

**Testimony before the Hawaii State Senate
Committee on Judiciary and Labor
For Senate Bill 2155**

January 29, 2016

Stuart Scott, Honolulu Resident since 1987

Dear Senators:

Let me mention some of my credentials to be giving testimony on this proposed legislative guidance to the Hawaii State Employee Retirement System (ERS). I was a Merrill Lynch stockbroker in the mid-1970s, and the first *environmentalist stockbroker* on Wall Street to my knowledge. From 2002 until 2008 I was a college instructor of mathematics, statistics and critical thinking here in Honolulu. However, I literally quit my day job in 2008 to work full time on the immense disconnect between policy and public perception on the one hand, and both science and observable reality on the other hand, on the urgent matter of climate change.

I will today address only the financial advisability of fossil fuel divestment, and not the scientific imperative if we are to avoid catastrophic climate change. But to fully appreciate the inadvisability of continuing to hold fossil fuel securities we have to start at the level of a global political agreement reached in December of last year in Paris, France under the UN climate negotiations called COP-21.

The Paris Accord was a consensus of all nations on Earth, essentially an agreement to stop using all fossil fuels by 2050, or sooner if possible. This puts a very clear definition on the future prospects of the energy sector: as investments they are headed down.

There is such a huge amount of testimony I could make here, and time is so limited, that I will focus the words of others who are far more expert than myself, in order to establish the *clear downward trend* in fossil fuel securities. In this manner I hope to establish incontrovertibly that these securities are a *bad investment* in both the short and long term, and it is the fiduciary duty of the ERS to divest the portfolio of these securities in an orderly but expeditious manner.

Let's distinguish between speculative trading and long term investing. In the former it is possible to make a profit on an *uptick* in an overall down market. In the latter, it is just simply unwise to hold securities in an industry that you are relatively certain is in a downward trend.

The Paris Agreement virtually ensures the stranding of a huge proportion of assets. For validation of this statement we can look to Mark Carney, Governor of the Bank of England, who has stated (in the context of climate change) that "the vast majority of fossil fuel stocks are unburnable." This will lead to the *stranding* of as much as 80% of

all the fossil fuel reserves owned by corporations and nations. The 80% figure has arisen from statements made by Fatih Birol, Executive Director of the International Energy Agency (IEA). The Bank of England itself is conducting an inquiry into the risk that the currently inflated value of fossil fuel assets pose to the stability of the entire financial system. Financial professionals describe this threat as 'the Carbon Bubble.'

Bank of England's deputy head of supervision for banks and insurance companies, Paul Fisher, warned recently, "As the world increasingly limits carbon emissions, and moves to alternative energy sources, investments in fossil fuels may take a huge hit." This is what happens when financial bubbles burst.

The president of the World Bank, Jim Yong Kim, urges: "Be the first mover. Use smart due diligence. Rethink what fiduciary responsibility means in this changing world. It's simple self-interest. Every company, investor and bank that screens new and existing investments for climate risk is simply being pragmatic."

I am personally acquainted with another Wall Street professional by the name of Bevis Longstreth. A summary of his relevant credentials is as follows:

- 60th Commissioner of the SEC, appointed twice by President Ronald Reagan,
- Served from 1981 to 1984,
- Former member of the Board of Governors of the American Stock Exchange,
- Former trustee of College Retirement Equities Fund (CREF),
- For many years he served on the Pension Finance Committee of The World Bank.

Below you will find a recent article from Mr. Longstreth. I will submit this to the record for the consideration of the committee concerning the financial risks of continuing to hold fossil fuel securities.

I have been in touch with Mr. Longstreth in the past couple of days to see if he is willing to speak with members of the committee on this matter, and he indicated he would be glad to.

So why is there such reticence from the financial industry itself to fossil fuel divestment?

To answer this question I will dip back into personal experience on Wall Street. While a broker I observed times when stocks were being touted to Merrill Lynch's retail clients when big investors were liquidating positions in those same stocks. We know this happens. It was the shame, if not the convicted crime, of Goldman Sachs that they were selling securities in the lead up to the 2008-9 financial meltdown and were simultaneously betting against those same securities with huge bets that contributed to the near collapse of AIG.

