to December 2009. Using Thomson Reuters Datastream (a financial database that includes global equity markets), we were able to identify price and market value data for 18 of those securities (corresponding to five different companies) for the full time period we studied. The two securities for which we were unable to find data were held by only two and seven investors, respectively.<sup>1</sup> Our price indices are based on those 18 securities.

## Capitalization Weighted Index

A capitalization weighted index is defined as

$$I_t^{CW} = \frac{\sum_j P_{j,t} \times Q_{j,t}}{D}$$

Where  $I_t$  is the level of the index at some time  $t$ ,  $P_{j,t}$  is the price of equity  $j$  at time  $t$ ,  $Q_{j,t}$  is the quantity (number of shares) of equity  $j$  at time  $t$ , and  $D$  is a divisor used to scale the index.<sup>2</sup> We chose the divisor as the level of the index at the initial time period and multiplied the result by 100, so the index had an initial value of 100. Therefore, our capitalization weighted index becomes

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<sup>1</sup>The omission of these two securities is unlikely to have a significant impact on our results. One security accounted for at most \$13 million in U.S. holdings (or less than 0.3 percent of Sudan-related holdings at the time). Holdings of the other security accounted for a notable amount (4.8 percent) of the Sudan-related equity portfolio for only a single quarter in the time period we studied, and were negligible for all other quarters.

<sup>2</sup>*Index Mathematics Methodology*. Standard and Poor's, February 2009.



$$I_t^{CW} = \frac{\sum_j P_{j,t} \times Q_{j,t}}{\sum_j P_{j,0} \times Q_{j,0}} \times 100$$

So changes in the value of the index are driven by changes in the total market value (or capitalization) of the securities.

### LasPeyres Index

The LasPeyres index is defined as

$$I_t^L = \frac{\sum_j P_{j,t} \times Q_{j,0}}{\sum_j P_{j,0} \times Q_{j,0}} \times 100$$

Here the quantities (number of shares) are held constant over time, and changes are driven by the changes in the prices in the numerator. As with the capitalization weighted index, we multiply the result by 100, so the index has an initial value of 100.

### Paasche Index

The Paasche index is defined as

$$I_t^P = \frac{\sum_j P_{j,t} \times Q_{j,t}}{\sum_j P_{j,0} \times Q_{j,t}} \times 100$$

Unlike the LasPeyres index, the Paasche index allows the composition of shares to fluctuate over time—capturing changes in the U.S. portfolio—while the denominator contains base-year prices, ensuring that changes in the index level are driven by either price changes or changes in the composition of U.S. equity holdings (where the price behavior of new holdings may differ from old holdings). As a result, we believe the Paasche index is the best way to capture the price of the U.S. Sudan-related equity portfolio. Once again, we multiply the result by 100, so the index has an initial value of 100.

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## Price Index Results and Net Selling Analysis and Potential Comparison Groups

Our analysis is meant to answer the following questions:

