

# Genocide-free Investing

*How and why investment firms should avoid ties to genocide*



## Introduction

While reasonable people may disagree about socially responsible investing, few want their investments to help fund genocide. Even so, investment firms like JPMorgan Chase, Franklin Templeton, Fidelity, Vanguard, BlackRock and many others invest their customers' money in companies that help fund the ongoing genocide in Sudan.

Investors Against Genocide is a citizen-led initiative, dedicated to convincing mutual funds and other investment firms to make an ongoing commitment to genocide-free investing. We work to encourage investment firms to change their investing strategy to avoid investments in companies that substantially contribute to genocide or crimes against humanity.

Investors Against Genocide was founded in 2006 after public recognition of the Darfur genocide spurred a movement for targeted divestment from companies that supported the genocidal regime in Sudan. As publicity increased about the genocide, many colleges and states decided to avoid investments in the foreign oil companies supporting the government of Sudan. In total, 30 states and more than 60 colleges decided to avoid such investments.

However, the largest investors in the companies supporting the government of Sudan were not state pension funds or college endowments. The largest investors were investment firms. Because investment firms decide which stocks to buy in mutual funds, ETF's and managed accounts, individual investors may inadvertently invest in companies that help support genocide.

Since the government-sponsored genocide in Sudan continues, we advocate for investment firms to avoid or divest holdings of the four foreign oil companies that are the largest business partners with the government of Sudan. These four companies are PetroChina/CNPC, China Petroleum & Chemical Corporation/Sinopec, ONGC and Petronas. Looking forward, we advocate for investment firms to make an ongoing commitment to genocide-free investing policies that would apply to future genocides and crimes against humanity.

Our goal is to make the U.S. financial investment industry more responsive to the American public's interest in not having their savings connected to the most egregious violations of human rights.

Investment firms that are dedicated to the interests of their customers and shareholders should support genocide-free investing because it is in line with the wishes of the vast majority of Americans who want to avoid investments with ties to genocide. For example, eighty-eight percent of Americans surveyed want their investments to be genocide-free.<sup>1</sup>

Nonetheless, many mainstream investment firms are resisting making changes in their policies to support genocide-free investing. In contrast, T. Rowe Price<sup>2</sup> and TIAA-CREF have established a leadership position by articulating and implementing policies on investments tied to genocide.<sup>3,4</sup> These two large asset managers demonstrate that genocide-free investment policies are feasible for a wide range of businesses.

This document provides more detail on why investment firms should establish policies to avoid investments tied to genocide and crimes against humanity, considers approaches to implementing "genocide-free investing," and reviews the glaring example of investments in the oil companies supporting the genocidal regime in Sudan.

***We encourage investment firms to change their investing strategy to avoid investments in companies that substantially contribute to genocide or crimes against humanity.***

Please contact us at 617-517-6310 or [info@InvestorsAgainstGenocide.org](mailto:info@InvestorsAgainstGenocide.org) for more information.

## Genocide-free investing

Investors Against Genocide asks investment firms to:

Institute transparent procedures to avoid holding or recommending investments in companies that, in management's judgment, substantially contribute to genocide or crimes against humanity, the most egregious violations of human rights.

***Genocide-free investing defined***

Such procedures may include time-limited engagement with problem companies if management believes that their behavior can be changed. In the rare case that the companies' duties as advisors require holding these investments, the procedures should provide for prominent disclosure to help shareholders and customers avoid unintentionally holding such investments.

Investment firms have full flexibility and control over how to define the details of a genocide-free investing policy. For example, the proposed policy does not require management to try to achieve 100% perfection in avoiding companies tied to serious human rights abuses.

The proposed policy asks to avoid cases where the company "substantially contributes" to serious rights abuses and leaves it to "management's judgment" as to where to draw that line. The problem we see in the investment industry is not that firms are trying to avoid companies tied to genocide and are doing an imperfect job of it, but rather that too many firms are simply not making an effort. We believe that if investment firms do choose to make an effort to avoid companies substantially tied to genocide or crimes against humanity, then they will at least address the most obvious and the most important cases.

Further, the proposed genocide-free investing policy was carefully constructed to focus only on the most extreme human rights abuses -- genocide<sup>5</sup> and crimes against humanity<sup>6</sup> -- both of which are defined terms in international law and universally recognized as egregious human rights abuses, and neither of which applies to lesser order problems.

