

No. A12-0948

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STATE OF MINNESOTA

IN COURT OF APPEALS

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Minnesota Break the Bonds Campaign, et al.,

Appellants,

vs.

Minnesota State Board of Investment,

Respondent.

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**RESPONDENT'S BRIEF AND APPENDIX**

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JORDAN S. KUSHNER  
Atty. Reg. No. 219307  
Law Office of Jordan S. Kushner  
431 South 7th Street, Suite 2446  
Minneapolis, Minnesota 55415  
(612) 288-0545

BRUCE D. NESTOR  
Atty. Reg. No. 318024  
De León & Nestor, LLC  
3547 Cedar Avenue South  
Minneapolis, MN 55407

Peter J. Nickitas  
Atty. Reg. No. 212313  
Peter J. Nickitas Law Office, LLC  
431 South Seventh Street, Suite 2446  
P.O. Box 15221  
Minneapolis, MN 55415-0221

ATTORNEYS FOR APPELLANTS

---

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota

KRISTYN ANDERSON  
Assistant Attorney General  
Atty. Reg. No. 0267752

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2127  
(651) 757-1225 (Voice)  
(651) 296-1410 (TTY)

ATTORNEYS FOR RESPONDENT

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## LEGAL ISSUES

- I. Whether Appellants lack standing because the allegations in the Complaint involve a policy disagreement with the discretionary decisions made by the Legislature and the SBI?

The district court held that Appellants lack standing.

Apposite authority:

*St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585 (Minn. 1977)  
*Olson v. State*, 742 N.W.2d 681 (Minn. Ct. App. 2007)  
*Conant v. Robbins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143 (Minn. Ct. App. 1999), *rev. denied* (Mar. 14, 2000)

- II. Whether the SBI is authorized to invest in foreign government bonds, including Israel bonds, when Minn. Stat. § 11A.24, subd. 6(a)(5) specifically permits investment in “international securities” “in addition to” other delineated investments, and the SBI has consistently construed “international securities” to include foreign government bonds?

The district court held that the SBI is statutorily authorized to invest in foreign government bond, including Israel bonds.

Apposite authority:

Minn. Stat. § 11A.24, subd. 1 (2010)  
Minn. Stat. § 11A.24, subd. 6(a)(5) (2010)  
*ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412 (Minn. 2005)  
*Walser Auto Sales, Inc. v. City Of Richfield*, 635 N.W.2d 391, 397 (Minn. Ct. App. 2001), *aff'd*, 644 N.W.2d 425 (Minn. 2002)  
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- III. Whether the political question and Act of State doctrines prevent a court from deciding Appellants’ claims that the SBI aids and abets alleged international law violations by its mere purchase of Israel bonds, when such claims would require the court to determine that a foreign sovereign’s acts violate international law?

The district court held that the political question and Act of State doctrines prevent the court from deciding Appellants’ aiding and abetting claims.

Apposite authority:

*Alperin v. Vatican Bank*, 410 F.3d 532 (9th Cir. 2005), *cert. denied*, 546 U.S. 1137 (2006)

*Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007)

*Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d 1019 (W.D. Wash. 2005), *aff'd*, 503 F.3d 974 (9th Cir. 2007)

*Doe I v. State of Israel*, 400 F. Supp.2d 86, 111 (D.D.C. 2005)

- IV. Whether Appellants' claims that the SBI aids and abets alleged international law violations by engaging in the ordinary commercial transaction of purchasing a country's bonds, fail to state claims upon which relief can be granted by the court?

The district court held that Counts Two and Three of the Complaint fail to state claims upon which relief can be granted.

Apposite authority:

*Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2nd Cir. 2009), *cert. denied*, 131 S. Ct. 79 & 131 S. Ct. 122 (2010)

*Rothstein v. UBS AG*, 647 F. Supp.2d 292 (S.D. N.Y. 2009)

*In re South African Apartheid Litig.*, 617 F. Supp.2d 228 (S.D. N.Y. 2009)

*Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d 1019 (W.D. Wash. 2005), *aff'd*, 503 F.3d 974 (9th Cir. 2007)

## STATEMENT OF THE CASE

Appellants appeal from a judgment issued on April 9, 2012, by Second Judicial District, Ramsey County District Court Judge Margaret M. Marrinan, granting Respondent's motion to dismiss and denying Appellants' motion for summary judgment.

Appellants challenge the Minnesota State Board of Investment's (the "SBI") purchase of Israel government bonds. In Count One of their Complaint, Appellants alleged that the SBI is not authorized to invest in foreign government bonds. Counts Two and Three asserted that the SBI violates a statutory duty to invest assets lawfully and prudently, because its purchase of Israel bonds allegedly aids and abets alleged violations of the Fourth Geneva Convention and thereby exposes the State to tort liability.

The SBI moved to dismiss all claims, and in response Appellants moved for summary judgment on Count One. The SBI argued that Appellants lack standing since their real dispute is a policy disagreement, and that the Act of State and political question doctrines also prevent the court from deciding Counts Two and Three. On the merits, with respect to Count One, the SBI argued that the plain language of Minn. Stat. § 11A.24, subd. 6(a)(5) (2010)<sup>1</sup> permits investment in "international securities," which

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<sup>1</sup> Section 11A.24 was amended in May 2012, 2012 Minn. Laws ch. 286, art. 10, § 3. As a result, Minn. Stat. § 11A.24, subd. 6(a)(5) was renumbered as Minn. Stat. § 11A.24, subd. 6(a)(4). For ease of reference to the district court opinion, this Brief will continue to refer to the statute as Section "11A.24, subd. 6(a)(5)". The amendment was merely an update of the public pension fund investment laws, *see* 2012 Minn. Laws ch. 286, p. 1, and did not change the substance of any of the provisions at issue in this case. *See Local Retirement Fund Investment Authorities Study*, p. 2, <http://www.osa.state.mn.us/other/investmentstudygroup/ReportandBill.pdf> (last visited July 30, 2012) (recognizing amendments are "purely technical changes").

includes foreign government bonds. Finally, the SBI argued that Appellants failed to state a claim for relief in Counts Two and Three because the SBI's conduct in merely purchasing bonds cannot constitute aiding and abetting as a matter of law.

The district court granted the SBI's motion to dismiss in all respects, concluding that Appellants lack standing; Count One was without merit because Section 11A.24, subd. 6(a)(5) authorizes the SBI to invest in foreign government bonds including Israel bonds; the Act of State and political question doctrines preclude jurisdiction on Counts Two and Three, and in any event, the Counts fail to state a claim upon which relief can be granted.

## STATEMENT OF FACTS

### A. The State Board of Investment.

The SBI was created by the Minnesota Constitution, Minn. Const. art. XI, § 8. The Constitution provides that “[a] board of investment,” composed of Minnesota’s four elected executive officers “is constituted for the purpose of administering and directing the investment of all state funds.” *Id.* The SBI also administers and directs the investment of all state pension funds. Minn. Stat. § 11A.02, subd. 2; Minn. Stat. ch. 356A. As of March 30, 2012, the SBI managed approximately \$61.1 billion in assets. *About The Minnesota State Board of Investment*, <http://www.sbi.state.mn.us/index.html> (last visited on July 30, 2012).<sup>2</sup>

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<sup>2</sup> Courts may properly consider on a motion to dismiss public records and matters subject to judicial notice, including information publicly available on a government agency’s website. *See Kladek, Inc. v. American Bank of St. Paul*, No. A09-948, 2010 WL 935378,

Minnesota Statutes Section 11A.24 (“Authorized Investments”) contains a specific list of asset classes in which the SBI is authorized to invest. Minn. Stat. § 11A.24, subds. 1-6. In 1988, Section 11A.24 was amended to specifically include “international securities” among the SBI’s authorized investments. 1988 Minn. Laws ch. 453, § 8 (Minn. Stat. § 11A.24, subd. 6(a)(5) (2010)). As of December 31, 2011, the SBI held investments in government bonds of a dozen foreign countries pursuant to its Section 11A.24, subd. 6(a)(5) authority. (R. App. 19 (¶5), 27-36.)

**B. Appellants.**

Appellants are comprised of four organizations and twenty-three individuals. (Compl. ¶¶ 2-13.) Five of the individual Appellants allege that they are beneficiaries of plans with funds invested by the SBI. (Compl. ¶¶ 5, 6, 7, 9, 13.) Ten of the Appellants are neither fund beneficiaries nor Minnesota citizens. (Compl. ¶¶ 3, 4, 11, 12.) Appellants allege moral opposition to the SBI’s investment in Israel bonds. (*See, e.g.*, Compl. ¶¶ 6- 8, 10, 13; Appellants’ Br. at 15.)

**SCOPE OF REVIEW**

Dismissal is required where the court lacks jurisdiction over the subject matter of a complaint. Minn. R. Civ. P. 12.02(a); 12.08(c) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”). A complaint also may be dismissed “for failure to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). Dismissal is

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at \*4 (Minn. Ct. App. Mar. 16, 2010) (R. App. 50); *Minnesota Majority v. Mansky*, 789 F. Supp.2d 1112, 1123, n.8 (D. Minn. 2011).

appropriate where it is clear from the face of the complaint that the claim is legally deficient. *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). Legal conclusions in the complaint are not binding on the court; indeed, “[a] plaintiff must provide more than labels and conclusions.” *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). This Court reviews a grant of dismissal for lack of jurisdiction or failure to state a claim *de novo*. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn.2003); *Schiff v. Griffin*, 639 N.W.2d 56, 59 (Minn. Ct. App. 2002).

## ARGUMENT

### **I. THE DISTRICT COURT PROPERLY DETERMINED THAT APPELLANTS LACK STANDING TO CONTEST THE SBI’S PURCHASE OF ISRAEL BONDS.**

The district court correctly concluded that Appellants lack standing to bring this case and specifically found that Appellants “allege no concrete ‘injury in fact’ as to any of [their] counts.” (R. App. 16.) Standing exists if (1) the plaintiff has suffered an “injury-in-fact” or (2) the legislature has conferred standing by statute. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). To establish the necessary injury-in-fact, the litigant must demonstrate a harm that is both “concrete” and “actual or imminent, not conjectural or hypothetical.” *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (quotation and citation omitted); *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977).

