

SENATE BILL 344

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By: **Senators Garagiola, Britt, Brochin, Frosh, Lenett, Madaleno, and Raskin**
Introduced and read first time: February 1, 2007
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Divestment from the Republic of Sudan**

3 FOR the purpose of requiring the Board of Trustees for the State Retirement and
4 Pension System to identify and create a list of certain companies within a
5 certain period of time who meet certain criteria; requiring the Board of Trustees
6 to use certain resources to identify certain companies; requiring the Board of
7 Trustees to provide written notice to certain companies; requiring the Board of
8 Trustees to notify certain companies that they may be subject to divestment
9 under certain circumstances; requiring the Board of Trustees to divest under
10 certain circumstances from certain companies following a certain schedule;
11 prohibiting the Board of Trustees from acquiring certain securities; exempting
12 certain companies from the provisions of this Act; requiring the Board of
13 Trustees to submit certain reports containing certain information to the
14 Chairman of the Joint Committee on Pensions and the United States
15 Presidential Special Envoy to Sudan, by a certain date; providing for the
16 expiration of this Act under certain circumstances; defining certain terms; and
17 generally relating to sanctions against the Republic of Sudan.

18 BY adding to

19 Article – State Personnel and Pensions
20 Section 21–1A–01 through 21–1A–08 to be under the new subtitle “Subtitle 1A.
21 Divestment from the Republic of Sudan”
22 Annotated Code of Maryland
23 (2004 Replacement Volume and 2006 Supplement)

24 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, On July 23, 2004, the United States Congress declared that “the
2 atrocities unfolding in Darfur, Sudan, are genocide”; and

3 WHEREAS, On September 9, 2004, Secretary of State Colin L. Powell told the
4 United States Senate Foreign Relations Committee that “genocide has occurred and
5 may still be occurring in Darfur” and “the Government of Sudan and the Janjaweed
6 bear responsibility”; and

7 WHEREAS, On September 21, 2004, addressing the United Nations General
8 Assembly, President George W. Bush affirmed the Secretary of State’s finding and
9 stated, “at this hour, the world is witnessing terrible suffering and horrible crimes in
10 the Darfur region of Sudan, crimes my government has concluded are genocide”; and

11 WHEREAS, On December 7, 2004, the United States Congress noted that the
12 genocidal policy in Darfur has led to reports of “systematic rape of thousands of
13 women and girls, the abduction of women and children, and the destruction of
14 hundreds of ethnically African villages, including the poisoning of their wells and the
15 plunder of their crops and cattle upon which the people of such villages sustain
16 themselves”; and

17 WHEREAS, Also on December 7, 2004, the United States Congress found that
18 “the Government of Sudan has restricted access by humanitarian and human rights
19 workers to the Darfur area through intimidation by military and security forces, and
20 through bureaucratic and administrative obstruction, in an attempt to inflict the most
21 devastating harm on those individuals displaced from their villages and homes
22 without any means of sustenance or shelter”; and

23 WHEREAS, On September 25, 2006, the United States Congress reaffirmed
24 that “the genocide unfolding in the Darfur region of Sudan is characterized by acts of
25 terrorism and atrocities directed against civilians, including mass murder, rape, and
26 sexual violence committed by the Janjaweed and associated militias with the
27 complicity and support of the National Congress Party–led faction of the Government
28 of Sudan”; and

29 WHEREAS, On September 26, 2006, the United States Congress stated that “an
30 estimated 300,000 to 400,000 people have been killed by the Government of Sudan and
31 its Janjaweed allies since the Darfur crisis began in 2003, more than 2,000,000 people
32 have been displaced from their homes, and more than 250,000 people from Darfur
33 remain in refugee camps in Chad”; and

34 WHEREAS, The Darfur crisis represents the first time the United States
35 Government has labeled ongoing atrocities a genocide; and

1 WHEREAS, The federal government has imposed sanctions against the
2 Government of Sudan since 1997, that are monitored through the United States
3 Treasury Department's Office of Foreign Assets Control (OFAC); and

4 WHEREAS, According to a former chair of the United States Securities and
5 Exchange Commission (SEC), "the fact that a foreign company is doing material
6 business with a country, government, or entity on OFAC's sanctions list is, in the SEC
7 staff's view, substantially likely to be significant to a reasonable investor's decision
8 about whether to invest in that company"; and