One way to implement our suggested policy would be to build procedures based on U.S. sanctions. In this approach, an investment firm could rely on the U.S. government to identify the few countries warranting special consideration while focusing its own research on identifying the companies of special concern. For example, the policy could seek to restrict investments in countries targeted by U.S. sanctions if: 1) the sanctions prevent U.S. companies from doing business or making investments in those countries, AND 2) the sanctions are due at least in part to serious human rights violations. Note that this approach would go further than what is required by U.S. law, since U.S. sanctions often limit operations of U.S. companies, while rarely restricting foreign competitors from the same business.

***One approach to implementing a genocide-free investing investment policy***

The US Department of the Treasury's Office of Foreign Asset Control (OFAC) maintains and publishes the list and details of U.S. sanctions.<sup>7</sup> Today, the only countries that meet these criteria would be Sudan, Syria, Burma, Iran, Cuba, Zimbabwe, Ivory Coast, and Cuba. This list of sanctioned countries could be used to identify companies that

are funding and furthering government-sponsored human rights abuses through their commercial involvement.

Lastly, the proposed policy's prescription of disclosure would not prevent an investment firm from assisting clients who knowingly choose to invest in companies funding genocide, but it would protect those clients who, against their values, might inadvertently do so because of investment firms' decisions.

## **Genocide-free investing is popular among investors, is good business, and enhances corporate reputations**

Genocide-free investing is not a small niche concern in the marketplace of financial firms' customers and shareholders. It is in line with the wishes of the vast majority of Americans who want to avoid investments with ties to genocide.

Beginning in 2008, shareholder proposals for genocide-free investing have appeared on the proxy ballots of large mutual funds, including Fidelity,<sup>8,9,10,11,12,13,14</sup> Vanguard,<sup>15</sup> Putnam,<sup>16</sup> and American Funds.<sup>17</sup> As a result, many millions of shareholders have been informed about the issue and large numbers have voted in favor of genocide-free investing. In one vote at Fidelity, 31%<sup>18</sup> of shareholders supported the measure despite active opposition from management. (The complete voting results on genocide-free investing shareholder proposals are posted online at [InvestorsAgainstGenocide.org](http://InvestorsAgainstGenocide.org).<sup>19</sup>)

In 2012, shareholders at the ING Emerging Countries Fund approved our genocide-free investing proposal by a wide margin. The proposal passed 59.8% to 10.7% with 29.5% abstaining.<sup>20</sup> ING management did not oppose the ballot measure, allowing a decisive vote by investors. This win at ING matches market research affirming that the vast majority of Americans want to avoid investments tied to genocide.

Market research done by KRC Research in 2007<sup>21</sup> and 2010<sup>22</sup> highlights strong public concern for the issue:

- 84% of respondents say they will withdraw their investments from American companies that do business with companies that directly or indirectly support genocide.<sup>23</sup>
- 88% would like their mutual funds to be genocide-free.<sup>24</sup>
- 95% of those earning \$50,000 or more would like their mutual funds to be genocide-free.<sup>25</sup>
- 82% say they would advise friends, family and co-workers against buying products or services, or investing in American companies that invest in a foreign company that directly or indirectly provides revenue to a government that perpetrates genocide.<sup>26</sup>

A 2012 study by the Forum for Sustainable and Responsible Investment on responsible investing confirmed that genocide-free investing is an increasingly important issue of shareholder concern. The report<sup>27</sup> found that Sudan, where genocide is ongoing, is the top ESG consideration for institutional investors. According to the report, Sudan-related investment policies are the most prevalent ESG criteria incorporated into investment management, affecting more than \$1.63 trillion in institutional assets, a 21% increase over 2010.

Other leading indicators of broad-based support for genocide-free investing include:

***Genocide-free investing is in line with the wishes of the vast majority of Americans who want to avoid investments with ties to genocide***

- Beginning in 2005, 30 states<sup>28</sup> decided to divest from companies supporting Sudan, as have over 60 colleges and universities.<sup>29</sup>
- In December 2007, Congress unanimously passed the Sudan Accountability and Divestment Act.<sup>30</sup>
- During the 2008 presidential election, candidates from both parties<sup>31</sup> divested from mutual funds holding stock in one or more of the oil companies supporting the government of Sudan, including President Obama,<sup>32</sup> Senator McCain,<sup>33</sup> and other candidates for president,
- In November 2010, the House Financial Services Subcommittee on International Monetary Policy and Trade held a hearing<sup>34</sup> on “Investments Tied to Genocide: Sudan Divestment and Beyond.”