If one has any doubts about the tendency of Wall Street professionals to be all too cozy with the companies whose stocks they sell, and the complicity of the ratings agencies like Moody's and Standard & Poors to cover known risks with Aaa ratings, one need

only go see the currently released film called 'The Big Short.' It is a factual movie with fictionalized versions of real people. The documentary 'The Inside Job' done a few years ago establishes the same points. That was the 'Housing Bubble'. This is the 'Carbon Bubble.' The principles are the same.

There is a so-called 'conventional wisdom' in portfolio management that a diverse portfolio is less subject to the risks of individual sectors within the portfolio. But in this case, it is *conventional* but not *wisdom* when a particular sector is known to be in a pattern of long term decline, exhibiting much exacerbated decline in the recent 3 years. I have no doubts whatsoever that the *smart money* is unloading their fossil fuel investments already. But the fund managers and rating agencies need to maintain confidence in this sector for an 'orderly market' (manipulated) into which the *smart money* can sell their holdings.

This process is virtually the same process that accompanies many if not most IPOs (Initial Public Offerings), when the market makers will use tried and true techniques to support the price of a stock that has been somewhat arbitrarily arrived at (based upon sales projections). The public will gobble up shares while the insiders are selling their holdings into that demand. All legal. All deceptive and unethical manipulation of the public.

When investment banking and asset management are both performed by the same Wall Street entities, the situation is ripe for conflicts of interest. The investment banking business is extremely profitable, and so there is constant pressure to *do right* by the individuals and companies that place business with the bank, where 'doing right by' means supporting them in their portfolio management departments. This tendency has existed for decades and has only become worse with successive moves to deregulate the financial industry.

I hope my testimony has been helpful and that members of the Senate Judiciary and Labor Committee will approve SB2155 over the objections of the management of the ERS, passing it on to the Ways & Means Committee.

I am available to discuss these matters with the Committee and any of its members who may so desire. I can be reached at 808-392-5188.

I would also like the opportunity to arrange a conference with Bevis Longstreth at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Stuart Scott". The signature is written in black ink and is positioned above the printed name.

Stuart Scott

Attachment

The Compelling Case for Divestment



Bevis Longstreth, JD

In Cancun, Mexico, at the 2010 United Nations Climate Change Conference, nations of the world set 3.6°F as the permissible increase in global average temperature over the preindustrial level. An increase beyond that would be a catastrophe. Since Cancun, the dangers of climate change have grown, become palpable in myriad ways, and become commonplace in the daily press. And, yet, nations have made little progress. In fact, having put the car in reverse, they are accelerating in the wrong direction. Thus, the International Energy Agency (IEA) reports that our current trend-line will take the planet by 2050 to 7°F higher than the preindustrial average, twice the level set in Cancun. Carbon emissions increased by 1.5% per year from 1980 to 2000. But then, that rate almost doubled to 2.5% per year through 2012. And in 2013, emissions jumped 2.3% to record levels. The IEA recently reported that the cost to decarbonize by 2050 was \$44 trillion, up from \$36 trillion just two years ago, and climbing. The cause? An increase in coal usage that exceeds the increase in renewables.

The planet has already warmed by 1.5°F since the preindustrial era. On our present trajectory, we will exceed the 3.6°F level, reaching as much as 10°F above the preindustrial era by 2100. By then, civilization and its current residence will have become unrecognizable.

So, the planet has a big problem. To help solve that problem, divestment from fossil fuel companies is an important strategy for fiduciaries of all types to pursue. Here's why.

Purpose of Divestment

The argument for divestment clusters around two ideas: financial and moral.

