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Shareholder Activists Try New Tactic in Divestment Campaign

by Francesca Rheannon and Bill Baue

Activists are bringing resolutions to shareholder meetings of mutual funds in a bid to widen pressure on companies doing business with the Sudanese government.

SocialFunds.com -- [Investors Against Genocide](#) is spearheading a campaign promoting targeted divestment by mutual funds from companies supporting the Khartoum regime in the Sudan. The Khartoum regime has been implicated in genocide in the Darfur region of Sudan.

This is the first time mutual funds, as opposed to simply the companies themselves, have been targeted by the divestment campaign. The first resolution comes to the floor of [Fidelity Mutual Fund's](#) shareholder meeting in Boston on March 19, 2008. Investors Against Genocide is currently sending out an action alert to investors.

SocialFunds.com writers Bill Baue and Francesca Rheannon spoke with Eric Cohen, chairperson for Investors Against Genocide and Tim Smith, senior vice president at [Walden Asset Management](#) and former chair of the Social Investment Forum ([SIF](#)), about the campaign. They prepared this edited excerpt from their interview.

Francesca Rheannon: Why is genocide in Darfur a crucial issue now for shareholder action?

Eric Cohen: Many people in the United States have been supporting the movement to try to do something to help Darfur. But the surprising thing for many of us is that we inadvertently have a connection through our financial investments to the companies who are partnering with the government of Sudan, primarily through developing the oil industry, producing oil and buying it, and thereby providing the government in Khartoum with the funds it needs to pursue its policy of attacking the people of Darfur, driving three million people into camps, and killing hundreds of thousands of people, with millions more at risk.

Bill Baue: Tim, companies have been targeted for shareholder resolutions for years and you've helped to pioneer that, but not mutual funds. Could you explain why this change now?

Tim Smith: Over the last thirty five years, investors have petitioned companies on social, environmental and governance issues through the shareholder resolution process, [but] mutual funds have [largely] escaped attention. Mutual funds are not required to have an annual stockholders meeting; they are only required to have a meeting for business requiring shareholder approval, like changes in the board or changing the manager of the fund. So their often are just business as usual without real issues being raised. What the folks who are campaigning have done in an unprecedented way is to recognize the uniqueness of this approach of going to dozens of mutual funds, saying "when you have your next stockholder meeting, we want you to put an item on the agenda that isn't just about who's going to manage our money."

BB: Eric, you have been involved in the Sudan divestment campaign for a while. What has been happening both with that campaign and also with the shareholder resolutions that you have filed with the mutual funds?

Eric Cohen: I got involved in divestment because of activities in Massachusetts to have a bill for the state to divest its holdings in Sudan from the state pension fund. In learning about that legislation, we discovered who the problem companies were. The worst was PetroChina [\[NYSE: PTR\]](#). We asked the question, "If PetroChina is the worst of the offending companies involved in the Sudan, who are the largest holders in PetroChina?"

We were shocked to discover that Fidelity Investments was the largest holder listed on the New York Stock Exchange with \$1.3 billion worth of PetroChina invested. We were Fidelity investors, we were citizens in the state of Massachusetts, where Fidelity had its headquarters, so we began to write them letters and telephone calls to try to get them to address this problem. And after working on that for [several] months privately, we decided to launch a public campaign because we had essentially gotten nowhere.

Since then, we have broadened our work to continue not just with Fidelity but with other financial institutions, the giants in the financial industry, and with mutual funds in particular. Of the largest mutual fund companies in the United States, each having over \$1 trillion of assets under management, Fidelity, American Funds and Vanguard were the major holders of PetroChina.

It's a terrible thing, in my view, that these financial giants are connecting themselves with genocide by investing in PetroChina and attempting to make money on that company. That's a problem in its own right. But it has secondary consequences because ordinary Americans have no idea what the Fidelitys, the Vanguards, the American Funds, and the Franklin Templetons, are doing "on behalf of" their customers but actually without their customers' knowledge. And we know from looking at the research that Americans do not want this. There was a study done in 2007 by KRC research where 71% of respondents said that companies should take into account extreme cases of human rights abuses when investing overseas, rather than make their investment decisions on economic criteria alone. These are unusually high numbers, and the divestment movement's success is a signal of how widespread concern is across the country.

Our first phase was to get people to express concern and objections directly to the companies. We got something like 200,000 people to sign petitions and call or write to Fidelity and other companies. Unfortunately, this was not enough to move the companies and so we came up with a different strategy: to submit shareholder proposals to individual mutual funds. The concept was to engage them in this way with the voices of their customers and have the companies be required to deal with the issue at a shareholder meeting of the mutual fund.