As the district court concluded, Appellants' Complaint is premised on a disagreement with the investment decisions of the SBI.<sup>3</sup> To establish standing, however, a plaintiff must demonstrate an injury beyond "mere differences of opinion." *St. Louis County Bd. of Educ. v. Borgen*, 257 N.W. 92, 95 (Minn. 1934) (noting that such differences do not present a justiciable controversy). Policy disagreements, no matter how deeply felt, do not confer standing. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 589-90 (Minn. 1977) (citizen with policy dispute "must take its case to the legislature"); *Conant v. Robbins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999), *rev. denied* (Mar. 14, 2000) (finding no standing and reasoning that plaintiffs' claims were "based only on their disagreement with policy or the exercise of discretion by those responsible for executing the law.")<sup>4</sup>

Ultimately, the authority to make social, political and economic policy decisions of the sort Appellants challenge resides with the Legislature and the SBI, not the courts. *See Westling v. County of Mille Lacs*, 581 N.W.2d 815, 822 (Minn. 1998), *cert. denied*,

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<sup>3</sup> As the district court reasoned, "[Appellants'] thirty two page complaint is dominated by representations regarding Israel's treatment of Palestinians; the bottom line here is that [Appellants] object to the SBI investing in any Israeli bonds." (R. App. 16.)

<sup>4</sup> Even a taxpayer challenge "based primarily on [the taxpayer's] disagreement with policy or the exercise of discretion by those responsible for executing the law,' [is] insufficient to confer standing." *Olson v. State*, 742 N.W.2d 681, 685 (Minn. Ct. App. 2007), quoting *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. Ct. App. 2004), *rev. denied* (Minn. Oct. 19, 2004). Moreover, to the extent Appellants rely on taxpayer standing, some of the Appellants are not Minnesota taxpayers. *See, e.g.,* Appellants' Br. at 15.

525 U.S. 1105 (1999) (noting that “social policy decisions are committed to the legislature”). Appellants have not alleged a sufficient injury to establish standing.

The district court also correctly concluded that the legislature did not confer standing upon Appellants by statute. A plaintiff may have standing if his or her injuries fall within a statute’s zone of interests. *See, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005). As the district court noted, the purpose of the Investment statutes is “to establish standards . . . to ensure that state and pension assets subject to this legislation will be responsibly invested *to maximize the total rate of return* without incurring undue risk.” Minn. Stat. § 11A.01 (emphasis added). (R. App. 16.)

Appellants’ alleged injuries are not in this economic zone of interest. Indeed, Appellants concede that “[c]oncerns about liquidity, interest rates and return on investment were not part of their complaint.” (Appellants’ Br. at 13.) *See, e.g., Jones v. Baskin, Flaherty, Elliot & Mannino, P.C.*, 738 F. Supp. 937, 942 (W.D. Penn. 1989) (finding that the plaintiff’s “personal feelings about investments in Israel bonds do not render the fiduciary’s actions unreasonable.”). Accordingly, the district court’s dismissal for lack of standing should be affirmed.

**II. EVEN ASSUMING APPELLANTS HAVE STANDING, THE DISTRICT COURT CORRECTLY HELD THAT THE SBI IS AUTHORIZED TO INVEST IN FOREIGN GOVERNMENT BONDS, INCLUDING ISRAEL BONDS.**

**A. “International Securities” As Used In Section 11A.24, Subd. 6(a)(5) Plainly Includes Foreign Government Bonds.**

The district court correctly concluded that the plain and ordinary meaning of Section 11A.24, subd. 6(a)(5) authorizes the SBI to invest in foreign government bonds,



including Israel bonds. (R. App. 17.) Thus, even if Appellants have standing, dismissal was appropriate.

According to the plain meaning of Section § 11A.24, subd. 6(a)(5), the SBI has the authority to invest in foreign government bonds. “The touchstone for statutory interpretation is the plain meaning of a statute’s language.” *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing Minn. Stat. § 645.16). When the words of a statute are clear, the plain meaning of the law controls and “shall not be disregarded”. Minn. Stat. § 645.16. Indeed, the statute’s plain language controls whether or not the reviewing court considers the result to be “reasonable” or “good policy.” *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 826-28 (Minn. 2005). When a statute’s meaning is plain, “statutory construction is neither necessary nor permitted.” *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

Subdivision 1 of Section 11A.24 (2010) states that the SBI “shall have the authority to purchase, sell, lend or exchange *the following securities* for funds or accounts specifically made subject to this section . . . .” Minn. Stat. § 11A.24, subd. 1 (emphasis added). The current version of the statute states that the SBI “is authorized to purchase, sell, lend, and exchange *the securities specified in this section*. . . .” 2012 Minn. Laws ch. 286, art. 10, § 3 (emphasis added). The statute then identifies a number of permissible investments, including “other investments” set forth in Subdivision 6:

**Other investments.** (a) *In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:*

\*\*\*\*\*

(5) international securities.

Minn. Stat. § 11A.24, subd. 6 (a)(5) (2010) (emphasis added).<sup>5</sup>

“International securities” unambiguously includes foreign government bonds. The word “international” must mean something other than U.S. domestic securities. *See, e.g., Webster’s Ninth New Collegiate Dictionary*, p. 632 (1988) (defining “international” to mean “reaching beyond national boundaries.”). The phrase “international securities” as used in Section 11A.24, subd. 6(a)(5) also is not limited to securities of a particular country.

The term “securities” plainly includes bonds. Subdivision 1 of Section 11A.24 refers to the “securities” described in subdivisions 2 to 6, which specifically include “*bonds, notes, bills mortgages, and other evidences of indebtedness,*” *see* subd. 2, and “*bonds, notes, [and] debentures,*” *see* subd. 3. (Emphasis added.) Several other Minnesota statutes similarly use the term “security” to include bonds.<sup>6</sup> The federal Securities and Exchange Act of 1934 also defines “security” to include bonds. *See* 15 U.S.C. § 78C(a)(10).

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<sup>5</sup> The 2012 amendment states that the SBI “is authorized to invest” in the enumerated other investments, and renumbers “international securities” as subpart (4). 2012 Minn. Laws ch. 286, art. 10, § 3.

<sup>6</sup> *See, e.g.,* Minn. Stat. §§ 50.14, subd. 2(c) (“authorized securities” includes “bonds or other interest bearing securities”); 51A.35 (authorizing associations to invest in “securities” including “bonds”); 80A.41(30) (Minnesota Securities Act definition of “security” includes “bonds”); 126C.72, subd. 4 (bonds issued by commissioner of management and budget deemed “authorized securities”); 136D.281, subd. 7 (intermediate school board bonds deemed “tax-exempt securities”).

Additionally, Minn. Stat. § 645.08 requires that statutory words and phrases be given their “common” usage. Minn. Stat. § 645.08(1). “Securities” is commonly understood in the industry to include government bonds. *InvestorWords.Com*, <http://www.investorwords.com/4446/security.html> (last visited July 30, 2012) (defining “security” to mean “[a]n investment instrument . . . issued by a corporation, government, or other organization which offers evidence of debt or equity.”); *Black’s Law Dictionary* 1476 (9th ed. 2009) (defining “security” to include “[a]n instrument that evidences . . . the holder’s creditor relationship with a firm or government (*e.g.*, a bond). . .”). The SBI is unequivocally authorized to invest in foreign government bonds, including those issued by Israel, pursuant to Section 11A.24, subd. 6(a)(5).

Appellants’ reliance on the *expressio unius, ejusdem generis* and absurd results canons of statutory construction (Appellants’ Br. at 20-23) is misplaced because the applicable statute is, as discussed above, plain on its face. *See Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 651 (Minn. 2012) (finding that absurd results canon is not available to override plain language of clear and unambiguous statute); *Weston v. McWilliams & Assoc., Inc.*, 716 N.W.2d 634, 639 (Minn. 2006) (holding that absurd results canon “only operates where the words of a statute are ambiguous; the rule cannot generally be used to override the plain language of a statute”); *Walser Auto Sales, Inc. v. City Of Richfield*, 635 N.W.2d 391, 397, n. 1 (Minn. Ct. App. 2001), *aff’d*, 644 N.W.2d 425 (Minn. 2002) (“*expressio unius*” “is only used where it is first determined that the language is ambiguous”); *Lefto v. Hoggsbreath Enters., Inc.*, 567 N.W.2d 746, 749

(Minn. Ct. App. 1997), *aff'd*, 581 N.W.2d 855, 856 (Minn. 1998) (refusing to resort to use of *ejusdem generis* where statute was unambiguous).

**B. Even If The Statute Is Ambiguous, It Is Properly Construed To Authorize The SBI To Purchase Foreign Government Bonds.**

Even assuming *arguendo* that the statute is ambiguous, a proper construction of the law mandates the conclusion that the SBI can invest in foreign government bonds, including Israel bonds.

**1. The obvious purpose of the statute, which is supported by the SBI's longstanding interpretation, strongly supports the SBI's position.**

In construing a statute, the Court should consider “the occasion and necessity for the law, the circumstances under which it was enacted, the mischief to be remedied, and the object to be attained.” *County of Hennepin v. County of Houston*, 39 N.W.2d 858, 860 (Minn. 1949); Minn. Stat. § 645.16(1)-(4). All of these considerations support the SBI's construction.

In 1988, the SBI proposed and assisted in drafting Section 11A.24, subd. 6(a)(5) to enable it to further diversify its holdings through the purchase of foreign corporate equity and debt and foreign government debt beyond that already authorized in other provisions. 1988 Minn. Laws ch. 453, § 8 (R. App. 19 ¶¶ 3-4), 23, 45-46.) Based on this understanding, the SBI has purchased non-Canadian foreign government bonds continuously since at least 1991, and has held Israel bonds since at least 1993.<sup>7</sup> (*Id.* at

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<sup>7</sup> Appellants erroneously assert that the SBI's Guidelines on International Investing and the International Stock Pool somehow show that the SBI has interpreted “international securities” to include only international stock. (Appellants' Br. at 10-11.) This is

19-20 (¶¶ 5-6), 24-38.) See *Bremer v. Comm'r of Taxation*, 75 N.W.2d 470, 474 (Minn. 1956) (reasoning that agency's construction "is relevant and material evidence of the understanding and opinions of those who were charged with the responsibility of putting the statute in operation and who were familiar with, and probably active in, drafting the statute.")<sup>8</sup>.