The Financial Reasons

Here the argument focuses on reducing the risk to your portfolio. Today the risks are many and they are growing. Consider a few:

- *The very serious yet hardly recognized risk from “stranded assets,” in particular “unburnable carbon.”* To hold to the global goal of only a 3.6°F increase in average temperature, there is a limit on how much carbon can be emitted by 2050. It’s called the *carbon budget* and it’s reckoned through science. The estimated level is 886 gigatons of CO₂ to be emitted between 2000 and 2050. Subtracting what has been emitted from 2000 to date (121 Gt) leaves 765 Gt left to emit up to 2050. But just the reserves currently on the books of public and private companies equal 2,795 Gt of potential emissions, meaning that proven reserves are well over three times what nations can allow to be emitted up to 2050 in order to remain within the safe standard set at Cancun and avoid the serious risk of planetary catastrophe. So the rest is at risk of being stranded—unburnable—if nations have a Darwinian moment and act, as they must. If this happens, of course, it will mean that current market prices for fossil fuel companies are hugely overvalued.
- *And consider the risk to the \$21 trillion of CAPEX by Big Oil that is planned for expenditure in the near term to develop unconventional oil projects.* Last year the fossil fuel giants spent nearly \$700 billion on developing new oil supplies, a record; yet, despite U.S. fracking, they were able to replace only 4.5 months’ worth of current production.
- *And given the plummeting prices for solar and wind energy, the risk that oil prices will not remain high enough to profit from the sale of newly discovered reserves from unconventional projects, which generally need about \$90 or more per barrel to break even.* Here, the big point—and a fearsome one for fossil fuel giants—is that a dramatic shift in the paradigm of “peak oil” is occurring. As competition from renewables grows more intense, “peak oil” supply may well become “peak oil” demand. And in looking back a decade from now, we may be forced to conclude that demand for oil had already peaked when this paper was being written.

In summary, risk to fossil fuel investments is growing in lock-step with the growth in the cluster of problems facing the fossil fuels complex: faltering productivity, falling profits, poor economics, environmental disasters, and increasing competition from power plants and automobiles running on free fuel.

Automobiles

Changes to autos deserve attention, for there is an incipient revolution emerging with advances in battery design and vehicles powered by electricity or hydrogen. Under its base case scenario, the IEA projects a 33% growth in world primary energy demand up to 2035. Of this increase, over 86% is projected to come from transport. And yet the IEA projects only minimal growth in clean automobiles by 2035. There is a substantial risk that growth in electric and hydrogen-powered vehicles could explode over the next two decades, stranding much of the oil developed to meet the projected needs of transport.

There are growing risks of stranding in the grid power sector. Barclays recently downgraded high-grade corporate bonds across the entire U.S. utility sector, citing the energy threat of solar power and storage. Baseload power sources like coal and nuclear are being replaced by renewables, and in time the grid will become obsolete. In Europe, growth in renewables was the

primary reason the top 20 utilities lost \$600 billion in market value over the past five years. And the same reason E.ON, Germany's largest utility, gave when it announced recently the end to its use of fossil fuels.

As is now well known, the losses in market value experienced by the coal industry over the past three years have been drastic, down 61% against the S&P 500, which was up 47%. And, among other things, coal is the canary in the oil well.

Conventional oil peaked in 2005. Oil and gas production by Chevron, ExxonMobil, and Shell has declined over the past five years, even as they were spending \$500 billion in CAPEX on new projects—that's shareholder wealth likely to vanish down very expensive holes drilled in the earth.

Despite the recent surging flows of tight oil and shale gas in the United States, the country is waking up to the high decline rates experienced by the sources for these products.

Renewable energy supplies at least 23% of global electricity generation today. Its capacity doubled from 2000 to 2012. Solar is now growing at a 30% rate every year and rapidly becoming cost competitive with fossil fuels.

Finally, consider that government subsidies for fossil fuels are some \$600 billion per year, compared to just \$90 billion annually for clean energy—a public perfidy whose days are numbered—a global outrage that will soon end. As it must.

