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It is an honor to have the opportunity to address this Caucus about the ongoing genocide in Darfur, and to share some thoughts on how investors can make a difference.

I am Adam Kanzer,[1] Managing Director and General Counsel of Domini Social Investments. We are an SEC registered investment adviser based in New York. We manage approximately $1.2 billion for individual and institutional mutual fund investors. All of our investment decisions are guided by a comprehensive set of social and environmental standards, including a policy to avoid the worst actors in Sudan.

My firm is devoted to the proposition that investment decisions have broad implications for society and the environment. We therefore have a responsibility to re-orient our priorities as investors to focus on our shared long-term goals as members of society.

In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. The preamble committed "every individual and every organ of society" to keep the Declaration "constantly in mind" as a "common standard of achievement for all peoples and all nations." The Declaration recognized that "the inherent dignity and … the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

At Domini, we are mindful of that commitment. Our Global Investment Standards[2] guide our assessment of the eligibility of investments for our mutual funds. Two fundamental principles underlie these global standards: the promotion of a society that values human dignity and the enrichment of our natural environment. We view these twin goals as crucial to a healthier, wealthier, and more sustainable world.

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[1] Adam Kanzer is Managing Director and General Counsel of Domini Social Investments and Chief Legal Officer of the Domini Funds. His responsibilities include directing Domini's shareholder advocacy department, where he has led numerous dialogues with corporations on a wide range of social and environmental issues. He currently serves as co-chair of the Contract Supplier Working Group at the Interfaith Center on Corporate Responsibility, focusing on improving working conditions in corporate global supply chains. Prior to joining Domini in 1998, Mr. Kanzer was a litigator for four and a half years with the firm of Cahill Gordon & Reindel in New York City. In October 1997, he volunteered as an international observer of the South African Truth and Reconciliation Commission. He holds a B.A. in political science from the University of Pennsylvania and a J.D. from Columbia Law School.

[2] *www.domini.com/GlobInvStd/index.htm*

Our aim is to align our funds' investments with these long-term goals. In doing so, we believe that we are identifying better financial investments, as well as addressing longer-term societal needs.

When Amy Domini, my firm's founder and CEO wrote her first book on what has come to be known as socially responsible investing in 1984,[1] it would be fair to describe the field as marginal in size and influence. This is no longer the case. Today, more than 400 institutional investors from around the world managing more than $15 trillion have endorsed the Principles for Responsible Investment,[2] committing themselves to consider social, environmental and governance factors in the investment process, and to engage with their holdings on these issues. The Social Investment Forum's last survey reported that by 2007, assets in U.S. socially responsible mutual funds had reached $171.7 billion.[3] The Asset Management Working Group of the UNEP Financial Initiative produced a study of 15 of the world's leading pension funds, describing in detail the steps each fund was taking to implement responsible investment strategies.[4]

This field is changing rapidly, and ideas that were once considered fringe are quickly becoming mainstream. It is now widely recognized that environmental, social and governance factors are essential tools for investors.

Fiduciary Duty Does Not Compel Investors to Profit From Genocide

Like all mutual fund managers and investment advisers, we are fiduciaries, bound by duties of care, loyalty and honesty to our fund shareholders. The individuals we serve are not simply "investors." They are human beings with concerns about others, and about the future of our planet. Our shareholders are not unique in wishing to use their investments to build a world of environmental sustainability and human dignity. They are certainly not unique in refusing to profit from genocide. As fiduciaries, we believe it is our legal duty to implement those desires, and to do so with the utmost care and diligence while remaining true to their financial goals.

We must also recognize that fiduciaries do not serve their clients in a vacuum. We cannot serve their interests by breaking the law or harming others. Can we include international human rights law in this calculus? Does this bind us as well?

