



Illinois Department of Financial and Professional Regulation

December 29, 2005

The Siren

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Public Act 94-0079 PROHIBITION ON SUDAN INVESTMENTS

Amends the Illinois Pension Code. Provides that a fiduciary with respect to a retirement system or pension fund established under that Code shall not, directly or through a fund manager, transact any business with any company unless an expressly authorized officer of that company certifies that the company has not engaged in certain activities concerning the Republic of Sudan.

Effective Dates of the New Law

January 26, 2006 - (1) the fund managing company has not loaned to, invested in, or otherwise transferred any of the retirement system or pension fund's assets to a forbidden entity any time after the effective date of this Act;

January 26, 2007 - (2) at least 60% of the retirement system or pension fund's assets are not invested in forbidden entities at any time more than twelve months after the effective date of this Act;

July 26, 2007 - (3) at least 100% of the retirement system or pension fund's assets are not invested in forbidden entities at any time more than eighteen months after the effective date of this Act.

Starting January 26, 2006, no pension funds may make any new investments in the following:

- (1) The government of the Republic of the Sudan and any of its agencies;
- (2) Any company that is wholly or partially managed or controlled by the government of the Republic of the Sudan and any of its agencies;
- (3) Any company that is established or organized under the laws of the Republic of the Sudan, whose principal place of business is in the Republic of the Sudan;
- (4) Any company identified by the Office of Foreign Assets Control in the United States Department of the Treasury as sponsoring terrorist activities; or fined, penalized, or sanctioned by the Office of Foreign Assets Control in the United States Department of the Treasury for any violation of any United States rules and restrictions relating to the Republic of the Sudan;
- (5) Any publicly traded company who has been identified by an independent researching firm that specializes in global security risk as being a company that owns or controls property or assets located in, has employees or facilities located in, provides goods or services to, obtain goods or services from, has distribution agreements with, issue credits or loans to, purchase bonds or commercial paper issued by, or invest in the Republic of the Sudan; or any company domiciled in the Republic of the Sudan;
- (6) Any non publicly-traded company that fails to submit to the fund managing company an affidavit sworn under oath in which an expressly authorized officer of the company avers that the company does not own or control any property or asset located in the Republic of the Sudan; and did not transact commercial business in the Republic of the Sudan.

Starting January 26, 2007, all pension funds must have divested itself of 60% of the prohibited investments and by July 26, 2007, must not hold any prohibited investments.

Section 1-110.5(a) calls for the company charged with managing the assets of the pension fund, at no additional cost to the fiduciary, certifies to the fiduciary, in the manner and form established by the Illinois State Treasurer that any future investments are not prohibited. As of December 28, 2005, no certification form has been presented by the Treasurer's Office

Pension Division Advisory Services

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as the official form that the managers are to sign. Once the certification form has been received, we will make it available for the funds to distribute to their managers. Also, a letter is attached that you may modify and distribute to your managers, that will provide them with a discounted fee that was negotiated with the independent researching firm that specializes in global security risk KLD, by a committee comprised of the large retirement funds and the Public Pension Division. The letter spells out the lower fees, how to contact; KLD, and whom to contact there.

Public Act 94-0079 PROHIBITION ON SUDAN INVESTMENT

(40 ILCS 5/1-110.5)

Sec. 1-110.5. Certain prohibited transactions.

(a) A fiduciary of a retirement system or pension fund established under this Code shall not transfer or disburse funds to, deposit into, acquire any bonds or commercial paper from, or otherwise loan to or invest in any entity unless the company charged with managing the assets of the retirement system or pension fund, at no additional cost to the fiduciary, certifies to the fiduciary, in the manner and form established by the Treasurer, that:

(1) the fund managing company has not loaned to, invested in, or otherwise transferred any of the retirement system or pension fund's assets to a forbidden entity any time after the effective date of this Act;

(2) at least 60% of the retirement system or pension fund's assets are not invested in forbidden entities at any time more than twelve months after the effective date of this Act;

(3) at least 100% of the retirement system or pension fund's assets are not invested in forbidden entities at any time more than eighteen months after the effective date of this Act.

(b) For purposes of this Section:

"Company" is any entity capable of affecting commerce, including but not limited to (i) a government, government agency, natural person, legal person, sole proprietorship, partnership, firm, corporation, subsidiary, affiliate, franchisor, franchisee, joint venture, trade association, financial institution, utility, public franchise, provider of financial services, trust, or enterprise; and (ii) any association thereof.

"Forbidden entity" means any of the following:

(1) The government of the Republic of the Sudan and any of its agencies, including but not limited to political units and subdivisions;

(2) Any company that is wholly or partially managed or controlled by the government of the Republic of the Sudan and any of its agencies, including but not limited to political units and subdivisions;

(3) Any company (i) that is established or organized under the laws of the Republic of the

Sudan; (ii) whose principal place of business is in the Republic of the Sudan;

(4) Any company (i) identified by the Office of Foreign Assets Control in the United States Department of the Treasury as sponsoring terrorist activities; or (ii) fined, penalized, or sanctioned by the Office of Foreign Assets Control in the United States Department of the Treasury for any violation of any United States rules and restrictions relating to the Republic of the Sudan that occurred at any time following the effective date of this Act; and

(5) Any publicly traded company who has been identified by an independent researching firm that specializes in global security risk as being a company that owns or controls property or assets located in, has employees or facilities located in, provides goods or services to, obtain goods or services from, has distribution agreements with, issue credits or loans to, purchase bonds or commercial paper issued by, or invest in (i) the Republic of the Sudan; or (ii) any company domiciled in the Republic of the Sudan; and

(6) Any non publicly-traded company that fails to submit to the fund managing company an affidavit sworn under oath in which an expressly authorized officer of the company avers that the company (i) does not own or control any property or asset located in the Republic of the Sudan; and (ii) did not transact commercial business in the Republic of the Sudan.

