

MEMO# 22234

February 13, 2008

SEC Proposes Rule To Implement The Sudan Accountability And Divestment Act Of 2007

[22234]

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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

SEC RULES MEMBERS No. 14-08 RE: SEC PROPOSES RULE TO IMPLEMENT THE SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007

On December 31, 2007, President Bush signed into law S. 2271, the Sudan Accountability and Divestment Act of 2007 (the "Act"). Among other provisions, the Act requires the Securities and Exchange Commission to adopt, within 120 days of the Act's enactment, disclosure rules to implement a safe harbor in the Act that is intended to provide protection from civil, criminal, or administrative actions based upon an investment company divesting from certain investments in the Sudan. Pursuant to the Act, such rules must require that the disclosure be included in the next periodic report filed with the SEC under Section 30 of the Investment Company Act of 1940. On February 11th, the SEC proposed its rules under the Act.* Comments are due to the SEC within 30 days of the proposal's publication in the Federal Register, which is expected in the near future. The Act and the Commission's rules to implement its safe harbor are briefly described below.

I. Background: the Sudan Accountability and Divestment Act of 2007

Section 4 of the Act, in part, added a new subsection (c) to Section 13 of the Investment Company Act to provide a safe harbor from any civil, criminal, or administrative action for any registered investment company or any employee, officer, director, or investment adviser thereof based upon the investment company divesting from, or avoiding investment in, securities issued by persons that have direct investments in business operations in Sudan. The Act requires the SEC to adopt regulations to implement this safe harbor by requiring disclosure of divestment in reliance on the safe harbor to be included the next periodic report filed with the SEC under Section 30 of the Act. Importantly, the safe harbor is conditioned upon an investment company, or any employee, officer, director, or investment adviser thereof, making disclosures in accordance with the rules adopted by the SEC.

II. The SEC's Proposed Disclosure Rules

A. Form N-CSR/N-SAR Disclosure

To implement the Act, the Commission has proposed to 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. As proposed, the disclosure would 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 dates 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 Release notes that, the Act's safe harbor would not apply to a divestment that is not disclosed pursuant to SEC rules, and disclosure is not required unless the registered investment company is relying on the Act's safe harbor.

B. 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. According to the Release, this flexibility is intended to lessen the compliance burdens associated with divestment transactions that occur shortly before filing the Form N-CSR or N-SAR.

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. The Release notes that this flexibility is intended to reduce opportunities for third parties to exploit information about ongoing divestments through practices such as front-running.

C. Request for Comment

In addition to seeking comment on the proposal generally, the Release seeks comment on several issues including the following:

- Are the Forms N-CSR and N-SAR (which are publicly available through the SEC but not provided to shareholders directly) the appropriate locations for disclosure?
- Should disclosure be provided (along with the proposed form disclosure or in lieu of such disclosure) in reports provided directly to shareholders?
- What information should the SEC require an investment company to disclose about its divestments in accordance with the Act? Are any of the proposed disclosure items unnecessary?
- After an investment company divests securities in reliance on the safe harbor should, as proposed, the Commission require it to disclose any securities of the issuer it continues to hold?
- For divestments that occur in serial transactions, should the SEC provide investment companies flexibility, as proposed, to disclose the divestment either in connection with each transaction or after the final transaction (with details on each divestment)?

Should the amendments address divestments that occur after the Act's enactment but before the effective date of the SEC rules implementing the Act? For example, should the SEC permit a registered investment company to disclose its divestment in reliance on the Act's safe harbor if such divestment is disclosed on an amendment to a previously filed Form N-CSR or N-SAR and such amendment is filed within five business days after the

effective date of the SEC's rules? Should the period for filing such an amendment be shorter or longer than five days (e.g., 2 or 10 days)?

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