In 1928, Benjamin Cardozo, Chief Justice of the New York Court of Appeals, famously wrote that "a trustee is held to something stricter than the morals of the market place."[5] Can we honestly sit here today and argue that honesty, care and loyalty—the core concepts guiding the law of fiduciary duty—permit me to make money for my client at the expense of the lives of innocent men, women and children? Am I

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[1] *Ethical Investing* (Addison-Wesley, 1984).
[2] *http://www.unpri.org/*
[3] "*2007 Report on Socially Responsible Investing Trends in the United States*", Social Investment Forum, available at *http://www.socialinvest.org.*
[4] "*Responsible Investment in Focus: How Leading Public Pension Funds are Meeting the Challenge*", United Nations Environment Programme Finance Initiative Asset Management Working Group and the United Kingdom Social Investment Forum Sustainable Pensions Project (April 2007), available at *http://www.unepfi.org/fileadmin/documents/infocus.pdf.*
[5] *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928)

legally permitted to provide for my client's retirement by helping to finance genocide? If we can answer in the affirmative, then we have relinquished the meaning of civilization, and we have destroyed the concepts of honesty, care and loyalty.

Fortunately, the law does not compel us to breach the social contract. In 2005, the law firm of Freshfields Bruckhaus Deringer issued a survey of the law of fiduciary duty in the United States, Europe, Japan, Canada and Australia, and concluded that the consideration of environmental, social and governance factors in the investment process is clearly permissible in every jurisdiction.[6] You may hear that mutual funds face legal obstacles that prevent them from implementing a policy to address genocide. Let me be clear—there is no law that compels mutual funds to profit from genocide.

Freshfields, however, went a step further. They concluded that the law arguably <u>requires</u> fiduciaries to take environmental, social and governance factors into account when they may impact the long-term value of the portfolio. They also noted that the law of fiduciary duty accords fiduciaries wide discretion in making this determination. Recent legal scholarship suggests there may be an emerging fiduciary duty for corporate directors to consider human rights issues that may present severe legal, operational and reputational risks to the long-term value of corporations.[7] If corporate directors must consider these issues, it is certainly prudent for investors to understand them as well**.** In our view, fiduciary duty compels funds to act, and to act now, particularly to address the most egregious violations of human rights—genocide and other crimes against humanity.

As fiduciaries, but more importantly, as members of the human community, we are compelled to take a careful look at genocide, and to ask ourselves what can be done. If we wish to avoid violating peoples' rights, then we must consider the implications of our decisions.

Domini's Approach

Let me talk for a few moments about how my firm is approaching this issue.

Domini manages a global family of mutual funds, covering North America, Europe and the Asia Pacific regions. Our funds may only purchase securities that we deem to be in compliance with our social and environmental standards. Domini has an in-house team of analysts dedicated to evaluating the social, environmental and governance records of companies in our investable universe. In 2007, we adopted a formal policy on Sudan to supplement our pre-existing human rights investment standards. Our Sudan policy directs us to avoid investment in companies that do business in Sudan in cases where we have determined that the company's activities provide certain direct benefits to the government of Sudan, particularly in the areas of oil, mining, electricity infrastructure and military or where, in our view, the

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[6] "*A legal framework for the integration of environmental, social and governance issues into institutional investment*", produced for the Asset Management Working Group of the UNEP Financial Initiative by Freshfields Bruckhaus Deringer (October 2005).
[7] Cynthia A. Williams & John M. Conley, *Is There an Emerging Fiduciary Duty to Consider Human Rights?*, 74 U. Cin. L. Rev. 75 (2005)

company is otherwise complicit in human rights abuses in Sudan.[8] We have also collaborated with the Sudan Divestment Task Force (SDTF),[9] who have been a tremendous resource in this area. We continue to share the benefit of our research and our insights, and have participated in joint meetings with companies.

