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SUDAN DIVESTMENT

U.S. Investors Sold Assets but Could Benefit from Additional Information about Companies' Ties to Sudan

Statement of Thomas Melito, Director
International Affairs and Trade



GAO

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Highlights of [GAO-11-245T](#), a testimony before the Subcommittee on International Monetary Policy and Trade, Committee on Financial Services, House of Representatives

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. This testimony (1) identifies actions that U.S. state fund managers and investment companies took regarding Sudan-related assets, (2) describes the factors that these entities considered in determining whether and how to divest, and (3) determines whether the U.S. government has contracted with companies identified as having certain Sudan-related business operations and assesses compliance with SADA's federal contract prohibition provision. This testimony is based on a GAO report ([GAO-10-742](#)), for which GAO surveyed states, analyzed investment data, assessed federal contracts, and interviewed government officials.

What GAO Recommends

The related GAO report 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-11-245T](#) or key components. For more information, contact Thomas Melito at (202) 512-9601 or melitot@gao.gov.

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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 and 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 lower 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. Although information directly provided by companies through public documents, such as Securities and Exchange Commission (SEC) disclosures, is a particularly reliable source of information, 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 nonrandom 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 SADA permits.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss our work regarding the Sudan Accountability and Divestment Act (SADA). Sudan has long been a source of concern for the U.S. government both because of its support for acts of international terrorism and its campaign of genocide in the Darfur region. Congress enacted SADA in 2007 to support U.S. states' decisions to divest from foreign companies conducting specific business operations in Sudan in four economic sectors—power production, mineral extraction, oil-related activities, and production of military equipment—and to give investment companies that divest from these companies “safe harbor”¹ from certain lawsuits. The act also contains a contract prohibition clause, which 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.

My testimony summarizes our June 2010 report.² As requested, in this report we (1) identify actions that U.S. state treasurers and public pension fund managers and U.S.-based investment companies have taken regarding their Sudan-related assets and attempt to determine the reasons for these actions, (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.

For our report, we conducted a survey of treasurers and public pension fund managers (hereafter referred to as “state fund managers”) in all 50 states and the District of Columbia.³ Ninety-one percent (or 138 of 151) of the fund managers we contacted responded to our survey, with at least 1 fund manager from each of the 51 states providing a response. We also

¹The safe harbor provision of SADA limits the civil, criminal, and administrative actions that may be brought against firms that, in accordance with the act, divest from, or avoid investing in, companies with prohibited business operations in Sudan.

²GAO, *Sudan Divestment: U.S. Investors Sold Assets but Could Benefit from Increased Disclosure Regarding Companies' Ties to Sudan*, GAO-10-742 (Washington, D.C.: June 22, 2010).

³Throughout this report, the term “state” refers to the 50 states and the District of Columbia.

reviewed state laws and policies regarding investment of their Sudan-related assets and interviewed various advocacy organizations. To identify the actions that investment companies took regarding their Sudan-related assets, we selected six key foreign companies that have operations in Sudan’s oil sector and then used shareholder ownership and market data to analyze U.S. investment companies’ holdings in these companies over time. We also interviewed investment companies regarding Sudan-related assets, as well as eight primarily European foreign operating companies that have or used to have Sudan-related business operations. Because the Securities and Exchange Commission (SEC) is responsible for overseeing the federal securities laws and, through its Office of Global Security Risk, for monitoring operating companies’ disclosure of material⁴ business activities in or ties to state sponsors of terrorism, we reviewed documents and interviewed officials from this agency. We also interviewed officials from the Department of State, which oversees U.S. foreign policy toward Sudan, and the Department of the Treasury, which administers and enforces U.S. sanctions against Sudan. Finally, we searched the Federal Procurement Data System—Next Generation to determine whether the U.S. government awarded federal contracts to foreign companies identified as having business ties to Sudan, as well as to some of their subsidiaries and affiliates. We selected the highest dollar amount contract or contract modification for each of the companies we identified and reviewed the contract solicitation or other relevant documentation for presence of the applicable Sudan-related certification clause, if required. We also reviewed federal rules related to the contract prohibition provision of SADA and interviewed officials at the Office of Management and Budget.

In preparing this testimony, we relied on our work supporting the accompanying report. That report contains a detailed overview of our scope and methodology. All of our work for this testimony was performed 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.

