

**41.474 Maintenance of list of all financial companies engaged in energy company boycotts -- Communication with financial company regarding divestment or sale of publicly traded securities -- Divestment delay -- Exemptions.**

- (1) (a) The Treasurer shall prepare and maintain, and provide to each state governmental entity through publication on the Treasurer's official Web site, a list of all financial companies that, to the Treasurer's knowledge, have engaged in energy company boycotts. In maintaining the list, the Treasurer may:
    1. Review and rely, as appropriate in the Treasurer's judgment, on all available information regarding financial companies, including information provided by the Commonwealth, nonprofit organizations, research firms, international organizations, governmental entities, or other organizations in the business of providing information relevant for investments; and
    2. Request written verification from a financial company that it does not engage in energy company boycotts and rely on, as appropriate in the Treasurer's judgment and without conducting further investigation, research, or inquiry, a financial company's written response to the request.
  - (b) A financial company that fails to provide to the Treasurer a written verification under paragraph (a)2. of this subsection within sixty (60) days of receiving the request from the Treasurer is presumed to be engaging in energy company boycotts.
  - (c) The Treasurer shall update the list required in paragraph (a) of this subsection annually or more often as the Treasurer considers necessary based on information from, among other sources, those listed in paragraph (a) of this subsection.
  - (d) Within thirty (30) days of the date the list of financial companies that engage in energy company boycotts is first provided or updated, the Treasurer shall file the list with the Legislative Research Commission and the Attorney General and post the list on a publicly available Internet Web site.
- (2) Within thirty (30) days of a state governmental entity receiving the list provided under subsection (1)(a) of this section, the state governmental entity shall notify the Treasurer of the listed financial companies in which the state governmental entity owns direct or indirect holdings. Receipt of the list by the state governmental entity shall be presumed upon the publication of the list on the Treasurer's official Web site.
- (3) (a) For each listed financial company identified under subsection (2) of this section, the state governmental entity shall send a written notice:
    1. Informing the financial company of its status as a listed financial company;
    2. Warning the financial company that it may become subject to divestment by state governmental entities after the expiration of the

period described by paragraph (b) of this subsection; and

3. Offering the financial company the opportunity to clarify its activities related to companies that are engaged in energy company boycotts.
- (b) Within ninety (90) days of the financial company receiving notice under paragraph (a) of this subsection, the financial company must cease engaging in energy company boycotts in order to avoid becoming subject to divestment by state governmental entities.
  - (c) If, during the time provided by paragraph (b) of this subsection, the financial company ceases engaging in energy company boycotts, and the Treasurer is made aware of the cessation, the Treasurer shall remove the financial company from the list maintained under subsection (1)(a) of this subsection, and this section and KRS 41.472 and 41.476 shall no longer apply to the financial company unless it resumes engaging in energy company boycotts.
  - (d) If, after the time provided by paragraph (b) of this subsection expires, the financial company continues to engage in energy company boycotts, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company, except securities described in subsection (5) of this section, according to the schedule provided in subsection (4) of this section.
- (4)
    - (a) A state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of a listed financial company within one (1) year of the expiration of the time period provided in subsection (3)(b) of this section.
    - (b) If a financial company that ceased engaging in energy company boycotts after receiving notice under subsection (3) of this section resumes its boycott, the state governmental entity shall send a written notice to the financial company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the financial company according to the schedule in paragraph (a) of this subsection.
    - (c) A state governmental entity may delay the schedule for divestment under paragraph (a) of this subsection only to the extent that the state governmental entity determines, in the state governmental entity's good-faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed financial companies will likely result in a loss in value or a benchmark deviation described in subsection (6) of this section.
    - (d) If a state governmental entity delays the schedule for divestment under paragraph (c) of this subsection, the state governmental entity shall submit a report within thirty (30) days of the decision to the Treasurer, the Legislative Research Commission, and the Attorney General stating the reasons and justification for the state governmental entity's delay in divestment from listed financial companies. The report shall include documentation, including objective numerical estimates, supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by subsection (6) of this section.

- (5) A state governmental entity shall not be required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit the list of all financial companies that have engaged in energy company boycotts to each investment fund manager and request that if any of those companies are present within their funds, they remove those financial companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed financial companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the four hundred fifty (450) days after the date the fund is created.
- (6) (a) A state governmental entity may cease divesting from one (1) or more listed financial companies only if reasonable evidence shows that:
1. The state governmental entity has suffered or will suffer a material financial loss as a result of having to divest from listed financial companies under this section; or
  2. An individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed financial companies under this section.
- (b) A state governmental entity may cease divesting from a listed financial company as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by paragraph (a) of this subsection.
- (c) Before a state governmental entity may cease divesting from a listed financial company under this section, the state governmental entity shall provide a written report to the Treasurer, the Legislative Research Commission, and the Attorney General setting forth the reason and justification, supported by reasonable evidence, for deciding to cease divestment or to remain invested in a listed financial company.
- (d) This section shall not apply to reinvestment in a financial company that is no longer a listed financial company under subsection (1) of this section.

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