9 WHEREAS, Since 1993, the United States Secretary of State has determined
10 that Sudan is a country the government of which has repeatedly provided support for
11 acts of international terrorism, thereby restricting United States assistance, defense
12 exports and sales, and financial and other transactions with the Government of
13 Sudan; and

14 WHEREAS, A 2006 United States Congressional report states that "a
15 company's association with sponsors of terrorism and human rights abuses, no matter
16 how large or small, can have a materially adverse result on a public company's
17 operations, financial condition, earnings, and stock prices, all of which can negatively
18 affect the value of an investment"; and

19 WHEREAS, In response to the financial risk posed by investments in companies
20 doing business with a terrorist-sponsoring state, the SEC established its Office of
21 Global Security Risk to provide for enhanced disclosure of material information
22 regarding such companies; and

23 WHEREAS, The current Sudan divestment movement encompasses nearly 100
24 university, city, state, and private pension plans; and

25 WHEREAS, Companies facing such widespread divestment present further
26 material risk to remaining investors; and

27 WHEREAS, It is a fundamental responsibility of the State to decide where, how,
28 and by whom financial resources in its control should be invested, taking into account
29 numerous pertinent factors; and

30 WHEREAS, It is the prerogative and desire of the State, in respect to
31 investment resources in its control and to the extent reasonable, with due
32 consideration for, among other things, return on investment, on behalf of itself and its
33 investment beneficiaries, not to participate in an ownership or capital-providing

1 capacity with entities that provide significant practical support for genocide, including
2 certain international companies presently doing business in Sudan; and

3 WHEREAS, It is the judgment of the General Assembly that this Act should
4 remain in effect only insofar as it continues to be consistent with, and does not unduly
5 interfere with, the foreign policy of the United States as determined by the federal
6 government; and

7 WHEREAS, It is the judgment of the General Assembly that mandatory
8 divestment of public funds from certain companies is a measure that should be
9 employed sparingly and judiciously – a United States Congressional and Presidential
10 declaration of genocide satisfying this high threshold; now, therefore,

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – State Personnel and Pensions**

14 **SUBTITLE 1A. DIVESTMENT FROM THE REPUBLIC OF SUDAN.**

15 **21-1A-01.**

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) “ACTIVE BUSINESS OPERATIONS” MEANS ALL BUSINESS
19 OPERATIONS THAT ARE NOT INACTIVE BUSINESS OPERATIONS.

20 (C) “BUSINESS OPERATIONS” MEANS ENGAGING IN COMMERCE IN ANY
21 FORM IN SUDAN, INCLUDING ACQUIRING, DEVELOPING, MAINTAINING, OWNING,
22 SELLING, POSSESSING, LEASING, OR OPERATING EQUIPMENT, FACILITIES,
23 PERSONNEL, PRODUCTS, SERVICES, PERSONAL PROPERTY, REAL PROPERTY, OR
24 ANY OTHER APPARATUS OF BUSINESS OR COMMERCE.

25 (D) “COMPANY” MEANS ANY SOLE PROPRIETORSHIP, ORGANIZATION,
26 ASSOCIATION, CORPORATION, PARTNERSHIP, JOINT VENTURE, LIMITED
27 PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY
28 COMPANY, OR OTHER ENTITY OR BUSINESS ASSOCIATION, INCLUDING ALL
29 WHOLLY OWNED SUBSIDIARIES, MAJORITY-OWNED SUBSIDIARIES, PARENT
30 COMPANIES, OR AFFILIATES OF SUCH ENTITIES OR BUSINESS ASSOCIATIONS,
31 THAT EXIST FOR PROFIT-MAKING PURPOSES.

1 **(E) “COMPLICIT” MEANS TAKING ACTIONS DURING ANY PRECEDING**
2 **20-MONTH PERIOD BEGINNING JULY 1, 2007, THAT HAVE DIRECTLY**
3 **SUPPORTED OR PROMOTED THE GENOCIDAL CAMPAIGN IN DARFUR,**
4 **INCLUDING:**

5 **(1) PREVENTING DARFUR’S VICTIMIZED POPULATION FROM**
6 **COMMUNICATING WITH EACH OTHER;**

7 **(2) ENCOURAGING SUDANESE CITIZENS TO SPEAK OUT AGAINST**
8 **AN INTERNATIONALLY APPROVED SECURITY FORCE FOR DARFUR; OR**

9 **(3) ACTIVELY WORKING TO DENY, COVER UP, OR ALTER THE**
10 **RECORD ON HUMAN RIGHTS ABUSES IN DARFUR, OR OTHER SIMILAR ACTIONS.**

