

# Investors / Against Genocide

January 12, 2017

Chair Mary Jo White  
Commissioner Kara M. Stein  
Commissioner Michael S. Piwowar

Securities and Exchange Commission (SEC)  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Dear Chairman and Commissioners,

The SEC has requested feedback on the Commission's April 13, 2016 Concept Release relating to the Business and Financial Disclosure Required by Regulation S-K. The Concept Release requests public comment on modernizing business and financial disclosure requirements under Regulation S-K for the benefit of investors and registrants. Specifically, the release seeks information on what issues are important to investor voting and decision making, and how such information should be disclosed.

This letter requests that regulations require investment firms to explicitly and clearly disclose when they hold or recommend investments in companies that, in their management's judgment, substantially contribute to genocide or crimes against humanity, the most egregious violations of human rights. Assisting investors in avoiding such investments is referred to as Genocide-free Investing.

Under Regulation S-K, corporations must disclose non-financial information that is material to investors. The Supreme Court ruled in 1976, in [TSC Industries v. Northway](#) that information is material to investors if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or in making an investment decision. In 2010, the [SEC outlined key factors](#) to consider when determining whether a topic of interest is material for corporate reporting purposes: (1) heightened public interest in recent years; (2) international accords and other efforts to address a topic of concern on a global basis; (3) federal regulations or state and local laws in the United States; and (4) business leaders' voluntary recognition of the current and potential effect of the category of information on companies' performance and operations.

Investments in companies substantially contributing to genocide or crimes against humanity clearly meet all of these criteria, are therefore material to investors' decisions, and should be disclosed.

The SEC has consistently ruled, in a series of No Action Requests, that such investments

represent a significant social policy issue. An example of such rulings is the [original ruling against Fidelity in 2008](#). Genocide-free investing is not a small niche concern. It is in line with the wishes of the vast majority of Americans who want to avoid investments with ties to genocide. [Market research](#) conducted by KRC Research showed that 88% of Americans would like their mutual funds to be genocide-free. [30 states decided to divest](#) from companies supporting Sudan, as have over 60 colleges and universities. In one mutual fund proxy vote for which management took a neutral position on genocide-free investing, the measure passed with 85% of the yes/no votes (at the [ING Emerging Countries Fund](#)). Even with active opposition from management, genocide-free investing proposals received 31% of votes in favor. Clearly, there is significant public interest in genocide-free investing. However, it is impractical for concerned individuals to avoid investments tied to genocide without clear disclosure or explicit investment policies by asset managers.

Congress, through the unanimous passage of the [Sudan Accountability and Divestment Act](#) has authorized state and local governments to divest assets in companies that conduct business operations in Sudan and prohibited United States Government contracts with such companies. It includes a provision that the “President should take all necessary and appropriate steps to deny the Government of Sudan access to oil revenues.” President Bush’s [Executive Order #13412](#) explicitly prohibited “all transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines.” As a result, although U.S. companies are prohibited from supporting Sudan and its oil industry, U.S. investment firms are free to invest in foreign companies that do support Sudan’s oil industry.

While many investment firms like JPMorgan Chase, Franklin Templeton, Fidelity, Vanguard, and BlackRock invest their customers’ money in companies that help fund ongoing genocide in Sudan and Syria, some investment firms have acted to prevent such investments. [T. Rowe Price](#) and [TIAA-CREF](#) have established a leadership position by articulating and implementing policies on investments tied to genocide. Other large financial institutions, such as American Funds, Allianz’s NFJ, and [Berkshire Hathaway](#) have sold their complete holdings in oil companies involved with Sudan (though some have not publicly stated their reasons for doing so.)

In short, genocide-free investing meets all the SEC’s criteria for material information that reasonable investors may want to consider in making their investment decisions. After all, while reasonable people may disagree about socially responsible investing, few want their investments to help fund genocide. Therefore, the SEC should develop and implement disclosure rules for investment firms regarding whether or not they invest in companies substantially contributing to genocide or crimes against humanity as an initial step in disclosure required by Regulation S-K.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Cohen". The signature is fluid and cursive, written in a professional style.

Eric Cohen  
Chairperson, Investors Against Genocide