⁴The 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.

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

We found that several states have divested or frozen assets primarily related to Sudan and that the value of U.S. investment companies' Sudan-related asset holdings has declined considerably since March 2007. Our survey responses show that state fund managers have divested or frozen about \$3.5 billion in assets primarily related to Sudan (see table 1). Specifically, fund managers from 23 of the states responding to our survey reported that, from 2006 to January 2010, they divested or froze about \$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.

Table 1: Total Sudan-Related Assets Divested or Frozen by U.S. States, 2006 to January 2010^a

State	Total amount divested or frozen	Earliest divestment or freezing action	Most recent divestment or freezing action
New Jersey	\$2,162,564,000	^b	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 ^c	154,947,926	April 2008	July 2008
California	81,739,949	May 2006	September 2008
Colorado	76,066,122	July 2007	January 2010
Indiana ^c	67,203,695	December 2008	December 2009
Maryland ^c	35,430,790	September 2007	April 2008
Michigan ^c	24,332,285	May 2009	December 2009
Maine ^d	21,500,000	April 2006	June 2009
Connecticut ^c	15,388,947	May 2007	September 2009
Kansas	13,378,022	^b	June 2008
Hawaii	13,288,052	February 2008	December 2008
New York ^c	12,300,000	June 2009	June 2009
New Mexico	12,000,000	^b	January 2008
Iowa	10,576,749	October 2007	October 2008
New Hampshire	5,636,966	September 2008	March 2009
Ohio ^c	2,341,595	November 2009	November 2009
Minnesota	1,012,038	January 2008	April 2009
Pennsylvania	945,247	January 2008	January 2008
Arizona ^c	727,480	November 2009	November 2009
Total^e	\$3,463,860,458		

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

^aIllinois was one 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.

^bStates with no entry for "earliest date" did not provide us with this information.

^cThe state has a law or policy, which either focuses on both Sudan and Iran or targets state sponsors of terrorism.

^dMaine's law on Sudan-related investments, enacted in 2005, expired July 1, 2009.

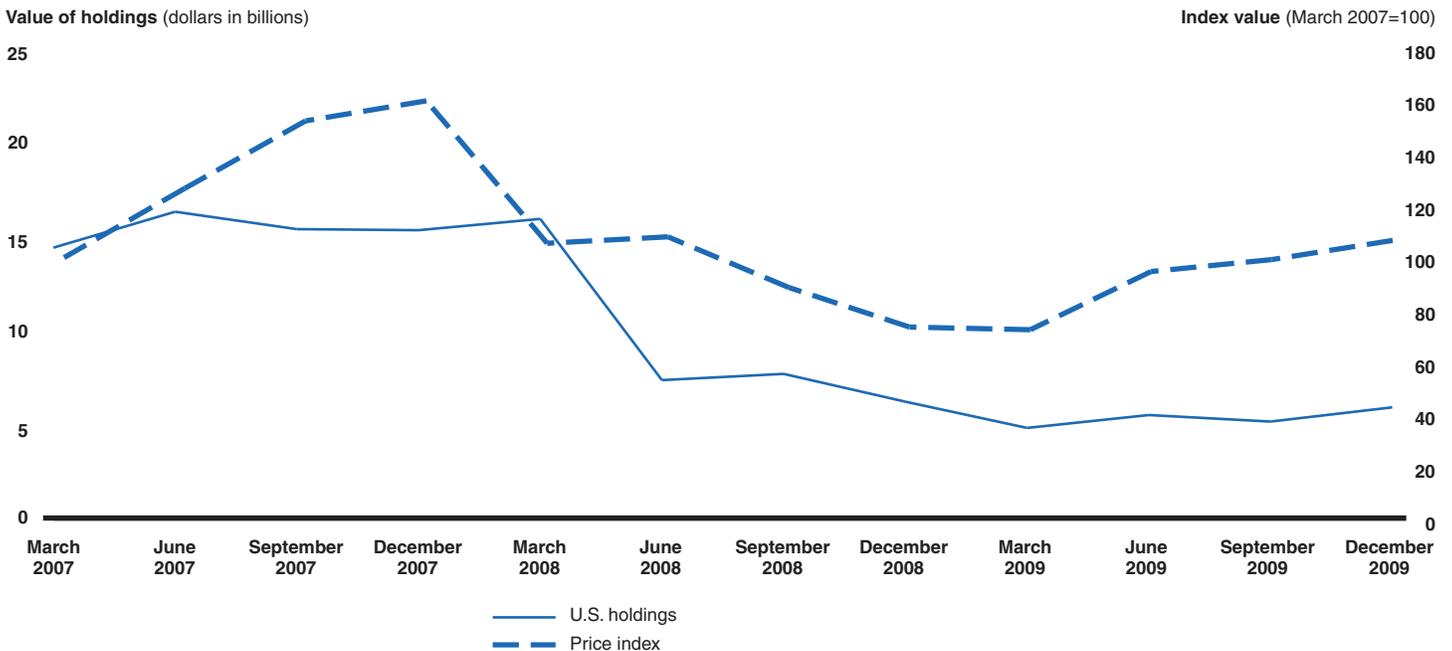
^eThis total reflects the amounts divested or frozen as reported in responses to our survey or in public documents. There may be additional fund managers whose funds were not included in our survey population or who divested but did not respond to our survey.

