

## NORTH CAROLINA DEPARTMENT OF STATE TREASURER POLICY

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| <b>DST Reference:</b>           | <b>OST-POL-5002-IMD</b>       |
| <b>Title:</b>                   | <b>Iran Divestment Policy</b> |
| <b>Cross Reference:</b>         | <b>Iran Policy</b>            |
| <b>Chapter:</b>                 | <b>Legal</b>                  |
| <b>Current Effective Date:</b>  | <b>October 30, 2015</b>       |
| <b>Revision History:</b>        | <b>October 30, 2015</b>       |
| <b>Original Effective Date:</b> | <b>July 19, 2012</b>          |

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### **I. Background.**

The North Carolina General Assembly has noted in statute that the United States Congress and the President have determined that the illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles and its support for international terrorism, represent a serious threat to the United States, Israel, and other allies of the United States in Europe, the Middle East, and around the world.<sup>1</sup>

Specifically, President Barack Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) into law on July 1, 2010.<sup>2</sup> CISADA expressly authorizes state and local governments to debar from contracting and divest from companies whose operations in Iran’s energy sector support the Government of Iran’s efforts to achieve a nuclear weapons capability.

In 2015, the North Carolina General Assembly passed the Iran Divestment Act, Session Law 2015-118, codified beginning at N.C.G.S. 143C-6A-1. It is the intent of the General Assembly to implement the authority granted by CISADA.<sup>3</sup> The North Carolina Department of State Treasurer adopted a previous Iran Divestment Policy in 2012. The Iran Divestment Act utilizes a different set of criteria from the previous State Treasurer Iran Divestment Policy and directs the State Treasurer to adopt a policy under the Act.

Accordingly, the North Carolina Department of State Treasurer (“DST”) hereby adopts this revised Iran Divestment Policy (“Policy”) in accordance with the Iran Divestment Act. The concerns of the State regarding Iran are strictly the result of the actions of the Government of Iran and should not be construed as enmity towards the Iranian people.

### **II. Purpose.**

It shall be the policy of the Department of State Treasurer and the North Carolina Retirement Systems (NCRS) to debar and divest from a company or individual that participates in certain ways, defined under statute and this Policy, in the energy sector of Iran.

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<sup>1</sup> N.C.G.S. Chapter 143C, Article 6A, titled the “Iran Divestment Act,” enacted in June of 2015.

<sup>2</sup> H.R. 2194 / PL 111-95.

<sup>3</sup> N.C.G.S. 143C-6A-2(8).

The State Treasurer has the fiduciary duty under N.C.G.S. 147-69.7 to invest and manage the entrusted funds in a manner consistent with statutes, regulations, and policies, and the State Treasurer is required to manage the program solely in the interest of the participants and beneficiaries of NCRS. The implementation of this Policy shall be accomplished in a manner that fulfills this fiduciary duty and in keeping with relevant North Carolina General Statutes. Nothing in the policy shall require the North Carolina Retirement Systems or the State Treasurer to take action unless the State Treasurer determines, in good faith, that the action is consistent with the relevant fiduciary responsibilities.

The Iran Divestment Act also restricts contracts between North Carolina state departments, agencies, institutions, boards, commissions, and officers, along with all North Carolina cities, towns, and all other political subdivisions of the State, and companies or other persons found on the Final Divestment List generated by the Department of State Treasurer under sections IV and V of this Policy.<sup>4</sup> Section VII of this Policy discusses how this requirement will work in practice.

### III. Definitions.

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

- A. **“Iran”** includes the Government of Iran and any agency or instrumentality of the Government of Iran, including companies owned or controlled by the government.<sup>5</sup>
- B. **“Individual”** means a natural person.<sup>6</sup>
- C. **“Company”** means any of the following:
  - A. Business, sole proprietorship, organization, corporation, partnership, limited liability partnership, society, trust, limited liability company, or other entity or business association; or
  - B. A successor, parent entity owning at least 20%, or majority-owned subunit or subsidiary of any entity described in subsection (1) above; or
  - C. A governmental entity or instrumentality of a government, including a multilateral development institution, as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. § 262r(c)(3)).<sup>7</sup>
- D. **“NCRS”** means the Teachers’ and State Employees’ Retirement System, the Consolidated Judicial Retirement System, the Firemen’s and Rescue Workers’ Pension Fund, the Local Governmental Employees’ Retirement System, the Legislative

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<sup>4</sup> N.C.G.S. 143C-6A-5 and 6A-6, along with definition at N.C.G.S. 143C-6A-3(7).