Moreover, the Court should defer to the interpretation of the agency which administers the law. *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641, 644 (Minn. 1979) (stating it is an established principle that "[w]hen the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the department charged with its administration"); Minn. Stat. § 645.16(8). This judicial deference is "rooted in the separation of powers doctrine." *In re Minnesota Power*, 807 N.W.2d 484, 488 (Minn. Ct. App. 2011), *rev. granted* (Minn. Feb. 14, 2012). In particular, courts give "considerable weight" to a construction contemporaneous with a statute's enactment by

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inaccurate. The Guidelines were created in response to concerns expressed by labor unions and environmentalists about investment in companies doing business in foreign countries and the potential adverse effects on the competitiveness of American businesses. (R. App. 20 (¶ 8).) The Guidelines do not address bonds issued by foreign countries because foreign governments do not compete against American businesses. (*Id.*) Additionally, foreign government bonds are not part of the International Stock Pool, they are primarily part of the SBI's Bond Pool. (*Id.*)

<sup>8</sup> Appellants' assertion that the district court did not address their objection to the Bicker affidavit (Appellants' Br. at 8-9) is without merit for several reasons. First, this issue is irrelevant since the statute unambiguously authorizes the SBI's investments, without reference to any affidavit testimony. Second, the affidavit testimony cannot legitimately be disputed. Finally, even if this Court finds the statute ambiguous, the affidavit is properly admissible for the purpose of statutory construction. It is based upon Bicker's personal knowledge, and is offered to show the undisputed occasion for the statute, and the SBI's contemporaneous construction of the statute. See *Bremer*, 75 N.W.2d at 474.

the agency charged with its administration. *Bremer*, 75 N.W.2d at 474. This is especially true of agency interpretations which are longstanding. *See id.*; *Emerson Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 687 (Minn. 2012) (rejecting statutory construction which would overturn longstanding interpretation by school board).

For these reasons, the statute's purpose and the SBI's undisputed interpretation of its enabling legislation establish that the SBI was authorized to purchase foreign government bonds, including Israel bonds.

**2. The canons of construction relied on by Appellants actually contradict the plain language and obvious purpose of the statute.**

Subdivision 6 unambiguously states that "international securities" are authorized "[i]n addition to the investments authorized in subdivisions 1 to 5." (Emphasis added.) As the district court noted, while Subdivision 2 allows for investment only in U.S. and Canadian government obligations, "Subdivision 6, however, opens the door to other international investments." (R. App. 17.)

Appellants' construction entirely ignores the clear "in addition to" language of Subdivision 6, violating the canon of construction that "[e]very law should be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16. For the same reason, Appellants improperly read into the statute a limitation that contradicts the language used by the legislature. *See Orme v. Atlas Gas & Oil Co.*, 13 N.W.2d 757, 765 (Minn. 1944) (stating that *ejusdem generis* cannot be used to render general words meaningless); *Westerlund v. Kettle River Co.*, 162 N.W. 680, 682 (Minn. 1917) (stating

that *ejusdem generis* should not be applied in a manner that “confine[s] the operation of the statute within narrower limits than intended by the lawmakers.”<sup>9</sup>

Appellants’ construction also violates the principle that all portions of a law should be given effect because it renders Subdivision 6(a)(5) superfluous. For example, Subdivision 5 of Section 11A.24 addresses investment in U.S. and Canadian corporate stock. If “international securities” cannot include any type of security addressed in the supposedly more specific provisions of Section 11A.24, then the SBI also could not invest in the stock of foreign corporations other than Canadian domiciled corporations. Under Appellants’ faulty reasoning, the SBI could not invest in non-Canadian foreign corporate or government securities, rendering Subdivision 6(a)(5) meaningless.

Finally, the canon of *ejusdem generis* does not apply where “the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such a general provision shall prevail.” Minn. Stat. § 645.26, subd. 1. The district court correctly stated that “[w]hile M.S. 11A.24 Subd. 2 authorized only governmental obligations in the United States and Canada, that predated Subd. 6 (a) (5), which places no such limitations on international securities.” (R. App. 17.) Subdivision 6(a)(5) was added in 1988, after Subdivisions 2-5 and after the provisions in Subdivision 6(a)(1)-(4). *See* 1980 Minn. Laws ch. 607, art. 14 § 22 (R. App. 40-43); 1988 Minn. Laws ch. 453, § 8 (R. App. 45-46).

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<sup>9</sup> *See also State v. Caldwell*, 803 N.W.2d 373, 383 (Minn. 2011) (application of *expressio unius* “is only justified when the language of the statute supports such an inference”); *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009) (“We have consistently refused to assume a legislative intent in plain contradiction to words used by the legislature.”).

The only reasonable way to read the statute and give effect to all of its provisions and its obvious purpose is that Subdivision 6(a)(5) gives the SBI authority “*in addition to*” that which was provided in other portions of the statute, to purchase foreign government bonds, including Israel bonds.

**3. Unlike the SBI’s interpretation, Appellants’ construction leads to absurd results.**

Appellants wrongly argue that the SBI’s interpretation leads to absurd results. As demonstrated above, the SBI’s interpretation is reasonable and is supported by both the language of the statute and the public policy necessitating the statute; namely, to enable the SBI to diversify its holdings.

Nor does the SBI’s interpretation permit it to purchase Iran or Sudan bonds, or other foreign government bonds without restriction as Appellants wrongly suggest. (Appellants’ Br. at 10, 20-21.) *See* Sudan Sanctions Regulations, 31 C.F.R. § 538.201 (adopted in 1998); Iran Transactions Regulations, 31 C.F.R. § 560.207 (adopted in 1999); Minn. Stat. §§ 11A.09, 356A.04 (setting forth investment standard of care); Minn. Stat. § 11A.24, subd. 5a (previously Minn. Stat. § 11A.24, subd 5(a)) (limiting aggregate value of subdivision 5 plus subdivision 6 investments to 85 percent of market value of a fund); R. App. 20 (¶ 7).

Appellants’ interpretation, not the SBI’s, would lead to absurd results. The SBI has invested in non-Canadian foreign government bonds since at least 1991, and in Israel bonds since at least 1993. To construe “international securities” to exclude foreign government bonds other than those issued by Canada would read into the statute a



limitation not provided by the legislature. Appellants' interpretation would deprive the SBI of the ability to comply with its statutory duty to diversify its investments, Minn. Stat. § 356A.06, subd. 2, in derogation of the clear purpose of Subdivision 6(a)(5) to enable diversification. It would also require the SBI to divest from a dozen of its current holdings. (See R. App. 19-20 (¶ 5), 27-36.)

The Court, just as did the district court, should reject Appellants' construction.

**III. COUNTS TWO AND THREE ARE NOT JUSTICIABLE AND, IN ANY EVENT, THEY FAIL TO STATE A CLAIM.**

The district court correctly determined that a court has no jurisdiction to decide whether Israel is violating the Fourth Geneva Convention or, correspondingly, whether the SBI has aided and abetted any such violations. Moreover, the district court properly concluded that the SBI, as a mere purchaser of bonds, has no potential tort or other liability for allegedly aiding and abetting any purported violations of the Convention.

**A. The Political Question And Act Of State Doctrines Preclude The Court From Adjudicating Appellants' Claims.**

Appellants' claims necessarily require a determination that a foreign sovereign is violating the Fourth Geneva Convention. Two longstanding doctrines preclude the Court from making such a determination.

The political question doctrine precludes claims which are impossible to decide “without an initial policy determination of a kind clearly for non-judicial discretion.” *Alperin v. Vatican Bank*, 410 F.3d 532, 561 (9th Cir. 2005), *cert. denied*, 546 U.S. 1137 (2006) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)) (holding that unjust enrichment claim against bank for profits derived from foreign government was non-justiciable

political question, and stating that “[i]t is not our place to speak for the U.S. Government by declaring that a foreign government is at fault for [its conduct] during World War II. Any such policy condemning [a foreign government] must first emanate from the political branches.”). The political question doctrine “is based upon respect for the pronouncements of coordinate branches of government that are better equipped and properly intended to consider issues of a distinctly political nature.” *Doe I v. State of Israel*, 400 F. Supp.2d 86, 111 (D.D.C. 2005).

The Act of State doctrine bars claims in which the relief sought would require a court to declare invalid a foreign sovereign’s official acts. *W.S. Kirkpatrick & Co., Inc. v. Env’tl. Tectonics Corp., Int’l*, 493 U.S. 400, 404-406 (1990). It is a rule of law that “prevents a U.S. court ‘from deciding a case when the outcome turns upon the legality or illegality (whether as a matter of United States, foreign, or international law) of official action by a foreign sovereign performed within its own territory.’”<sup>10</sup> *Malewicz v. City of Amsterdam*, 517 F. Supp.2d 322, 336-7 (D.D.C. 2007).<sup>11</sup>

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<sup>10</sup> Appellants argue that the Act of State doctrine does not apply because the alleged Geneva Convention violations occur outside of Israel’s territory. (Br. at 30.) This same argument was rejected by the court in *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d 1019, 1032 (W.D. Wash. 2005), *aff’d*, 503 F.3d 974 (9th Cir. 2007).

<sup>11</sup> See also *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) (Act of State doctrine reflects “the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder” the conduct of foreign affairs); *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302-304 (1918) (stating that Act of State doctrine is premised on policy of international comity and amicable relations between governments, foreclosing adjudication of legality of acts of foreign states).

The district court correctly found that the political question and Act of State doctrines preclude the courts from adjudicating this matter. *See, e.g., Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 984 (9th Cir. 2007) (deciding political question doctrine precluded claim against Caterpillar for allegedly aiding and abetting Israel); *Corrie*, 403 F. Supp.2d at 1032 (finding Act of State doctrine barred claim that Caterpillar allegedly aided and abetted Israel, and stating that “[t]his lawsuit challenges the official acts of an existing government in a region where diplomacy is delicate and U.S. interests are great.”).

*Doe I v. State of Israel* is directly on point. There, plaintiffs sued Israel and Israeli officials under the Alien Tort Claims Act. The court recognized that plaintiffs’ claims would have required it to determine that Israeli settlement activities are illegal or tortious. 400 F. Supp.2d at 112. The court held that any such determination was precluded by the political question doctrine. 400 F. Supp.2d at 111-114. In deciding that the political question doctrine applied, the court stated:

[Such a decision] is a foreign relations determination to be made by the Executive or Legislative Branches, and the Court would usurp the roles of those coordinate branches if it were to intrude. Such a conclusion would also implicitly condemn American foreign policy by suggesting that the support of Israel is wrongful. Conclusions like these present a potential for discord between the branches that further demonstrates the impropriety of a judicial decision on these quintessential political issues.

