

NORTH CAROLINA DEPARTMENT OF STATE TREASURER POLICY

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I. Background

The United States and North Carolina governments have labeled actions by the Government of Sudan (as defined in Section III of this Policy below) as genocide, as atrocities, and as acts of state-sponsored terrorism. The General Assembly determined that it is the prerogative and desire of the State of North Carolina to exclude investment of resources in its control in entities that provide support for genocide, to the extent reasonable, and with consideration for return on investment.¹

The Sudan Act prohibits the North Carolina Retirement Systems (“NCRS”)² from investing in certain companies with activities linked to Sudan and imposes certain divestment requirements for securities already held by the Department.³ NCRS’ actions to comply in good faith with the Sudan Act are exempt from any conflicting obligations under North Carolina law.⁴

II. Purpose

It shall be NCRS’ policy to divest from current holdings and exclude from future holdings, directly held securities of companies that participate in Scrutinized Business Operations as defined under statute and this policy.

The 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 Treasurer is required to manage the program solely in the interest of the participants and beneficiaries of NCRS. NCRS shall implement this Policy in a manner that fulfills this fiduciary duty and in keeping with the Sudan Act.

¹ N.C.G.S. 147-86.41(17)

² Collectively, NCRS refers to 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 Retirement System, the North Carolina National Guard Pension Fund, the Legislative Retirement Fund, and the Retiree Health Benefit Fund. See N.C.G.S. 147-86.42(14) and N.C.G.S. 147-69.2(b)(8).

³ N.C.G.S. 147-86.44

⁴ N.C.G.S. 147-86.47

III. Definitions

The following terms when used in this policy shall have meaning set forth below unless the Policy specifically states otherwise:

- A. **“Government of Sudan”** means the government of the Republic of Sudan or any successor government, and does not include the Government of South Sudan or any successor government.⁵
- B. **“Company”** means any of the following:
 - a. Any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association that exists for the purpose of making a profit, or⁶
 - b. A parent entity owning at least 20%, or a majority-owned subunit or subsidiary of any entity described in subsection (a) above, or affiliates of such entity described in subsection (a) that exists for profit making purposes.
- C. **“Social Development Company”** means a Company whose primary purpose in Sudan is to provide humanitarian goods, services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or Power Production Activities.⁷
- D. **“Marginalized Population”** includes, but is not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.⁸
- E. **“NCRS Investments”** means a commitment or contribution of funds or property from any source except those that are held through indirect beneficial ownership like index funds, commingled funds, limited partnerships, derivative instruments, or any other similar investment instrument.
- F. **“Business Operations”** means engaging in commerce in any form in Sudan, including

⁵ N.C.G.S. 147-86.42(6)

⁶ N.C.G.S. 147-86.42(3)

⁷ N.C.G.S. 147-86.42(16)

⁸DST’s definition of “Marginalized Population” differs from its statutory definition located in N.C.G.S. 147-86.42(9) due to the region of South Sudan’s independence.

by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.⁹

G. **“Scrutinized Business Operations”** means any Business Operations that have resulted in a Company becoming a Scrutinized Company.¹⁰

H. **“Scrutinized Company”** means a company that meets the criteria in subdivisions 1, 2, or 3 below:

1. The Company has Business Operations that involve contracts with and/or provision of supplies or services to the Government of Sudan, to companies in which the Government of Sudan has any direct or indirect equity share, Government of Sudan-commissioned consortiums or projects, or to Companies involved in Government of Sudan-commissioned consortiums or projects and at least one of the following conditions is satisfied:

(a) More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities and the Company has failed to take Substantial Action.

(b) More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Power Production Activities; less than seventy-five percent (75%) of those Power Production Activities include projects whose intent is to provide power or electricity to the Marginalized Populations of Sudan; and the Company has failed to take Substantial Action.

2. The Company is complicit in the Darfur genocide.

3. The Company supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used to facilitate offensive military actions in Sudan or the Company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the Company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

⁹ N.C.G.S. 147-86.42(2)

¹⁰ N.C.G.S. 147-86.42(14a)

Notwithstanding anything herein to the contrary, a Social Development Company which is not Complicit in the Darfur genocide shall not be considered a Scrutinized Company.¹¹ Capitalized terms found in the definition of “Scrutinized Operations” above have the meanings defined in N.C.G.S. § 147-86.42.