<sup>5</sup> N.C.G.S. 143C-6A-3(5).

<sup>6</sup> Individuals are included within the definition of person under the Iran Divestment Act. See N.C.G.S. 143C-6A-3(6)(a).

<sup>7</sup> N.C.G.S. 143C-6A-3(6).

Retirement System, the North Carolina National Guard Pension Fund, the Legislative Retirement Fund, and the Retiree Health Benefit Fund.<sup>8</sup>

E. **“State or Local Agency”** means any board, commission, department, executive, department, officer, institution, and any political subdivision of the State.<sup>9</sup>

F. **“Energy sector of Iran”** means activities to develop petroleum resources, natural gas resources, or nuclear power in Iran.<sup>10</sup>

G. **“Financial institution”** includes

A. a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978;

B. a credit union;

C. a securities firm including a broker or dealer;

D. an insurance company, including an agency or underwriter; and

E. any other company that provides financial services.<sup>11</sup>

H. **“DST Investments”** means the following financial relationships with an individual or company:

A. A commitment or contribution of funds or property from any source except indirect beneficial ownership through index funds, commingled funds, limited partnerships, derivative instruments, or the like,

B. A loan or other extension of credit, and

C. The entry into or renewal of a contract for goods or services.<sup>12</sup>

DST Investments include those made by NCRS, the Escheat Fund, the Short-Term Investment Fund, the Long-Term Investment Fund, the Supplemental Retirement Plan, and all other funds held within the State Treasurer’s investment programs.

I. **“Potential Divestment List”** means the lists created pursuant to section IV of this Policy and updated pursuant to section V of this Policy, which will list individuals and companies subject to the engagement process.

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<sup>8</sup> N.C.G.S. 147-69.2(b)(8).

<sup>9</sup> N.C.G.S. 143C-6A-3(7).

<sup>10</sup> N.C.G.S. 143C-6A-3(1).

<sup>11</sup> N.C.G.S. 143C-6A-3(2).

<sup>12</sup> N.C.G.S. 143C-6A-3(3).

J. **“Final Divestment List”** means the lists created pursuant to section IV of this Policy and updated pursuant to section V of this Policy, which will list individuals and companies subject to prohibition and divestment.

K. **“Scrutinized Business Activities”** means an individual or company that:

A. Provides goods or services of twenty million dollars (\$20,000,000) or more within any 12-month period in the energy sector of Iran, over the preceding five years, including an individual or company that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

B. Is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another individual or company, for 45 days or more, if

a) the financial institution knows, or reasonably should know, that the individual or company will use the credit to provide goods or services in the energy sector in Iran, and

b) the individual or company receiving credit is identified on the Final Divestment List.<sup>13</sup>

L. **“Substantial Positive Action”** is defined in section XI, “Exceptions,” below.

#### IV. **Identification of Individuals or Companies to be Listed.**<sup>14</sup>

A. **Identify Individuals or Companies.** Within 120 days of adoption of this version of the Policy, DST<sup>15</sup> shall develop and publish a Final Divestment List of individuals and companies engaged in Scrutinized Business Activities. Such efforts shall include using federal sanctions lists and any other credible information available to the public, and DST shall make every effort to avoid erroneously including an individual or company on the list.

B. **Engagement.** Prior to publishing the Final Divestment List, DST shall perform the following engagement acts for each individual or company under scrutiny. These individuals or companies will be on the DST Potential Divestment List throughout the engagement process.

A. Provide each individual or company under scrutiny with at least 90 days of written notice that they may be included on the Final Divestment List.

