Should Universities and Pension Funds Divest from Fossil Fuel Stocks?

By Gregg Badichek*

Event Coverage from the "Should Universities and Pension Funds Divest from Fossil Fuel Stocks?" Forum, held at Columbia University on November 24, 2014.

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I. INTRODUCTION

The campaign encouraging shareholding entities to divest their holdings and funds from the stocks of fossil fuel companies has grown from a loosely affiliated grassroots confederation into a national—arguably global—movement deserving of major media coverage. It targets universities, pension funds, foundations, and religious institutions, among other groups. In the realm of university campaigns, students and occasionally alumni typically aim to pressure the school's fiduciaries to divest for political or moral reasons.

There exist no illusions amongst divestment campaign members that this tactic will harm the bottom line of any fossil fuel companies—quite the contrary. Divestment is conceived as a largely political tool whose practical consequences mostly derive from the message it creates: that investment in certain companies is an unacceptable endorsement of the social ills to which those companies may ultimately contribute.

Certainly some criticism of fossil fuel divestment emanates from those who deny the realities of climate change and its predicted impacts upon future generations. However, most

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attention paid toward critical opinions, particularly in scholarly fora, rightly focuses on those who reasonably advise that divestment is not the appropriate tool with which these shareholding institutions should oppose the activities of fossil fuel companies—let alone combat climate change. I describe this detraction in fond light because those critics speak, ultimately, in solidarity with divestment campaigns: they too acknowledge the dangers of climate change; they too oppose certain destructive and illegal practices some businesses use; they too recognize the power that economic statements can lend in pursuit of a greater goal. To simplify, it is merely in the approach that these critics differ with divestment supporters.

It is against this background that the Sabin Center for Climate Change Law at Columbia University hosted a panel at Columbia Law School on Monday, November 24, 2014. The event, moderated by Professor Michael Gerrard, a renowned environmental lawyer and Director of the Sabin Center, featured both proponents and opponents of divestment. The guiding question was deceptively simple, and served as the event's title: Should Universities and Pension Funds Divest from Fossil Fuel Stocks? Ancillary issues were likewise prominent, such as whether divestment is consistent with the fiduciary duties of trustees; whether divestment is the best way for investors to influence corporate behavior; the effects of divestment on portfolio value; and the tactic's place in the corporate social responsibility movement.

"Almost every week there is a new study showing that global temperatures are on a dangerous trajectory," opened Professor Gerrard, "and that during the lifetimes of today's university students, catastrophic climate change is likely." He then briefly recounted the scientific consensus as to the role of greenhouse gas emissions, caused mostly by the burning of fossil fuels, in anthropogenic climate change, as well as a summary history of the divestment movement described above.

He oriented the explanation towards universities. "Columbia University has not taken a position on this issue, but it is actively considering what position to take," he explained, before pointing out the presence of Lee Bollinger, President of Columbia University, in the audience. He also summarized the activities of Barnard Columbia Divest, a student group founded in November of 2012, which presses the university for greater

transparency in their investment policies and practices, and, of course, pushes for divestment from the fossil fuel industry.

Though the panel was not intended as a formal mechanism to assist Columbia University in selecting a position in the divestment debate, Professor Gerrard expressed his hopes that it would help universities and other organizations considering fossil fuel divestment to arrive at a well-reasoned conclusion.

II. THE PANEL

The speakers brought sharply diverging views on the question of divestment, views that cross the spectrum from total divestment on one end, shareholder activism and partial divestment towards the center, and total shareholder activism on the other end. They presented their positions in turn before Professor Gerrard and the audience posed questions.

Stephen Heintz, President of the Rockefeller Brothers Fund, spoke first. The Fund received widespread media attention in October 2014 when it announced its decision to divest from certain energy stocks. Mr. Heintz emphasized the sheer complexity of the decision and the importance of discussion in appreciating investment realities. The Fund is no stranger to challenging political issues, but how did it settle upon divesting from fossil fuels?

"We would have to ask the question, 'What are we doing with the other 95% of our financial assets?'" said Mr. Heintz, regarding the 95% foundations are not legally obliged to donate annually. Of course the Foundation must ensure that return on those assets are significant enough that it could exist and remain committed to philanthropy in perpetuity. This led to the question of how the Foundation could use its financial assets as tools for progress in their own right. Mr. Heintz explained that the Fund began to explore shareholder activism, which he terms "mission aligned investing." More specifically, the Fund searched for a reliable sustainable investment platform. With this guideline, the Fund was able to develop an infrastructure through which to manage its investments sustainably and responsibly. In February 2014, Mr. Heintz continued, the conversation shifted to divestment.

