

NORTH CAROLINA DEPARTMENT OF STATE TREASURER POLICY

DST Reference:	OST-POL-4006-MUL*
Title:	Boycott Israel Divestment Policy
Cross Reference:	
Chapter:	Corporate Governance
Effective Date:	October 30, 2017

I. BACKGROUND

This year, the North Carolina General Assembly (the “General Assembly”) passed Session Law 2017-193 (“Session Law”), known as the Divestment from Companies Boycotting Israel Act (the “Act”).¹ The statute notes that boycotts and related tactics have become a tool of economic warfare that threaten the sovereignty and security of key allies and trade partners of the United States. Specifically, that the State of Israel is the most prominent target of such boycott activity. Companies that refuse to deal with United States trade partners like Israel make discriminatory decisions on the basis of national origin that impair those companies’ commercial soundness. Because Israel is known for its dynamic and innovative approach in many business sectors, a company’s decision to discriminate against Israel is an unsound business practice that makes such a company an unduly risky contracting partner or vehicle for investment. A company that boycotts Israel is ineligible for state investment or contracts. Accordingly, the North Carolina Department of State Treasurer (“DST”) hereby adopts this Boycott Israel Divestment Policy (“Policy”) in accordance with the Act.²

II. PURPOSE

The State Treasurer has a fiduciary duty under the North Carolina General Statutes to invest and manage the entrusted funds in a manner consistent with statutes, regulations, and policies.³ Also, DST jointly administers the North Carolina Supplemental Retirement Plans with the North Carolina Supplemental Retirement Board of Trustees.⁴ The Treasurer must manage all programs in the best interest of the participants and beneficiaries of North Carolina Retirement Systems (“NCRS”) and the Supplemental Retirement Plans (“SRP”). The implementation of this Policy shall be accomplished in a manner that fulfills this fiduciary duty and in keeping with relevant statutes. Nothing in the policy shall require the State Treasurer to take action unless the Treasurer determines, in good faith, that the action is consistent with the relevant fiduciary responsibilities.

* This policy applies to the Investment Management Division for the North Carolina Retirement Systems and the Supplemental Retirement Plans.

¹ Session Law 2017-193

² Session Law 2017-193§147-86.81

³ Session Law 2017-193§ 147-69.7

⁴ N.C.G.S. §135-96(a)

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The Act restricts contracts between North Carolina boards, commissions, state departments, executive departments, officers, institutions, and any political subdivision of the State, and companies or other persons found on the Final Divestment List generated by DST.⁵ Any individual or company that is identified on the Final Divestment List is ineligible to contract with State or Local Agencies. In addition, an individual or company that contracts with State or Local Agencies shall not utilize any subcontractor that is identified on the Final Divestment List. Each State or Local agency, not DST or the State Auditor, is responsible for ensuring its own compliance with the Act.

III. DEFINITIONS

The following terms shall have the following meanings when used in this Policy unless the policy specifically states otherwise:

- A. “Department of State Treasurer investments” for the purposes of this policy will include both NCRS and SRP.
- B. “Boycott Israel” or “Boycott of Israel” is defined as: “engaging in refusals to deal, terminating business activities, or taking actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations specifically with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories. This term does not apply to decisions made for ordinary business purposes or for actions with an economic impact of less than \$20 million dollars in a 12 month period.”⁶
- C. “Company” includes any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.⁷
- D. “Investment” means a commitment or contribution of funds or property, whatever the source, a loan or other extension of credit, and the entry into or renewal of a contract for goods or services. It does not include indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like.⁸
- E. “Final Divestment List” a list published by DST on an at least annual basis that

⁵ Session Law 2017-193 §147-86.82

⁶ Session Law 2017-193 §147-86.80(3)

⁷ Session Law 2017-193 §147-86.80(2)

⁸ Session Law 2017-193 §147-86.57(3)

identifies companies DST determines are engaged in a Boycott of Israel.

- F. “Restricted company” is an entity that appears on the Divestment List.⁹
- G. “Restrictions on contracts” means that a company identified as a restricted company is ineligible to contract with any board, commission, department, executive department, officer, institution or any political subdivision of the State.¹⁰ This does not apply to contracts valued at \$1000 or less.¹¹

IV. IDENTIFICATION OF RESTRICTED COMPANIES

Within 120 days of adoption of this policy, and at least annually thereafter, DST shall develop and make publicly available a Final Divestment List of restricted companies it determines to be engaged in a Boycott of Israel. In the development of this list, DST will use a research firm, which will analyze information from credible sources to evaluate whether a company (1) has engaged in the intentional boycott of Israel, (2) if the Boycott has an economic impact of \$20,000,000 or more in a 12 month period, and (3) if the actions were not made for ordinary business purposes.¹²

Each company identified by the research firm will be provided 90 days written notice prior to the publication of the Final Divestment List. The notice will communicate DST’s intent to include the company on the list, inform the company that inclusion on the list would make the company ineligible for state investment and may affect the company’s ability to conduct business with the State and its subdivisions.¹³ Further, the notice will specify that the company may be removed from the list if it ceases its Boycott of Israel.¹⁴

Each company will have the opportunity to comment in writing that it is not engaged in a Boycott of Israel or that it has ceased its Boycott of Israel and certify that the company will not reengage in a boycott of Israel for the duration of any business with the State.¹⁵ DST shall make every effort to avoid erroneously including a company on the list.¹⁶

V. PROHIBITION AND DIVESTMENT

Within 180 days of the publication of a Final Divestment List, any existing DST investment with a company that is on the list shall be divested.¹⁷ New DST investments will not be made with a company that is identified on the Final Divestment List. Further, DST shall not contract

⁹ Session Law 2017-193 §147-86.80(4)

¹⁰ Session Law 2017-193 §147-86.82

¹¹ Session Law 2017-193 §147-86.83

¹² Session Law 2017-193 §147-86.81(a)(1)

¹³ Session Law 2017-193 §147-86.81(a)(1)(a)

¹⁴ Session Law 2017-193 §147-86.81(a)(1)(b)

¹⁵ *Ibid.*

¹⁶ Session Law 2017-193 §147-86.81(a)(1)

¹⁷ Session Law 2017-193 §147-86.81(a)(5)

with a company that is on the list, with the exception of de minimis contracts valued at \$1,000 or less.¹⁸

VI. REPORTING

Once a year, by October 1, DST shall report to the Joint Legislative Commission on Governmental Operations the information regarding investments sold, invested, and withdrawn pursuant to this policy.

VII. REVISION/REVIEW HISTORY

Version	Date Approved	Description
1.0	10/30/2017	New Policy

For questions or clarification on any of the information contained in this policy, please contact the policy owner or designated contact point: [Madelaine Wang](#). For general questions about department-wide policies and procedures, contact the [DST Policy Coordinator](#).

¹⁸ Session Law 2017-193 §147-86.84