Divestment is a Last Resort

As investors, we can have significant influence over companies we hold by exercising our rights as owners of the company. Our decisions to sell holdings when they violate our standards can also influence corporate behavior, however. It is important to consider that the capital markets flow on information. Each decision to buy, sell or vote shares sends a signal to the marketplace. We believe that investors should seek the most advantageous combinations of both *exit* and *voice*, to borrow the economist Albert O. Hirschman's terms, to influence corporate behavior.[10] We must also remember that "exit"—in this case, through divestment—can also be viewed as a form of expression. It is perhaps the ultimate repudiation of corporate strategy, an investor's vote of "no confidence."

Our Global Investment Standards compel us to avoid companies whose actions or business lines are dramatically out of line with societal needs or international norms. We believe this helps our funds avoid certain risks that will generally not be reflected on the balance sheet—at least not in the short term—and, if our Standards are to have integrity, there must be a point at which we will sell our shares.

We have always believed that it is important for investors to set standards. Of course, intelligent people can disagree about where lines should be drawn, but until we each establish these types of standards for our own portfolios, we cannot even begin to have that conversation. The central topic of that conversation is the appropriate role of corporations, and investors, in society. It is one of the most critical conversations of our time. Today, the vast majority of mutual fund managers set no standards at all to address corporate impact on society or the environment.

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[8] Domini considers a variety of factors to understand the nature and extent of a company's activities in Sudan, including whether it operates primarily inside or outside government stronghold areas, whether the company has supported the efforts of humanitarian organizations working to address human rights abuses in Sudan, and whether the company has been transparent about its operations and their impacts.

Based on this evaluation, we seek to avoid investing in companies that do business in Sudan in cases where Domini has determined that the company's activities provide certain direct benefits to the government of Sudan, particularly in the areas of oil, mining, electricity infrastructure and military or where, in our view, the company is otherwise complicit in human rights abuses in Sudan. For these companies, our analysis will focus on each company's degree of involvement with the Sudanese government, and its response to the crisis in Darfur.

In certain cases we may seek to use our leverage as shareholders to obtain more information, or to influence the company's behavior in Sudan before selling our shares. We will generally not invest in a company that violates the standards outlined above for the sole purpose of engaging in shareholder activism. Domini's policy is available at *www.domini.com/GlobInvStd/Darfur-Cri/InvestmentPolicy.doc_cvt.htm*.

[9] *http://www.sudandivestment.org*

[10] Albert O. Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Harvard Univ. Press, 1970)

In our experience, there have only been a handful of meaningful divestment campaigns. We enter into these debates cautiously. My industry came of age during the South Africa divestment movement. We answered the call to divest from South Africa, and we immediately responded to Archbishop Tutu's call to drop that policy when apartheid ended. Through a combination of tactics, including divestment and shareholder activism, I believe that concerned investors played an important role in ending the system of apartheid and freeing the people of South Africa. Perhaps more importantly, divestment is a peaceful tool that helped to bring about a bloodless transition of power from minority to majority rule in South Africa. This was a very long struggle to address a daily assault on human dignity, but it was not genocide. Apartheid lasted for more than 45 years. Genocide requires a more aggressive and more immediate response.

In Darfur, unlike South Africa, targeted divestment strategies implicate a very limited number of companies. This is a critical consideration for a fiduciary attempting to manage a well-diversified portfolio. Our policy, consistent with the policies advocated by the SDTF, requires careful consideration of the role individual corporations are playing in Sudan. It does not target every company operating in that country. Rather, it is focused on identifying the worst actors. Currently, the SDTF's "highest offender" list includes 23 companies.

A well diversified investor should therefore not face significant problems in implementing a divestment strategy targeting those companies determined to be financing genocide by lending certain forms of direct support to the government in Khartoum.

Divestment should always be considered cautiously, and it should be carefully tailored to the problem it seeks to address. It is a last resort, and is not an appropriate response to every problem. We are convinced that targeted divestment is necessary to address the crisis in Darfur.

Shareholder Engagement

While many investors are moving forward to creatively address a broad range of societal concerns, and to measure the financial impact of these efforts, there are still those that say they cannot adopt an investment guideline to consider even that most narrow category of genocide or other crimes against humanity. As discussed above, investment policies designed to address genocide are both warranted and achievable. Those that fail to adopt them, however, should not feel free to stand on the sidelines. Investors have other tools at their disposal.