11 **(F) “DIRECT HOLDINGS” MEANS ALL SECURITIES OF A COMPANY THAT**
12 **ARE HELD DIRECTLY BY THE BOARD OF TRUSTEES ON BEHALF OF THE SEVERAL**
13 **SYSTEMS IN AN ACCOUNT OR FUND IN WHICH THE BOARD OF TRUSTEES OWNS**
14 **ALL SHARES OR INTEREST.**

15 **(G) (1) “GOVERNMENT OF SUDAN” MEANS THE GOVERNMENT IN**
16 **KHARTOUM, SUDAN, THAT IS LED BY THE NATIONAL CONGRESS PARTY**
17 **(FORMERLY KNOWN AS THE NATIONAL ISLAMIC FRONT) OR ANY SUCCESSOR**
18 **GOVERNMENT FORMED ON OR AFTER OCTOBER 13, 2006, INCLUDING THE**
19 **COALITION NATIONAL UNITY GOVERNMENT AGREED ON IN THE**
20 **COMPREHENSIVE PEACE AGREEMENT FOR SUDAN.**

21 **(2) “GOVERNMENT OF SUDAN” DOES NOT MEAN THE REGIONAL**
22 **GOVERNMENT OF SOUTHERN SUDAN.**

23 **(H) “INDIRECT HOLDINGS” MEANS ALL SECURITIES OF A COMPANY**
24 **HELD IN AN ACCOUNT OR FUND AND MANAGED BY ONE OR MORE PERSONS NOT**
25 **EMPLOYED BY THE BOARD OF TRUSTEES, BUT INCLUDES SHARES OR**
26 **INTERESTS OWNED BY THE BOARD OF TRUSTEES ON BEHALF OF THE SEVERAL**
27 **SYSTEMS AND OTHER INVESTORS NOT AFFILIATED WITH THE SEVERAL**
28 **SYSTEMS.**

29 **(I) “MARGINALIZED POPULATION OF SUDAN” MEANS:**

1 **(1) THE PORTION OF THE POPULATION IN THE DARFUR REGION**
2 **THAT HAS BEEN GENOCIDALLY VICTIMIZED;**

3 **(2) THE PORTION OF THE POPULATION OF SOUTHERN SUDAN**
4 **VICTIMIZED BY SUDAN’S NORTH–SOUTH CIVIL WAR;**

5 **(3) THE BEJA, RASHIDIYA, AND OTHER SIMILARLY**
6 **UNDERSERVED GROUPS OF EASTERN SUDAN;**

7 **(4) THE NUBIAN AND OTHER SIMILARLY UNDERSERVED GROUPS**
8 **IN SUDAN’S ABYEI, SOUTHERN BLUE NILE, AND NUBA MOUNTAIN REGIONS;**
9 **AND**

10 **(5) THE AMRI, HAMADAB, MANSIR, AND OTHER SIMILARLY**
11 **UNDERSERVED GROUPS OF NORTHERN SUDAN.**

12 **(J) “MILITARY EQUIPMENT” MEANS WEAPONS, ARMS, MILITARY**
13 **SUPPLIES, AND EQUIPMENT THAT READILY MAY BE USED FOR MILITARY**
14 **PURPOSES, INCLUDING:**

15 **(1) RADAR SYSTEMS OR MILITARY–GRADE TRANSPORT VEHICLES;**
16 **AND**

17 **(2) SUPPLIES OR SERVICES SOLD OR PROVIDED DIRECTLY OR**
18 **INDIRECTLY TO ANY FORCE ACTIVELY PARTICIPATING IN ARMED CONFLICT IN**
19 **SUDAN.**

20 **(K) “MINERAL EXTRACTION ACTIVITIES” MEANS EXPLORING,**
21 **EXTRACTING, PROCESSING, TRANSPORTING, OR WHOLESALE SELLING OR**
22 **TRADING OF ELEMENTAL MINERALS OR ASSOCIATED METAL ALLOYS OR OXIDES**
23 **(ORE), INCLUDING GOLD, COPPER, CHROMIUM, CHROMITE, DIAMONDS, IRON,**
24 **IRON ORE, SILVER, TUNGSTEN, URANIUM, AND ZINC.**

25 **(L) (1) “OIL–RELATED ACTIVITIES” MEANS:**

26 **(I) OWNING RIGHTS TO OIL BLOCKS; AND**

27 **(II) EXPORTING, EXTRACTING, PRODUCING, REFINING,**
28 **PROCESSING, EXPLORING FOR, TRANSPORTING, SELLING, OR TRADING OF OIL.**