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. Thirty-five U.S. states have enacted legislation, adopted policies, or both, affecting their Sudan-related investments. These 35 states did so often out of concern for the genocide in Darfur, as well as some concerns about terrorism. Their laws and policies vary in the specificity with which they address the sale and purchase of Sudan-related assets. For example, 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.

Like the states, U.S.-based investment companies have sold Sudan-related shares. Specifically, our analysis shows that the value of U.S. holdings in six key foreign companies with Sudan-related business operations 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. This decline cannot be accounted for solely by changes in share price, indicating that U.S. investors, on net, chose to sell shares of these companies. Based on a 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. 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. Nevertheless, some 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 and as a percentage of all foreign equity holdings.

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 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. 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. For example, one firm’s statement indicated that it would ensure that its funds did not invest in companies materially involved in Sudan, while another’s explained that it would remain invested in these companies in order to actively oppose their practices that it did not condone.

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

We found that U.S. investors have often considered three factors when determining whether and how to divest from companies tied to Sudan: fiduciary responsibility, the difficulty identifying operating companies with ties to Sudan, and the possible effects of divestment on operating companies and the Sudanese people.

Fiduciary Responsibility

Both state fund managers and private investment companies we contacted told us that 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 interests of the client. Representatives from organizations that advocate for the interests of state fund managers told us that fiduciary duty could be a disincentive to divesting, depending 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 second priority, then fiduciary responsibility can be a disincentive to divesting. While some states make no explicit mention of fiduciary responsibility in their divestment policies and laws, some state constitutions emphasize its priority above all other responsibilities. Many state laws allow fund managers to stop divesting or to reinvest if there is a drop in the fund’s value. In addition, 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 in six states include clauses explicitly stating that the investing authority should only divest if doing so will not constitute a breach of fiduciary trust.

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. 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

their offices or states were not made vulnerable to lawsuits.⁵ 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. 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 (or 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.

Private investment companies expressed differing perspectives on whether divesting from Sudan is consistent with their fiduciary responsibilities. 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 nonfinancial criteria can result in lower investment returns. Other investment companies, particularly those identifying themselves as socially responsible, maintain that divesting from Sudan based on nonfinancial criteria is consistent with fiduciary responsibility, as long as alternative equities selected can compete on the basis of financial criteria. For these investment companies, creating financially viable investment options that respond to social concerns, such as genocide or the environment, is the primary goal. These firms expressed confidence that taking nonfinancial factors into account results in an investment product that is competitive with other investments.

As of May 2010, two companies that sold their Sudan-related assets had relied upon the safe harbor provision in SADA. Most companies told us

⁵In 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. The trial court found on a preliminary basis that the trustees could not comply with the legislation without violating their common law fiduciary duties, but did not decide what standard to apply in determining whether a trustee who complies with the legislation has met his fiduciary duties. On October 27, 2010, the New Hampshire Supreme Court ruled that the state's Sudan divestment law was constitutional, but sent the case back to the trial court to determine whether the law interferes with the trustees' statutory or common law fiduciary duties. See *Board of Trustees of the New Hampshire Judicial Retirement Plan v. Secretary of State* (Merrimack, No. 2009-621, October 27, 2010).

that the provision was not necessary to their decision-making regarding Sudan-related assets.