*Id.* at 112.<sup>12</sup>

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<sup>12</sup> Contrary to Appellants’ assertion (Br. at 26), the political question doctrine is not limited to cases in which the United States government is directly involved. Rather, just as in *Doe I*, it applies where the court is asked to insert itself into issues which implicate American foreign policy. As with *Doe I*, a determination that investment in Israel bonds

The *Doe I* court also concluded that “[t]he actions challenged by plaintiffs are classic acts of state.” *Id.* at 113-114. The court rejected the argument now made by Appellants that the Act of State doctrine does not apply to allegations of *jus cogens* violations. *Id.* at 114 (“The fact that plaintiffs have alleged *jus cogens* violations does not change things. Within our territorial borders, the law of the United States is paramount, under which the law of nations does not preempt the act of state doctrine even if the conduct at issue allegedly violates international law.”). *See also Sabbatino*, 376 U.S. at 431 (“[T]he act of state doctrine is applicable even if international law has been violated.”). Instead, the court concluded that jurisdiction “would offend notions of international comity and sovereignty” and dismissed the case. 400 F. Supp.2d at 114. *Accord Corrie*, 403 F. Supp.2d at 1032 (finding Act of State doctrine precluded aiding and abetting claims based on allegations that Israel’s official policy violated international law).

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aids and abets Geneva Convention violations would “implicitly condemn American foreign policy by suggesting that the support of Israel is wrongful.” 400 F. Supp.2d at 112. Appellants ask this Court to impose an embargo upon investment in Israel; a decision obviously within the discretion of the United States government. *See Corrie*, 403 F. Supp.2d at 1032 (noting that since United States government has not restrained trade with Israel in any manner, a contrary conclusion by the court would “impinge directly upon the prerogatives of the executive branch of government”). In addition, the political question doctrine precludes the court from substituting its judgment for discretionary decisions made by the *State* executive and legislative branches. Those decisions cannot legitimately be challenged here. *See, e.g., Jones*, 738 F. Supp. at 942 (rejecting ERISA claim of breach of fiduciary duty for investing pension funds in Israel bonds, and stating “[c]learly, [plaintiff’s] personal feelings about investments in Israel bonds do not render the fiduciary’s actions unreasonable.”).

*Zivotofsky v. Clinton*, 132 S. Ct. 1421 (2012), is inapposite. *Zivotofsky* involved a lawsuit to require the U.S. Secretary of State to identify the plaintiff's birthplace as "Israel" on his passport pursuant to a federal statute allowing an American born in Jerusalem to do so. *Id.* at 1424, 1426. The Court stated that the issue was not "the political status of Jerusalem," but was simply whether the plaintiff had a statutory right. *Id.* at 1427-28.<sup>13</sup>

In contrast to *Zivotofsky*, Appellants do not ask this Court to adjudicate "commonplace issues of statutory and constitutional interpretation," *id.* at 1426, but rather, to determine that Israel is violating the Fourth Geneva Convention, and to issue what amounts to an embargo against Israel-- matters which are plainly nonjusticiable under the Act of State and political question doctrines.

**B. Appellants Have Failed To State A Claim That The SBI Could Ever Be Liable For Aiding And Abetting Alleged International Law Violations By Engaging In The Ordinary Commercial Transaction Of Purchasing A Foreign Country's Bonds.**

Even if Appellants' claims were justiciable, the district court correctly found that they fail to state a valid claim for relief. To state a valid aiding and abetting claim, "a claimant must show that the defendant provided substantial assistance with the purpose of facilitating the alleged offenses." *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 247 (2nd Cir. 2009), *cert. denied*, 131 S. Ct. 79 & 131 S. Ct. 122

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<sup>13</sup> *Sarei v. Rio Tinto*, 671 F.3d 736 (9th Cir. 2011), *pet. for cert. filed*, 80 BNA USLW 3335 (Nov 23, 2011), also is inapposite. There, the court found that the case did not involve the potential for interference in the conduct of foreign affairs or notions of international comity since the foreign government at issue sent a letter to the court urging it to retain jurisdiction, and since the U.S. government expressly apprised the court that jurisdiction would not adversely affect foreign policy concerns. *Id.* at 756-57.

(2010). In other words, it must be shown that by buying bonds, the SBI acts with the intent to assist violations of customary international law and that the SBI has the right and ability to control the country's alleged conduct. *Id.* at 261, 263.

Since the SBI is merely a purchaser of bonds, it lacks the requisite intent to aid and abet any alleged international law violations, as a matter of law. *See, e.g., Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1024, 1027 (finding that as a matter of law, a seller lacks specific intent necessary to aid and abet actions of buyer). Appellants' allegations of the SBI's knowledge and purpose to aid and abet international law violations are not plausible on their face, and the Court is not bound by these conclusory assertions. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (holding that complaint must allege facts sufficient to plausibly suggest defendant's state of mind, and court is not bound by conclusory assertions of knowledge or intent, and describing as conclusory allegations that defendants "knew of, condoned, and willfully and maliciously" acted).

Appellants also cannot establish a causal link between the SBI's investment and any alleged violation of international norms. For example, in *Corrie v. Caterpillar, Inc.*, the plaintiffs claimed that Caterpillar was liable under the Alien Tort Claims Act for aiding and abetting Israel's alleged international law violations committed using Caterpillar's bulldozers sold to the Israeli army. The plaintiffs asserted that since Caterpillar knew or should have known that the bulldozers would be used to commit violations of the Geneva Conventions, it was guilty of aiding and abetting those violations. 403 F. Supp.2d at 1023-24. The court rejected this argument, stating that "[a] theory of accessory liability does not obtain in this case because there is no allegation of

the right or ability to control the Israeli soldiers' conduct." *Id.* at 1027. The court concluded that "Plaintiffs' claim of aiding and abetting fails because where a seller merely acts as a seller, he cannot be an aider and abettor. . . ." *Id.* at 1024.

Multiple courts have come to the same conclusion that simply doing business with a country cannot form the basis of an aiding and abetting claim.<sup>14</sup> Just as in *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1024, the ordinary commercial act of purchasing a foreign country's bonds does not make the SBI "a participant in that government's alleged international law violations." This Court should affirm the district court's dismissal of this case for this reason as well.

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<sup>14</sup> See, e.g., *Talisman*, 582 F.3d at 264 (dismissing claim that corporation aided and abetted violations of international law by simply doing business with Sudan, and stating that any other conclusion would allow "private parties to impose embargos or international sanctions through civil actions in United States courts. Such measures are not the province of private parties but are, instead, properly reserved to governments and multinational organizations."); *Doe v. Nestle*, 748 F. Supp.2d 1057, 1096 (C.D. Ca. 2010) ("[A] plaintiff must allege something more than ordinary commercial transactions in order to state a claim for aiding and abetting human rights violations."); *Rothstein v. UBS AG*, 647 F. Supp.2d 292 (S.D. N.Y. 2009) (granting motion to dismiss claim against international bank that bank's funds facilitated international law violation, and reasoning that bank loans were not significant source of funds to government, and the money could be used for multiple legitimate uses); *In re South African Apartheid Litig.*, 617 F. Supp.2d 228, 257-258, 269 (S.D. N.Y. 2009) (dismissing aiding and abetting claims and stating that "[i]t is (or should be) undisputed that simply doing business with a state or individual" is insufficient to create aiding and abetting liability).

## CONCLUSION

Respondent respectfully requests this Court to affirm the district court's dismissal of Appellants' Complaint.

Dated: July 30, 2012

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota



KRISTYN ANDERSON  
Assistant Attorney General  
Atty. Reg. No. 0267752

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2127  
(651) 757-1225 (Voice)  
(651) 296-1410 (TTY)

ATTORNEY FOR RESPONDENT



**RESPONDENT'S APPENDIX**

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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Minnesota Break the Bonds Campaign,  
Bil'in Popular Committee Against the Wall  
and Settlements, Women Against Military  
Madness-Middle East Committee, Lucia  
Wilkes Smith, Margaret Sarfehjooy,  
Catharine Abbott, Barbara Hill, Polly Mann,  
Leona Ross, Sylvia Schwarz, Nadim  
Shamat, Sarah Martin, Robert Kosuth, Mary  
Eoloff, Nick Eoloff, Vern Simula, Cynthia  
Arnold, Newland F. Smith, III, Ronnie  
Barkan, Ofer Neiman, David Nir, Lehee  
Rothschild, Renen Raz, Dorothy Naor, Gal  
Lugassi, Boycott From Within and David  
Boehnke,

Court File No. 62-CV-11-10079  
Judge Margaret M. Marrinan

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER FOR JUDGMENT**

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

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This matter came before the undersigned on March 5, 2012, pursuant to Defendant's motion to dismiss the Complaint in its entirety. Attorneys Jordan Kushner, Esq. and Peter J. Nickitas, Esq. appeared on behalf of Plaintiffs. Assistant Attorney General Kristyn Anderson appeared on behalf of Defendant.

Based upon the arguments of counsel, the files and record herein, and the evidence before the Court, the Court hereby makes the following:

## FINDINGS OF FACT

### A. The State Board of Investment

1. The State Board of Investment (the "SBI") was created by the Minnesota Constitution, Minn. Const. art. XI, § 8, "for the purpose of administering and directing the investment of all state funds."

2. The SBI's authority also extends to administering and directing the investment of all state pension funds. Minn. Stat. § 11A.02, subd. 2; Minn. Stat. ch. 356A.

### B. The SBI's Purchase of Foreign Government Bonds

3. M.S. Section 11A.24, subds. 1-6 ("Authorized Investments,") contains a specific list of asset classes in which the SBI is authorized to invest. These include common stocks, bonds, short term securities, real estate, private equity, and resource funds.

4. In 1988, Section 11A.24 was amended to specifically include "international securities" among the SBI's authorized investments. Minn. Laws 1988, ch. 453, § 8; Minn. Stat. § 11A.24, subd. 6(a)(5).

5. The SBI has invested in Israel government bonds. Compl. ¶ 17.

### C. The Plaintiffs

6. Plaintiffs are comprised of four organizations and twenty-three individuals. Compl. ¶¶ 2-13. Five of the individual Plaintiffs allege that they are either citizens of Minnesota or beneficiaries of plans with funds invested by the SBI. Compl. ¶¶ 5, 6, 7, 9, 13. Nine others allege that they are citizens of the State of Minnesota. The remaining Plaintiffs are neither fund beneficiaries nor Minnesota citizens. Compl. ¶¶ 3, 4, 11, 12.