1 (2) **“OIL-RELATED ACTIVITIES” DOES NOT MEAN THE RETAIL**
2 **SALE OF GASOLINE AND RELATED CONSUMER PRODUCTS.**

3 (M) **“POWER PRODUCTION ACTIVITIES” MEANS ANY BUSINESS**
4 **OPERATION THAT INVOLVES A PROJECT COMMISSIONED BY THE NATIONAL**
5 **ELECTRICITY CORPORATION OF SUDAN OR OTHER SIMILAR GOVERNMENT OF**
6 **SUDAN ENTITY WHOSE PURPOSE IS TO FACILITATE POWER GENERATION AND**
7 **DELIVERY, INCLUDING:**

8 (1) **ESTABLISHING POWER-GENERATING PLANTS OR**
9 **HYDROELECTRIC DAMS;**

10 (2) **SELLING OR INSTALLING COMPONENTS FOR THE PROJECT; OR**

11 (3) **PROVIDING SERVICE CONTRACTS RELATED TO THE**
12 **INSTALLATION OR MAINTENANCE OF THE PROJECT.**

13 (N) (1) **“SCRUTINIZED COMPANY” MEANS ANY COMPANY THAT MEETS**
14 **THE CRITERIA OF § 21-1A-02 OF THIS SUBTITLE.**

15 (2) **“SCRUTINIZED COMPANY” DOES NOT MEAN A SOCIAL**
16 **DEVELOPMENT COMPANY THAT IS NOT COMPLICIT IN THE DARFUR GENOCIDE.**

17 (O) **“SOCIAL DEVELOPMENT COMPANY” MEANS A COMPANY WHOSE**
18 **PRIMARY PURPOSE IS TO PROVIDE HUMANITARIAN GOODS OR SERVICES,**
19 **INCLUDING MEDICINE OR MEDICAL EQUIPMENT, AGRICULTURAL SUPPLIES OR**
20 **INFRASTRUCTURE, EDUCATIONAL OPPORTUNITIES, JOURNALISM-RELATED**
21 **ACTIVITIES, INFORMATION OR INFORMATIONAL MATERIALS,**
22 **SPIRITUAL-RELATED ACTIVITIES, SERVICES OF A PURELY CLERICAL OR**
23 **REPORTING NATURE, OR FOOD, CLOTHING, OR GENERAL CONSUMER GOODS**
24 **THAT ARE UNRELATED TO OIL-RELATED ACTIVITIES, MINERAL EXTRACTION**
25 **ACTIVITIES, OR POWER PRODUCTION ACTIVITIES.**

26 (P) **“SUBSTANTIAL ACTION” MEANS:**

27 (1) **ADOPTING, PUBLICIZING, AND IMPLEMENTING A FORMAL**
28 **PLAN TO CEASE SCRUTINIZED BUSINESS OPERATIONS BY JULY 1, 2008, AND TO**
29 **REFRAIN FROM ANY SUCH NEW BUSINESS OPERATIONS;**

1 **(2) UNDERTAKING SIGNIFICANT HUMANITARIAN EFFORTS ON**
2 **BEHALF OF ONE OR MORE MARGINALIZED POPULATIONS OF SUDAN; OR**

3 **(3) THROUGH ENGAGEMENT WITH THE GOVERNMENT OF SUDAN,**
4 **MATERIALLY IMPROVING CONDITIONS FOR THE GENOCIDALLY VICTIMIZED**
5 **POPULATION IN DARFUR.**