Tim Smith: There are [also] over thirty major universities, from Harvard to Stanford, who have been involved in taking a position on Sudan divestment. We have states and city pension funds who have decided to take a stand and either divest or reach out to strategic companies in the Sudan. So, we have a real growth of interest among investors who see this both as a very important social and moral issue and as a fiduciary duty to address because of some of the risk issues that are in the portfolio.

Eric Cohen: And then just at the end of the last calendar year, the House and the Senate together voted unanimously for the Sudan Accountability And Divestment Act. It supports the rights of states and pension funds to divest and provides amendments to the securities and exchange laws that give fiduciaries safe harbor should they choose to divest from companies like PetroChina. No one will be able to successfully sue them, providing yet another element of support. And President Bush signed it on December 31.

So this is a very broad-based movement of concern and the mutual fund companies are very much on the wrong side of public opinion here. But so far they've been digging in their heels and refusing to consider making a commitment to genocide-free investing, which is why we submitted the shareholder proposals.

FR: There was a recent development by the Securities and Exchange Commission that denied Fidelity's no-action request. Could you explain what that was and what is the significance of the SEC decision to deny it?

Eric: Technically this is "called a request for no action". Fidelity did not want the proposal going forward to its shareholders; it made various claims about why the proposal should be excluded and filed its objections with the Security and Exchange Commission. We filed a defense of our proposal. The SEC rejected every argument that Fidelity made, so [Fidelity] has to bring it forward for the upcoming shareholder meeting.

The substance of our proposal says that the board should institute oversight procedures to screen out investments in companies that in the judgment of the board

substantially contribute to genocide, patterns of extraordinary and egregious violations of human rights, or crimes against humanity.

BB: What guidance can you give to shareholders who might be receiving this proxy in the upcoming weeks about how to voice their vote? What funds are being targeted?

Eric: Votes are coming up on March 19 for a host of funds, and also in April and in May. Fidelity shareholders will be receiving proxy materials and one easy way to tell if their fund is affected is to look at the proxy card they get. If it has a question that says something about "a shareholder proposal on certain matters", it's worth looking in the proxy book to see what that "certain matter" is. What you may discover is that it's a proposal for genocide-free investing. We are the only shareholder proposal that we know of that will be showing up on Fidelity's proxy materials.

[Investors] could keep an eye out for the following funds: the Capital and Income Fund, Fidelity's Contra Fund, the Growth and Income Fund, the Low-Priced Stock Fund, Puritan Fund, Real Estate Investment Portfolio, and Utilities Fund. We are also expecting it to be for the Blue Chip Growth Fund, Blue Chip Value Dividend Growth Fund, and the Equity Income Fund. In a similar way there's a host of funds that we filed for with Fidelity that will have meetings in April and some in May. And we've already filed for many in Vanguard, in Barclay's, Templeton's and T. Rowe Price. And our hope is that that there will be broader interest as word about this goes forth.

BB: You pointed out that on the proxy card they say "certain matters". There was a television commercial with a woman from Darfur reading a letter in which Fidelity had stated in aseptic language that it made its decision solely on financial issues. What is your strategy around lifting the veil to the true human rights issues that undergird these financial investment decisions?

Eric: Fidelity takes a stance that I would describe as amoral, because they want to live in a world where the only thing they have to concern themselves with is making money and not breaking laws. And that's a neat little world that they want to live in. They want to operate with no rules related to human rights issues, even when they're the worst issues on the planet.

The shareholder proposal will seek to change the rules they operate by and add one basic rule. We think that there is a minimum standard on ethical investing with which almost everyone can agree: we don't want our family savings dependent on investment in companies that help to fund genocide, whether it's occurring in Darfur today — or anywhere in the future. So we want to have this basic principle of ethical investing apply to the mutual funds.

The only way this can happen is if the word gets out and people vote the proxies. If voting our proxies isn't sufficient with certain companies such as Fidelity, then I think we'll start to see people with money disassociating themselves from the Fidelitys of the world and moving their money to companies that support genocide-free investing. And we're hoping that one day perhaps we'll all live in a world where the financial giants of the world think it's just fundamental that they would not try to make money by investing in genocide.

As this article went to press, Fidelity has just filed the formal [proxy](#) materials, including the genocide-free investing proposal, with the SEC for the shareholder vote.

You can listen to the complete interview by Corporate Watchdog Radio hosts Bill Baue and Francesca Rheannon with Eric Cohen and Tim Smith at the [Corporate Watchdog Radio](#) website.

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