7. Plaintiffs allege moral opposition to the SBI's investment in Israel bonds. *See, e.g.,* Compl. ¶¶ 6- 8, 10, 13.

**D. Plaintiffs' Claims**

8. The Complaint consists of three counts. Count One seeks a declaratory judgment that the SBI is not authorized to invest in bonds issued by Israel. Counts Two and Three request a declaration that the SBI may not invest in Israel bonds because in doing so the SBI allegedly aids and abets Israel's alleged violation of the Fourth Geneva Convention and exposes the State to tort liability.

9. Defendant has moved to dismiss all of Plaintiffs' claims with prejudice, based on four arguments: (a), that Plaintiffs lack standing to sue; (b) that M.S. § 11A.24, subd. 6(a)(5) authorizes the SBI to purchase foreign government bonds, including those of Israel; (c) that the political question and act of state doctrines render Counts Two and Three non-justiciable; and (d) that Plaintiffs fail to state a claim of aiding and abetting against the SBI.

**CONCLUSIONS OF LAW**

**A. Motion to Dismiss**

10. Minnesota Rule of Civil Procedure 12.02(a) provides for dismissal where the court lacks jurisdiction over the subject matter of a complaint. Subject matter jurisdiction, including plaintiffs' standing, is a question of law for the court to decide. *Id.; Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190 (Minn. Ct. App. 1999), *rev. denied* (Minn. July 28, 1999).

11. Minnesota Rule of Civil Procedure 12.02(e) provides that a complaint may be dismissed "for failure to state a claim upon which relief can be granted." Dismissal of a claim is appropriate where it is clear from the face of the complaint that the claim is legally deficient.

*Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). Legal conclusions in the complaint are not binding on the court. *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

**B. Standing of the Plaintiffs**

12. Plaintiffs must prove that they have the requisite standing to bring this case. Standing exists if (1) a plaintiff has suffered an “injury-in-fact” or (2) the legislature has conferred standing by statute. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972)). The necessary injury-in-fact must be both “concrete” and “actual or imminent, not conjectural or hypothetical.” *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) ; *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977).

13. “[M]ere differences of opinion” are not sufficient to establish standing. *St. Louis County Bd. of Educ. v. Borgen*, 257 N.W. 92, 95 (Minn. 1934); *Conant v. Robbins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999) (finding no standing and reasoning that plaintiffs’ claims were “based only on their disagreement with policy or the exercise of discretion by those responsible for executing the law.”). Policy disagreements, no matter how deeply felt, also do not confer standing. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 589-90 (Minn. 1977) (citizen with policy dispute “must take its case to the legislature”). When even a taxpayer’s challenges to state action are “‘based primarily on [the taxpayer’s] disagreement with policy or the exercise of discretion by those responsible for executing the law,’ they are insufficient to confer standing.” *Olson v. State*, 742 N.W.2d 681, 685 (Minn. Ct. App. 2007).

14. Plaintiffs' challenges in this case are based on a policy disagreement with the discretionary decisions made by the Legislature and the SBI. Ultimately, the authority to make social, political and economic policy decisions of the kind Plaintiffs complain about in this case resides with the Legislature and the SBI, not this Court. *See Westling v. County of Mille Lacs*, 581 N.W.2d 815, 822 (Minn. 1998) ("social policy decisions are committed to the legislature"), *cert. denied*, 525 U.S. 1105 (1999). Accordingly, Plaintiffs do not have the requisite standing to bring this case.

15. In addition, the legislature has not conferred standing upon Plaintiffs. Although a plaintiff may have standing if his or her injuries fall within the zone of interests protected by a statutory provision, *see, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005), Plaintiffs' alleged injury does not fall within the zone of interest of the SBI's enabling legislation. The purpose of Minnesota Statutes Chapters 11A and 356A relates to the economic decisions of the SBI, not international policy interests. As a result, Plaintiffs' claims fail for lack of standing.

**C. Count One: The SBI's Investment Authority Under Minn. Stat. § 11A.24**

16. Even if Plaintiffs had standing, to prevail on Count One, they must show that the SBI is not authorized to invest in Israel bonds under Minn. Stat. § 11A.24.

**1. The Plain Meaning of Minn. Stat. § 11A.24**

17. "The touchstone for statutory interpretation is the plain meaning of a statute's language." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing Minn. Stat. § 645.16). When the words of a statute are clear in their application to a particular case, the plain meaning of the law controls and "shall not be disregarded under the pretext of pursuing the spirit [of the statute]." M.S. § 645.16. The plain language of a statute

controls regardless of whether the reviewing court considers the result to be “reasonable” or “good policy.” *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 826-28 (Minn. 2005). When a statute’s meaning is plain from its language, “statutory construction is neither necessary nor permitted.” *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

18. M.S. 11A.24, Subd.1 gives the SBI “the authority to purchase, sell, lend or exchange the following securities for funds or accounts specifically made subject to this section.” Subdivision 6 then sets forth a number of permissible investments, including:

**Other investments.** (a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:

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(5) international securities.

Minn. Stat. § 11A.24, subd. 6 (a) (5).

19. “International securities” unambiguously includes foreign government bonds, including those of Israel. The word “international” is used to mean something other than U.S. domestic securities. *See, e.g., Webster’s Ninth New Collegiate Dictionary*, p. 632 (1988) (defining “international” to mean “reaching beyond national boundaries”). Similarly, the phrase “international securities” as used in Minn. Stat. § 11A.24, subd. 6(a) (5) is not limited to securities of a particular country.

20. The term “securities” plainly includes bonds. M.S.11A.24, Subd. 1 refers to the “securities” described in subdivisions 2 to 6, which specifically include “bonds, notes, bills mortgages, and other evidences of indebtedness,” (Subd. 2) and “bonds, notes, [and]



debentures,” (Subd. 3). Several other Minnesota statutes similarly use the term “security” to include bonds.<sup>1</sup>

21. M.S. § 645.08 (1) requires that statutory words and phrases be given their “common” usage. “Securities” is commonly understood in the industry to include government bonds.<sup>2</sup>

22. The plain and ordinary meaning of Minn. Stat. § 11A.24, subd. 6 (a) (5) authorizes the SBI to invest in foreign government bonds, including those of Israel.

23. Even if the statute were ambiguous, courts should defer to the construction given the statute by the agency which administers the law. *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641, 644 (Minn. 1979) ([it is an established principle that when] the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the department charged with its administration”); M. S. § 645.16(8). This judicial deference is “rooted in the

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<sup>1</sup> See, e.g., Minn. Stat. §§ 50.14, subd. 2(c) (“authorized securities” includes “bonds or other interest bearing securities”); 51A.35 (authorizing associations to invest in “securities” including “bonds”); 80A.41(30) (Minnesota Securities Act definition of “security” includes “bonds”); 126C.72, subd. 4 (bonds issued by commissioner of management and budget deemed “authorized securities”); 136D.281, subd. 7 (intermediate school board bonds deemed “tax-exempt securities”). The federal Securities and Exchange Act of 1934 also defines “security” to include bonds. See 15 U.S.C. § 78C(a)(10).

<sup>2</sup>See also Definition of “Security,” *InvestorWords*, <http://www.investorwords.com/4446/security>(defining “security” to mean “[a]n investment instrument, other than an insurance policy or fixed annuity, issued by a corporation, government, or other organization which offers evidence of debt or equity.”); Black’s Law Dictionary 1476 (9th ed. 2009) (defining “security” to include “[a]n instrument that evidences . . . the holder’s creditor relationship with a firm or government (e.g., a bond). . .”).

separation of powers doctrine.” *In re Minnesota Power*, 807 N.W.2d 484, 488 (Minn. Ct. App. 2011), *rev. granted* (Minn. Feb. 14, 2012) (“judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.”) (citations omitted).

The Court defers to the SBI’s construction that it is authorized to invest in bonds of foreign governments, including those of Israel.

## 2. *Ejusdem Generis and Expressio Unius*

24. Relying on two canons of construction, Plaintiffs argue that because M.S. 11A.24 Subd.2 references Canadian government bonds, that “international securities” as used in Subdivision 6 cannot include government bonds beyond those authorized by Subdivision 2. The canons of construction cited by Plaintiffs apply only if a statute is ambiguous.<sup>3</sup> Because Subdivision 6(a)(5) plainly authorizes the purchase of foreign government bonds beyond those authorized by Subdivision 2, the canons of construction do not apply.

25. Plaintiffs’ position also conflicts with the plain language of the statute. Subdivision 6 states that “international securities” are authorized “[i]n addition to the investments authorized in subdivisions 1 to 5.” (Emphasis added.) Thus, Plaintiffs’ argument violates the canon of construction that “[e]very law should be construed, if possible, to give effect to all its provisions,” Minn. Stat. § 645.16. *See also State v. Caldwell*, 803 N.W.2d 373,

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<sup>3</sup> *Winters v. City of Duluth*, 84 N.W. 788, 789 (Minn. 1901) (holding that *ejusdem generis* “can be used only as an aid in ascertaining the legislative intent, and when that is apparent from the statute itself the rule has no application.”); *Lefto v. Hoggsbreath Enters., Inc.*, 567 N.W.2d 746, 749 (Minn. Ct. App. 1997) (refusing to resort to use of *ejusdem generis* where statute was unambiguous), *aff’d*, 581 N.W.2d 855, 856 (Minn. 1998). *See also Walser Auto Sales, Inc. v. City Of Richfield*, 635 N.W.2d 391, 397, n. 1 (Minn. Ct. App. 2001), *aff’d*, 644 N.W.2d 425 (Minn. 2002) (“*expressio unius*” “is only used where it is first determined that the language is ambiguous”).

383 (Minn. 2011) (inference that mention of one term excludes another “is only justified when the language of the statute supports such an inference”).

26. Plaintiffs’ contention would render Subdivision 6(a)(5) superfluous. For example, M.S. 11A.24 Subd.5 addresses investment in U.S. and Canadian corporate stock. If “international securities” cannot include any type of security addressed in the supposedly more specific provisions of Section 11A.24, then the SBI also could not invest in the stock of foreign corporations other than the stock of Canadian domiciled corporations. Under Plaintiffs’ reasoning, the SBI therefore could not invest in non-Canadian foreign corporate or government securities, rendering Subdivision 6(a)(5) meaningless.

