Investors Against Genocide

Draw the line at investing in genocide

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Mr. Chairman and members of the Congressional Human Rights Caucus, thank you for the opportunity to highlight the problem of American financial investments being connected to genocide.

Investing in genocide is not a historical anomaly

Most thoughtful, knowledgeable people believe that in the face of genocide, there are limits to business as usual. Who among us would have supported the idea of investing in companies that sought profit by selling Zyklon-B gas to the Nazis or machetes for the genocide in Rwanda? Though stories continue to surface about companies that profited doing business with the Third Reich, we assume that this problem is behind us. We imagine that such business practices are a tragic aberration from a distant and dark past. Genocide is widely recognized as the ultimate crime against humanity and has earned unique recognition in international law. Surely, 63 years after the end of the Holocaust and 14 years after the genocide in Rwanda, no company that values the public trust would attempt to profit from connections to genocide.

Sadly, the stark reality of the 21st century is that the problem of investing in genocide is neither theoretical nor historical. Investing in genocide is a broad-based problem affecting many millions of Americans.

Today, five and a half years since the beginning of the genocide in Darfur, Sudan, and more than four years after that genocide was publicly acknowledged by the US Congress, most major financial institutions still invest in a small set of problem companies that fund the regime in Khartoum, including PetroChina, the worst offender. These financial institutions invest the family savings and pensions of ordinary Americans in genocide, without their knowledge and almost surely against their wishes.

Investing in genocide is a broad-based problem affecting many millions of Americans

As many members of Congress have discovered from personal experience, individual investors, even those aware of the issue, find it hard to avoid such investments. Mutual funds are the most common investment vehicle for family savings and retirement plans of Americans. Few investors understand the details of their mutual fund investments and, instead, trust the financial professionals who manage their money to make reasonable choices on their behalf. Unfortunately, the large mutual fund companies – Fidelity, Franklin Templeton, Barclays, American Funds, and Vanguard, among too many others – are major investors in companies complicit in genocide. Further, these mutual fund companies may at any time increase their holdings or involve new funds in these problem investments. Since funds have no requirement to notify their customers of such purchases, and the requirements for disclosure of holdings allow delays of two to five months, even the most vigilant investors are frustrated in their attempts to avoid investments in genocide.

That's why it is so important for mutual funds to commit to genocide-free investing. As SEC Chairman Cox has said, "No investor should ever have to wonder whether his or her investments or retirement savings are indirectly subsidizing a ... genocidal state." So far, however, the major mutual fund companies have been unresponsive to this problem and resist making any such commitment.

When confronted with the problem of investing in genocide, Fidelity, for example, says that they make investment decisions based solely on financial and legal factors. Incredibly, Fidelity wants to retain the flexibility to invest in a company, even if, in their <u>own judgment</u>, that company is substantially contributing to genocide. For Fidelity, no human rights problems are to be considered in their investment decisions, not even the most egregious violations of human rights and not even when there is a finding of genocide by the United States Congress, the Department of State, and the President.

Fidelity's responses mirror those of many major investment firms. Vanguard, for example, when pressed about investing in companies that substantially contribute to genocide, cited its fiduciary responsibility, and went on to say that they “do not require, or even expect, [their] advisors to make investment decisions based on social or political issues.” Even T. Rowe Price, a firm which completely divested its $200 million of holdings in PetroChina, Sinopec, Petronas, and ONGC, insists that it is “obligated” by its “fiduciary duties” to not make a commitment to a genocide-free investment policy. Confronted with the specter of investing in genocide, these firms ignore the moral issue. No guidelines regulate the investment choices of the largest mutual fund companies or their investment managers when it comes to genocide or crimes against humanity.

In faraway Darfur, every day is plagued by the horrible madness of genocide and atrocities. Here in America, a different type of madness allows many of the best known and most respected financial institutions to operate as if it were morally acceptable to invest in genocide.

Genocide-free investing is important to Americans

Investors Against Genocide, a non-profit organization which I co-founded, is dedicated to ending investment in genocide.

Most Americans are unaware that the financial institutions they trust may invest their family savings and pensions in companies that help to fund genocide. Once they become aware, Americans are overwhelmingly opposed to being financially connected to genocide. In KRC Research’s 2007 study, 71% of respondents said companies should take extreme cases of human rights abuses, such as genocide, into account rather than base investment decisions solely on economic criteria. In that same study, 77% said they would switch to a different investment company if they learned that those managing their funds had significant investments in firms that were active in Sudan. In 2007, 200,000 people wrote to financial firms objecting to making such problem investments. Reasonable people may disagree about what constitutes socially responsible investing, but few people want their savings to be complicit in genocide.

