Oral Testimony Presented to the Congressional Human Rights Caucus briefing on Genocide-Free Investing
September 10, 2008

It is an honor to have the opportunity to address this Caucus, and to share some thoughts on what investors can do to address genocide and other crimes against humanity. I would like to focus specifically on what mutual funds can do, although my written testimony contains recommendations for investment banks, stock exchanges and government as well.

Domini is an investment adviser based in New York. We manage approximately $1.2 billion for individual and institutional mutual fund investors. All of our investments are guided by a set of social and environmental standards, including a policy to avoid investment in the worst actors in Sudan.

The preamble of the Universal Declaration of Human Rights commits "every individual and every organ of society" to keep it "constantly in mind" as a "common standard of achievement for all …." We're here to discuss what one such "organ of society" – institutional investors – can do to meet that commitment.

Two fundamental principles underlie the social and environmental standards Domini applies to its funds: the promotion of a society that values human dignity and the enrichment of our natural environment. 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.

The field of socially responsible or sustainable investing is changing rapidly, and ideas that were once considered fringe are quickly becoming mainstream. Today, for example, institutional investors with more than $15 trillion under management have endorsed the United Nations' Principles for Responsible Investment, committing themselves to consider social, environmental and governance factors in the investment process, and to engage with their holdings on these issues.

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.

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. 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 requires fiduciaries to take environmental, social and governance factors into account when they may impact the long-term value of the portfolio. We believe companies that engage in egregious human rights violations are taking on a number of long-term financial, legal, operational and reputational risks that should be considered by fiduciaries. Freshfields also noted that the law accords fiduciaries wide discretion in making this determination.

Honesty, care and loyalty are the core concepts defining the law of fiduciary duty. The duty of loyalty requires me to place my client's interests above all others. It does not require me to break the law, or to make money for my client at the expense of the lives of innocent men, women and children. Am I legally compelled to provide for my client's retirement by helping to finance genocide? If so, then we have relinquished the meaning of civilization, and we have destroyed the concepts of honesty, care and loyalty.

In fact, we believe fiduciary duty compels funds to act, and to act now, particularly to address the ongoing genocide in Darfur.

Let me talk for a moment about how Domini is approaching this issue.

Domini manages a global family of mutual funds, covering North America, Europe and the Asia Pacific regions. 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 the worst actors—those companies that we believe are funding the ongoing genocide in Darfur by providing certain direct benefits to the government of Sudan, particularly in the areas of oil, mining, electricity infrastructure and military.

The Sudan Divestment Task Force provides helpful ongoing analysis of corporate activity in Sudan to fiduciaries managing more than $3 trillion. Currently, the Task Force "highest offender" list includes only 23 companies—an important consideration for any fiduciary attempting to manage a broadly diversified portfolio with a Sudan policy.

But divestment is not our only tool.

My firm is engaged in dialogue with our fund holdings virtually every day. I can tell you from personal experience that many corporations will act when they are asked the right questions by their shareholders. 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.

Mutual funds can take several very clear steps. They can adopt formal policies to avoid investment in genocide and other crimes against humanity, and to engage with their holdings to address these issues. Where these policies may materially impact performance, funds should review these policies with their board, and may need to amend their prospectus.

Mutual funds should also 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. These votes are sending the wrong signal to corporate management.

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.