There's an old saw: "How did you go bankrupt? Two ways: slowly at first; then all at once." In financial markets today, too few people consider climate change an investment risk at all. Too many of those who do, consider it merely a tail risk, remote and barely worth noting. But change in energy is coming at a gallop. It has happened before. Consider, not long ago, when we used whales for light; horses for power; coal for steam to drive locomotion; coal again for electricity; and incandescent bulbs for light. We need to disenthral ourselves from old business models and listen to the wise and well informed. Sheikh Zaki Yamani, Saudi Arabia's powerful minister of oil from 1962 to 1986, famously said, "The Stone Age didn't end because we ran out of stones, and the age of oil won't end because we run out of oil." Or as Johannes Mauritzen from the NHH Norwegian School of Economics wrote in the *Financial Times* on January 10, 2015, of the threat to electric cars from falling oil prices: "When automobiles first emerged at the beginning of the last century, their eventual success had little to do with the price of hay. The success of electric cars is unlikely to be dependent on the price of oil."

Or listen to Lord Browne, former head of BP and one of the energy world's most influential voices, who, speaking at a London seminar on November 19, 2014, said that "energy and mining groups are ignoring an 'existential threat' that climate change poses to their industry and need to make big changes to the way they operate." (*Financial Times*, November 20, 2014, 13.)

Or Amory B. Lovins, co-founder and chief scientist of the Rocky Mountain Institute, who, at the Oslo Energy Forum in February 2015, put slides on the screen showing the New York Easter Parade on Fifth Avenue in 1900 and again in 1913. In the first, the Avenue is filled with horse-

drawn carriages. In the second, the Avenue is filled with cars, with not a horse in sight. One picture is worth a thousand words.

Sometimes a snapshot can capture something so obvious we can't see it—the old quip about not seeing the forest for the trees. Consider Transocean, one of the world's largest drilling contractors. Falling oil prices are hurting its deepwater drilling business because offshore oil has some of the highest production costs of all oil deposits. Transocean's shares have lost 46% over the past 12 months. Here's the snapshot: Transocean says its future lies in what's called “ultra-deep water.” Its new rigs are equipped to operate in 10,000 feet of water, and drill wells 40,000 feet below sea level. That's close to eight miles down. Contrast finding and lifting carbon-laden oil from such a distance with capturing free and clean energy from sources like wind and sun. Aren't we insane? Which business would prudence and foresight lead a fiduciary to invest in?

The Moral Imperative

The moral argument is particularly pertinent to educational institutions and public pension funds, each so importantly affected with the public interest.

Given the gargantuan existential risk of climate change to the planet, those in positions of leadership who fail to take reasonable steps to stop carbon emissions from rising are the moral equivalent of those who deny the science and brush away the problem—as Galileo did by recanting to save his life. Divestment is a reasonable step for pension trustees to take.

What does divestment accomplish? It avoids the ugly scene of trustees seeking to profit from carbon emissions through the selling and burning of fossil fuel reserves and especially through the massive use of shareholder funds to search for more fossil fuels to sell and burn. Such behavior violates the most basic norms of a civilized society.

I've tried to imagine how Homer, the great story-teller, would have described Big Oil. You'll have your own answer. Here's mine: the lung-choking, ocean-poisoning, species-sickening pitiless scourge of humanity.

Divestment by any group, but particularly by those responsible for educational institutions and public pension funds, helps to stigmatize the oil, gas, and coal giants as repugnant social pariahs and rogue political forces bent on profit at whatever cost to the planet and its people. That is, the pitiless scourges of humanity.

Don't underestimate the power of being able to create pariahs. These companies fear stigmatization. It hurts in hiring, employee morale and motivation, customer attitudes, shareholder satisfaction, and equity valuations. And it hurts when leaders of these companies go home to face their children and grandchildren.

Most energy and mining group leaders remain in denial about the existential risk to their businesses from climate change. But increasingly, shining exceptions can be found. Consider the following statement from David Crane, CEO of NRG, a leading electricity business that uses coal and other fossil-fueled power plants. In announcing NRG's goal of reducing carbon

emissions 50% by 2030 and 90% by 2050, he said, “If divestment from fossil fuel companies becomes the issue that preoccupies college campuses around America for the next decade, I don’t relish the idea that year after year we’re going to be graduating a couple million kids from college, who are going to be American consumers for the next 60 or 70 years, that come out of college with a distaste or disdain for companies like mine.” (*New York Times*, November 21, 2014, B3.)