6 **21-1A-02.**

7 **(A) A COMPANY IS A SCRUTINIZED COMPANY IF IT:**

8 **(1) (I) HAS BUSINESS OPERATIONS THAT INVOLVE CONTRACTS**
9 **FOR SUPPLIES OR SERVICES TO:**

10 **1. THE GOVERNMENT OF SUDAN;**

11 **2. COMPANIES IN WHICH THE GOVERNMENT OF**
12 **SUDAN HAS A DIRECT OR INDIRECT EQUITY SHARE;**

13 **3. THE GOVERNMENT OF SUDAN-COMMISSIONED**
14 **CONSORTIUMS OR PROJECTS; OR**

15 **4. COMPANIES INVOLVED IN THE GOVERNMENT OF**
16 **SUDAN-COMMISSIONED CONSORTIUMS OR PROJECTS;**

17 **(II) HAS ASSETS LINKED TO SUDAN THAT INVOLVE:**

18 **1. A. OIL-RELATED ACTIVITIES GREATER THAN**
19 **10% OF THE COMPANY'S TOTAL ASSETS; AND**

20 **B. OIL-RELATED OR MINERAL EXTRACTING**
21 **PRODUCTS OR SERVICES TO THE REGIONAL GOVERNMENT OF SUDAN OR A**
22 **PROJECT OR CONSORTIUM CREATED EXCLUSIVELY BY THAT REGIONAL**
23 **GOVERNMENT THAT IS LESS THAN 75% OF THE COMPANY'S TOTAL ASSETS; OR**

24 **2. A. POWER PRODUCTION ACTIVITIES GREATER**
25 **THAN 10% OF THE COMPANY'S TOTAL ASSETS;**

1 **B. LESS THAN 75% OF ALL POWER PRODUCTION**
2 **ACTIVITIES THAT PROVIDE POWER OR ELECTRICITY TO THE MARGINALIZED**
3 **POPULATIONS OF SUDAN; AND**

4 **C. FAILURE TO TAKE SUBSTANTIAL ACTION;**

5 **(2) IS COMPLICIT IN THE DARFUR GENOCIDE; OR**

6 **(3) SUPPLIES MILITARY EQUIPMENT TO SUDAN.**

7 **(B) FOR PURPOSES OF SUBSECTION (A)(3) OF THIS SECTION, A**
8 **COMPANY IS NOT CONSIDERED TO SUPPLY MILITARY EQUIPMENT TO SUDAN IF**
9 **THE COMPANY:**

10 **(1) SUPPLIES MILITARY EQUIPMENT THAT CANNOT BE USED TO**
11 **FACILITATE OFFENSIVE MILITARY ACTIONS IN SUDAN; OR**

12 **(2) IMPLEMENTS SAFEGUARDS TO PREVENT USE OF MILITARY**
13 **EQUIPMENT BY FORCES ACTIVELY PARTICIPATING IN ARMED CONFLICT.**

14 **21-1A-03.**

15 **(A) (1) AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ON OR**
16 **BEFORE OCTOBER 1, 2007, THE BOARD OF TRUSTEES SHALL IDENTIFY ALL**
17 **SCRUTINIZED COMPANIES IN WHICH THE BOARD OF TRUSTEES HAS DIRECT OR**
18 **INDIRECT HOLDINGS.**

19 **(2) TO IDENTIFY SCRUTINIZED COMPANIES AS REQUIRED UNDER**
20 **PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD OF TRUSTEES SHALL:**

21 **(I) REVIEW AND RELY ON PUBLICLY AVAILABLE**
22 **INFORMATION REGARDING COMPANIES WITH BUSINESS OPERATIONS IN SUDAN,**
23 **INCLUDING INFORMATION PROVIDED BY NONPROFIT ORGANIZATIONS,**
24 **RESEARCH FIRMS, INTERNATIONAL ORGANIZATIONS, AND GOVERNMENT**
25 **ENTITIES;**

26 **(II) CONTACT ASSET MANAGERS CONTRACTED BY THE**
27 **BOARD OF TRUSTEES ON BEHALF OF THE SEVERAL SYSTEMS, WITH BUSINESS**
28 **OPPORTUNITIES IN SUDAN; AND**

1 (III) CONTACT OTHER INSTITUTIONAL INVESTORS THAT
2 HAVE DIVESTED FROM OR ENGAGED WITH COMPANIES THAT HAVE BUSINESS
3 OPERATIONS IN SUDAN.

4 (B) ON OR BEFORE NOVEMBER 1, 2007, THE BOARD OF TRUSTEES
5 SHALL PREPARE A LIST OF ALL SCRUTINIZED COMPANIES IDENTIFIED UNDER
6 SUBSECTION (A) OF THIS SECTION.

7 (C) THE BOARD OF TRUSTEES SHALL UPDATE THE LIST PREPARED
8 UNDER SUBSECTION (B) OF THIS SECTION ON A QUARTERLY BASIS.

9 **21-1A-04.**

10 (A) FOR PURPOSES OF THIS SECTION, ACTIVELY MANAGED
11 INVESTMENT FUNDS INCLUDE PRIVATE EQUITY FUNDS.