My firm is engaged in dialogue with our fund holdings virtually every day on a broad range of environmental and human rights issues and we have seen the results of these efforts. I can tell you from personal experience that many corporations will act, and will change policies, when they are asked the right questions by their shareholders. Concerned investors have achieved significant results with corporations, convincing companies to adopt more responsible climate change policies, to accept responsibility for working conditions in their global supply chains and to exit repressive regime countries, such as Burma or Apartheid-era South Africa, to name but a few issues.[11]

The Sudan Divestment Taskforce reports that fiduciaries managing more than $3 trillion utilize its reports to identify and categorize corporate activity in Sudan. Using the leverage afforded by this significant backing, the Taskforce has achieved successes with a number of companies operating in Sudan, including La Mancha Resources, Schlumberger, Weatherford and others.

Domini has joined the Taskforce, Amnesty International and other investors and human rights activists in meetings with some of the largest financial institutions in the world about the situation in Darfur. Together, we represent a very minor stake in these companies. Nevertheless, senior officials have agreed to meet with us, and to continue talking. One bank's team was led by a member of their executive committee. One outcome of these discussions was Citigroup's public statement describing its approach to Sudan.[12] Although this is a small step, it is significant for a firm of Citigroup's size to acknowledge that it has responsibilities to address this problem, and dialogue will continue. Investors have influence. They merely need to exercise it.

Shareholder dialogue with corporations can have significant results. However, these dialogues must always be guided by a set of clear objectives and timeframes. For every productive dialogue, there are others that merely serve to delay action. Companies must understand that there are consequences for failure to reach agreement and investors must be willing to sell their shares if a company involved in egregious human rights violations proves unwilling to alter its behavior after a reasonable length of time. Few tough negotiations—in any field—go very far without both carrots and sticks. Again, the most effective approach to changing corporate behavior must combine both exit and voice.

We are optimistic about the role the capital markets could be playing to address these issues, and to advance human rights and sustainability generally. To date, the capital markets have served to finance the genocide in Darfur by allowing certain companies with egregious human rights records to list on national exchanges, and by continuing to myopically focus on one thing, and one thing only—stock price. This must change.

Recommendations

We would welcome broader Congressional hearings to consider all of the various tools that could be brought to bear to end this urgent humanitarian crisis. Below, Domini respectfully offers a handful of recommendations for mutual funds, other financial institutions, the federal government, stock exchanges and index managers.

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[11] Quarterly reports on Domini's shareholder activism work are available at *http://www.domini.com/shareholder-advocacy/index.htm*

[12] *http://www.citigroup.com/citi/citizen/humanrights/sudan.htm*

Mutual Funds

1. Mutual funds should adopt formal investment policies that address genocide and other crimes against humanity. In particular, they should examine their holdings against the SDTF list and determine a course of action. Wherever possible, they should directly engage with their holdings to encourage companies to take more responsible actions to reduce the likelihood that they will be held complicit in genocide.

   The SDTF Targeted Divestment approach includes a fairly small list of companies. Most diversified funds should have no trouble implementing such a policy. Funds that believe that a divestment policy would impose material risks to the performance of their funds will need to review these policies with each fund's board of trustees, and may need to amend their prospectus. The Domini Funds' prospectus clearly discloses the potential risks imposed by the application of social and environmental standards. There is no legal obstacle to adopting such policies.

2. Mutual funds should amend their proxy voting policies to support shareholder proposals addressing the crisis in Darfur, and human rights generally. Most of the largest mutual fund families in the country currently routinely vote against or abstain on all shareholder proposals addressing human rights issues.[13] Not only are these funds ignoring human rights issues in the investment process, they are affirmatively telling corporate management to ignore them as well, through their proxy votes.