Does Big Oil deserve stigmatization? Consider, for example, the ExxonMobil and Shell reports to shareholders on stranding. Despite each company’s acceptance of the science, they smack their gauntlets across the collective face of humanity by asserting that no government restrictions will restrain them. Here, for example, is ExxonMobil’s statement:

We are confident that none of our hydrocarbon reserves are now or will become stranded. . . . Further, the company does not believe current investments in new reserves [which it intends to discover and develop in quantities at least equal to current proven reserves] are exposed to the risk of stranded assets, given the rising global need for energy. . . .

As the Carbon Tracker Initiative observes in its rebuttal to the ExxonMobil report, that company does not consider a low-carbon scenario in its investment planning, which is proceeding on a “business as usual” basis. Its projections are, without doubt, incompatible with meeting the goal of a 3.6°F maximum increase. Studies show that the company’s projections correspond with the IPCC’s RCP 8.5°F scenario, putting the planet on a pathway to about a 7°F increase from the preindustrial era by 2050.

In its annual *Energy Outlook* report, released in February 2015, BP models its “most likely” energy scenarios down to 2035. In predicting an increase in fossil fuel use of 33% over this 20-year period, BP generally follows the lead of reports by Exxon and Shell. These companies now acknowledge that climate change is occurring and is principally caused by the burning of fossil fuels. They further acknowledge, expressly or implicitly, that their “most likely” growth predictions for fossil fuel use put the planet on an IEA trajectory to multiples above the 3.6°F limit. Yet, they mention not a word about the multiple catastrophes that will, according to the science they now accept, afflict the planet if their predictions come to pass. In its report, Exxon said, “We don’t model global average temperature impacts.” Nor do they offer solutions. Here one finds a dramatic example of cognitive dissonance, one that, beyond culture, can perhaps best be explained as the blind and single-minded pursuit of profit. By literally averting their eyes and minds from the scientifically established estimates of global damage to be caused by their published plans to continue “business as usual” long into the future, they appear to think they can avoid responsibility. It is the public’s job not to let that happen.

Divestment by our country’s leading pools of capital will help awaken citizens to the peril of inaction. Collectively, we are like the frog resting comfortably in a pot of cold water being heated to boiling. (This metaphor probably abuses frogs, who are too smart to stick around that long, but it works, so I claim poetic license.) You can be among the first in the nation to shake this frog from the deadly comfort zone in which it rests.

Despite the success of the People's Climate March in New York City, even the most basic scientific arguments have not been settled. Consider, for example, the comment of Freeman Dyson, distinguished and greatly admired theoretical physicist at the Institute for Advanced Study:

What worries me is that many people, including scientists and politicians, believe a whole lot of dogmatic nonsense about climate change. The nonsense says that climate change is a terrible danger and that it is something we can do something about if we wanted to. The whole point is to scare people, and this has been done very successfully.”
(*New York Times*, September 23, 2014)

Dyson is wrong. Alas, not enough people have been scared. Too many are still complacent frogs. Governments won't act until enough people—call it a critical mass—have been scared by the foreseeability of the dire consequences that science tells us will follow inaction. Only then will people insist that their governments act, thereby driving down demand for fossil fuels and driving up demand for non-fossil fuel alternatives such as renewables, nuclear power, and higher energy efficiency. In fact, foreseeability is the key to action, and every one of us holds that key in our hands. By educating ourselves and others on this matter, each of us can help achieve the necessary level of certainty.

Consider the tragedy of the Titanic. It is a metaphor for the surpassing vanity of humankind and the indifferent brutality of nature. As such, it can speak to us about the looming threat of climate change. On that night in April 1912, hundreds of human beings consciously, and with deliberation, chose to die as a matter of honor in order to save women and children. Men of privilege, such as Isidor Straus and Benjamin Guggenheim, refused places on the lifeboats, choosing to wait in deckchairs for death to come. Of course, the immediacy of death, the certain foreseeability of the ship sinking, is what makes that case different from the perils of doing nothing about carbon.