12 (B) (1) (I) FOR EACH COMPANY IDENTIFIED IN § 21-1A-03 OF
13 THIS SUBTITLE WITH ONLY INACTIVE BUSINESS OPERATIONS, THE BOARD OF
14 TRUSTEES SHALL:

15 1. SEND A WRITTEN NOTICE INFORMING THE
16 COMPANY OF THE PROVISIONS INCLUDED IN THIS SUBTITLE; AND

17 2. ENCOURAGE THE COMPANY TO CONTINUE TO
18 REFRAIN FROM INITIATING ACTIVE BUSINESS OPERATIONS IN SUDAN UNTIL IT
19 IS ABLE TO AVOID ALL SCRUTINIZED BUSINESS OPERATIONS.

20 (II) THE BOARD OF TRUSTEES SHALL SEND
21 CORRESPONDENCE DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS
22 PARAGRAPH EVERY 6 MONTHS.

23 (2) (I) FOR EACH COMPANY IDENTIFIED IN § 21-1A-03 OF
24 THIS SUBTITLE WITH ACTIVE BUSINESS OPERATIONS, THE BOARD OF TRUSTEES
25 SHALL SEND A WRITTEN NOTICE INFORMING THE COMPANY:

26 1. OF ITS SCRUTINIZED COMPANY STATUS; AND

1 **2. THAT IT MAY BECOME SUBJECT TO DIVESTMENT**
2 **BY THE BOARD OF TRUSTEES.**

3 **(II) THE NOTICE SHALL OFFER THE COMPANY THE**
4 **OPPORTUNITY TO CLARIFY ITS SUDAN-RELATED ACTIVITIES AND SHALL**
5 **ENCOURAGE THE COMPANY, WITHIN 90 DAYS OF RECEIPT OF THE**
6 **CORRESPONDENCE, TO EITHER CEASE ITS SCRUTINIZED BUSINESS OPERATIONS**
7 **OR CONVERT SUCH OPERATIONS TO INACTIVE BUSINESS OPERATIONS IN ORDER**
8 **TO AVOID QUALIFYING FOR DIVESTMENT BY THE BOARD OF TRUSTEES.**

9 **(3) (I) IF WITHIN 90 DAYS OF RECEIPT OF THE**
10 **CORRESPONDENCE DESCRIBED IN PARAGRAPH (2)(I) OF THIS SUBSECTION, A**
11 **COMPANY CEASES SCRUTINIZED BUSINESS OPERATIONS, THE COMPANY SHALL**
12 **BE REMOVED FROM THE BOARD OF TRUSTEES' LIST OF SCRUTINIZED**
13 **COMPANIES AND THE PROVISIONS OF THIS SUBTITLE SHALL CEASE TO APPLY**
14 **TO IT UNLESS IT RESUMES SCRUTINIZED BUSINESS OPERATIONS.**

15 **(II) IF WITHIN 90 DAYS OF RECEIPT OF THE**
16 **CORRESPONDENCE DESCRIBED IN PARAGRAPH (2)(I) OF THIS SUBSECTION, A**
17 **COMPANY CONVERTS ITS SCRUTINIZED ACTIVE BUSINESS OPERATIONS TO**
18 **INACTIVE BUSINESS OPERATIONS, THE COMPANY SHALL BE SUBJECT TO ALL**
19 **PROVISIONS IN THIS SUBTITLE AS THEY RELATE TO SCRUTINIZED COMPANIES.**

20 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
21 **SUBSECTION, IF, ON THE 91ST DAY OF RECEIPT OF THE CORRESPONDENCE**
22 **DESCRIBED UNDER SUBSECTION (B)(2)(I) OF THIS SECTION, THE COMPANY**
23 **CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS, THE BOARD**
24 **OF TRUSTEES SHALL SELL, REDEEM, DIVEST, OR WITHDRAW ALL PUBLICLY**
25 **TRADED SECURITIES OF THE COMPANY ACCORDING TO THE FOLLOWING**
26 **SCHEDULE:**

27 **(I) AT LEAST 50% OF ALL ASSETS HELD IN THE COMPANY**
28 **BY THE BOARD OF TRUSTEES SHALL BE REMOVED AS ASSETS UNDER**
29 **MANAGEMENT WITHIN 9 MONTHS AFTER THE COMPANY'S MOST RECENT**
30 **APPEARANCE ON THE BOARD OF TRUSTEES' LIST OF SCRUTINIZED COMPANIES;**
31 **AND**

32 **(II) 100% OF ALL ASSETS HELD IN THE COMPANY BY THE**
33 **BOARD OF TRUSTEES SHALL BE REMOVED AS ASSETS UNDER MANAGEMENT**