Notwithstanding the foregoing, the term "forbidden entity" shall exclude companies, except agencies of the Republic of the Sudan, who are certified as Non-Government Organizations by the United Nations, or who engage solely in (i) the provision of goods and services intended to relieve human suffering or to promote welfare, health, religious and spiritual activities, and education humanitarian purposes or otherwise; or (ii) journalistic activities.

(c) In addition to any other penalties and remedies available under the law of Illinois and the United States, any transaction that violates the provisions of this Act shall be void or voidable, at the sole discretion of the fiduciary.

(Source: P.A. 94-79, eff. 1-27-06; for force and effect of certain provisions, see Section 90 of P.A. 94-79.)

Pension Division Advisory Services

www.ins.state.il.us/pension/pension.htm

January XX, 2006

Name
Investment Management Firm
Address
City, State Zip

Re: Illinois Public Act 094-0079 – Sudan Divestiture Act

Dear XXXXX:

On January 27, 2006, Illinois Public Act 094-0079, to End Atrocities and Terrorism in the Sudan (the Act), becomes effective. Under this Act, you, at no cost to our Pension Plan, are required to certify that:

- (1) You will not loan to, invest in, or otherwise transfer any of the Pension Plan's assets to a forbidden entity at any time after the effective date of this Act;
- (2) At least 60% of the Pension Plan's assets are not invested in any forbidden entities, at any time, for more than twelve months after the effective date of this Act;
- (3) 100% of the Pension Plan's assets are not invested in any forbidden entities, at any time, for more than eighteen months after the effective date of this Act.

"Company" is any entity capable of affecting commerce, including but not limited to (i) a government, government agency, natural person, legal person, sole proprietorship, partnership, firm, corporation, subsidiary, affiliate, franchiser, franchisee, joint venture, trade association, financial institution, utility, public franchise, provider of financial services, trust, or enterprise; and (ii) any association thereof.

"Forbidden entity" means any of the following:

- (1) The government of the Republic of the Sudan and any of its agencies, including, but not limited to political units and subdivisions;
- (2) Any company that is wholly or partially managed or controlled by the government of the Republic of the Sudan and any of its agencies, including, but not limited to political units and subdivisions;

- (3) Any company (i) that is established or organized under the laws of the Republic of the Sudan; (ii) whose principal place of business is in the Republic of the Sudan;
- (4) Any company (i) identified by the Office of Foreign Assets Control in the United States Department of the Treasury as sponsoring terrorist activities; or (ii) fined, penalized, or sanctioned by the Office of Foreign Assets Control in the United States Department of the Treasury for any violation of any United States rules and restrictions relating to the Republic of the Sudan that occurred at any time following the effective date of this Act; and
- (5) Any publicly traded company who has been identified by an independent researching firm that specializes in global security risk as being a company that owns or controls property or assets located in, has employees or facilities located in, provides goods or services to, obtain goods or services from, has distribution agreements with, issue credits or loans to, purchase bonds or commercial paper issued by, or invest in (i) the Republic of the Sudan; or (ii) any company domiciled in the Republic of the Sudan; and
- (6) Any non-publicly traded company that fails to submit to you an affidavit sworn under (i) oath in which an expressly authorized officer of the company avers that the company; (ii) does not own or control any property or asset located in the Republic of the Sudan; and (iii) did not transact commercial business in the Republic of the Sudan.

Notwithstanding the foregoing, the term "forbidden entity" shall exclude companies, except agencies of the Republic of the Sudan, who are certified as Non-Government Organizations by the United Nations, or who engage solely in (i) the provision of goods and services intended to relieve human suffering or to promote welfare, health, religious and spiritual activities, and education humanitarian purposes or otherwise; or (ii) journalistic activities.

You will note that (5) above provides for identification of forbidden entities by using an independent researching firm that specializes in global security risk. The Association of Illinois Public Retirement Systems has identified KLD as a qualified research firm that meets the requirements of the Act. KLD is providing the following special pricing for managers who engage them to comply with Illinois Public Act 094-0079:

| <u>Firm Wide Assets Under Management</u> | <u>Annual Price Per Manager</u> | <u>Current KLD Client Price</u> |
|--|---|---|
| \$0-2 billion | \$1,000 | \$800 |
| \$2-5 billion | \$2,500 | \$2,250 |
| \$5-10 billion | \$3,500 | \$3,150 |
| Over \$10 billion | \$5,000 | \$5,000 |

The contact information for KLD is as follows:

Mr. Randy O'Neil
Managing Director, Global Sales
250 Summer Street, 4th Floor
Boston, MA 02210
Tel: (617) 426-5270
Cell: (617) 413-6315
roneil@kld.com

A copy of the Certification that you must execute with respect to the Act is enclosed. Please return the Certification to me no later than January 27, 2006. A copy of the Act is enclosed for your reference.

By contract, this statutory change to the Illinois Pension Code is now incorporated into your Investment Management Agreement with XXXXX.

If you have any questions , you may contact me or XXXXX, at your earliest convenience. Thank you for your attention to this very important matter.

Very truly yours,

XXXXXXXXXX

Enclosures