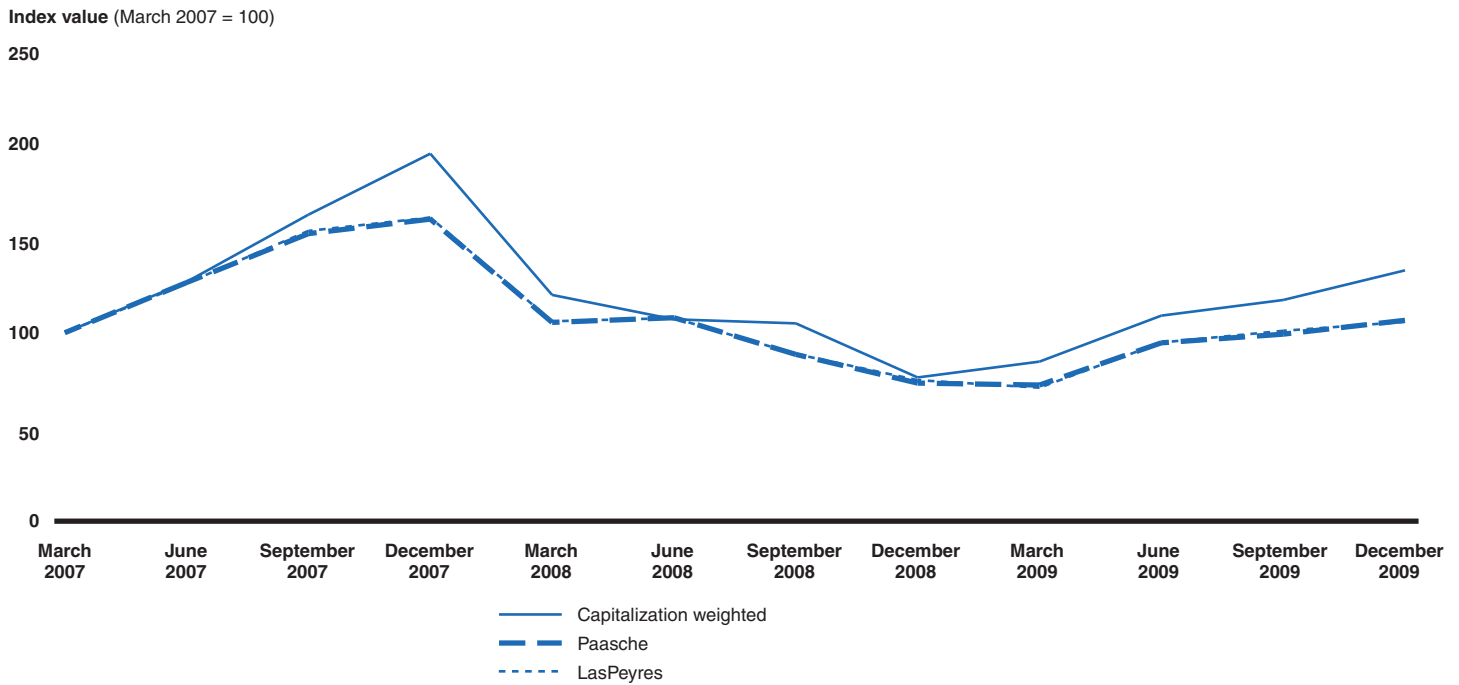
- Does the drop in the value of U.S. holdings of Sudan-related equities reflect the selling of securities, a drop in their value, or some combination of the two?
- If U.S. investors, on net, sold shares in Sudan-related companies, was this driven by conditions specific to Sudan (such as SADA or civil conflict) or similar to broad selling of foreign equities or foreign equities in the oil and gas sector?

All three price indices indicate that U.S. investors, on net, sold shares of Sudan-related companies, though the estimated amount of selling varies. The values of the three price indices, from March 2007 to December 2009, are in figure 3 below. Prices rose by 6 percent (according to the LasPeyres index), 7 percent (according to the Paasche index) or 33 percent (according to the capitalization weighted index). In comparison, from March 2007 to December 2009, the value of U.S. Sudan-related equity holdings fell by almost 60 percent. Despite this variation in estimated price increases, given that the value of holdings did not increase by more than 6 percent (the smallest estimated price increase) and in fact fell significantly, some net selling must have occurred. Because the composition of the U.S. portfolio changed over time, we believe the results indicated by the Paasche index are the most relevant.<sup>3</sup> This suggests that net selling of Sudan-related equities explains the majority of the drop in the value of U.S. holdings. Similarly, from December 2007 to December 2009 (a time period for which SADA was in force), the value of U.S. Sudan-related equity holdings fell by more than 61 percent. During that same time period, prices fell by 34 percent (according to the LasPeyres index), 33 percent (according to the Paasche index) or 32 percent (according to the capitalization weighted index). Because the value of holdings fell by more than any of the price indices, some net selling must have occurred during this time period.

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<sup>3</sup>Results indicated by the Paasche and LasPeyres indices are substantively identical. If U.S. holdings were weighted to the market value of their respective securities (as in the equilibrium of the Capital Asset Pricing Model) and the quantity of outstanding shares were constant, all three indices would collapse to the same value.