***Genocide-free investing is popular***

Shareholder votes and Sudan divestment measures have raised the profile of the problem of investments tied to genocide. In addition to the financial institutions that have taken steps to avoid investing in genocide, private pensions have also taken significant steps. For example, in May 2010, the Unitarian Universalist Association (UUA) announced<sup>35</sup> it was moving its \$178 million pension account from Fidelity to TIAA-CREF because of “Fidelity’s persistent refusal to consider human rights in their investment choices.” Further, the national and financial media have written extensively<sup>36</sup> on the topic, thereby helping to build awareness of the problem.

Investment firms have suffered extremely unfavorable publicity in the wake of the recent financial crisis. Those firms can build positive public opinion by making an effort to avoid investments in companies that substantially contribute to genocide or crimes against humanity.

### **Investments in oil companies supporting Sudan show current policies are inadequate**

Investment firms that resist making an effort to avoid investments in companies that substantially contribute to genocide or crimes against humanity often claim that their existing policies and procedures appropriately address the concerns.<sup>37</sup> However, an examination of their investments shows that existing policies do not adequately respond to the problem of investments in companies that help to fund genocide.

For example, the government of Sudan has waged genocide against its own people for decades, not only in the western region of Darfur, but in other regions as well. Sudan’s President Omar al-Bashir and other government leaders have been indicted by the International Criminal Court for genocide and crimes against humanity, but they are still in power in Sudan and in positions that allow them to continue to perpetrate similar crimes. Although South Sudan gained its independence in July 2011, the government of Sudan continues its campaign of ethnic cleansing north of the border with South Sudan, in the Nuba Mountains of South Kordofan and in Blue Nile State of Sudan.<sup>38</sup> The UN estimates that new government-sponsored violence and obstruction of aid has displaced 400,000<sup>39</sup> civilians in South Kordofan and Blue Nile and killed thousands. Hundreds of thousands have scattered to safer terrain, but are suffering from near famine conditions and ongoing aerial and artillery bombardments by the Sudan Armed Forces and militias.<sup>40</sup> The government of Sudan is employing the same method of attacks on civilians and systematic ethnic cleansing as it used earlier in Darfur and South Sudan.

***Genocide is a real and current problem***

Although U.S. sanctions prevent American companies from operating in Sudan, many financial institutions continue to invest in one or more of the four foreign oil companies partnering with the government of Sudan and providing its primary source of revenue, thereby helping fund the government of Sudan's genocide. These four companies are PetroChina/CNPC<sup>41</sup> (China), China Petroleum & Chemical Corporation/Sinopec<sup>42</sup> (China), ONGC (India), and Petronas (Malaysia).<sup>43,44</sup>

PetroChina, through its closely related parent, China National Petroleum Company (CNPC), is internationally recognized<sup>45,46</sup> as Sudan's largest partner in the oil industry which provides funds used by the government to commit genocide. CNPC has also provided loans to the government of Sudan to help it stay in power.<sup>47</sup>

Numerous investment companies and governments have tried engaging with PetroChina over the last decade. These efforts have proven futile. For example, TIAA-CREF made a statement on January 4, 2010<sup>48</sup> indicating that it was terminating its fruitless efforts to engage with PetroChina and divesting its shares.

The SEC has been investigating whether PetroChina violated US sanctions. According to a recent report, the SEC "has warned it might take action against PetroChina after the energy giant admitted for the first time to doing business with its state-owned parent relating to countries under US sanctions like Iran and Sudan."<sup>49</sup> The PetroChina example is a red flag highlighting the need for a clearer and more effective investment policy to avoid investments that fund genocide.

The example of Franklin Resources shows that its existing human rights and good governance policies do not result in avoiding investments in PetroChina. Franklin Resources' filing<sup>50</sup> on December 31, 2012, shows the company held 1,470,026,753 shares (7% of the class outstanding) of PetroChina.

