

**MEMO# 22463**

April 25, 2008

# **SEC Adopts Rule to Implement The Sudan Accountability And Divestment Act of 2007**

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TO: ACCOUNTING/TREASURERS MEMBERS No. 8-08  
COMPLIANCE MEMBERS No. 16-08  
EQUITY MARKETS ADVISORY COMMITTEE No. 19-08  
INTERNATIONAL MEMBERS No. 4-08  
INVESTMENT ADVISER MEMBERS No. 7-08  
PENSION MEMBERS No. 25-08  
SEC RULES MEMBERS No. 36-08  
SMALL FUNDS MEMBERS No. 25-08  
UNIT INVESTMENT TRUST MEMBERS No. 7-08     RE: SEC ADOPTS RULE TO IMPLEMENT THE  
SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007

The Securities and Exchange Commission has adopted amendments to Forms N-CSR and N-SAR to accommodate disclosure by investment companies regarding divestment of certain investments in Sudan. [\[1\]](#) These amendments are intended to implement the safe harbor provision in the Sudan Accountability and Divestment Act of 2007 (the “Act”) that provides investment companies protection from civil, criminal, or administrative actions based upon divesting from certain investments in Sudan. The amendments to the forms, which were adopted substantially as proposed, will be effective immediately upon their publication in the Federal Register. Importantly, funds that want to rely on the safe harbor for divestments made between December 31, 2007 (the date of the Act’s enactment) and the effective date of the amendments must file a revised Form N-CSR or N-SAR within 10 days of the revised forms’ effectiveness. The revisions to Form N-CSR and N-SAR are briefly summarized below. [\[2\]](#)

II.            Form N-CSR/N-SAR Disclosure

As adopted, the revised forms will require each registered investment company that divests securities in reliance on the Act's safe harbor to disclose the divestment on the next Form N-CSR (for management investment companies) or Form N-SAR (for unit investment trusts) filed after such divestment. [3] The disclosure must include the following information to identify the securities divested and the magnitude of the divestment: issuer's name; exchange ticker symbol; CUSIP number; total number of shares or, for debt securities, principal amount divested; and date(s) on which the securities were divested. If, upon the divestment, the registered investment company continues to hold securities of the same issuer, it must additionally disclose the exchange ticker symbol, CUSIP number, and total number of shares or, for debt securities, principal amount of securities, held on the date of filing. This latter requirement is intended to provide information about the registered investment company's continuing position in such issuer.

Consistent with the Act, the SEC's Adopting Release notes that the Act's safe harbor would not apply to a divestment that is not disclosed pursuant to SEC rules. Disclosure is not required unless the registered investment company is relying on the Act's safe harbor. [4]

### III. Timing of Disclosure: Amended Filings; Serial Divestments

A registered investment company that divests securities in reliance on the Act's safe harbor during the period that begins on the fifth business day before the date of filing a Form N-CSR or Form N-SAR and ends on the date of filing may disclose the divestment in either that filing or an amendment to that filing. Such amendment must be filed no later than five business days after the date of filing the form.

If the divestment occurs through a series of transactions, the proposed revisions to the forms' instructions provide that the registered investment company may deem the divestment to occur at the time of the final transaction in the series. Such disclosure would be required to detail each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date. Accordingly, the investment company could choose either to report each transaction in the next Form N-CSR or Form N-SAR filed following the individual transaction or to report the entire series of transactions in the next form filed following the final transaction in the series. This flexibility is intended to reduce opportunities for third parties to exploit information about ongoing divestments through practices such as front-running.

## endnotes

[1] See Disclosure of Divestment by Registered Investment Companies in Accordance with Sudan Accountability and Divestment Act of 2007, SEC Release Nos. 34-57711 and IC-28254 (April 24, 2008) (the “Adopting Release”). The Adopting Release is available at: <http://www.sec.gov/rules/final/2008/34-57711.pdf>.

[2] For more information on the Act, see Institute Memorandum to Accounting/Treasurers Committee No. 2-08, Compliance Members No. 4-08, Equity Markets Advisory Committee No. 6-08, International Committee No. 7-08, Investment Adviser Members No. 4-08, Pension Members No. 7-08, and SEC Rules Members No. 14-08 [No. 22234], dated February 13, 2008.

[3] The one exception to this is the disclosure of divestment occurring between December 31, 2007 and the effective date of the revised forms, as discussed above.

[4] The Act provides that the safe harbor shall terminate 30 days after the President certifies to Congress that the Government of Sudan has taken certain actions. The revisions to the forms will terminate one year after termination of the Act’s provisions. Automatic termination of the amendments to the forms is intended to accommodate any such termination of the Act’s safe harbor provision.