B. Inform the individual or company that inclusion on the Final Divestment List will make the individual or company ineligible for DST Investment and will

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<sup>13</sup> N.C.G.S. 143C-6A-3(4) (main definition) and last sentence of G.S. 143C-6A-7(b) (five-year requirement).

<sup>14</sup> This provision incorporates the requirements of N.C.G.S. 143C-6A-4(1).

<sup>15</sup> All duties of the State Treasurer under this Policy will be carried out by authorized employees of the State Treasurer’s agency, the Department of State Treasurer.

prohibit the individual or company from conducting other contract business with State or Local Agencies.

C. Specify that the individual or company may be removed from the Potential Divestment List and will not appear on the Final Divestment List, if it ceases its engagement in Scrutinized Business Activities.

D. Provide the individual or company with an opportunity to comment in writing that it is not engaged in Scrutinized Business Activities. If the individual or company demonstrates to the satisfaction of DST that the individual or company is not engaged in Scrutinized Business Activities, then the individual or company shall not be included on the Final Divestment List and will be removed from the Potential Divestment List.

V. **Updates to Final Divestment List.** NCRS shall update the Final Divestment List on at least a bi-annual basis based on evolving information as described in Section IV of this Policy.<sup>16</sup>

## VI. **Prohibition and Divestment.**<sup>17</sup>

A. **During Engagement.** During the engagement process specified in section IV of this Policy, it is in DST's discretion whether to instruct investment managers not to make new DST Investments with companies on the Potential Divestment List, or communicate the Potential Divestment List to investment managers explaining that it is a preliminary list.

B. **Prohibition.** DST shall not make new DST Investments with an individual or company that is identified on the Final Divestment List.

C. **Divestment.** DST shall issue divestment notices to its investment managers in a timely manner to ensure that any DST Investments with an individual or company remaining on the Final Divestment List are divested within 180 days of the date engagement concludes. (Notwithstanding the foregoing, any DST Investments held on October 30, 2015 with a company listed on the first Final Divestment List, published by DST on or about February 26, 2015, shall be divested no later than April 27, 2016.)

## VII. **Contract Certification.**

A. Any individual or company that is identified on the Final Divestment List is ineligible to contract with State or Local Agencies.<sup>18</sup> In addition, an individual or company that contracts with State or Local Agencies shall not utilize on the contract any subcontractor that is identified on the Final Divestment List.<sup>19</sup>

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<sup>16</sup> See N.C.G.S. 143C-6A-4(1), next-to-last sentence.

<sup>17</sup> See N.C.G.S. 143C-6A-4(2) and 143C-6A-4(3).

<sup>18</sup> N.C.G.S. 143C-6A-6(a).

<sup>19</sup> N.C.G.S. 143C-6A-5(b).

B. If an individual or company is added to the Final Divestment List and State or Local Agencies have existing contracts with that individual or company, that contract shall be allowed to expire in accordance with the contract's terms.<sup>20</sup>

C. For each new contract, contract renewal, or contract assumption after the date (expected to be February 26, 2016) that the Final Divestment List, is published by DST under section IV of this Policy, each State or Local Agency shall require a certification from its counterparty that the counterparty is not identified on the list.<sup>21</sup> This certification may be made in the body of the contract or in an exhibit or rider to the contract. Each State or Local Agency shall maintain its own records demonstrating these certifications, which may be reviewed by the State Auditor.

D. DST shall make the Final Divestment List of individuals or companies specified pursuant to this Policy available to State and Local Agencies, including updates, so that they may comply with the Iran Divestment Act. Each State or Local Agency, not the Department of State Treasurer or the State Auditor, is responsible for ensuring its own compliance with the Iran Divestment Act.

**VIII. Reporting.** DST shall deliver a report on its public website and to the Joint Legislative Commission on Government Operations annually by October 1 that includes:

A. The Final Divestment List developed pursuant to this Policy.

B. A summary of correspondence with individuals and companies engaged by DST under this Policy;

C. All investments sold, redeemed, divested, or withdrawn in compliance with this Policy;

D. Any investment by NCRS in individuals or companies with scrutinized activities in Iran; and

E. The status of the federal "Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010" (Public Law 111-195), the "Iran Divestment Act of 2015," and any rules or regulations adopted thereunder.