Americans have the right to expect that their savings will not be invested in support of genocide or crimes against humanity, the most egregious violations of human rights. The challenge is to make the market for financial investments more responsive to the American public’s interest in genocide-free investing.

Awareness of the demand for genocide-free investing is growing

Investors Against Genocide is working to change the market dynamics and encourage mainstream investment firms to adopt genocide-free investing policies. Along with our partners at the Save Darfur Coalition and the Sudan Divestment Task Force, we have been privately writing to and talking with a wide range of mutual fund companies and large asset managers. Together, we have raised awareness of the problem through email, mail, advertising, and widespread media coverage.

Awareness of the problem continues to grow, already showing some dramatic results. 27 states and over 60 colleges and universities have made the decision to divest from Sudan because of the genocide in Darfur. Many people have moved their money, not just out of particular problem funds, but away from investment companies that refuse to take action. News stories have highlighted these actions by celebrities, politicians across the country, and even presidential candidates. Recognition in Congress was so widespread that the Sudan Accountability and Divestment Act passed both Houses by unanimous vote, before being signed into law last December.

We see no compelling reason for investment firms to continue to invest the savings of Americans in companies connected to genocide. There are ample competitive alternatives and flexibility of investment choices for portfolio managers, even with index funds, to select companies that do not carry the added risk and volatility of being connected to genocide. Since there is such a small number of problem companies, avoiding them need not result in any significant effect on fund performance. As noted by Gary Brinson’s classic study, investment returns are affected much more by asset allocation than individual security selections.

We have seen some progress with investment firms, though they have denied that their decisions have been related to genocide. Five months after the launch of our campaign, Fidelity sold virtually all of its New York Stock Exchange holdings of PetroChina and Sinopec, worth about $700 million. After pressure from Investors Against Genocide working in partnership with the Sudan Divestment Task Force and Save Darfur Coalition, Warren Buffett's Berkshire Hathaway sold all of its PetroChina holdings, worth over $3 billion. After broadening our campaign to include Allianz, they sold all of their New York Stock Exchange holdings of PetroChina, worth about $800 million. Though some companies may be feeling pressure to act, none of the three companies made a commitment to a policy to be genocide-free. Fidelity highlighted this lack of commitment by keeping holdings of PetroChina and Sinopec on the Hong Kong Stock Exchange even larger than what it sold on the New York Stock Exchange. Isolated actions are not enough to make American investments genocide-free.

Despite the clear signals of customer desire for genocide-free investments, the mutual fund industry is resisting the need to change, particularly the largest mutual funds. We believe there is a significant market opportunity for major mutual fund companies to distinguish themselves by being responsive to customer interest in genocide-free investing.

Why are firms resisting? By and large, these financial firms have operated with no concern for human rights, seeing such problems as relevant only for other industries. Changing their established model even a little, even for the most extreme case, is a complication that they do not welcome. Some may hope that the issue will simply go away. Some may fear the "slippery-slope" and want to avoid setting a precedent of responding to social concerns, even though we have limited our focus to genocide and crimes against humanity. Some evade the issue by claiming they are engaging with PetroChina, rather than divesting, even though there has been no result from this approach since it was first tried more than three years ago.

Using shareholder proposals to force mutual funds to respond

To increase visibility to the problem of investments in genocide and to engage mutual fund customers more directly, we have begun encouraging individual mutual fund customers to file a shareholder proposal to be voted on at their fund's shareholder meeting. To date, shareholder proposals have been filed for 62 different funds, and we expect many more to be filed. The proposal states:

> Shareholders request that the Board institute procedures to prevent holding investments in companies that, in the judgment of the Board, substantially contribute to genocide or crimes against humanity, the most egregious violations of human rights.

In the spring of 2008, 21 Fidelity mutual funds voted on our shareholder proposal. Remarkably, shareholder voting ranged from 20% to 31% in favor of genocide-free investing, far higher than the single digit support which is typical of social concern resolutions. Millions of shareholders voted against Fidelity management and for the genocide-free investing proposal, despite aggressive resistance from Fidelity. Ignoring this powerful message from a very large number of their shareholders and customers, Fidelity did nothing to address the problem of having no policy against investing in companies that fund genocide.