1 **WITHIN 15 MONTHS AFTER THE COMPANY'S MOST RECENT APPEARANCE ON THE**
2 **BOARD OF TRUSTEES' LIST OF SCRUTINIZED COMPANIES.**

3 **(2) (I) IF A COMPANY THAT CEASED SCRUTINIZED ACTIVE**
4 **BUSINESS OPERATIONS FOLLOWING RECEIPT OF CORRESPONDENCE UNDER**
5 **SUBSECTION (B)(2)(I) OF THIS SECTION RESUMES SCRUTINIZED ACTIVE**
6 **BUSINESS OPERATIONS, PARAGRAPH (1) OF THIS SUBSECTION SHALL APPLY**
7 **IMMEDIATELY.**

8 **(II) THE BOARD OF TRUSTEES SHALL SEND WRITTEN**
9 **NOTICE TO A COMPANY DESCRIBED UNDER SUBPARAGRAPH (I) OF THIS**
10 **PARAGRAPH THAT THE COMPANY HAS BEEN PLACED ON THE BOARD OF**
11 **TRUSTEES' LIST OF SCRUTINIZED COMPANIES AND THE BOARD OF TRUSTEES**
12 **WILL BEGIN DIVESTMENT PROCEDURES AS PROVIDED UNDER PARAGRAPH (1)**
13 **OF THIS SUBSECTION.**

14 **(3) THIS SUBSECTION APPLIES ONLY TO A COMPANY WHILE IT**
15 **CONTINUES TO HAVE SCRUTINIZED ACTIVE BUSINESS OPERATIONS.**

16 **(D) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, THE**
17 **BOARD OF TRUSTEES MAY NOT ACQUIRE SECURITIES OF COMPANIES ON ITS**
18 **LIST OF SCRUTINIZED COMPANIES THAT HAVE ACTIVE BUSINESS OPERATIONS.**

19 **(E) A COMPANY THAT THE FEDERAL GOVERNMENT AFFIRMATIVELY**
20 **DECLARES TO BE EXCLUDED FROM ITS PRESENT OR ANY FUTURE FEDERAL**
21 **SANCTIONS REGIME RELATING TO SUDAN MAY NOT BE SUBJECT TO**
22 **DIVESTMENT OR INVESTMENT PROHIBITION UNDER SUBSECTIONS (C) AND (D)**
23 **OF THIS SECTION.**

24 **(F) (1) SUBSECTIONS (C) AND (D) OF THIS SECTION DO NOT APPLY TO**
25 **INDIRECT HOLDINGS IN ACTIVELY MANAGED INVESTMENT FUNDS.**

26 **(2) THE BOARD OF TRUSTEES SHALL SEND LETTERS TO ANY**
27 **MANAGER WHO IS RESPONSIBLE FOR INVESTMENT FUNDS CONTAINING**
28 **COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS AND REQUEST**
29 **THAT THE MANAGER CONSIDER REMOVING SUCH COMPANIES FROM THE FUND**
30 **OR CREATE A SIMILAR ACTIVELY MANAGED FUND WITH INDIRECT HOLDINGS**
31 **DEVOID OF SUCH COMPANIES.**

1 **(3) IF THE MANAGER CREATES A SIMILAR FUND, THE BOARD OF**
2 **TRUSTEES SHALL REPLACE ALL APPLICABLE INVESTMENTS WITH**
3 **INVESTMENTS IN THE SIMILAR FUND IN AN EXPEDITED TIME FRAME**
4 **CONSISTENT WITH PRUDENT INVESTING STANDARDS.**

5 **21-1A-05.**

6 **(A) WITHIN 30 DAYS OF CREATING A LIST OF SCRUTINIZED COMPANIES**
7 **UNDER § 21-1A-03 OF THIS SUBTITLE, THE BOARD OF TRUSTEES SHALL**
8 **SUBMIT TO THE CHAIR OF THE JOINT COMMITTEE ON PENSIONS A COPY OF**
9 **THE LIST OF SCRUTINIZED COMPANIES.**

10 **(B) BEGINNING SEPTEMBER 1, 2008, AND EVERY YEAR THEREAFTER,**
11 **THE BOARD OF TRUSTEES SHALL SUBMIT TO THE CHAIRMAN OF THE JOINT**
12 **COMMITTEE AND THE UNITED STATES PRESIDENTIAL SPECIAL ENVOY TO**
13 **SUDAN A REPORT INCLUDING:**