**Figure 3: Price Indices for the U.S. Sudan-related Equity Portfolio**



The question remains open as to whether this net selling of Sudan-related equities was related to conditions specific to Sudan (such as SADA or civil conflict) or broad selling of foreign equities or foreign equities in the oil and gas sector. An ideal approach to this question would involve a comparison group of foreign oil and gas equities available at a similar frequency and time period to the data we collected on Sudan-related equity holdings (quarterly, from March 2007 to December 2009). However, such data are available from public data sources (Treasury International Capital U.S. Portfolio Holdings of Foreign Securities or Bureau of Economic Analysis International Investment Position) on only an annual basis, and data for the end of 2009 were not yet available. We were able to perform a more limited comparison from the end of 2007 to the end of 2008, the first 12 months SADA was in force. During 2008, the value of U.S. Sudan-related equity holdings fell about 59 percent. In comparison, the value of all U.S. foreign oil and gas holdings (according to the 2007 and 2008 Reports on U.S. Holdings of Foreign Securities) fell by only 40 percent, indicating that U.S. investors actively or passively allowed the weight of Sudan-related equity holdings to shrink in their foreign oil and gas portfolio (the proportion fell from 3.4 percent to 2.3 percent).

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Similarly, total U.S. foreign equity holdings fell by 46 percent in 2008, indicating that U.S. investors actively or passively allowed the weight of Sudan-related equity holdings to also shrink in their total foreign equity portfolio (the proportion fell from 0.3 percent to 0.2 percent). This is merely suggestive that Sudan-specific factors played a role in U.S. investor selling decisions during 2008.

# Appendix III: Questionnaire

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## Questionnaire Regarding States' Sudan Investment Policies

### U.S. Government Accountability Office

#### Introduction

The U.S. Government Accountability Office (GAO) is an independent, non-partisan research arm of the legislative branch. GAO assists the U.S. Congress in evaluating the efficiency and effectiveness of federal laws.

The goal of this survey is to describe the effect, if any, of the Sudan divestment campaign on U.S. state-owned assets and on the assets of state-run pension funds. In particular, we hope to identify any challenges faced when considering or implementing divestment policies and laws.

(This survey is part of a larger study requested by the House Financial Services Committee regarding the federal law called the Sudan Accountability and Divestment Act (SADA), Public Law 110-74.) Your responses to this survey will help the GAO answer the House Financial Services Committee's questions about policies and actions affecting each state's assets, including your own.

It is estimated that you will require 30 to 60 minutes to complete this questionnaire. It is divided into 5 sections and has 25 questions and most of the questions are short and may be easily answered by checking a box next to the appropriate response. However, you may need to consult records if your state has divested any assets. After receiving your responses, we may follow up with a brief telephone call to clarify your responses.

The results of this survey will generally be provided in summary form in our report. Individual answers may be discussed, but they will not include any information that could be used to identify individual respondents. For more information, [click here](#).

We understand that there are great demands on your time, so we appreciate your effort in completing this questionnaire. The data you provide in this questionnaire will be a critical input in GAO's report to Congress.

Please complete this questionnaire as soon as possible, but within the next two weeks. Your cooperation in returning the questionnaire promptly is appreciated. When it is issued, we will email you a copy of the report containing these survey results. We plan on issuing the report by summer 2010.

#### Instructions

To learn more about navigation, exiting and printing the survey, please [click here](#).

Questionnaire Regarding States' Sudan Investment Policies

2/23/2010 12:29 PM

**To move from section to section:** Use the menu bar on the left side of the screen or the "Next section" button at the bottom of each page. Do not use the "Enter" key on your keyboard to navigate through the survey.

**To exit and save:** Click on the "Exit" button at the bottom of the screen. Always use the "Exit" button to close the survey. If you do not, you will lose all the information that you have entered on the screen of the survey where you improperly exited the program.

**To restart your survey:** Log onto the survey using your username and password. The survey will restart at the point where you exited.

**Indicating You Have Completed the Questionnaire**

The final question in the last section asks you to indicate that you have completed this questionnaire. Checking "Complete" tells us that your answers are official and final. Your answers will not be used unless you have done this. Please note we will not send follow-up e-mails to those who have checked the "Complete" button.

**Contact**

If you have any questions or are experiencing difficulties responding to the questionnaire (for example, if you are unable to complete it online), please contact one of the following persons.

Thank you for your time and assistance.

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**Section 1: Information on Your State's Sudan-related Investment Policies**

NOTE: All questions contained in this survey only pertain to the \_\_\_\_\_. Even if you have investment authority for additional funds, please only provide answers that pertain to the \_\_\_\_\_.

