

Chapter 171 Oregon Investment Council
OREGON ADMINISTRATIVE RULES 1997 COMPILATION

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DIVISION 1

PROCEDURAL RULES

171-001-0000

Notice of Proposed Rulemaking

Prior to adoption, amendment, or repeal of any rule, the Oregon Investment Council shall give notice of its intention to adopt, amend, or repeal any rule, not less than 15 days prior to the date of the proposed action:

- (1) In the Secretary of State's Bulletin;
- (2) By purchasing a legal notice (advertisement) in a daily or weekly newspaper of general circulation;
- (3) By furnishing a copy of the notice to the following:
 - (a) Associated Press, United Press International, and other media;
 - (b) Any interested parties requesting to be on a regular mailing list for rules adopted by the Oregon Investment Council;
 - (c) To members of boards and commissions working with the Oregon Investment Council that may be affected by the adoption of said rule; and
 - (d) To all banking institutions, state money managers, and local governments that may be affected by the proposed rule.

Stat. Auth.: ORS Ch. 183

Hist.: OIC 2-1987, f. & ef. 12-17-87

171-001-0005

Model Rule of Procedure

Pursuant to ORS 183.341(2), the Oregon Investment Council adopts the Attorney General's Uniform and Model Rules of Procedure of January 27, 1986 by reference.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or State Treasurer.]

Stat. Auth.: ORS Ch. 183

Hist.: OIC 1-1987, f. & ef. 12-17-87

DIVISION 2

INSPECTION, CERTIFICATION, OR COPYING PUBLIC RECORDS

171-002-0000

Public Records

Pursuant to ORS 192.420 through 192.505, the Oregon Investment Council:

(1) May charge the following fees for certification or copying of any public records in the Oregon State Treasury's custody not otherwise exempt from disclosure:

- (a) For each certification containing five pages or less, \$5;
- (b) For each page of a certified document in excess of five pages, 5¢ per page;
- (c) For uncertified copies, 5¢;
- (d) For facsimile transmission, \$1 per page (excluding cover page).

(2) In addition to the charges prescribed in section (1) of this rule, an amount, as determined reasonable by the State Treasurer, to reimburse the Oregon State Treasury for the actual cost of making the records available for inspection.

(3) Shall make all public records of the Oregon Investment Council, not otherwise exempt from disclosure by law, available for inspection and/or copying during regular business hours of the Oregon State Treasury.

(4) May condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the State Treasurer, the Oregon State Treasury and its employees.

(5) Shall post within public view the fee schedule for certification or copying of public records.

Stat. Auth.: ORS Ch. 183, 192, 293 & 295

Hist.: OIC 1-1990, f. 4-30-90, cert. ef. 5-1-90

DIVISION 10

DIVESTITURE

171-010-0000

Purpose

(1) These rules are promulgated pursuant to the "Oregon Anti-Apartheid Act of 1987" (Chapter 193 of Oregon Laws 1987 (House Bill 2001) (ORS 293.830 - 293.870)).

(2) The Legislative Assembly has determined it opposes the apartheid policies of the Republic of South Africa and of Namibia.

(3) The Legislative Assembly has found:

(a) The law of apartheid in South Africa and in Namibia enforce a social, political and economic structure which institutionalizes inequality solely based on race;

(b) Apartheid is absolutely contrary to the fundamental principles of human rights and standards of justice and individual freedom;

(c) The United States of America, under the Federal Anti-Apartheid Act of 1986, has rejected the system of apartheid as immoral and indefensible; and encourages the establishment of a nonracial, democratic form of government;

(d) The practice of apartheid in South Africa and in Namibia is repugnant to the principles of liberty and justice found in the Bill of Rights, Article I of the Oregon Constitution, which are fundamental to the character of a free society;

(e) The investment of Oregon trust funds and state moneys in business firms and financial institutions with close ties to South Africa is fiscally imprudent, given the political and economic instability in South Africa and in Namibia, and inconsistent with the moral and political values of the people of Oregon;

(f) Investment in banks and companies doing business in and with South Africa contribute directly to the perpetuation of a system which we oppose;

(g) Divestment and reinvestment of subject investment funds should be achieved without monetary loss and shall be accomplished in a reasonable and prudent manner by investment in acceptable institutions at comparable rates and return.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f & cert. ef 1-7-88

171-010-0005

Definitions

As used in these rules:

(1) "Business Arrangements" means projects, ventures, undertakings, contractual relations or other efforts requiring ongoing or periodic performance by either or both parties.

(2) "Business Entity" means any organization, firm, association, corporation, partnership or venture, or its subsidiary or affiliate, which exists for profit-making purposes or otherwise to secure economic advantage.

