

**Oral Testimony of Adam M. Kanzer  
Managing Director and General Counsel, Domini Social Investments LLC**

**Presented to the U.S. House of Representatives, Committee on Financial Services  
Subcommittee on International Monetary Policy and Trade  
“Investments Tied to Genocide: Sudan Divestment and Beyond”  
November 30, 2010**

It is an honor to address this committee and to share Domini’s perspectives on investor and regulatory responses to the genocide in Darfur.

Domini Social Investments is an investment adviser based in New York. We manage funds for individual and institutional mutual fund investors who incorporate social and environmental standards into their investment decisions.

We believe investors have an affirmative obligation to respect human rights, and to seek to do no harm. Domini seeks to meet this obligation by implementing a comprehensive set of social and environmental standards to guide our investment decisions.

Addressing genocide is first and foremost a moral imperative, but it is also an appropriate concern for fiduciaries that see their role as exclusively focused on financial concerns. Companies that operate in conflict zones such as Sudan take on a variety of operational, reputational and legal risks, including risk to their license to operate. There are also systemic socioeconomic risks presented.

Investment policies to address genocide are both warranted and achievable, and can influence corporate behavior. Investors have other tools as well, and direct engagement with portfolio holdings is a critically important and effective strategy for addressing corporate human rights performance.

In discussions about the Sudan Accountability and Divestment Act, emphasis has been placed on the word “divestment.” I would encourage you, however, to focus on the word “accountability.” Investors cannot hold companies accountable without data. I would therefore like to focus today on the need for mandatory corporate human rights disclosure.

We strongly endorse the GAO’s recommendation that the SEC require companies “to disclose their business operations related to Sudan” and encourage Congress to take the recommendation a few steps further.

Domini utilizes a *targeted* model of divestment and engagement. A company’s connection to Sudan is merely the first step in our analysis, and is insufficient to gauge how a company is meeting its human rights obligations.

We need information to distinguish between companies that are helping to finance human rights abuses, and those that are contributing to solutions. Appropriate disclosure should also highlight key areas for corporate executives to manage and measure.

To “foster business respect for human rights,” Professor John Ruggie, the UN Secretary General’s Special Representative on Business and Human Rights states that governments should encourage, and where appropriate, require “business enterprises to provide adequate communication on their human rights performance.” This is an element of the State’s duty to protect against human rights abuses, one of the three pillars of the Protect, Respect and Remedy framework adopted by the UN Human Rights Council in 2008.

In the United States, however, corporations are not required to disclose their human rights policies, procedures or performance unless corporate counsel determines that such issues present “material” risks to the company.

The materiality standard has failed to provide investors with necessary information about corporate human rights performance in any area of the world, including Sudan, for several reasons:

First, although materiality is an “objective” standard, in practice materiality is in the eye of the beholder – the corporation.

Second, the materiality standard is generally interpreted as *financial risks to the issuer*, not to stakeholders affected by corporations. So-called “externalities”, including human rights abuses, are generally not reported.

And third, materiality is a broad, ambiguous concept. Companies are often uncertain whether an emerging risk should be disclosed and, if it is material, *how* it should be disclosed.

In Domini’s experience, it is rare to find any human rights data in securities filings.

Management’s incentives—particularly during a global divestment campaign—are to disclose *as little as possible*. As noted by the GAO, “companies have generally resisted [the SEC’s instructions to disclose] and, at times, have refused to disclose information about their ties to Sudan.” There appears to be no meaningful sanction for these companies.

The status quo falls short of Professor Ruggie’s recommendation that the State “encourage” or “require” corporate reporting, and provide clarity about these obligations.

A mandatory set of tailored indicators, including human rights policies, due diligence procedures, risks identified and performance reports would provide:

- investors with reliable, consistent, comparable and relevant information to make prudent investment decisions and monitor corporate human rights performance; and

- would further our government's policy goals in Sudan and its duty to protect against human rights abuses.

In addition, if investors are to help avert the next Darfur, we need disclosure requirements that apply to corporations wherever they operate around the world.

Thank you again for this opportunity. You will find additional recommendations and details in my written testimony. I look forward to your questions.