1. To the best of your knowledge, has \_\_\_\_\_ passed any laws or issued any policies that affect investment in companies that do business in Sudan?

Laws or policies may directly target Sudan or include Sudan among a number of countries targeted for divestment, such as state sponsors of terrorism.

(Check only one answer)

- 1.  Yes, my state has passed laws and/or state investment authorities have issued policies.
- 2.  No, my state has neither passed any laws nor issued any policies. (Go to question 6.)
- 3.  I don't know if my state has any laws or policies. (Go to question 6.)

2. Which authority issued the policy/policies? (For example: the state legislature, the investment board, the governor, etc. If you prefer and it is available, you may e-mail a copy of the policy to: SudanDivestment@gao.gov)

3. To the best of your knowledge, does the law, policy or policies include any of the following provisions?

For the purposes of this survey, to **divest** is to relinquish assets held in specified companies. This sale of assets is intended to reduce financial and/or political support for an entity in an effort to change that entity's behavior. The sale of assets may also be intended to reduce the investor's exposure to financial risk. Divestment can be implemented either in a blanket manner or a targeted manner. With blanket divestment, all shares in a company are sold immediately upon identification of that company's ties to the scrutinized government. With targeted divestment, companies are contacted first and shares are sold (sometimes in increments) only if the companies do not respond to the concerns of the shareholder contacting them.

For the purposes of this survey, to **freeze assets** means withholding additional or new investments from (one's current) investments.

Appendix III: Questionnaire

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	Yes	No	Don't know
3a. Requires the person(s) with investment authority to divest from Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3b. Allows (but does not require) the person(s) with investment authority to divest from Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3c. Requires the person(s) with investment authority to contact companies prior to divesting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3d. Allows the person(s) with investment authority to remain invested if targeted companies change their behavior in the Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3e. Requires the person(s) with investment authority to report any divestment actions taken to the state legislature on a regular basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3f. Requires the person(s) with investment authority to identify which companies have ties with Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3g. Requires the person(s) with investment authority to report the list of identified companies to the state legislature on a regular basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3h. Allows the person(s) with investment authority to be indirectly invested in Sudan through mutual funds or hedge funds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3i. Allows the person(s) with investment authority not to divest if she/he states that divestment would constitute a breach of fiduciary trust	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3j. Prohibits state contracts with companies with ties to Sudan (as defined by the policy/law)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3k. Prohibits future investment in companies with ties to Sudan (as defined by the policy/law)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3l. Other provision (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other provision:

4. Has the \_\_\_\_\_ had any written correspondence with the Department of Justice regarding its change of investment policy towards Sudan?  
 (Check only one answer)



1.  Yes
2.  No
3.  Don't know
4.  Not applicable

5. Has the \_\_\_\_\_ had any written correspondence with the office of the U.S. Special Envoy to Sudan regarding its change of investment policy towards Sudan?

*(Check only one answer)*

1.  Yes
  2.  No
  3.  Don't know
  4.  Not applicable
-

**Section 2: Engagement**

This section specifically asks questions about the engagement of companies. **Engagement** of a company is defined here as: identifying companies and leveraging one's power as a shareholder (or potential shareholder) in an effort to change the investment or operating behavior of that company.




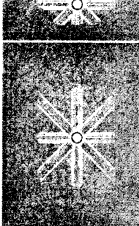


**6. Did the \_\_\_\_\_, or a money manager acting on its behalf, engage with companies who do or did business in Sudan?**

*(Check only one answer)*

- 1.  Yes
- 2.  No *(Go to question 10.)*
- 3.  Don't know *(Go to question 10.)*

**7. Which of the following methods did the \_\_\_\_\_ use when engaging companies?**

*(Please check one answer per method.)*

	Used	Did not use	Don't know
7a. Wrote letter(s)/e-mails to companies concerning their business ties to Sudan	<input type="radio"/>	<input type="radio"/>	
7b. Called or met with companies asking them for information on their business ties to Sudan	<input type="radio"/>	<input type="radio"/>	
7c. Informed companies the _____ might divest or freeze assets if they did not cease all business ties to Sudan	<input type="radio"/>	<input type="radio"/>	
7d. Informed companies the _____ might divest or freeze assets if they did not change the nature of their operations in Sudan, such as providing humanitarian outreach programs for Sudanese people, engaging with the Sudanese Government, or conducting a human rights impact assessment	<input type="radio"/>	<input type="radio"/>	
7e. Used an intermediary to communicate with the targeted companies (For example, Conflict Risk Network)	<input type="radio"/>	<input type="radio"/>	
7f. Other method <i>(Please specify below)</i>	<input type="radio"/>	<input type="radio"/>	