(3) "Business Operations" means the maintenance of equipment, facilities, personnel or any other apparatus of business or commerce, including the ownership or possession of real or personal property located in South Africa.

(4) "Consultant" or "State Consultant" means the investment advisor(s) hired by the council and to whom are delegated divestiture advisory and monitoring duties pursuant to these rules.

(5) "Council" means the Oregon Investment Council.

(6) "Directly Investing" means owning ten percent or more of one or more business entities in either South Africa or Namibia, as identified by the Investor Responsibility Research Center.

(7) "Investment" or "Invest" means the commitment of funds or other assets to a business entity, including a loan or other extension of credit made to that entity, or security given for the other assets to that business entity, or the beneficial ownership or control of a share or interest in that business entity, or of a bond or other debt instrument issued by that business entity.

(8) "Investment Manager Style" means the investment policies and guidelines which are followed by the investment manager with respect to particular investment funds and which were specifically selected or determined by the council or the State Treasurer in creating a balanced investment portfolio.

(9) "Private Investment Manager" means the investment managers employed pursuant to ORS 293.741.

(10) "South Africa" means the Republic of South Africa, any territory under the administration, legal or illegal, of South Africa and the "Bantustans" or "homelands."

(11) "State Moneys" means all moneys, bonds and securities in possession of or collected by any state agency.

(12) "State Trust Fund" means any investment fund that is held in trust by this state.

(13) "Strategic Products or Services" means articles designated as arms, ammunition and implements of war, as defined in the United States **Code of Federal Regulations 22 Part 121**, and data processing equipment and computers sold for military or police use in the Republic of South Africa.

(14) "Subject Investment Funds" means:

(a) The Public Employees' Retirement Fund described in ORS 237.271;

(b) The Industrial Accident Fund described in ORS 656.632

(c) The Common School Fund;

(d) The Oregon War Veterans' Fund;

(e) Investment funds of the State Board of Higher Education lawfully available for investments or reinvestments by the Oregon Investment Council or State Treasurer; or

(f) Any funds in the custody of the Oregon Investment Council or State Treasurer that are not required to meet short-term demands.

[ED. NOTE: The publication referenced in this rule is not printed in the OAR Compilation. Copies are available from the State Treasurer.]

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f & cert. ef 1-7-88

171-010-0010

Review of State Investment Policies

In consultation with the Oregon Investment Council, the State Treasurer shall conduct an ongoing review of the investment policies of the state to determine consistency with the legislative policy, findings and provisions of the Oregon Anti-Apartheid Act of 1987.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f. & cert. ef 1-7-88

171-010-0015

Phase I — Divestiture Program

On and after July 1, 1987, all investors of state trust funds and state moneys are prohibited from:

(1) Making any new loans, extending new credit or making any other new investment in South Africa or in Namibia;

(2) Financially contributing to the development of technology for research, development or production of new South African or Namibian energy resources or strategic products or services;

(3) Making any deposits in South African or Namibian banks;

(4) Knowingly maintaining deposits in banks continuing to lend directly to business entities owned by or headquartered in South Africa or in Namibia;

(5) Knowingly maintaining deposits in banks continuing to lend directly to the government of South Africa or Namibia; or

(6) Having investments in any business entity owned wholly or in part, by the government of South Africa or of Namibia.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f & cert. ef 1-7-88

171-010-0020

Phase II — Divestiture Program

On and after February 15, 1988, and continuing thereafter until February 15, 1992, in Phase II of the divestiture program:

(1) The State Treasurer shall make every reasonable effort to evaluate all investments of subject investment funds. In cooperation with the State Treasurer, the Oregon Investment Council shall report regularly to the governing bodies of the subject investment funds of those funds invested in business entities found not to comply with the policy, findings and provisions of the Oregon Anti-Apartheid Act of 1987.

(2) The Oregon Investment Council orders divestiture and directs the State Treasurer to proceed in an orderly, prudent manner, in accordance with ORS 293.721 and 293.726, to divest funds in stocks and bonds in United States business entities directly investing in South Africa and in Namibia owned by the State of Oregon on or after December 31, 1987. On or after February 15, 1988, there shall be no new investment in such stocks or bonds unless the State Treasurer determines in the particular instance that, given the duties of ORS 293.721 and 293.726, there is no acceptable alternative investment and expressly authorizes the new investment.

(3) Pursuant to section (2) of this rule, the council and the State Treasurer shall endeavor to divest annually a minimum of 1/4 of the value of investments ultimately to be divested and owned by the State of Oregon on or after December 31, 1987.