Why was the favorable vote not even higher? The voting was not a simple case of shareholders deciding the issue. If Fidelity truly wanted to let its shareholders decide, it would have taken a neutral stance on the proposal. Instead, Fidelity actively opposed it, and, in so doing, tilted the vote against the proposal. Some of the factors working to skew the vote include:

1. Large blocks of internal and institutional shares automatically voting with management.
2. Fidelity hiring a proxy solicitation firm to call shareholders and urge them to vote with management, without mentioning the shareholder proposal under consideration.
3. Electronic voting that preferentially places the option to vote with management, before displaying the issues to be voted.
4. Fidelity's policy of counting broker non-votes as if they were votes opposing the merits of the proposal.
5. Counting abstentions as if they were votes opposing the proposal.
6. Customer service procedures that make it difficult for shareholders to get control numbers if they discard the original paperwork.
7. Choosing how long to leave voting open and not reporting interim results.

The burden on the proposal is especially heavy because, as we all know, it is common practice for ordinary investors to ignore and discard their proxy materials, thereby recording no vote, even when, as in this case, there is an issue on the ballot that is of interest and importance to ordinary Americans. This was the first wave of voting, and it will take considerable time for the issue to be common knowledge among shareholders, so that larger numbers of shareholders will vote their proxies.

What Congress can do to help

We believe that there is an excellent chance that market dynamics can address the problems we are experiencing today. Some of the factors that will help make this happen are 1) publicity to raise public awareness, 2) removing the gloss of respectability for the excuses that investment firms use, 3) forcing investment companies to address the concern, particularly by use of shareholder proposals, and 4) greater expectations for transparency.

We thank Congress for its overwhelming support for the Sudan Accountability and Divestment Act, which protects fiduciaries who take reasonable action in the face of the genocide in Darfur. We had hoped that SADA would effectively remove the “fiduciary responsibility” excuse that some investment firms use to justify making tainted investments, but we are disappointed to report that the major mutual fund companies have remained unmoved.

Congress can take an additional step that will have tremendously beneficial results and significantly advance the cause of supporting Americans interest in genocide-free investing. Please. Hold a hearing on the issue of genocide-free investing in 2009. The attention, interest, and oversight from Congress might be all that’s required for market factors to accelerate and the industry to reform itself.

Some of the objectives of the hearing would be:

First, to review and clarify existing regulations or statutes so that there is no ambiguity and no conflict between drawing the line at investing in genocide and fiduciary responsibilities. Documented guidelines may go a long way toward addressing this problem.

Second, to get perspective from senior management of mutual fund and investment companies on why they continue to invest in genocide. Hearings would force management to answer hard questions rather than deflecting public concerns with simplistic excuses. Further, hearings would force companies to go on the record about their business policies. Both Fidelity and Franklin Templeton declined invitations to appear before you today.

Third, to discuss and evaluate the merits of additional disclosure requirements for mutual funds and investment firms. For example, uniformly require them to state which social concerns, if any, are reflected in their investment policies; or require mutual funds with no policy on avoiding investing in genocide to carry a warning statement, similar to the health warnings on cigarettes!

Fourth, to discuss and evaluate the merits of reducing the structural barriers facing shareholder proposals on such significant social policies.

Fifth, to address contradictions in existing US law and regulations related to extreme human rights problems. For example, Executive Order 13412 prohibits transactions relating to the oil or petrochemical industries in Sudan. American oil companies are thereby prohibited from doing business with Sudan. However, there is no restriction against many billions of dollars of American capital flowing to Chinese and other oil companies that support Khartoum and help fund the genocide in Darfur. There must be a more effective way than restricting American industry while providing capital to its competitors.

Sixth, to explore additional creative opportunities from Congress and other experts to advance genocide-free investing and improve the responsiveness of investment firms to the interests of their customers.

Lastly, we ask all members of Congress, to review their own investments and speak publicly about the actions you take. Many of you already have done so, helping shed light on the problem and sending a message of your own to financial institutions.

We must act, now, to address the crisis in Darfur. We also must prepare, now, to prevent future genocides and respond quickly to those that do occur. One element of that preparation is for the financial industry to draw the line at investing in genocide. I look forward to the day when capital markets provide disincentives for companies that support genocide and, instead, support the right of Americans to keep their savings free of investments in companies that substantially contribute to genocide or crimes against humanity. I thank the Caucus for allowing me to share these thoughts today.