27. To give effect to Subdivision 6(a)(5), it must mean that the SBI is authorized to invest in government bonds, corporate stocks, and other securities different from and in addition to those authorized by Minn. Stat. § 11A.24, subs. 2-5, and subd. 6(a)(1)-(4).<sup>4</sup>

28. Finally, the cannon of *ejusdem generis* does not apply where “the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such a general provision shall prevail.” M.S. § 645.26, subd. 1. Here,

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<sup>4</sup> See, e.g., *Westerlund v. Kettle River Co.*, 162 N.W. 680, 682 (Minn. 1917) (rejecting use of *ejusdem generis*, and stating that “[t]he general purpose of a statute, as disclosed by the provisions thereof, taken as a whole, often requires that the final general clause, inserted with a view of bringing within its scope matters not specifically mentioned, should not be restricted in meaning by the preceding specifications.”); *State v. Caldwell*, 803 N.W.2d at 383 (stating that use of “*expressio unius*” “is not justified when the omitted term is encompassed by the enumerated terms”).

Subdivision 6(a)(5) was added in 1988, after Subdivisions 2-5 and after the provisions in Subdivision 6(a)(1)-(4). *See* Minn. Laws 1980, ch. 607, art. 14 § 22; Minn. Laws 1988, ch. 453, § 8.

29. Since the SBI is authorized to invest in foreign government bonds, including those of Israel, the Court grants Defendant's motion to dismiss Count One of Plaintiffs' Complaint.

**D. Counts Two and Three: The SBI's Investment In Israel Bonds**

30. Counts Two and Three of the Complaint allege that the SBI's investment in Israel bonds is unreasonable and violates the "prudent person" standard, because the SBI is allegedly aiding and abetting an alleged violation of the Fourth Geneva Convention, and the State would be liable in tort for its purchase of Israel bonds.

31. Two longstanding legal doctrines preclude courts from adjudicating cases of the kind now before the Court. The "political question" doctrine precludes claims which are impossible to decide "without an initial policy determination of a kind clearly for non-judicial discretion."<sup>5</sup> This doctrine "is based upon respect for the pronouncements of coordinate branches of government that are better equipped and properly intended to consider issues of a distinctly political nature." *Doe I v. State of Israel*, 400 F. Supp.2d 86, 111 (D.D.C. 2005).

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<sup>5</sup> *Alperin v. Vatican Bank*, 410 F. 3d 532, 561 (9<sup>th</sup> Cir.2005), *cert. denied*, 546 U.S. 1137 (2006), quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962) (holding that unjust enrichment claim against the bank for profits derived from conduct of foreign government was non-justiciable political question).

32. The “act of state” doctrine is a rule of law that “prevents a U.S. court ‘from deciding a case when the outcome turns upon the legality or illegality (whether as a matter of United States, foreign, or international law) of official action by a foreign sovereign performed within its own territory.’” *Malewicz v. City of Amsterdam*, 517 F. Supp.2d 322, 336-7 (D.D.C. 2007) (citations omitted). This doctrine bars claims in which the relief sought would require a court in the United States to declare invalid a foreign sovereign’s official acts.<sup>6</sup>

33. Both the political question and act of state doctrines preclude the Court from adjudicating this matter since it would require the Court to determine whether a foreign sovereign’s acts have violated the Fourth Geneva Convention.<sup>7</sup>

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<sup>6</sup> *W.S. Kirkpatrick & Co., Inc. v. Envtl. Tectonics Corp., Int’l*, 493 U.S. 400, 404-406 (1990). See also, e.g., *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) (act of state doctrine reflects “the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder” the conduct of foreign affairs); *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302-304 (1918) (stating that act of state doctrine is premised on policy of international comity and amicable relations between governments, foreclosing adjudication of legality of acts of foreign states).

<sup>7</sup> See for example, *Corrie v. Caterpillar Inc.*, 503 F.3d 974, 984 (9<sup>th</sup> Cir. 2007) (deciding political question doctrine precluded claim against Caterpillar for allegedly aiding and abetting Israel); *Corrie v. Caterpillar, Inc.* 403 F. Supp2d 1019, 1032 (W.D. Wash. 2005) *aff’d*, 503 F.3d 974 (9<sup>th</sup> Cir. 2007), finding act of state doctrine barred claim that Caterpillar allegedly aided and abetted Israel, stating that “[this] lawsuit challenges the official acts of an existing government in a region where diplomacy is delicate and the U.S. interests are great.” See also *Doe I*, 400 F. Supp

34. Plaintiffs argue that the Court should presume that Israel has violated the Fourth Geneva Convention simply based on the allegations in their Complaint. However those allegations are in the nature of legal conclusions or conclusory assertions which are not deemed to be true for purposes of this Motion. *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010), citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

35. Plaintiffs have also failed to show that any alleged action of an international organization is enforceable by this Court. *Medellin v. Texas*, 552 U.S. 491, 511, 518 (2008) (rejecting notion that International Court of Justice interpretations or decisions were intended to be enforceable by American courts); *Diggs v. Richardson*, 555 F.2d 848, 850-51 (D.C. Cir. 1976) (U.N. Security Council resolution did not confer rights enforceable in American courts); *Smith v. Socialist People's Libyan Arab Jamahiriya*, 886 F. Supp. 306, 311-12 (E.D.N.Y. 1995) (U.N. Security Council resolution did not create private right of action).

36. Plaintiffs' reliance on the assertion that they have alleged *jus cogens* violations is also misplaced. This same argument was rejected by the court in *Doe I*. 400 F. Supp.2d at 114 ("The fact that plaintiffs have alleged *jus cogens* violations does not change things. Within our territorial borders, the law of the United States is paramount, under which the law of nations does not preempt the act of state doctrine even if the conduct at issue allegedly violates international

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2d at 111-114 (finding claims which would require court to determine that Israeli settlement activity was illegal or tortious were non-justiciable under both political question and act of state doctrines, stating that such a determination "is a foreign relations determination to be made by the Executive or Legislative Branches," and that "[t]he actions challenged by plaintiffs are classic acts of state.").

law.”). A determination of such alleged violations “would offend notions of international comity and sovereignty.” *Id.* See also *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1032 (finding act of state doctrine precluded aiding and abetting claims based on allegations that Israel’s official policy violated international law). Here, the potential for interference in the conduct of foreign affairs and international comity preclude jurisdiction on Counts Two and Three of the Complaint.

**E. Aiding and Abetting Allegations**

37. Even if Counts Two and Three were justiciable, to state a valid claim for aiding and abetting alleged Fourth Geneva Convention violations, “a claimant must show that the defendant provided substantial assistance with the purpose of facilitating the alleged offenses.” *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 247 (2nd Cir. 2009), *cert. denied*, 131 S. Ct. 79 & 131 S. Ct. 122 (2010). In other words, it must be shown that the SBI acted with the purpose of assisting international law violations, and that it has the right and ability to control the country’s alleged conduct. *Id.* at 261, 263.

38. Since the SBI is merely a purchaser of bonds, it lacks the requisite purpose to aid and abet any alleged international law violations, as a matter of law. *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1024, 1027 (finding that as a matter of law, a seller lacks specific intent necessary to aid and abet actions of buyer). Plaintiffs’ allegations of the SBI’s intent to aid and abet international law violations are not plausible, and the Court is not bound by these conclusory assertions. See *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1951-2 (2009) holding 1) that to survive motion to dismiss, complaint must allege facts sufficient to plausibly suggest defendant’s state of mind, and 2) that court is not bound by conclusory assertions of knowledge or intent).

39. Regardless of Plaintiffs' allegations of intent, the SBI's conduct in merely purchasing government bonds cannot impose aiding and abetting liability as a matter of law. *See, e.g., Talisman, supra* p.13, 582 F.3d at 264 (any other conclusion would allow "private parties to impose embargos or international sanctions through civil actions in United States courts. Such measures...are properly reserved to governments and multinational organizations."); *Doe v. Nestle*, 748 F. Supp.2d 1057, 1096 (C.D. Ca. 2010) ("[A] plaintiff must allege something more than ordinary commercial transactions in order to state a claim for aiding and abetting human rights violations."); *Rothstein v. UBS AG*, 647 F. Supp.2d 292 (S.D. N.Y. 2009) (granting motion to dismiss claim against international bank that bank's funds indirectly facilitated international law violation, and reasoning that bank loans were not significant source of funds to government, and the money could be used for multiple legitimate uses); *In re South African Apartheid Litig.*, 617 F. Supp.2d 228, 257-258, 269 (S.D. N.Y. 2009) (dismissing aiding and abetting claims and stating that "[i]t is (or should be) undisputed that simply doing business with a state or individual" is insufficient to create aiding and abetting liability); *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1023-24 ("Plaintiffs' claim of aiding and abetting fails because where a seller merely acts as a seller, he cannot be an aider and abettor. . . .").

40. Counts Two and Three of the Complaint are neither justiciable nor do state a claim upon which relief can be granted.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby issues the following:

**ORDER**

1. Defendant's motion to dismiss the Complaint is granted; and



2. Plaintiffs' Complaint is hereby dismissed in its entirety, with prejudice.

3. For the same reasons that Defendant's motion to dismiss the Complaint is granted, Plaintiffs' motion for summary judgment on Count One is denied.

Let Judgment be entered accordingly.

Dated: 9 April 2012

BY THE COURT:

  
MARGARET M. MARRINAN  
Judge of District Court

AG: #2971012-v1

Memorandum

At issue is whether this complaint sets forth a legally sufficient claim for relief. Minn.R.Civ.P.12.02. For purposes of this motion, the court accepts as true the facts (and reasonable inferences drawn from them) as articulated in the complaint.

Plaintiffs' complaint alleges three counts: that Defendant 1) has exceeded its investment authority; 2) has violated a statutory duty to invest assets lawfully; and 3) has violated the "Prudent Person" standard.

Whether a litigant is entitled to have a court address the merits of a dispute hinges first upon the question of standing.<sup>1</sup> This exists if 1) the Plaintiff has suffered "an injury in fact" or 2) if the legislature has conferred standing via statute.<sup>2</sup>

Plaintiffs allege no concrete "injury in fact" as to any of these counts. As to the question of statutorily conferred standing, the Plaintiffs' injuries, if any, must fall within the "zone of interest" of the particular statute<sup>3</sup>, here M.S. Chapters 11A and 356A.