14 **(1) A SUMMARY OF CORRESPONDENCE WITH COMPANIES**
15 **ENGAGED BY THE BOARD OF TRUSTEES UNDER § 21-1A-04(B) OF THIS**
16 **SUBTITLE;**

17 **(2) ALL INVESTMENTS SOLD, REDEEMED, DIVESTED, OR**
18 **WITHDRAWN IN COMPLIANCE WITH § 21-1A-04(C) OF THIS SUBTITLE;**

19 **(3) ALL PROHIBITED INVESTMENTS UNDER § 21-1A-04(D) OF**
20 **THIS SUBTITLE; AND**

21 **(4) ANY PROGRESS MADE UNDER § 21-1A-04(F) OF THIS**
22 **SUBTITLE SINCE SUBMITTING THE PREVIOUS REPORT.**

23 **21-1A-06.**

24 **THE PROVISIONS OF THIS SUBTITLE SHALL EXPIRE IF THE UNITED**
25 **STATES CONGRESS OR THE PRESIDENT OF THE UNITED STATES:**

26 **(1) DECLARES THAT THE DARFUR GENOCIDE HAS BEEN HALTED**
27 **FOR AT LEAST 12 CONSECUTIVE MONTHS;**

1 (2) REVOKES ALL SANCTIONS IMPOSED AGAINST THE
2 GOVERNMENT OF SUDAN; OR

3 (3) THROUGH LEGISLATION OR EXECUTIVE ORDER, DECLARES
4 THAT MANDATORY DIVESTMENT OF THE TYPE PROVIDED FOR UNDER THIS
5 SUBTITLE INTERFERES WITH THE CONDUCT OF UNITED STATES FOREIGN
6 POLICY.

7 **21-1A-07.**

8 WITH RESPECT TO ANY ACTION TAKEN IN COMPLIANCE WITH THE
9 PROVISIONS OF THIS SUBTITLE, INCLUDING ALL GOOD FAITH DETERMINATIONS
10 REGARDING COMPANIES AS REQUIRED BY THE PROVISIONS OF THIS SUBTITLE,
11 THE BOARD OF TRUSTEES SHALL BE EXEMPT FROM ANY CONFLICTING
12 STATUTORY OR COMMON LAW OBLIGATIONS, INCLUDING ANY SUCH
13 OBLIGATIONS REGARDING CHOICE OF ASSET MANAGERS, INVESTMENT FUNDS,
14 OR INVESTMENTS FOR THE SECURITIES PORTFOLIOS OF THE BOARD OF
15 TRUSTEES.

16 **21-1A-08.**

17 (A) THIS SECTION DOES NOT APPLY TO ANY COMPANY THAT HAS
18 CEASED SCRUTINIZED ACTIVE BUSINESS OPERATIONS.

19 (B) THE BOARD OF TRUSTEES MAY CEASE DIVESTING FROM
20 SCRUTINIZED COMPANIES AND BEGIN REINVESTING IN THESE COMPANIES ONLY
21 IF CLEAR AND CONVINCING EVIDENCE SHOWS THAT THE VALUE FOR ALL
22 ASSETS UNDER MANAGEMENT BY THE BOARD OF TRUSTEES BECOMES EQUAL
23 TO OR LESS THAN 99.50% OF THE VALUE OF ALL ASSETS UNDER MANAGEMENT
24 BY THE BOARD OF TRUSTEES, ASSUMING NO DIVESTMENT FOR ANY COMPANY
25 HAS OCCURRED.

26 (C) (1) FOR ANY CESSATION OF DIVESTMENT, REINVESTMENT, AND
27 SUBSEQUENT ONGOING INVESTMENT AUTHORIZED BY THIS SECTION, THE
28 BOARD OF TRUSTEES SHALL SUBMIT A REPORT TO THE CHAIR OF THE JOINT
29 COMMITTEE ON PENSIONS IN ADVANCE OF INITIAL REINVESTMENT, THE
30 REASONS AND JUSTIFICATION, SUPPORTED BY CLEAR AND CONVINCING
31 EVIDENCE, FOR ITS DECISIONS TO CEASE DIVESTMENT, REINVEST, OR REMAIN
32 INVESTED IN COMPANIES WITH SCRUTINIZED ACTIVE BUSINESS OPERATIONS.

1 **(2) THE REPORT SUBMITTED UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION SHALL BE UPDATED EVERY 6 MONTHS.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 2007.