CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

FIRE AND POLICE EMPLOYEES' RETIREMENT SYSTEM

N. ANTHONY CALHOUN, Executive Director
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September 17, 2013

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Report to the City Council
Concerning Sudan Investments
Fire & Police Employees' Retirement System

On behalf of the Board of Trustees of the Fire and Police Employees' Retirement System (F&P), the following report is submitted to the Baltimore City Council as required by Baltimore City Code Article 22, Section 35(a)(1)(vii) (Ordinance 07-570 of 2007).

The Board of Trustees is pleased to report that no Sudan related investments are currently held in F&P actively managed separate accounts and the Board has not had to divest of any Sudan related investments over the last year.

The securities held in F&P investment manager accounts are compared each month to the list of companies on the Sudan listing as reported by the MSCI ESG Research Datafeeds Service. The companies listed are those that reportedly do business with the Sudan government. As of August 31, 2013, the F&P does not hold in any actively managed separate account any securities of Sudan related companies as reported by the MSCI Datafeed Service.

Legislative History and Report Requirements

Ordinance 07-570 of 2007 became law following passage by the City Council and the approval of Mayor Dixon on November 27, 2007. The purpose of the Ordinance is to authorize divestment of public pension or retirement funds from Sudan or from companies doing business in or with Sudan; it defines certain terms, specifies certain criteria and considerations, requires certain reports and provides for the automatic termination of the Ordinance. The Ordinance became effective according to Section 4 of its provisions on April 1, 2008, the first day of the second quarter after the date it was enacted.

Ordinance 07-570 of 2007 established Baltimore City Code Article 22, Section 35(a)(1) of the F&P plan provisions. Section 35(a)(1)(vii) requires that each year the F&P Board of Trustees submit a report to the Baltimore City Council concerning Sudan divestment that provides:

1. all divestment actions taken by the Board of Trustees in accordance with the ordinance,
2. a list of those companies doing business in Sudan and of those securities or instruments issued by Sudan, as reported to the Board by its investment managers and from which the Board has not divested, and
3. other developments relevant to investment in companies doing business in Sudan.

<u>Identification of Sudan Related Companies</u>

Section 35(a)(1)(iii) provides that for examination of each management portfolio for Sudan related investments, the manager (and the Board of Trustees) shall reference the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) list of sanctioned companies, the Institutional Shareholders Services (ISS) list of Sudan related companies, or other list as approved by the F&P Board of Trustees.

The Treasury Department OFAC regulations list Sudanese specially designated nationals (SDNs) which are individuals and entities owned or controlled by or who act on behalf of the Government of Sudan. It is highly improbable that any investment management firm hired by the F&P Board of Trustees would hold shares or securities of companies on the OFAC Sudanese list or would conduct business with any individual on the OFAC Sudanese list.

Since passage of Ordinance 07-570, the Institutional Shareholders Services Company sold their social issue services which include the Sudan related companies list to the Risk Metrics Group. The Risk Metrics Group is now the MSCI ESG Datafeed Service and it continues to provide the same Sudan service listing as previously issued by ISS. The F&P Board of Trustees previously approved utilization of the ISS list and continues to utilize the MSCI Datafeed Service for determination of Sudan related investments. The latest MSCI Datafeed Service Sudan Focus list, issued August 31, 2011, is attached to this report.

Actively Managed Separate Accounts Considered for Divestment Action

Section 35(a)(1)(iii) provides that the F&P Board of Trustees may take divestment action in "actively managed separate accounts" with regard to:

1. any bank or financial institution that makes loans to the Republic of Sudan,

2. a national corporation of Sudan, and

3. the stocks, securities, or other obligations of any company doing business in or with Sudan.

Excluded from divestment consideration are manager accounts that by definition in the law are not "actively managed separate accounts." Actively managed separate accounts do not include: indexed funds, private equity funds, hedge funds, real estate funds, other comingled funds, and passively managed funds. Therefore, the F&P's non-actively managed accounts are not included in this report.

Sudan Accountability and Divestment Act of 2007

The U.S. Sudan Accountability and Divestment Act of 2007 (P.L. 110-174) (the "Act"), signed into law by President Bush on December 31, 2007, provides authority for State and local governments and certain registered investment companies to adopt and enforce measures requiring divestment from companies having business operations in Sudan that include operations in 4 sectors – oil extraction, power production, mineral extraction, and military equipment manufacture – and provides a safe harbor from federal preemption claims for such divestment activity.

The Act provides protection for divestment only under the following conditions:

1. The divestment action is based on a determination "using credible information available to the public" that the company is conducting business operations in Sudan.

2. "Business operations" must fall under the above-enumerated types of business operations.

3. The Act excludes from this definition any entities whose business operations:

   a) are "conducted under contract directly and exclusively with the regional government of southern Sudan;"
   b) are conducted pursuant to a license from the Department of the Treasury's Office of Foreign Assets Control or otherwise exempted under Federal law;

c) "consist of providing goods or services to marginalized populations of Sudan;"
d) involve "providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;" or
e) "consist of providing goods or services that are used only to promote health or education;".

4. The Act also excludes companies that have voluntarily suspended any such business operations.

5. The State or local government must provide written notice and an opportunity to comment in writing to each company to whom a divestment measure is applied.

6. The State or local government must refrain from divestment until after 90 days after the date on which written notice is provided to the company.

7. The State or local government may not divest from a company that demonstrates that it does not conduct or have direct investments in the 4 prohibited "business operations" categories.

Any State or local government enacting a divestment law or taking any divestment measure after January 1, 2008 must give notice of the action to the U.S. Justice Department no later than 30 days after adoption or action.

The divestment protections of the Act will terminate 30 days after the date the President certifies to Congress that the "Government of Sudan" as defined in the Act has honored its commitment to:

1. abide by United Nations Security Council Resolution 1769 (2007);
2. cease attacks on civilians;
3. demobilize and demilitarize the Janjaweed and associated militias;
4. grant free and unfettered access for delivery of humanitarian assistance; and
5. allow for the safe and voluntary return of refugees and internally displaced persons.

As concerns the City's Sudan divestment legislation, it is clear that, in order to be constitutional, any divestment statute, regardless of when enacted, must conform to the requirements of the Act on or after January 1, 2008. As present, the City's Sudan divestment law is wider reaching and does not include the protections for targeted companies set forth in the Act. What is less than clear is whether an existing Sudan divestment law such as the City's which does not conform to the Act has to be rewritten before any divestment can take place or whether the City's retirement systems would be required to divest under the existing law to the extent it can be applied in a manner which conforms to the Act. It is thus advisable that the City Council amend its Sudan divestment law to conform to the Act and provide the U.S. Justice Department notice of the amended legislation.

Also of note is that on July 8, 2011, the Republic of South Sudan earned independence breaking the country of Sudan in two. The Republic of South Sudan became the world's newest nation officially breaking away from Sudan after two civil wars over five decades that cost the lives of millions.

Please let me know if I can provide any further information.

Respectfully submitted,

N. Anthony Calhoun
Executive Director

Cc: The Honorable Carl Stokes, Councilman, Chair, Taxation, Finance, and Economic Development Committee of the Baltimore City Council
Angela Gibson, Mayor's Legislative Liaison to the City Council
The Honorable Members of the Board of Trustees, Fire and Police Employees' Retirement System