The Fund decided upon divestment for two reasons. First, "the moral reason," as the Fund believes divestment aligns with its mission. Second, "the economic reason," which focuses

upon the scientific prediction that "around 60 to 80% of all the known fossil fuel reserves that are owned by the major fossil fuel companies today simply have to stay in the ground if we are going to keep this planet from warming up to 2 degrees Celsius above pre-industrial levels."

He then summarized another goal: "We are going to take our time in this process to do it right to demonstrate that you can divest and still meet your other economic and financial goals, which in our case is to maintain the purchasing power parity of our current assets."

Christianna Wood, the Chairperson of the Board of the Global Reporting Initiative, who has over thirty years of experience managing institutional capital on a global basis in traditional and alternative asset classes, spoke second.

Ms. Wood's response to the fundamental question: "Absolutely not. Pension funds and universities should not divest." Ms. Wood believes we must act on climate change, "soon and decisively and collectively as a global community," but that divestment is not the appropriate tool to underwrite that action. She laid out ten concrete reasons to support her conclusion, ranging from skepticism of research supporting divestment and the tactic's the historical effectiveness, to strategic considerations, such as divestment's potential damage to portfolios despite none inflicted upon a company's bottom line. Ms. Wood emphasized "perhaps the most important" of her points: that divestment leaves one unable to employ the means for change that we know work, such as shareholder activism and company engagement. Rather, she predicts that in the next few decades, we have an opportunity to achieve environmental accomplishments similar to shareholder activist achievements in recent years. She also warned of the dangers of university boards allowing portfolios to become instruments for social statements, which include the likelihood that activist groups would demand, ad infinitum, divestment from companies supporting causes they disagreed with. "We need to act as owners and as voices for civil society," she concluded.

Bruce Kahn, a Portfolio Manager with Sustainable Insight Capital Management, did not offer a position on fossil fuel divestment, but rather a neutral perspective on the consequences, positive and negative, of choosing to take this action. "What I want you to understand," he explained, "is if

you do take an action, what are the ramifications?" Dr. Kahn structured his answer by presenting in turn four integral sub-issues, and how they relate to the hypothetical divester's choice.

First, how is fossil fuel-free defined? Dr. Kahn offered three potential categories of fossil fuel companies from which divestment would occur for analysis: core (the fossil fuel extraction companies), extended (core companies along with dependent companies, e.g. electric utilities), and the "go fossil fuel free" concept (the Carbon Tracker 200[1]). These would allow the divester to identify the assets in his or her portfolio that would ultimately be excluded.

Second, what is the most suitable benchmark against which to measure returns on the investment? This is important, Dr. Kahn explained, because return differentials for a given portfolio will be vastly different when compared with different benchmarks. The divester would need to select a benchmark that suitably reflects his or her particularized goals.

Third, what are the sources of financial returns? The divester would need to evaluate these sources as well as the resulting risks. This leads fluidly to the final question: what are the intentional and unintentional risks involved? The divester must earnestly scrutinize the economic risks posed by the three inquiries above—as well as in investment tactics generally—in order to make an informed decision.

Bennett Freeman, Senior Vice President for Sustainability Research and Policy at Calvert Investments, spoke last. His perspective straddled the middle ground. His outlook, couched in line with Calvert's perspective: "We can help to change and improve the world, we can help to promote corporate responsibility and sustainability through the power of investment."

Mr. Freeman believes that climate change "represents both a global sustainability crisis but also a global investment opportunity." This dynamic contributes to the intricate questions surrounding fossil fuel divestment; such staying

1. This refers to the top 200 listed companies by estimated carbon reserves. *See* MARK CAMPANALE & JEREMY LEGGETT, UNBURNABLE CARBON: ARE THE WORLD'S FINANCIAL MARKETS CARRYING A CARBON BUBBLE? (2012), http://www.carbontracker.org/wp-content/uploads/2014/09/Unburnable-Carbon-Full-rev2-1.pdf [http://perma.cc/953B-YFLH].

quandaries, he explained, did not exist for the human rights atrocities that yielded widespread divestment in the past. He then attempted to characterize each of three approaches one can take towards the divestment proposition.