Other method:

**8. With which operating companies did the \_\_\_\_\_ "engage"?**

(You may write the names below. However, if it is easier, you may copy the names of the companies from your records and paste them in the space below. You may also send a copy of your records listing the companies to SudanDivestment@gao.gov.)

9. To the best of your knowledge, how many companies gave the following responses after the \_\_\_\_\_'s engagement with them?

(Please check one answer per response from companies.)

	All	More than half	About half	Less than half	None	Don't know
9a. The targeted companies provided no response to our letters and/or phone calls	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9b. The targeted companies informed us that they had left/planned to leave Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9c. The targeted companies provided more information about their business that revealed there was no need to divest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9d. The targeted companies informed us that they changed or will change their operations (for example: limited partnerships with companies that may have strong ties to the Government of Sudan (GOS), committed to refuse any future contracts for work in Sudan once current contract obligations are satisfied, increased extent of humanitarian activities, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9e. The targeted companies informed us that they did not or will not change their practices in Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9f. Other response from companies (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other response from companies:

---

**Section 3: Divestment**

For the purposes of this survey, to **divest** is to relinquish assets held in specified companies. This sale of assets is intended to reduce financial and/or political support for an entity in an effort to change that entity's behavior. The sale of assets may also be intended to reduce the investor's exposure to financial risk. Divestment can be implemented either in a blanket manner or a targeted manner. With blanket divestment, all shares in a company are sold immediately upon identification of that company's ties to the scrutinized government. With targeted divestment, companies are contacted first and shares are sold (sometimes in increments) only if the companies do not respond to the concerns of the shareholder contacting them.

For the purposes of this survey, to **freeze assets** means withholding additional or new investments from (one's current) investments.

**10. Did the \_\_\_\_\_ divest or freeze assets, or does it plan to divest/freeze, any or all of its Sudan-related assets?**

*(Check only one answer)*

- 1.  Yes, the fund has divested and/or frozen some or all of its assets.
- 2.  Yes, the fund is planning to divest and/or freeze some or all of its assets.
- 3.  No, the fund is not divesting or freezing any of its assets. (Go to question 19.)
- 4.  The fund did not have assets invested in Sudan-related business. (Go to question 20.)
- 5.  Don't know (Go to question 20.)

**11. Which of the following methods did the \_\_\_\_\_ use, or will use, when divesting/freezing some or all of its Sudan-related assets?**

*(Please check one answer per method.)*

	Used	Did not use	Don't know
11a. Divested and/or froze assets without contacting companies the _____ divested from	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11b. Divested and/or froze assets after communicating with companies and being unsatisfied with their response	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11c. Informed companies that the _____ would not invest in them in the future unless they changed their business ties or operations in Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11d. Other method <i>(Please specify below)</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other method:

**12. What were the major, moderate, and minor reasons for the \_\_\_\_\_'s divesting/freezing assets in Sudan?**

*(Please check one answer per reason.)*

	Major reason	Moderate reason	Minor reason	Not a reason	No opinion
12a. Divesting from Sudan could reduce the financial risk my office's investments were exposed to	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12b. Divesting from Sudan could improve the returns on my office's investments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12c. The _____ was required to divest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12d. Divesting from Sudan could alleviate concerns about indirectly supporting a country designated as a State Sponsor of Terrorism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12e. Divesting from Sudan could alleviate concerns about indirectly supporting the genocide and human rights abuses in Darfur	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12f. Divesting from Sudan was likely to have a positive impact (i.e., take revenue source away from the government of Sudan)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12g. Other reason <i>(Please specify below)</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other reason:

**13. To what extent was the \_\_\_\_\_ concerned about each of the following when divesting/freezing Sudan-related assets?**