Chapter 11A of Minnesota Statutes (Investment of State and Pension Assets) includes a Statement of Purpose at M.S. 11A.01:

[It is] "to establish standards, in addition to the standards of chapter 356A, to ensure that state and pension assets subject to this legislation will be responsibly invested to maximize the total rate of return without incurring undue risk".

The Board's fiduciary duty (M.S. 356A.04) extends to 1) active, deferred and retired members of the plan (its beneficiaries); 2) the taxpayers of the state or political subdivision who help finance the plan; and 3) the state of Minnesota. At least five of the named plaintiffs are beneficiaries of plans covered in these statutes<sup>4</sup>; an additional nine are citizens of Minnesota<sup>5</sup>.

Plaintiff's thirty two page complaint is dominated by representations regarding Israel's treatment of Palestinians; the bottom line here is that Plaintiffs object to the SBI investing in any Israeli bonds. The Court will not substitute its own judgment for those policy decisions appropriately made by the executive or legislative branches.

Nonetheless, Plaintiffs have alleged that the SBI is limited by statutory language to the international securities in which it may invest, and that its investments in Israeli bonds is in violation of those limitations.

<sup>1</sup> *Annandale Advocate v. City of Annandale*, 435 NW2d 24, 27 (Minn. 1989).

<sup>2</sup> *State by Humphrey v. Phillip Morris, Inc.*, 551 NW2d 490, 493 (Minn. 1996).

<sup>3</sup> *Hanson v. Woolston*, 701 NW2d 257, 262 (Minn. Ct. App. 2005).

<sup>4</sup> Sylvia Schwarz, Sarah Martin, Robert Kosuth, Vern Simula and David Boehnke.

<sup>5</sup> Lucia Smith, Margaret Sarfehjooy, Catharine Abbott, Barbara Hill, Polly Mann, Leona Ross, Mary Eoloff, Nick Eoloff and Cynthia Arnold.

M.S. Sec. 11A.24 addresses authorized investments. Subdivision 2 allows for investment in governmental obligations, both nation-wide and in Canada. With the exception of certain specific international banks, there is no mention of countries other than Canada. Subdivision 6, however, opens the door to other international investments:

“(a) In addition to the investments authorized in subdivisions 1 to 5, the state board may invest funds in... (5) international securities.”

While M.S. 11A.24 Subd. 2 authorized only governmental obligations in the United States and Canada, that predated Subd. 6 (a) (5), which places no such limitations on international securities.<sup>6</sup> Where such a situation exists, the Court looks to M.S. 645.26 for assistance. M.S. 645.26 provides in pertinent part:

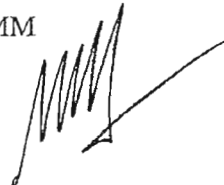
Subd. 1: “When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the special shall prevail...unless the general provision shall be enacted at a later session....

Subd. 4: “When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail.”

In light of the above, the Plaintiffs’ motion for summary judgment must be denied, and Defendant’s motion for dismissal of this action granted.

4-9-12

MMM



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<sup>6</sup> M.S. 11A.24 clearly includes bonds in the term “security”. Subd. 1 gives the SBI authority to invest in “the following securities” which are set out in subsequent subdivisions.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Declaratory Judgment Action

Minnesota Break the Bonds Campaign,  
Bill in Popular Committee Against the  
Wall and Settlements, Women Against  
Military Madness-Middle East Committee,  
Lucia Wilkes Smith, Margaret Sarfehjooy,  
Catharine Abbott, Barbara Hill, Polly Mann,  
Leona Ross, Sylvia Schwarz, Nadim Shamat,  
Sarah Martin, Robert Kosuth, Mary Eoloff,  
Nick Eoloff, Vern Simula, Cynthia Arnold,  
Newland F. Smith, III, Ronnie Barkan, Ofer  
Neiman, David Nir, Leehee Rothschild,  
Renen Raz, Dorothy Naor, Gal Lugassi,  
Boycott From Within and David Boehnke,

Court File No. 62-CV-11-10079  
Judge Margaret M. Marrinan

**AFFIDAVIT OF HOWARD BICKER**

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

HOWARD BICKER, being first duly sworn on oath, deposes and states as follows:

1. I submit this affidavit in opposition to Plaintiffs' Summary Judgment Motion on Count One in the above-referenced matter and in support of summary judgment in favor of Defendants.

2. I am the Executive Director of the State Board of Investment ("SBI") and have served in this position since 1981. I have worked for the SBI since 1971.

3. The SBI was granted authorization by the legislature to invest in international securities in 1988, when Minnesota Statutes Section 11A.24, subd. 6(a)(5) was adopted.

4. In 1988, as Executive Director, I was directly involved in proposing legislation on behalf of the SBI. The 1988 statute adding "international securities" as authorized investments for the funds under the SBI's control was adopted at the SBI's request. I helped draft the legislative proposal and testified at the Legislature regarding the proposal. The SBI requested this legislation to enable it to further diversify its holdings by the purchase of foreign corporate equity and debt and foreign government debt, beyond the corporate equity and debt and government debt already authorized in other provisions of Minnesota Statutes Section 11A.24. Attached hereto as Exhibit A is a true and correct copy of pages of the SBI's 1988 Annual Report describing the legislation.

5. I understood that with the passage of Minn. Stat. § 11A.24, subd. 6(a)(5), the SBI was authorized to purchase foreign government bonds, beyond just Canadian government bonds. As a result of this understanding, the SBI has purchased non-Canadian foreign government bonds continuously since at least 1991, when it purchased bonds issued by the Korean Development Bank and the European Investment Bank. Attached hereto as Exhibit B is a true and correct copy of pages 70 and 71 of the SBI's 1991 Annual Report, which show the SBI's holding of Korean Development Bank bonds and European Investment Bank bonds. The SBI's holdings as of December 31, 2011 include government bonds of Aruba, Norway (Ekspportfinans), Denmark, Japan, Russia, Colombia, Italy, Mexico, France (SFEF) and Israel, as well as the European Investment Bank and the Nordic Investment Bank. Attached hereto as Exhibit C is a true and correct copy of pages 76, 79, 84, 96, 98, 99, 100, 104, 106 and 108 of the *Minnesota State Board of Investment Alphabetical Asset Listing As Of December 31, 2011*, a document

found on the SBI's website, which indicates the SBI's holdings of the above-mentioned foreign government bonds.

6. The SBI first purchased State of Israel bonds in 1993. Attached hereto as Exhibit D is a true and correct copy of page 99 of the SBI's 1993 Annual Report which shows the SBI's holding in Israel bonds for June 30, 1993. The SBI has continuously invested in various State of Israel bonds since that time.

7. Minnesota Statutes Sections 11A.243 and 11A.244 preclude investment in companies doing business in Sudan and Iran. Although the SBI is authorized to purchase foreign government bonds, the legislature had no need to address Sudanese or Iranian government bonds in §§ 11A.243 and .244 because such bonds are not and have never been available for purchase on an organized secondary open market. In other words, Sudanese and Iranian bonds have never been available to the SBI for purchase.

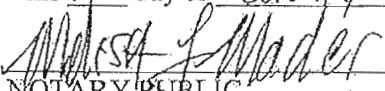
8. An International Investment Standards Task Force was created in 1992 to draft guidelines for investment managers to follow in order to invest in stock in international companies. The guidelines were created in response to concerns expressed by labor unions and environmentalists about companies doing business in foreign countries in which the labor, human rights and environmental standards in these countries could have an adverse impact on the competitiveness of American businesses. Since foreign governments do not compete against American businesses, the investment in foreign government bonds does not raise the issues to which the guidelines were intended to respond. As a result, these investing guidelines for the

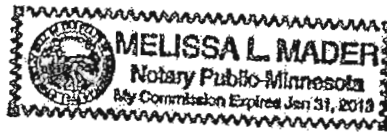
International Stock Pool do not address government bonds. Foreign government bonds are not part of the International Stock Pool, they are primarily in the SBI's Bond Pool.

FURTHER YOUR AFFIANT SAYETH NOT.

  
HOWARD BICKER

Subscribed and sworn to before me on  
This 23 day of February, 2012.

  
NOTARY PUBLIC



AG: #2955355-v1

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**1988  
ANNUAL  
REPORT**

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**MINNESOTA STATE  
BOARD OF  
INVESTMENT**

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Bicker Aff.  
Exhibit A



## MAJOR DEVELOPMENTS

### LEGISLATIVE CHANGES

The 1988 Legislature enacted two changes that affect the statutory authority of the State Board of Investment (SBI).

#### International Investments

The Legislature approved the Board's request to add international securities as authorized investments for the funds under its control. Under the statute adopted by the Legislature, international investments will be considered an alternative asset class. Previously, the Legislature authorized real estate, venture capital, resource fund investments and unrated debt as alternative assets classes. By statute, investments in all alternative asset classes, including international securities, are capped at 35% of a fund.

The Board has not yet established a target asset allocation for international investments in any fund. It expects to develop an international investment program over the next one to two years.

#### Northern Ireland

The Legislature also enacted statutory provisions concerning the SBI's investments in U.S. companies with operations in Northern Ireland. The new statute requires the SBI to:

- Annually compile a list of U.S. corporations with operations in Northern Ireland.
- Annually determine whether those corporations have taken affirmative action to eliminate religious or ethnic discrimination. The statute lists nine goals modeled after the McBride Principles.
- Sponsor, co-sponsor and support resolutions that encourage U.S. companies to pursue affirmative action in Northern Ireland, where feasible.

The statute does not require the SBI to divest existing holdings in any company and does not restrict future investments by the SBI.