Franklin Resources emphasizes that it complies "with all applicable legal and regulatory restrictions on investment."<sup>51</sup> However, through its investments in PetroChina, it undermines the objective of U.S. economic sanctions. Since 2002,<sup>52</sup> U.S. law<sup>53</sup> includes a provision that the President should "take all necessary and appropriate steps... to deny the Government of Sudan access to oil revenues." President Bush's Executive Order #13412<sup>54</sup> explicitly prohibited "all transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines." Therefore, ExxonMobil is precluded from supporting the government of Sudan by helping to develop its oil industry, but Franklin Resources has more than a billion dollars invested in PetroChina, the publicly traded arm of CNPC that provides these same services to the government of Sudan.

The example of JPMorgan Chase is similar. The company claims that "additional procedures are unnecessary" because JPMorgan's "business practices already reflect support and respect for the protection of fundamental human rights and the prevention of crimes against humanity."<sup>55</sup> And yet, JPMorgan Chase held \$1.3 billion of PetroChina as of September 10, 2013<sup>56</sup> and \$2.1 billion of Sinopec as of October 28, 2013.<sup>57</sup> JPMorgan mutual funds hold stocks and bonds from the PetroChina/CNPC group, Sinopec, ONGC, and Petronas.<sup>58</sup>

***Foreign oil companies, such as PetroChina/CNPC operate in Sudan and provide the primary source of income to the government***

***Large investments in PetroChina highlight the need for more effective policies***

## **A genocide-free investing policy is needed to align investments with shareholder values**

Some might argue that there are other ways for shareholders to address concerns about a firm's investments tied to genocide. They might, for example, elect new directors or move their investments to another firm. The reality is that neither of these approaches are satisfactory alternatives for many investors.

In theory, an approach for addressing human rights concerns would be to hold directors of the fund accountable through the election of trustees. However replacing a majority of the trustees by shareholder action is an overly broad approach and has a remote chance of success.

Investing elsewhere is also an unattractive option since investors face multiple hurdles when attempting, on their own, to make genocide-free investments. Few people research the details of their investments and banking relationships; they simply trust their investment company to make sound choices on their behalf. Individual investors who do attempt this research discover that it is a daunting task to determine which companies have ties to genocide, so that they can avoid those companies. Further complicating the task are the facts that even "recent" reports of a company's portfolio holdings are likely to be months out of date and individuals have no assurance that investment managers will not invest in the problem companies in the future.

As Barack Obama and John McCain discovered during the 2008 presidential campaign, it is extremely difficult for individual investors to avoid investments tied to genocide. Ordinary investors, who do not have the staff and resources of presidential candidates, have an even more difficult challenge in avoiding investments tied to genocide. They rely on and need the help of the investment firms that manage their investments.

Only if investment managers commit to genocide-free investing and implement supporting procedures can investors be confident that they are not inadvertently complicit in supporting genocide and crimes against humanity.

## **No sound reasons prevent having a genocide-free investing policy**

Genocide-free investing focuses on a small, well defined, and non-controversial segment of the investing universe. It sets a very high bar for when action by management would be required, focusing only on companies that "substantially contribute to genocide or crimes against humanity." These few companies are a tiny fraction of the universe of available investments, and Gary Brinson's classic asset allocation study<sup>59</sup> showed that avoiding a few companies need not have a significant effect on investment performance.

Adopting such a policy will not require the company to divest from inappropriate and unintended targets. Our suggested genocide-free investing policy was carefully constructed to focus only on the most extreme human rights abuses, genocide<sup>60</sup> and crimes against humanity,<sup>61</sup> both of which are defined terms in international law and are universally recognized as egregious human rights abuses, and neither of which applies to lesser order problems.

Although some might worry that agreeing to a genocide-free investing policy might open the door to every human rights issue, no matter how small or controversial, an SEC ruling in May 2013 demonstrated that there is no "slippery slope." In that SEC

***Investors need assistance making genocide-free investments***

***Genocide-free investing sets a very high bar for action - those few companies that "substantially contribute to genocide or crimes against humanity"***

ruling, TIAA-CREF's support for genocide-free investing made it harder, not easier, for special-interest groups to push the institution to consider lesser human rights concerns. The SEC supported TIAA-CREF in resisting efforts from a shareholder seeking to force the firm into divestment which management felt was inappropriate. The SEC supported TIAA-CREF's response that it had substantially implemented "a policy for identifying portfolio companies to engage on a broad range of matters including human rights matters and divesting from companies when judged appropriate" and proving it by saying that "CREF divested from several companies with ties to the government of Sudan."<sup>62</sup> This SEC decision showed that a policy that responded to issues with broad public support and consensus would assist in deflecting pressure to react to more controversial political disputes.