*(Please check one answer per concern.)*

	To a large extent	To a moderate extent	To a small extent	To no extent	No opinion
13a. Engaging companies was too difficult and/or costly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13b. Divesting could cause my office to incur high transaction costs and/or earn reduced returns on investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13c. It would be difficult to divest while ensuring that fiduciary trust requirements were not breached and my office/state was not made vulnerable to law suits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13d. Despite SADA's explicit authorization, it would be difficult to divest while ensuring that the state was not left open to law suits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	To a large extent	To a moderate extent	To a small extent	To no extent	No opinion
alleging that divestment practice is unconstitutional					
13e. Divesting might force an operating company out of the Sudanese market, leaving room for one with more questionable business practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13f. It would be difficult and costly to identify accurate and authoritative information regarding companies with business ties to Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13g. There was concern about setting a dangerous precedent for divesting because of other social concerns	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
13h. Other reason (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other reason:

14. Did, or will, the \_\_\_\_\_ divest or freeze directly-held assets related to Sudan?

(Check only one answer)

1.  Yes, all directly-held assets have been, or will be, divested or frozen.
2.  Yes, some directly-held assets have been, or will be, divested or frozen.
3.  No, directly-held assets have not, or will not, be divested or frozen.
4.  The fund had no directly-held assets in Sudan.
5.  Don't know

15. Did, or will, the \_\_\_\_\_ divest or freeze indirectly-held assets (e.g., assets held in a commingled fund) related to Sudan?

(Check only one answer)

1.  Yes, all indirectly-held assets have been, or will be, divested or frozen. (Go to question 17.)
2.  Yes, some indirectly-held assets have been, or will be, divested or frozen. (Go to question 17.)
3.  No, indirectly-held assets have not, or will not, be divested or frozen. (Go to question 16.)
4.  The fund had no indirectly-held assets in Sudan. (Go to question 17.)
5.  Don't know (Go to question 17.)

16. To what extent were each of the following factors a reason why the

\_\_\_\_\_ did not or will not divest its indirectly-held assets?

(Please check one answer per factor.)

	To a large extent	To a moderate extent	To a small extent	To no extent	No opinion
16a. As one of many investors, did not have authority to divest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16b. It was too costly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16c. The law/policy only requires the divestment of directly-held assets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
16d. Other factor (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other factor:

If the \_\_\_\_\_ has NOT yet divested or frozen assets, click on link below to go to question 20.

[Click here to skip to question 20.](#)

17. If the \_\_\_\_\_ has already divested or frozen assets, what was the name/ names of the company/companies from which it divested or froze assets, the date of divestment or freezing, and the value divested or frozen from the company (in U.S. dollars)?

(You may enter the information for up to 5 companies below. If you divested or froze assets from more than 5 companies, or if it is easier to cut and paste information from your records, you may enter the information in the large box at the end of question 17. You may also send a copy of your records listing the companies to [SudanDivestment@gao.gov](mailto:SudanDivestment@gao.gov).)

Company #1 from which the fund divested/ froze assets:

17a. Name of company

17b. Date of divestment/ date when value of frozen assets was calculated (month/year)

17c. Value frozen/ divested from the company (in US\$)

\$

**Company #2 from which the fund divested/ froze assets:**

17d. Name of company

17e. Date of divestment/ date when value of frozen assets was calculated (month/year)



17f. Value frozen/ divested from the company (in USS) \$

**Company #3 from which the fund divested/ froze assets:**

17g. Name of Company

17h. Date of divestment/ date when value of frozen assets was calculated (month/year)



17i. Value frozen/ divested from the company (in USS) \$

**Company #4 from which the fund divested/ froze assets:**

17j. Name of Company

17k. Date of divestment/ date when value of frozen assets was calculated (month/year)




17l. Value frozen/ divested from the company (in USS) \$



**Company #5 from which the fund divested/ froze assets:**

17m. Name of Company

17n. Date of divestment/ date when value of frozen assets was calculated (month/year)  

17o. Value frozen/ divested from the company (in US\$) \$

Please enter information on additional companies or from your records below. For each company, please include the company name, date of divestment/ date when value of frozen assets was calculated, and value frozen/ divested from each company.

18. If the \_\_\_\_\_ has already divested or frozen assets, to the best of your knowledge, how many companies took the following actions after the \_\_\_\_\_'s divestment from them?

(Please check one answer per action.)