- I. **“Complicit”** means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to preventing Darfur’s victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.¹²

- J. **“Substantial Action”** means:
 - 1. Adopting, publicizing, and implementing a formal plan to cease Scrutinized Business Operations within one year and to refrain from any such new Business Operations;
 - 2. Undertaking significant humanitarian efforts on behalf of one or more Marginalized Populations of Sudan; or,
 - 3. Materially improving conditions for the genocidally victimized population in Darfur through engagement with the Government of Sudan.¹³

- K. **“Inactive Scrutinized Operations”** means Scrutinized Business Operations that are entirely the mere continued holding or renewal or rights to property previously operated for the purpose of generating revenues, but not presently deployed for such purpose.¹⁴

- L. **“Active Scrutinized Operations”** means Scrutinized Business Operations that are not Inactive Scrutinized Operations.¹⁵

- M. **“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 companies subject to the engagement process.

- N. **“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 companies subject to prohibition and divestment.

¹¹ DST’s definition of “Scrutinized Company” differs slightly from its statutory definition located in N.C.G.S. 147-86.42(15). DST’s definition excludes language referring to the region of South Sudan. South Sudan became an independent country on July 9, 2011.

¹² N.C.G.S. 147-86.42(4)

¹³ N.C.G.S. 147-86.42(17)

¹⁴ N.C.G.S. 147-86.42(7)

¹⁵ N.C.G.S. 147-86.42(1)

IV. Identification of Companies to be Listed

A. **Identify Companies.** NCRS shall develop and publish Potential and Final Divestment Lists of companies engaged in Scrutinized Business Activities on a quarterly basis. Such efforts shall include reviewing and relying on publicly available information, as appropriate in NCRS's judgment, including information issued by non-profit organizations, research firms, international organizations, and government entities; and/or contacting asset managers or other institutional investors¹⁶ NCRS shall assemble all Companies that seem to meet the criteria for divestment into a "Potential Divestment List".

Scrutinized companies will be categorized as having either active or inactive business operations, and those subject to divestment upon the completion of NCRS' review, as described in Section B of this policy, will be placed onto a "Final Divestment List."¹⁷

B. Engagement

NCRS shall perform the following engagement acts for each Company on the Potential Divestment list prior to publishing the Final Divestment List.

1. **Inactive Scrutinized Operations.** NCRS shall send each Company that it determines to have solely Inactive Scrutinized Operations, as identified in Section IV (A) of this Policy, a written notice informing the Company of the Sudan Act and this Policy. That notice shall encourage the Company to continue to refrain from initiating Active Scrutinized Operations. NCRS shall continue such correspondence on a semiannual basis.¹⁸

2. **Active Scrutinized Operations.** NCRS shall send each Company that it determines to have Active Scrutinized Operations, as identified in Section IV (A) of this Policy, a written notice informing the Company of its Scrutinized Company status and that it may become subject to divestment by NCRS. The notice shall offer the Company the opportunity to clarify its Sudan-related activities and shall encourage the Company to cease its Scrutinized Business Operations or convert the activities to Inactive Scrutinized Operations within 90 days, in order to avoid qualifying for divestment.¹⁹ If the Company converts its Active Scrutinized Operations to Inactive Scrutinized Operations, the Company shall be subject to semiannual notices under Section V (B)(1) of this Policy.²⁰

3. **Compliance.** A Company shall be removed from the Potential Divestment List if

¹⁶ N.C.G.S. 147-86.43(a)

¹⁷ N.C.G.S. 147-86.43(b) requires the creation of a Scrutinized Companies List. The Final Divestment List listed in this policy is the Scrutinized Companies List as referenced in the statute.

¹⁸ N.C.G.S. 147-86.44 (b)(1) and (b)(2)

¹⁹ N.C.G.S. 147-86.44(b)(3)

²⁰ N.C.G.S. 147-86.44(b)(4)

that Company ceases Scrutinized Business Operations following NCRS's engagement pursuant to this Section or if a Company demonstrates to the satisfaction of NCRS that it is not engaged in Scrutinized Business Activities.