Although the sinking of the Titanic is high drama, I don't believe it is any more fraught than the planetary threat we face today. It's just far more compressed: two and a half hours to sink instead of 35 or so years to reach 7°F and even more years to experience the full catastrophe. Humans are simply not well designed to contemplate, fear, and act in anticipation of events—however terrifying—that are way down the road.

Somehow, despite the timeline, the resting frog—our collective self—must be awakened.

Why Not Engagement?

Drew Faust, president of Harvard University, and other prominent leaders have been pushed, pulled, and prodded to make the endowments they oversee divest from fossil fuel companies directly engaged in extractive activities; instead, they have rejected this idea in favor of “shareholder engagement.” Engagement, say, with ExxonMobil is possible only if one is a shareholder of that enterprise. Therefore, engagement is a distinct alternative to divestment, because one cannot do both at the same time with regard to the same company.

With some social, environmental, and governance (SEG) issues, shareholder engagement has been tried and been successful. However, the closer one comes to trying to affect core business issues or issues involving the safety, security, and compensation of officers and directors, the less successful engagement becomes. In fact it's a bust. Thus, for example, trying to convince Phillip Morris to give up making cigarettes or Johnny Walker to abandon its distilleries will most certainly be a fool's errand. Likewise, trying to convince GM or Microsoft to abandon stock options or to institute a nominating system that allows shareholders to nominate and elect directors from a slate larger than the number to be elected will prove to be an equally useless effort. It is for these reasons that divestment became the tool of choice in addressing tobacco companies and companies heavily engaged in profitable businesses in South Africa under apartheid.

In regard to fossil fuel companies directly engaged in extractive activities, it is unrealistic to imagine them being swayed by shareholder arguments to get out of their core business of exploring for, extracting, and selling carbon-emitting fuel. The problem goes beyond just the high likelihood of accomplishing nothing in addressing the urgent need for global action. Indeed, engagement is likely to assist Big Oil and Big Coal in postponing the day when governments limit the burning of fossil fuels.

The IEA reckons that if governments compel adherence to the "carbon budget" in order to hold the planet to a 3.6°F rise in temperature from preindustrial levels, it will cause Big Oil and Big Coal to lose about \$1 trillion a year. Engagement with institutional investors like Harvard gives the fossil fuel giants the protective cover they need to stretch out the transition to renewables for as long as they can. It legitimizes talk over action. In truth, if the engagement crowd didn't exist, the fossil fuel giants would have invented them. (And, in light of the parallels to tobacco and lead, who knows the extent to which they did.)

The Relevance of Norway

Early this year, Norway put its toe in the global movement to drop investments in fossil fuel companies. Its Sovereign Wealth Fund, at \$850 billion the world's largest, divested 14 coal mining companies, 5 tar-sands oil producers, and a few other companies heavily involved with fossil fuel. Late last year, an Expert Group appointed by Norway's Finance Ministry released a 71-page report addressing whether the Fund, as a responsible investor sensitive to the global threat of climate change, should exclude fossil fuel companies from its portfolio or exercise its ownership and influence by engaging with those companies.

The Expert Group rejected an "either-or" approach, describing the many ways in which strategies of exclusion and active ownership can contribute to lessening the climate change danger. Indeed, it wisely emphasized the reinforcing value of using both exclusion and active ownership in combination, suggesting that together they "can be larger than the sum of their parts."

In exploring these strategies, the Expert Group ignored concerns of fiduciary duty. This is important. There is nothing exceptional about the Fund's objectives that distinguishes it, in regard to investments, from the vast majority of institutional funds managed by fiduciaries

throughout the world, whether as pension funds, endowments of educational institutions, philanthropies, or others. This approach to fiduciary duty is remarkably and refreshingly different from the defensive one adopted by many fiduciaries in the United States, who have wrapped themselves in the “duty of care” to avoid confronting the fossil fuel industry by either exclusion or engagement through active ownership.

In acting upon the Expert Group’s report, Norway has a problem. Not only is the Fund’s immense wealth derived from North Sea oil, the Norwegian Parliament controls Statoil, one of the largest oil companies in the world. These facts pose a dilemma. They also offer Norway a unique opportunity.

