

Introduction

The Financial Affairs Committee of the University Senate (“SFAC”) is charged with the responsibility to consider and make recommendations on financial and budgetary policies of the University. Pursuant to that responsibility, SFAC has undertaken to prepare a report to the University Senate with regard to the divestment from NYU’s endowment of any investments in companies participating in the fossil fuel industry. The issues of climate change, the role of the fossil fuel industry, and possible responses to climate change have been matters of public policy discussion and debate. As a result of the significance of the issues and in response to the debate, many universities and other institutional investors have developed policies with regard to this matter.

SFAC developed a charge that it determined would be the basis for its recommendation. That charge consisted of two questions:

1. Is Divestment from the Fossil Fuel Industry an appropriate step for NYU to take in response to climate change?
2. Can fossil fuel divestment be done in a manner that is consistent with the University’s fiduciary obligations?

SFAC created a working group of students, faculty and administrators to address the charge. The working group met through the fall 2014 semester. It held numerous meetings and collected data from a number of internal and external sources, including NYU Divest. The meeting schedule, presentations, and additional material reviewed by the working group has been available to the University community on the wiki:

<https://wikis.nyu.edu/display/DivestmentWorkingGroup/Divestment+Working+Group>

The working group prepared this report, which was reviewed and approved by the SFAC. NYU’s Investment Policy is required by law to be approved by NYU’s Board of Trustees and therefore any recommendation of the Senate arising from this report must be presented to the Board for its consideration.

Is Divestment from the Fossil Fuel Industry an appropriate step for NYU to take in response to climate change?

In order to answer this question, the working group considered NYU’s mission as an institution of higher education. NYU’s mission statement (<http://www.nyu.edu/about.html>) states the following:

“New York University’s mission is to be a top quality international center of scholarship, teaching and research. This involves retaining and attracting outstanding faculty who are leaders in their fields, encouraging them to create

programs that draw outstanding students, and providing an intellectually rich environment. NYU seeks to take academic and cultural advantage of its location and to embrace diversity among faculty, staff and students to ensure a wide range of perspectives, including international perspectives, in the educational experience.

...

Thriving beyond borders and across academic disciplines, NYU has emerged as one of the most networked and extensive worldwide platform for learning, teaching, researching, building knowledge, and inventing new ways to meet humanity's challenges. “

The working group therefore concluded that the University should and does accept the responsibility to “[invent] new ways to meet humanity’s challenges”. As such, NYU has the responsibility to be a thoughtful and public-minded steward of its resources and of the resources beyond its direct control that bear on its mission. However, direct political action or speech by the University has not been part of the NYU mission, other than to create an atmosphere that embraces the diversity of political thought and action, and to encourage its individual exercise by members of the community.

The working group members did not consider themselves to be expert in matters relating to climate change and global warming, the causes thereof, or the role of fossil fuel use or the fossil fuel industry in causing climate change. Furthermore, the charge was not to evaluate or pass judgment on the science of global warming. Nevertheless, the working group accepts that the impacts of global warming are apparent, and the ongoing risk to the environment of continuing growth of carbon emissions into the atmosphere is significant. Therefore, regardless of the underlying reasons for global warming, mitigation of the use of fossil fuels is in our best interest and consistent with the University’s mission.

The working group believes that NYU can have its greatest impact on global warming and sustainability through direct action and through its teaching and research mission.

NYU has built an impressive record of energy conservation, sustainability, and reduced dependence on fossil fuels. Among the accomplishments to date:

- Reduction of CO₂ emissions per square foot and total metric tons of carbon equivalent (mtce) greenhouse gases by 30% since 2006;
- 21% reduction in energy consumption per square foot;
- Increased energy efficiency, reduced cost and reduced mtce emissions due to the new cogeneration plant;
- Use of state of the art energy conservation measures such as room temperature controls, LED lighting, building by building energy audits.

NYU's department of Facilities and Construction Management has set the goal of a 50% reduction in carbon emissions by 2017.

The working group believes that NYU should also support other areas of possible direct action, such as funding for research in development of alternative energy sources and support for entrepreneurial programs that can promote concepts with commercial potential.

However, these actions do not bear directly on the question of divestment. The working group is of the opinion that divestment of fossil fuel companies has been presented as primarily a political statement and as such is not consistent with the University's mission. A direct statement by the University in support of a public policy issue could be interpreted as having a chilling effect on the academic freedom of those in the community who have chosen to research, write, or advocate for a different point of view. The working group also questions whether divestment meaningfully advances the goal of reducing fossil fuel emissions – particularly in comparison to the direct actions discussed above.