First, divestment itself. While a valid investment decision that may lead to, or reduce, some degree of risk in portfolio discussion, divestment is a clear political statement rather than an economic tool per se. But that, he said, is completely fine, since political messaging is the point of divestment. In that context, divestment can help to sharpen focus on integral issues, but it likely will not immediately result in the desired change.

Second, active ownership through engagement. Here, Mr. Freeman agreed with Ms. Wood that shareholder activism, when guided by a strong mission and intelligent investing, can immediately and effectively result in company compliance with the shareholder's social goals. This allows the shareholder to "go right after them" and steer their investments towards a societal, rather than merely individual, good.

Finally, the prevailing norm approach: to own fossil fuel stocks and do nothing with them. "We have to disrupt and overturn and destroy that norm," Mr. Freeman declared, as it is "absolutely unacceptable to sit on the sidelines and do nothing while the planet burns." Of utmost importance to Calvert is disposing of this norm and inspiring all parties—including investors, governments, and institutions like universities—to take meaningful action on climate change.

III. QUESTIONS

At the conclusion of these presentations, Professor Gerrard posed questions to specific panelists. Among them was a question about "stranded assets," which refers to the idea that governments will eventually place an injunction on further extraction in order to prevent further greenhouse gas emissions, directed toward Ms. Wood. She posited that the stock market itself will begin to reflect this stranding prior to governmental action, and cautioned that, in light of potential asset control, fossil fuel companies must not be ostracized from the ultimate solutions to climate change, but rather integrated into them.

Mr. Heintz rebutted briefly that Ms. Wood may have been criticizing the divestment approach in a way that trivializes the deep scope of the thinking that goes into divestment. Rather the opposite: divestment is not a total delegation of responsibility but a highly individualized tactic. Ms. Wood replied that the decision depends on the institution, and the asset manager vastly influences the institution's ultimate choice.

Mr. Freeman chimed in: one must recognize that while certain energy companies have the capital to invest in alternative energies, and have taken some steps in that direction, the pressure that investors place on them to do so must increase.

Following a moderated discussion, Professor Gerrard solicited questions from the audience. Karina Jougla, a junior at Columbia College and a member of Barnard Columbia Divest for Climate Justice, directed a question towards Ms. Wood. She recounted the recent actions of certain fossil fuel companies that sharply contrast with the actions necessary to combat climate change—such as funding scientific denial and increasingly expending funds on locating additional reserves—and inquired, "How could shareholder activism," given that it requires quite some time to generate results, "influence the fossil fuel industry in such a way to contribute to a reality 15 years from now in which 80% of their product stays underground to avoid 2 degrees Celsius of warming?"

Ms. Wood responded that, while some environmental accomplishments are slow coming, many have been seminal and immediate, such as through high-momentum legislative action. This comes from collective thinking in society, which results in a prime environment for quick action. Ms. Wood exemplified gay rights as a social need wherein "we never could have predicted five years or ten years ago that we would be where we are today." Therefore, she continued, we should not be afraid to engage companies and legislators individually in pursuit of what will ultimately become collective change.

Dr. Kahn meanwhile suggested that Columbia students utilize the vast resources at their disposal to develop more modular and innovative economic tools towards the end of climate action. Mr. Freeman clarified that shareholder activism can make a difference in addition to several other

approaches, but that it would have little effect on its own; that said, he disagrees with sacrificing active ownership.

IV. CONCLUSION

This author would argue that Professor Gerrard was successful in his ambitions; the panel provided tools, impressions, and perspectives from seasoned economic experts on the relative merits of divestment from fossil fuel stocks on the one hand, and active shareholder engagement on the other. Regardless of the tactic favored by any individual panelist, at least one unifying theme permeated everyone's candor: the time for maximally effective action is running low, and our species' approach to the problem must quickly become collective, committed, and coordinated if we are to stave off the worst of what's being predicted.

The Earth Institute at Columbia University, the Columbia Center on Sustainable Investment, the Environmental Law Clinic of Columbia Law School, and the Environmental Law Society of Columbia Law School co-sponsored the forum, and the David Sive Memorial Fund generously supported it.