(4) In order to effect an orderly and prudent divestment in accordance with the Oregon Anti-Apartheid Act of 1987, investments in stocks and bonds in United States business entities directly investing in South Africa and Namibia shall be divested as soon as it may be accomplished pursuant to the following policies and procedures:

(a) Policies Divestment shall be:

(A) Without monetary loss of the original investment amount;

(B) Done prudently, i.e. in an investment of comparable safety;

(C) At comparable rates or comparable anticipated return;

(D) Accomplished consistent with the investment manager's investment style.

(b) Procedures:

(A) Every month, commencing January 15, 1988, the State Treasurer shall provide to state and private investment managers an updated list of business entities with direct investments in South Africa and Namibia monthly based on the current Investor Responsibility Research Center (IRRC) list pursuant to the provisions of the Oregon Anti-Apartheid Act of 1987;

(B) Every three months, commencing January 15, 1988, each state and private investment manager shall identify, from the current IRRC list provided pursuant to the provisions of paragraph (A) of this subsection and consistent with the divestment policies of these rules, which stocks and bonds on the IRRC list may be

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replaced with stocks and bonds not on the list;

(C) Upon receipt of the investment manager's list described in paragraph (B) of this subsection the State Treasurer shall cause the state's consultant(s) to review the submitted lists and report to the State Treasurer concerning compliance with these rules;

(D) Upon receipt of the report of the state consultant(s) provided pursuant to paragraph (C) of this subsection, the State Treasurer shall provide to each state and private investment manager a list of restricted stocks and bonds to be divested from that manager's portfolio;

(E) The restricted list provided in paragraph (A) of this subsection shall be reviewed and revised by the State Treasurer as necessary. Copies of the restricted list shall be provided to members of the council.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f & cert. ef. 1-7-88

171-010-0025

Documentation — Quarterly Reports

(1) For the period January 1, 1988 and ending March 31, 1988, and for each calendar quarter thereafter, each investment manager shall provide the State Treasurer through the state's consultant(s) within 20 working days written documentation setting forth why, in the professional judgment of the private investment manager, it is:

(a) Imprudent to divest a stock or bond held for the state of Oregon and which has been listed pursuant to OAR 171-010-0020(4)(b)(A);

(b) It is more prudent to purchase a stock or bond listed pursuant to OAR 171-010-0020(4)(b)(A).

(2) Documentation shall identify:

(a) The stock or bond listed in OAR 171-10-020(4)(b)(A);

(b) Which particular alternative stocks or bonds were considered and the reason(s) they were rejected consistent with the divestment policy described in these rules;

(c) When it is anticipated the stock or bond may be prudently divested.

(3) The consultant(s) shall submit a consolidated report in a manner directed by the State Treasurer not later than 60 days from the ending date of the calendar quarter being reported.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f. & cert. ef. 1-7-88

171-010-0030

Delegation

The State Treasurer may delegate to the state's consultant(s) or any private investment manager or subject money manager in the State Treasurer's office specific advisory and monitoring responsibilities as may be required to implement the Oregon Anti-Apartheid Act of 1987 on behalf of the council.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f. & cert. ef 1-7-88

171-010-0035

Annual Report

(1) As long as the Oregon Investment Council holds investments in stocks and bonds in United States business entities directly investing in South Africa or in Namibia, the council and the State Treasurer shall file an annual report with the Governor and the Legislative Assembly by January 15 of each year, specifying:

(a) The name of the issuer of the stocks, bonds, securities and other evidence of indebtedness;

(b) The cost and market value of the stock or book value of the investment;

(c) The amount, yield and maturity date of any bond investment;

(d) The operations of the business entity in South Africa or in Namibia, or with the government of South Africa.

(2) The State Treasurer shall include in the report required in section (1) of this rule the actual rate of divestiture as compared with the goal stated in OAR 171-010-0020(3) of these divestiture rules with an explanation if the rate does not equal or exceed the

minimum rate described in OAR 171-010-0020(3).

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f. & cert. ef 1-7-88

171-010-0040

Public Hearing

After conducting a public hearing, pursuant to Section 9 of Chapter 193 of the 1987 Oregon Laws (House Bill 2001) (ORS 293.830 - 293.870), not later than January 15, 1989, the council and the State Treasurer shall report to the Governor and Legislative Assembly on any state investments in any business entity or business arrangements in South Africa or in Namibia, including but not limited to international and foreign companies, and make recommendations on policies and procedures for prudent divestment.

Stat. Auth.: ORS Ch. 293

Hist.: OIC 1-1988, f. & cert. ef 1-7-88

171-010-0045

Fiduciary Responsibility

Nothing in these divestiture rules is intended to abrogate the fiduciary responsibilities of the State Treasurer as stated in ORS 293.721 and 293.726.

Stat. Auth. ORS Ch. 293

Hist.: OIC;-1988, f & cert. ef 1-7-88