*The theoretical problem of the "slippery slope" does not apply*

Reasonable people may not agree on the definition of "socially responsible" and "ethical investing" but few want to invest in companies complicit in genocide. Genocide-free investing focuses on the few worst offenders. It gives management control and flexibility in defining the supporting procedures and in applying the procedures to particular companies by asking for a policy to address only companies "that, in management's judgment, substantially contribute" to genocide or crimes against humanity.

Implementing genocide-free investing can have a significant positive impact now and in the future. It is generally accepted that divestment pressure was critical in achieving positive change in South Africa.<sup>63</sup> Similarly, many experts believe that divestment pressure helped end Sudan's war against what is now South Sudan.<sup>64</sup> A genocide-free investment policy would have a positive effect, not only on current crises, but may also prevent future crises by limiting the interest in stock and bond offerings of companies tied to the most serious human rights abuses. Investment firms, by instituting a simple investment policy, would exert their considerable influence to encourage companies to demonstrate good records regarding the most severe human rights problems.

**Genocide-free investing would not be overly difficult to implement, would allow flexibility for any businesses, and would not prevent the companies from assisting clients that choose to invest in genocide**

*Financial institutions can easily get guidance from U.S. sanctions about which countries and industries deserve additional due diligence*

Numerous respected organizations such as the Conflict Risk Network (now part of EIRIS), MSCI (including KLD, ISS and Risk Metrics), Sustainalytics, and IW Financial are able to provide management with the research they need to identify problem companies. There may be disagreement among these sources about the full list of offenders but there is widespread agreement about the worst offenders. For example, every major organization that has taken action to avoid complicity in the Sudan genocide divested from PetroChina. By saying that management need take action only on those "substantially contributing" to genocide, our suggested policy makes it easy to focus on just these worst offenders. Therefore, identifying the few companies that "substantially contribute" to genocide or crimes against humanity is not a complex task.

There is no need to invest in these few problem companies. Comparable investments can be found, even in index funds, since index funds need not invest in every security in the index in order to statistically track index performance. No sound financial, fiduciary, or legal reasons prevent the companies from having a genocide-free investment policy.



Unlike JPMorgan Chase, Franklin Templeton, Fidelity, Vanguard, and BlackRock, thirty states, more than 60 colleges, and numerous other investment firms, have already demonstrated the feasibility of taking strong action. T. Rowe Price<sup>65</sup> and TIAA-CREF have established a leadership position by articulating and implementing policies on investments tied to genocide.<sup>66,67</sup> Other large financial institutions, such as American Funds,<sup>68</sup> Allianz's NFJ, and Berkshire Hathaway,<sup>69,70</sup> have sold their complete holdings in oil companies involved with Sudan (though some have not publicly stated their reasons for so doing).

If T. Rowe Price, TIAA-CREF, American Funds, 30 states, and 61 colleges can all take steps to avoid investments tied to genocide, so can other investment firms.

### **Genocide-free investing is consistent with the values and commitments of investment firms**

Investment firms should recognize that genocide-free investing is consistent with their stated values and commitments. Investment firms that examine their values and commitments should recognize this consistency and seek to implement genocide-free investing policies to support their customers and shareholders, rather than resisting this healthy change.

Two examples illustrate how many investment firms fail to meet their stated commitments.

Franklin Resources, known as Franklin Templeton Investments, proudly states<sup>71</sup> on its website, "At Franklin Templeton Investments, we believe that being a good corporate citizen is good business." It notes that the name of the firm was inspired by the ideas of Ben Franklin and quotes the Franklin motto, "Do well by doing good."<sup>72</sup> It further states, "integrity, trust and responsibility are essential to our continued success as a premier global investment management organization."<sup>73</sup>

Franklin Resources also states, "We recognize that human rights, environmental, social and governance issues have the potential to affect the performance of an investment and, therefore, believe that consideration of these issues should be incorporated into mainstream investment analysis and decision-making processes."<sup>74</sup>

We agree with these values, which is why we believe that Franklin Resources should make an effort to avoid investments connected to genocide and crimes against humanity.