	All	More than half	About half	Less than half	None	Don't know
18a. The targeted companies changed their operations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18b. The targeted companies left Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18c. The targeted companies increased the number or extent of humanitarian activities they fund in Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18d. The targeted companies did nothing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18e. Other action (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other action:

After answering question 18, click on link below to go to question 20.

[Click here to skip to question 20.](#)

19. If the \_\_\_\_\_ did not or will not freeze or divest any Sudan-related assets, to what extent did each of the following factors influence the decision not to freeze or divest Sudan-related assets?

(Please check one answer per factor.)

	To a large extent	To a moderate extent	To a small extent	To no extent	No opinion	Not applicable
19a. The _____ did not divest since it is not required to	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19b. The _____ determined it had no directly-held assets in companies operating in Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19c. The _____ determined it had no indirectly-held assets (i.e., commingled funds) in companies operating in Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19d. The _____ determined that it had indirectly-held assets (i.e., commingled funds) in companies operating in Sudan but did not have the authority to divest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19e. The _____ did not view divesting as a positive tool to promote change	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19f. Divesting would have caused State/name of fund to incur high transaction costs and/or earn reduced returns on investment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19g. Divesting would have conflicted with my fiduciary trust requirements thereby making the _____ vulnerable to law suits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19h. It was too difficult and too costly to identify accurate and authoritative information regarding companies with business ties to Sudan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19i. Engaging companies was preferable to divesting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19j. Divesting would have forced an operating company out of the Sudanese market, leaving room for one with more questionable business practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19k. Adopting a policy encouraging divestment from Sudan would have set a dangerous precedent for divesting because of other social concerns	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19l. In order to divest from certain companies, the _____ would have had to sell off entire funds, such as international funds, which are the most	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	To a large extent	To a moderate extent	To a small extent	To no extent	No opinion	Not applicable
lucrative						
19m. Despite SADA's explicit authorization, divesting would have left the _____ open to law suits alleging that divestment practice is unconstitutional	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
19n. Other factor (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other factor:

\_\_\_\_\_

**Section 4: Sources of Information**

20. Did your state, fund, or governing body attempt to identify companies with ties to Sudan?

(Check only one answer)

- 1.  Yes
- 2.  No (Go to question 24.)
- 3.  Don't know (Go to question 24.)

21. Below is a list of sources commonly used to identify companies with ties to Sudan. How useful were each of these sources to your office as it attempted to identify companies with business operations in Sudan?

(Please check one answer per source.)

	Very useful	Useful	Somewhat useful	Not at all useful	No Opinion	Did not use
21a. <b>Government source:</b> The Securities and Exchange Commission's EDGAR database on-line (SEC)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21b. <b>Government source:</b> Treasury Department's Office of Foreign Asset Controls List (OFAC)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21c. <b>Commercial or private source:</b> Private research companies (such as CSAG, RiskMetrics, Bloomberg Terminal, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21d. <b>Commercial or private source:</b> Socially responsible investment firm (e.g., Calvert, Domini Investments, etc.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21e. <b>NGOs/Advocacy groups (Such as: Investors Against Genocide, The Sudan Divestment Task Force/Conflict Risk Network)</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
21f. Other source (Please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other source:

22. Overall, how sufficient did your office think the information provided by the sources it consulted was in identifying companies with business ties to Sudan as defined under the \_\_\_\_\_'s policy or law?

(Check only one answer)

- 1.  Very sufficient
- 2.  Sufficient
- 3.  Somewhat sufficient
- 4.  Not at all sufficient

- 5.  No opinion
- 6.  Don't know
- 7.  Not applicable

23. What are the reason(s) for your response to question 22?



**Section 5: Contact information**

24. Do you have any additional comments?

25. What are the names, titles, phone number, and e-mail address of the person(s) completing this questionnaire?

*(Enter information in boxes below.)*

**Person #1:**

**Name**

**Title**

**Phone number, including area code**

**E-mail Address**

**Person #2:**

**Name**

**Title**

**Phone number, including area code**

**E-mail Address**

**Completed**

26. If you have completed the survey, please check "Completed" below. Clicking on "Completed" indicates that your answers are final.

Your answers will not be used unless you check **COMPLETED** below.