V. Updates to the Final Divestment List. NCRS shall update the Final Divestment List quarterly based on evolving information from the sources described in Section IV (A) of this Policy.²¹

VI. Prohibition and Divestment

- A. **During Engagement.** NCRS shall instruct investment managers not to make new investments with Companies on the Potential Divestment List during the engagement process specified in section IV of this Policy.
- B. **Prohibition.** NCRS shall not make new investments with a Company that is identified on the Final Divestment List.
- C. **Divestment.** NCRS shall issue divestment notices to its investment managers in a timely manner to ensure that it divests of all NCRS investments in Companies on the Final Divestment List within 15 months after the Company's appearance on the Final Divestment List.²²
- D. **Resumption of Active Scrutinized Operations.** If a Company that ceased Active Scrutinized Operations following engagement pursuant to Section IV (B) 2 of this Policy resumes such operations, NCRS shall send a written notice to the Company pursuant to Section VI (C) of this Policy, and Section VI (A) shall apply with divestment required 15 months from the date on which the Company resumed Active Scrutinized Operations. The Company shall also be immediately reintroduced onto the Final Divestment List.²³

VII. General Exemptions

- A. **Affirmative Declaration.** No Company which the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibitions pursuant this Policy.²⁴
- B. **Asset Allocation.** If this Policy or the Sudan Act call for any action which, in the view of the Treasurer or Department staff, either (1) may cause an asset allocation that is out of compliance with the limits set out for particular types of NCRS

²¹ See footnote 19. The updates to the Scrutinized Companies List required by N.C.G.S. 147-86.43(c) applies to the Final Divestment List.

²² N.C.G.S. 147-86.44(c)(1)

²³ N.C.G.S. 147-86.44(c)(2)

²⁴ N.C.G.S. 147-86.44(e)

investments under state law or (2) may conflict with the standard of care stated by N.C.G.S. § 147-69.7 or any other general fiduciary obligations that may apply, then the Treasurer shall consult with the Department's General Counsel and, if necessary, the North Carolina Attorney General to determine the extent, if any, to which G.S. § 147-86.47 requires noncompliance with other state laws in the particular situation at hand.

N.C.G.S. § 147-86.41(17) states,

It is the prerogative and desire of the State of North Carolina in respect to investment resources in its control and to the extent reasonable, *with due consideration for, among other things, return on investment*, on behalf of itself and Its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan. (Emphasis added.)

If extraordinary situations make compliance with the Sudan Act's requirements unreasonable (with due consideration for NCRS's return on investment), the Treasurer will consider a short-term waiver of the procedures described in this Policy.

C. Reinvestment Allowed

1. Notwithstanding anything in the Sudan Act or this Policy, NCRS is permitted to cease divesting from certain Scrutinized Companies and/or reinvest in certain Scrutinized Companies from which it divested if clear and convincing evidence shows that the value for all assets under management by NCRS becomes equal to or less than 99.50% (50 basis points) of the hypothetical value of all NCRS assets assuming no divestment for any Company had occurred under this Policy.
2. Cessation of divestment, reinvestment, and/or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in section C (a) above. For any cessation of divestment, reinvestment, and/or subsequent ongoing investment authorized by this section, NCRS shall provide a written report to the General Assembly in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, and/or remain invested in companies with Active Scrutinized Operations. This section has no application to reinvestment in Companies on the ground that they have ceased to have Active Scrutinized Operations.²⁵

²⁵ N.C.G.S. 147-86.48

VIII. Excluded Securities

NCRS shall submit letters to its managers of Scrutinized Companies' outside the scope of NCRS investments requesting that they consider removing such Companies from the fund or create a similar fund devoid of such Companies. If the manager creates a similar fund, NCRS shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards.²⁶

IX. Reporting

NCRS shall annually publish on its website and submit to the General Assembly and the United States Presidential Special Envoy to Sudan (or the Special Envoy's his or her designee or successor) a report that includes:

- A. the Final Divestment List;
- B. a summary of correspondence with companies engaged by NCRS under this Policy;
- C. all investments sold, redeemed, divested, or withdrawn in compliance with this Policy;
- D. a summary of initiatives resulting from responses under Section V (C) of this Policy; and
- E. any efforts by managers of excluded funds under Section IX of this Policy to create a similar fund devoid of Companies with Active Scrutinized Operations.²⁷

X. Expiration

NCRS shall have no obligations under this Policy with respect to a Company engaged in business activities in Sudan upon the occurrence of any of the following:

- A. The Congress or President of the United States declares that the Darfur genocide has been halted for at least 12 months.
- B. The United States revokes all sanctions imposed against the Government of Sudan.
- C. The Congress or President of the United States declares that the Government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed militia and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

²⁶ N.C.G.S. 147-86.44(f)

²⁷ N.C.G.S. 147-86.45

D. The President or Congress of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.²⁸

Revision History

Version/Revision	Date Approved	Description of Changes
1	7/19/12	First Version
2	12/31/15	Revised policy for technical corrections ratified under Session Law 2015-269

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](#).

²⁸ N.C.G.S. 147-86.46