Difficulty Identifying Operating Companies with Ties to Sudan, Including Those Monitored by the SEC

Investors considering whether and how to divest from companies with ties to Sudan have faced difficulties identifying these companies. 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 fund managers have relied heavily on these sources of information. However, our analysis of available lists indicates that they differ significantly from one another. We compared three lists of companies with business ties to Sudan and found that, of the over 250 companies identified on one or more of these lists, only 15 appeared on all three.

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, and that information that comes directly from companies is 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. While SEC regulations require disclosure of such operations if they constitute “material information,” the meaning of “material information” is not explicitly defined by law and companies are ultimately responsible for the accuracy and adequacy of the information they disclose to investors.

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. However, in their correspondence with the SEC, companies have raised concerns about these instructions. For example, one energy company wrote that its business dealings in state sponsors of terrorism did not need to be further

disclosed in annual reports because, while these dealings may have been of interest to certain investors, they were not material to the general investing public.

The Office of Global Security Risk provides limited monitoring of companies that conduct business in the four sectors covered under SADA. 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. 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 economic sectors identified in SADA. Furthermore, the office has not always followed up with companies concerning their correspondence. For example, 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 to the request. Four years later, the office reiterated its question to the company.

SEC 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 these officials, the Office of Global Security Risk has referred one company to this division since the office was created in 2004. The SEC also 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.

The Possible Effects of Divestment on Operating Companies and the Sudanese People

Some companies that have ceased operating in Sudan warned of a negative effect on the Sudanese people. For example, one company we spoke with told us that when it decided to leave Sudan and sell its stake in a project 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. 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.

Because of concerns about these possible negative effects, 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. 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. U.S. states have also endorsed engagement as a viable alternative to divestment, with a few states identifying divestment only as a last resort. Nineteen of the 25 states whose laws or policies require divestment also encourage or require engagement.

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. These companies consistently told us that they believe their business operations positively impact the Sudanese people. 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. 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 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.

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

Our analysis indicates that the U.S. government has complied with SADA's federal contract prohibition. Specifically, we found no evidence to suggest that the U.S. government has awarded contracts to companies identified as having prohibited business operations in Sudan or has violated the Federal Acquisition Regulation (FAR) rules implementing section 6 of SADA (Prohibition on United States Government Contracts).⁶ SADA 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 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 in the four key economic sectors. Based on our analysis of one of the most widely used lists of companies with prohibited business ties to Sudan,⁷ we found that only 1 of 88 companies identified in the list has received federal contracts since the FAR requirements implementing SADA 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, which generally do not require SADA certification under the FAR.

In addition to the purchase orders with this company, we found that from June 12, 2008 to March 1, 2010, the U.S. government awarded 756

⁶See FAR § 52.225-20 and FAR § 52.212-3(m) for commercial item acquisitions.

⁷We 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.

contracts to 29 affiliates and subsidiaries⁸ 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 federal contracting with these companies' affiliates and subsidiaries, provided that the affiliates and subsidiaries certify that they do not have prohibited business operations in Sudan. 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. The FAR councils, however, stated that expanding the scope of the rule to include subsidiaries and affiliates would require the parties seeking federal contracts 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. Our review of a nonrandom 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 prohibition section of SADA. We also found that the U.S. government has not granted any waivers pursuant to SADA, as allowed under the act, or determined that any companies submitted false certifications under SADA.

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. 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

⁸These affiliates and subsidiaries were identified from 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.

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.

GAO Recommends That SEC Consider More Complete Disclosure by Companies with Business Operations Related to Sudan

In our report released today, we recommend that, in order to enhance the investing public's access to information needed to make well-informed decisions when determining whether and how to divest Sudan-related assets, 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.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

GAO Contact and Staff Acknowledgments

For questions or further information about this testimony, please contact Thomas Melito at (202) 512-9601, or melitot@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include Cheryl Goodman, Assistant Director; Elizabeth Singer; Kay Halpern; Katy Forsyth; Michael Hoffman; R.G. Steinman; Julia Becker Vieweg; Sada Aksartova; Debbie Chung; JoAnna Berry; Noah Bleicher; Martin de Alteriis; Patrick Dynes; Justin Fisher; Cathy Hurley; Ernie Jackson; Debra Johnson; Julia Kennon; Jill Lacey; and Linda Rego.

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