*(Check only one answer)*

- 1.  Completed
- 2.  Not completed

**Thank you**

**Thank you for your participation!**

**If applicable, please remember to send a copy of your state's divestment policy, a list of companies with which you engaged, and/or the list of companies from which you divested or froze assets, the date of divestment, and value divested to [SudanDivestment@gao.gov](mailto:SudanDivestment@gao.gov).**

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# Appendix IV: Comments from the Securities and Exchange Commission

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

June 14, 2010

Thomas Melito  
Director, International Affairs and Trade  
United States Government Accountability Office  
Washington, DC 20548

Dear Mr. Melito:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report entitled *Sudan Divestment: U.S. Investors have Sold Assets but Could Benefit from Increased Disclosure Regarding Companies' Ties to Sudan* (GAO-10-742).

The GAO recommends that the SEC consider issuing a rule requiring companies that trade on U.S. exchanges to disclose their business operations tied to Sudan as well as possibly other state sponsors of terrorism. As the report noted, the federal securities laws do not specifically require public companies to disclose this information. Rather, these laws require this disclosure when the information is "material." It is important to note that companies are not free to make their own judgments as to whether these matters are "material." The materiality test for misstatements or omission of facts is an objective test based on the informational needs of a reasonable investor. In the Division of Corporation Finance's view, companies have a strong incentive to make appropriate judgments about materiality, in that they may face significant federal securities law liability for disclosure that includes material misstatements or material omissions that make the information provided misleading. The Division reviews company filings with this materiality standard for disclosure in mind. Through our review and comment process, the Division questions public companies about their business operations tied to Sudan and other state sponsors of terrorism and, where appropriate, the Division asks companies to explain and revise their disclosure about those ties.

The decision as to whether to adopt corporate disclosure requirements that expand beyond materiality is one which must be presented to the Commission for its consideration. In presenting GAO's recommendation to the Commission, the Division will note that jurisdictions throughout the U.S. have adopted numerous divestiture-like statutes concerning a variety of topics. While the GAO's recommendation relates to investors' access to information about companies' activities with respect to a specific subset of those divestiture statutes – those relating to Sudan – the Division is concerned that if the Commission were to adopt disclosure requirements to facilitate compliance with the broad span of these statutes – without consideration of the materiality of that disclosure to the overall mix of information about a company – the volume of information could overwhelm investors and could possibly obscure other material information. Such an outcome would run counter to the fundamental purposes of

See comment 1.

See comment 2.



Thomas Melito  
Page 2

disclosure under the securities laws – i.e., to provide investors with meaningful information and promote price discovery efficiency in the securities markets.

Thank you for the courtesy the GAO extended to the SEC during the course of preparing its report, and thank you again for giving us the opportunity to provide you with comments as you finalize it.

Sincerely,



Meredith B. Cross  
Director

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The following are GAO's comments on the letter from the SEC's Division of Corporation Finance, dated June 14, 2010.

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## GAO Comments

1. The meaning of "material information" is not explicitly defined by law, but the Supreme Court has determined that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or the information would significantly alter the total mix of available information. In evaluating companies' disclosures regarding global security-risk related issues, the SEC's Office of Global Security Risk has asked companies to consider both quantitative and qualitative factors, such as the potential impact of corporate activities upon a company's reputation and share value. As we note in our report, however, companies have generally resisted these instructions and, at times, have refused to disclose information about their ties to Sudan.
2. As we state in our report, the SEC's Office of Global Security Risk has suggested to companies that any operations they have in state sponsors of terrorism might be considered material because divestment campaigns and legislation mandating divestment from Sudan indicate that investors would consider this information important in making investment decisions.

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Thomas Melito (202) 512-9601 or [melitot@gao.gov](mailto:melitot@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Cheryl Goodman, Assistant Director; Elizabeth Singer; Katy Forsyth; Michael Hoffman; R.G. Steinman; Julia Becker Vieweg; Sada Aksartova; Kay Halpern; Debbie Chung; Ann Baker; JoAnna Berry; Noah Bleicher; Martin de Alteriis; Patrick Dynes; Etana Finkler; Justin Fisher; Cathy Hurley; Ernie Jackson; Debra Johnson; Julia Kennon; Jill Lacey; Andrea Miller; and Linda Rego make key contributions to this report.

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## Congressional Relations

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## Public Affairs

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