In May 2013, Franklin Templeton Investments became a signatory to the United Nations Principles for Responsible Investing (UN PRI) and stated, "Franklin Templeton's various investment teams and strategies are very much aligned with the PRI principles."<sup>75</sup> As a signatory<sup>76</sup> to the UN PRI,<sup>77</sup> the company has agreed to:

- a) "incorporate ESG issues into investment analysis and decision-making processes" and
- b) "better align investors with broader objectives of society."

Given these significant commitments by Franklin Resources, we believe that the company should make an effort to avoid investments connected to genocide and crimes against humanity.

However, Franklin Resources' resistance to change led it to a further strained defense of its investments. Franklin Resources opposed genocide-free investing stating<sup>78</sup> that

***Genocide-free investing is in line with values and commitments of investment firms***

“fostering economic and business development through investment can often help in achieving reforms.” We agree that may sometimes be the case. However, it is a surprising assertion to make regarding the genocidal regime in Sudan that has resisted international condemnation on government-sponsored mass atrocities in Darfur for 11 years and continues its genocide and crimes against humanity in Darfur and recently in the Nuba Mountains of South Kordofan and Blue Nile states.

The example of JPMorgan Chase is similar.

JPMorgan Chase has made significant environmental, social and governance (ESG) commitments, such as the company’s Human Rights Statement,<sup>79</sup> signing the United Nations Environment Program Finance Initiative, adopting the Wolfsberg Principles, supporting the Extractive Industries Transparency Initiative, and adopting the United Nations Principles for Responsible Investing (UN PRI).<sup>80</sup>

Given these significant commitments by JPMorgan, a company that prides itself on being “deeply committed to being good corporate citizens” and affirming that that commitment “is an essential part of what we do,”<sup>81</sup> we believe that it is not too much to ask that JPMorgan make an effort to avoid investments connected to genocide and crimes against humanity.

## Conclusion

Investment firms can and should make an effort to avoid investments tied to genocide or crimes against humanity. The last eleven years of genocide in Sudan illustrates that the issue is current and deserves attention as a mainstream concern throughout America. Acting now, on this extreme situation, will, not only support the interests of customers and shareholders, but will also prepare investment firms to address humanitarian crises that may appear in the future.

In conclusion:

- Genocide-free investing is in line with the wishes of the vast majority of Americans who want to avoid investments with ties to genocide.
- The current policies of mainstream investment firms are not adequately addressing the issue.
- Genocide-free investing allows management flexibility about how to implement the policy, taking into account the range of its businesses and fact-specific evaluations of companies and crises.
- Genocide-free investing is consistent with the objectives and the spirit of U.S. economic sanctions in Sudan.
- Genocide-free investing is consistent with the stated values and commitments of investment firms.

## About Investors Against Genocide

Investors Against Genocide is a citizen-led initiative, dedicated to convincing mutual funds and other investment firms to make an ongoing commitment to genocide-free investing. Investors Against Genocide works with individuals, investment firms, pension and endowment managers and government officials to encourage investment firms to change their investing strategy to avoid investments in companies that

substantially contribute to genocide or crimes against humanity. Investors Against Genocide is staffed by volunteers and is a project of the Massachusetts Coalition to Save Darfur Inc., a 501(c)(3) non-profit charitable organization, incorporated in the state of Massachusetts.

## Genocide-free Investing: Endnotes

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- <sup>10</sup> Fidelity Funds proxy voting on May 14, 2008 - <http://www.sec.gov/Archives/edgar/data/35341/000087846708000068/q77c-votingresults.htm>, <http://www.sec.gov/Archives/edgar/data/24238/000002423808000038/q77pvr.htm>, [http://www.sec.gov/Archives/edgar/data/275309/000087866208000039/q77c\\_votingmatters2.htm](http://www.sec.gov/Archives/edgar/data/275309/000087866208000039/q77c_votingmatters2.htm), <http://www.sec.gov/Archives/edgar/data/81205/000008120508000015/main.htm>, <http://www.sec.gov/Archives/edgar/data/754510/000075451008000018/main.htm>
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