**IX. Exemptions.**

A. **Case-by-Case Exemptions.** Notwithstanding this Policy:

1. The Department of State Treasurer may invest with an individual or company on the Final Divestment List if DST makes a good-faith determination, on a case-by-case basis, that the investments are necessary to perform its functions, including but not limited to meeting its fiduciary

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<sup>20</sup> N.C.G.S. 143C-6A-6(c).

<sup>21</sup> N.C.G.S. 143C-6A-5(a).

obligations for investing trust fund assets as described in section XI of this Policy,<sup>22</sup> and

2. State or Local Agencies may contract with an individual or company on the Iran Final Divestment List if the State or Local Agency makes a good-faith determination, on a case-by-case basis, that the commodities or services are necessary to perform its functions and that, absent such an exemption, the State or Local Agency would be unable to obtain the commodities or services for which the contract is offered. The determination shall be entered into the procurement record.<sup>23</sup> DST is not responsible for recording or maintaining a record of such exemptions for any other State or Local Agency.

**B. General Exemptions.** Notwithstanding this Policy:

A. Substantial Positive Action.<sup>24</sup> DST and State or Local Agencies may invest or contract with individuals or companies listed pursuant to this policy if DST determines that the individual or company is engaged in Substantial Positive Action. “**Substantial Positive Action**” means that an individual or company engaged in Scrutinized Business Activities before the effective date of this Policy but:

- a) Has not expanded or renewed Scrutinized Business Activities after the effective date of this Policy; and
- b) Has adopted, publicized, and is implementing a detailed plan to cease the Scrutinized Business Activities and to refrain from engaging in any new Scrutinized Business Activities.

DST may make Substantial Positive Action determinations using U.S. Government statements and any other credible information available to the public.

DST shall develop and make publicly available a “Substantial Positive Action Exception List” of these individuals and companies. DST shall update the list every 180 days.

B. Contracts Beneath \$1,000. The contracting restrictions of section VI of this Policy shall not apply to contracts in which the compensation to the State or Local Agency’s counterparty is \$1,000 or less.<sup>25</sup>

C. Affirmative Declaration. If particular Scrutinized Business Operations have been specifically exempted from U.S. government sanctions by an affirmative declaration authorized by the Congress of the United States, those

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<sup>22</sup> See N.C.G.S. 143B-6A-4(5)(b).

<sup>23</sup> See N.C.G.S. 143B-6A-7(c).

<sup>24</sup> This section implements N.C.G.S. 143C-6A-7(b).

<sup>25</sup> N.C.G.S. 143C-6A-7(a).

operations will not be taken into account in developing the Final Divestment List.<sup>26</sup>

**X. Expiration.** The restrictions on contracting and investing as described in this Policy shall only apply until:

A. The President or Congress of the United States, by means including, but not limited to, legislation, executive order, or written certification, declares that divestment of the type provided for in this Article interferes with the conduct of United States foreign policy; or

B. Congress revokes authority to divest in the manner provided for in this Article.<sup>27</sup>

**XI. Prudent Investor Rule.** DST shall not take any action under this Policy which conflicts with the standard of care stated by N.C.G.S. 147-69.7.

**XII. Revision History**

| Version/Revision | Date Approved | Description of Changes   |
|------------------|---------------|--|
| 1                | 07/19/2012    | First version.   |
| 2                | 10/30/2015    | Revised policy conforming to Iran Divestment Act passed by the North Carolina General Assembly in 2015 |

*For questions or clarification on any of the information contained in this policy, please contact the policy owner or designated contact point: Matthew Leatherman, [matthew.leatherman@nctreasurer.com](mailto:matthew.leatherman@nctreasurer.com) . For general questions about department-wide policies and procedures, contact the DST Policy Coordinator: [Sandra Johnson](#).*

<sup>26</sup> N.C.G.S. 143C-6A-8(b)(1), last sentence.

<sup>27</sup> N.C.G.S. 143C-6A-8(b).