Other Financial Institutions

1. Investment banks should consider the broad range of influence they have over their portfolio holdings, as well as their clients, and should raise the very serious human rights risks that are imposed on the bank and its clients by corporate complicity in genocide and other crimes against humanity. Specifically, banks should adopt formal human rights policies to guide their activities. These policies should include the full range of a bank's activities, including mutual fund advisory services, project finance, debt underwriting, consulting, etc. Citigroup recently adopted a human rights policy[14] and published a statement on the crisis in Darfur after dialogue with a coalition of stakeholders including Domini.[15] Domini also participated in a long-term dialogue with JPMorgan Chase that resulted in the bank's adoption of a comprehensive set of environmental policies. These policies also address some specific human rights issues, including indigenous peoples' rights.[16]

2. Wall Street analysts should incorporate corporate involvement in egregious human rights violations into their analyses. Their reports, for example, should assess the risk to shareholder

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[13] Independent analyses of mutual fund proxy voting data are available at *www.fundvotes.com* and *www.proxydemocracy.org*.
[14] *http://www.citigroup.com/citi/citizen/humanrights/index.htm*
[15] *http://www.citigroup.com/citi/citizen/humanrights/sudan.htm*
[16] *http://investor.shareholder.com/jpmorganchase/press/releasedetail.cfm?releaseid=161100*

value imposed by potential corporate complicity in genocide, and should provide investors with quality data to allow clients to fully assess these activities.

Federal Government

1. The Department of Labor should issue interpretative guidance to assure ERISA fiduciaries that decisions to divest individual holdings, or to engage with these holdings in order to avoid the fund's complicity in genocide, are consistent with the intent of the Act.

2. The Securities & Exchange Commission should create a blue ribbon panel to consider requiring issuers to disclose certain aspects of their human rights performance, with a particular focus on genocide and other crimes against humanity. Investors and the public need consistent, reliable and comparable data on corporate human rights performance in order to effectively address these risks.

Stock Exchanges and Index Managers

Human rights criteria at the exchange or index level could have significant ripple effects throughout the markets and, more importantly, on the ground in Darfur.

1. If a company is complicit in genocide, it should not be permitted to list on a national exchange. The stock exchanges are the gateways to the capital markets. These gates should be closed to the small group of firms that choose to actively profit from genocide. Although the NYSE and the NASDAQ adopted various corporate governance standards in the wake of Enron and the associated accounting and governance scandals, currently neither exchange includes any social or environmental listing standards. Such standards—even those that merely required the disclosure of certain human rights performance data—would be a very powerful incentive for corporations. Such standards would also help to safeguard the competitiveness of the U.S. markets in light of rapid regulatory developments in foreign markets to promote corporate social responsibility.

2. Portfolio managers are evaluated against public benchmarks. When they seek to avoid investing in certain companies that are included in their portfolio's public benchmark, they may face challenges in meeting their investment objectives. It is often the company's inclusion in a particular benchmark that creates the obstacle to divestment. A number of indexes currently incorporate social and environmental factors, including the Domini 400 Social Index (owned and maintained by KLD Research & Analytics, Inc.), the Dow Jones Sustainability Index and the FTSE4Good Index Series. A broader range of mainstream index managers should consider setting basic standards that would exclude those companies that directly profit from genocide.

Conclusion

Our participation in the global capital markets links our fortunes with every individual and society that is touched by the actions of the companies we own. Many still believe that these companies should place shareholder value above all other concerns, and many corporate managers continue to accept this view.

When companies make decisions to serve their shareholders, then shareholders take on a moral responsibility for the impact of those decisions. If we truly condemn genocide, then we must not continue to profit from it. We must tell corporate managers that they are not acting in our name when they actively support genocidal regimes. Divestment is not the equivalent of walking away from the problem. It is a form of communication—the strongest rejection of corporate strategy an investor can send.

Thank you again for the opportunity to address this Caucus today and for all of your continuing work on this most pressing issue.