The working group recognizes that NYU has in the past undertaken divestment from companies on the basis of public policy issues (genocide in Darfur, apartheid in South Africa) on rare occasions and sought to determine whether fossil fuel divestment is comparable to those situations. The working group proposes the principle that divestment is appropriate in the rare instances when there is a compelling moral or humanitarian objective and that there are few or no alternatives for action by the institution. This principle is admittedly open to interpretation by those who would apply it. Based on application of that principle, a minority of the members of the working group believes that divestment is justified in this instance.

Therefore, the working group has concluded that supporting divestment is primarily a political action or statement that expresses the University's opposition to the fossil fuel industry's role in global warming or climate change - and there is not sufficient justification for such an action or for enactment of a policy of the University. However, the working group is unanimous in its support for continuing direct action by NYU to reduce carbon emissions, improve sustainability, and reduce dependence on fossil fuels.

Can fossil fuel divestment be done in a manner that is consistent with the University's fiduciary obligations?

The working group understands that the University's officers and trustees have a fiduciary responsibility. With regard to the investment of funds, these individuals therefore have the legal duty to act solely in the best interest of the University.

Investment of NYU's funds are governed by the New York Prudent Management of Institutional Funds Act ("NYPMIFA") which provides the fundamental rules for managing and

investing funds held by not-for-profit and other institutions, and the spending of those funds. NYPMIFA states the following standard (often referred to as the “prudent man” standard):

Each person responsible for managing and investing funds “shall manage and invest the fund in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances”.

NYPMIFA also states that the following factors should be taken into consideration in applying the standard:

- General economic conditions;
- The possible effect of inflation or deflation;
- The expected tax consequences, if any;
- The role that each investment or course of action plays within the overall portfolio;
- The expected total return from income and appreciation of investments;
- Other resources of the University;
- The needs of the University and the Endowment to make distributions and to preserve capital;
- An asset’s special relationship or special value, if any, to the charitable purposes of the University.

The University’s Investment Office provided an explanation of how NYU invests its endowment funds. NYU does not directly purchase investment securities, but instead invests with investment managers who are selected for their expertise. NYU selects managers based on many criteria (experience, track record, how manager’s investment style fits within overall portfolio). As is the norm in the investment management industry, managers do not take specific direction from clients on which investments to make or not make.

Investment managers usually use a fund or partnership structure in which its investors own a share of the manager’s entire portfolio (a “comingled account”). Some managers operate with a different model and create individual accounts for each investor so that the securities are held in the name of NYU, not the manager.

NYU Divest provided a list of fossil fuel companies from which it asked NYU to divest (the “fossil fuel 200”). As of December, 2014 NYU’s endowment market value was approximately \$3.4 billion. The Investment Office reported to the working group that \$139 million, or 7 percent, of the endowment was comprised of investments in fossil fuel 200 companies. Of that amount, approximately \$700,000, or two-hundredths of one percent, was in manager accounts held in NYU’s own name.

In order to divest of securities held in comingled accounts, NYU would have to redeem their total investment with the managers since those managers cannot customize individual portfolios. The Investment Office reported that divesting of fossil fuel 200 company securities would therefore require that NYU “fire” 39 managers who collectively manage 38% of the endowment (about \$1.3 billion). The working group unanimously agreed that redeeming and reinvesting 38% of the endowment portfolio to accomplish divestment of \$139 million of securities would not be prudent.

In order to divest of stocks in individual accounts, NYU could notify managers to not hold such stocks in our named accounts (although managers would arguably still buy such stocks for other clients’ accounts if they so chose). The Investment Office opined that such a move could be accomplished without requiring a total redemption from these managers and would incur no harm to NYU. A minority of the working group concluded that such a move would be acceptable.

Based on these considerations, the working group unanimously agrees that it is not prudent to divest of investments in the fossil fuel 200 from comingled accounts. A minority of working group members do consider it prudent to divest of investments in the fossil fuel 200 in individually named accounts.

Working Group Members:

David Backus	T/TT Faculty Senators Council (Stern)
Jamie Skye Bianco	FT NTT Contract Faculty Senators Council (Steinhardt)
John De Santis	Administrative Management Council (Faculty of Arts and Sciences)
Martin Dorph	University Administration (Financial Affairs)
Magnolia E Jorge	Student Senators Council (Silver)
Tommy Lee	FT NTT Faculty Senators Council (Engineering)
Keagan Sakai-Kawada	Student Senators Council (Liberal Studies)
Daniel L Smith	T/TT Faculty Senators Council (Wagner)