Norway could provide exactly the dramatic step needed to make active ownership through engagement with fossil fuel companies a promising enterprise. The Fund could try engagement with the fossil fuel companies held in its portfolio, but only if first the government were to align the behavior of Statoil with the demands the Fund would then make on those portfolio companies. The Norwegian Parliament has the power, and Norway is recognized as a global leader in both thought and deed.

There are three fundamental requirements that a fossil fuel company should meet to avoid exclusion from portfolios managed by responsible fiduciaries seeking to acknowledge the global threat of climate change. They should

1. Publicly accept the science of climate change, including recognition of the scientifically rooted predictions of damage to the planet and its people if we fail to halt carbon emissions.
2. Within a reasonable period, cease capital expenditures (CAPEX) in search of more fossil fuel.
3. Publicly and constructively lobby for (a) elimination of all fossil fuel subsidies, which today globally total some \$600 billion a year; (b) imposition of carbon taxes or other processes that would internalize the costs to the planet of burning fossil fuels, and (c) legislation to reduce carbon emissions to a level, globally, that will not harm the planet. Lobbying for these three goals should be conducted by the company’s own lobbying forces, wherever active in the world.

There may be other demands that investors want to make on fossil fuel companies, but these three are fundamental and fair and can be instituted immediately. Any company accepting them would no longer be viewed as a global pariah throughout the world, but instead would become a responsible corporate citizen whose securities need not be excluded from portfolios. Any company rejecting one or more of them would remain a pariah and be excluded.

By instituting these three policies, Statoil would establish itself (and vicariously the government of Norway and its people) as first among those global leaders addressing the most existential threat the world has ever faced. Statoil would become the measure against which all other fossil fuel companies would be tested for inclusion or exclusion from portfolios everywhere.

Universities and public pension funds would then have something serious to demand of the fossil

fuel companies held in their portfolios. And, as is likely to be the case when demand is made on the likes of Exxon, Shell, or BP, they would have a clear basis for divesting.

Fiduciary Duty

Fiduciaries are charged with the duty of care. Here's how the American Law Institute's Restatement of Trusts describes that duty:

This standard requires the exercise of reasonable care, skill and caution, and is applied to investments not in isolation but in the context of the . . . portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the [purposes for which the portfolio is held]. (Section 227)

If you have an informed view of all climate change factors, including those I've just outlined, it is easy to conclude from financial considerations alone that divestment of fossil fuel company holdings is a permissible option. And the moral dimension makes this conclusion even more powerful.

Whether at this time divestment is compelled by the duty of care is a more difficult question to answer. Anticipatory divestment in recognition that, at some unknown and unknowable point down the road, markets will suddenly adjust equity prices downward to reflect swiftly changing prospects for fossil fuel companies, however wise as a prudent option today, is probably not yet compelled in the exercise of due care.

But here's the most important point: Whether your portfolio will under- or outperform after divestment is unknowable. Looking back in time, you can see that results vary depending on the measuring period and assumptions about how proceeds are reinvested. But past is not prologue here. And, in any case, fiduciaries need not worry about short-term results. Anticipatory investment should be viewed as having unknown short-term consequences. In the end, those results are unimportant. A decision to divest rests on the claim that fossil fuel companies will prove to be bad investments over the long term and, therefore, with foresight that anticipates this result, should be removed from the pension fund before the strengthening and foreseeable likelihood of this result becomes commonplace in the market—as it did with coal.

Biography

From 1981 to 1984 Bevis Longstreth served as a Commissioner of the U.S. Securities and Exchange Commission. In 1993, he retired from the practice of law as a senior partner in the New York City law firm of Debevoise & Plimpton to teach at Columbia Law School and pursue other interests, among which was writing. Over his professional career he has often spoken and written many articles and two books on finance, corporate behavior and the law. Mr. Longstreth has also written two novels: *Spindle and Bow* (2005) and *Return of the Shade*. Mr. Longstreth is a graduate of Princeton University and the Harvard Law School.