1991  
ANNUAL  
REPORT

PART TWO

STATE  
BOARD OF  
INVESTMENT

MINNESOTA

Bicker Aff.  
Exhibit B  
R. App. 24

MINNESOTA STATE BOARD OF INVESTMENT  
 PASSIVE BOND MANAGERS ACCOUNT  
 FIDELITY MANAGEMENT TRUST  
 ALPHABETICAL FIXED INCOME HOLDINGS  
 JUNE 30, 1991

PAR VALUE	SECURITY	COUPON	MATURITY	MARKET VALUE
\$ 6,766,821	GNMA POOL # 281729	09.0000 %	10/15/19	\$ 6,727,928
337,109	GNMA POOL # 282466	09.5000 %	03/15/20	340,852
1,846,671	GNMA POOL # 280052	09.5000 %	08/15/20	1,873,609
615,492	GNMA POOL # 289054	09.5000 %	08/15/20	627,802
1,447,373	GNMA POOL # 289055	09.5000 %	08/15/20	1,476,320
435,867	GNMA POOL # 289359	09.5000 %	08/15/20	505,784
482,183	GNMA POOL # 288884	09.5000 %	07/15/20	491,826
483,282	GNMA POOL # 28011	09.0000 %	12/15/08	485,013
995,161	GNMA POOL # 291783	09.5000 %	08/15/20	1,015,064
348,566	GNMA POOL # 293345	09.5000 %	11/15/20	355,538
3,985,071	GNMA POOL # 293021	09.5000 %	03/15/20	4,064,773
342,384	GNMA POOL # 301106	09.5000 %	03/15/21	354,332
170,609	GNMA POOL # 42759	11.0000 %	08/15/10	184,843
557,229	GNMA POOL # 44607	11.0000 %	09/15/10	603,719
3,119,000	GOLDEN WEST FINL CORP	10.2500 %	05/15/97	5,279,754
2,250,000	HOME SVGS AMER IRVINDALE CALIF	10.5000 %	06/12/97	2,334,585
3,000,000	INTER AMERICAN DEV. BANK	09.5000 %	10/15/97	3,145,770
625,000	INTERNATIONAL BK FOR RECON &	14.7500 %	06/01/92	663,843
1,000,000	INTERNATIONAL LEASE FIN CORP	07.0000 %	02/01/92	1,032,510
1,470,000	KOREA DEV BANK	09.6000 %	12/01/00	1,449,727
2,090,000	KOREA DEV BK MEDIUM TERM NTS	09.4800 %	04/02/01	2,077,774
3,000,000	MANITOBA PROV CDA	09.1250 %	01/15/18	3,075,810
2,570,000	MANUFACTURERS HANOVER CORP	08.5000 %	02/15/99	2,346,255
200,000	MARRIOTT CORP	08.7500 %	05/09/93	259,305
760,000	MICHERMOTT INC	10.2500 %	06/01/95	764,908
5,000,000	MORGAN STANLEY MTG TR II	08.2500 %	07/20/18	4,801,999
250,000	PIHLI GROUP INC	08.7500 %	08/15/91	250,545
2,000,000	PHILIP MORRIS COS INC	09.0000 %	05/15/98	2,030,929
3,000,000	PHILIP MORRIS COS INC.	07.5000 %	08/01/96	3,001,230
2,000,000	PITNEY BOWES CR CORP	08.6250 %	02/15/08	1,973,740
4,000,000	PRIVATE EXIT FDG CORP.	09.0000 %	01/31/96	4,113,200
10,500,000	RESOLUTION FUNDING CORP	08.1250 %	10/15/19	9,856,875
4,000,000	RJR NABISCO INC	08.8750 %	11/15/92	3,988,720
6,795,259	S.B.I MONEY FUND	00.0000 %		6,795,250
9,897,000	SEAR'S CREDIT ACCOUNT TR	09.3500 %	12/15/93	9,949,553
2,000,000	SOUTHERN CALIF GAS CO	09.3750 %	06/15/98	2,098,800
3,000,000	STANDARD CREDIT CARD TR	09.3000 %	05/10/93	3,077,790
6,500,000	STANDARD CREDIT CARD TR	09.3750 %	06/10/95	6,734,655
11,955,000	SYSTEM ENERGY RES INC	14.0000 %	11/15/94	13,849,732
50,215,000	U.S.A. TREASURY BOND	08.8750 %	08/15/17	10,569,358
25,410,000	U.S.A. TREASURY BOND	08.8750 %	02/15/19	24,295,132
35,710,000	U.S.A. TREASURY BOND	10.3750 %	11/15/12	41,209,412
10,000,000	U.S.A. TREASURY COUPON	00.0000 %	05/15/99	5,208,560
14,545,000	U.S.A. TREASURY NOTE	09.5000 %	10/15/94	15,367,665
1,700,000	U.S.A. TREASURY NOTE	08.5000 %	05/15/97	1,796,291
1,890,000	U.S.A. TREASURY NOTE	09.1250 %	05/15/99	1,890,558
20,375,000	U.S.A. TREASURY NOTE	07.6250 %	05/15/93	20,616,851
31,920,000	U.S.A. TREASURY NOTE	09.5000 %	11/15/95	33,854,990
5,950,000	U.S.A. TREASURY NOTE	08.8750 %	11/15/97	6,169,376
7,000,000	U.S.A. TREASURY NOTE	07.8750 %	03/31/92	7,080,920
9,500,000	U.S.A. TREASURY NOTE	07.3750 %	05/15/96	9,102,375
12,615,000	U.S.A. TREASURY NOTES	09.0000 %	05/15/92	12,881,068
\$ 529,296,426	TOTAL FIXED INCOME PORTFOLIO			\$ 539,206,614

MINNESOTA STATE BOARD OF INVESTMENT  
 PASSIVE BOND MANAGERS ACCOUNT  
 LINCOLN CAPITAL MANAGEMENT  
 ALPHABETICAL FIXED INCOME HOLDINGS  
 JUNE 30, 1991

PAR VALUE	SECURITY	COUPON	MATURITY	MARKET VALUE
\$ 1,240,000	AFRICAN DEV BK	08.8000 %	09/01/19	\$ 1,241,785
475,000	AFRICAN DEV BK	10.0000 %	11/01/97	506,065
515,000	ALLIED SIGNAL	09.2000 %	02/15/03	513,496
1,000,000	AMERICAN EXPRESS CR CORP	07.7500 %	03/01/97	954,740
385,000	AMOCO CO	07.8750 %	08/15/96	376,071
500,000	AMR CORP MEDIUM TERM	10.5500 %	01/12/21	506,275
975,000	ASIAN DEVELOPMENT BANK	09.1250 %	06/01/00	998,994
1,625,000	AVCO FINL SVCS INC	09.3750 %	01/15/93	1,652,901
765,000	BALTIMORE GAS & ELEC CO	07.1250 %	01/01/02	666,733
35,000	BANKAMERICA CORP	09.7000 %	08/01/00	35,471
710,000	BANKAMERICA CORP	09.6250 %	02/13/01	714,366
965,000	BECTON DICKINSON & CO E GIVEN	07.8750 %	12/15/96	925,367
625,000	BENEFICIAL CORP	08.4000 %	05/15/08	624,556
755,000	BENEFICIAL CORP	09.1250 %	02/15/98	760,254
4,560,000	BSY MASTER CR CARD TR	07.9500 %	04/15/96	4,561,413
775,000	BRITISH COLUMBIA HYDRO & PWR	15.0000 %	04/15/11	994,549
500,000	C I T GROUP HLDGS INC	08.8750 %	06/15/96	502,520
1,105,000	CAROLINA PWR & LT	07.3750 %	01/01/01	973,394
635,000	CATERPILLAR INC	09.3750 %	03/15/21	621,010
1,548,705	CFI GRANTOR TR	09.5000 %	04/17/95	1,625,675
740,000	CHASE MANHATTAN CR CARD TR	08.4500 %	11/15/97	748,088
2,864,623	CHEMICAL BK GRANTOR TR	09.0000 %	02/15/95	2,904,011
265,000	CHEMICAL BK GRP CORP	10.3750 %	03/15/99	259,119
545,000	CHEVRON CAP USA INC	07.8750 %	03/01/97	526,824
895,000	CINCINNATI GAS & ELEC CO	09.2500 %	04/01/16	871,094
860,000	CIT GROUP HLDGS INC	07.4000 %	02/15/92	863,827
505,000	CIT GROUP HOLDINGS	08.7500 %	02/15/96	905,060
200,000	CLICORP	01.0000 %	04/15/99	183,368
515,000	CLICORP	09.7500 %	06/01/99	496,975
365,000	COMMERCIAL CREDIT CO	09.8750 %	12/01/95	379,067
515,000	COMMONWEALTH EDISON CO	09.8750 %	06/15/20	535,455
600,000	COMMONWEALTH EDISON CO	05.0000 %	10/15/03	549,143
950,000	CONNECTICUT LIGHT & POWER CO	09.7500 %	11/01/18	968,688
150,000	CONSOLIDATED NAT GAS CO	08.6250 %	12/01/11	141,838
490,000	CONSOLIDATED RAIL CORP	09.7500 %	06/15/20	496,615
460,000	CORNING GLASS WKS	08.3750 %	11/01/96	453,831
2,211,950	COUPON TREAS RCPT	00.0000 %	11/15/92	2,021,102
2,259,000	COUPON TREAS RCPT	00.0000 %	02/15/93	2,024,064
420,000	COUPON TREAS RCPT	00.0000 %	06/15/93	362,044
9,639,840	COUPON TREAS RCPT	00.0000 %	02/15/92	9,290,330
485,000	DAYTON HUDSON CORP	10.0000 %	01/01/11	503,255
1,000,000	DELOITTE EDISON	09.5000 %	02/15/17	949,340
500,000	DOW CAP B V	09.2000 %	06/01/10	452,934
1,130,000	DOW CORNING CORP	08.1500 %	10/15/96	1,159,496
610,000	DUPONT (E.I.) DENEMOURS	06.0000 %	12/01/01	492,568
1,035,000	DUKE PWR CO	07.7500 %	06/01/03	963,932
215,000	DUKE PWR CO	07.5000 %	03/01/97	303,828
860,000	EATON CORP	07.0000 %	04/01/11	746,265
900,000	EUROPEAN INVT BK	10.1250 %	10/01/00	1,040,659
830,000	EXPORT DEV CORP	07.3750 %	02/01/97	796,982
860,000	FARM CR CORP	07.5000 %	12/24/96	828,756
335,379	FED HM LN PC # 170020	07.5000 %	06/01/08	317,001
430,291	FED HM LN PC # 181020	07.5000 %	06/01/09	406,754
747,572	FED HM LN PC # 181539	07.5000 %	11/01/08	706,679











MINNESOTA STATE BOARD OF INVESTMENT  
ALPHABETICAL ASSET LISTING  
As Of December 31, 2011

SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE	SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE
5,480,000.00	NEVADA POWER CO	6.50	5/15/2018	\$6,376,633.94	4,063,000.00	PHILIP MORRIS INTL INC	2.50	5/16/2016	\$4,170,571.94
5,125,000.00	NEW JERSEY ST TURNPIKE AUTH	7.10	1/1/2041	\$7,021,557.50	1,560,000.00	PICO RIVERA CA WTR AUTH REVENU	6.75	5/1/2014	\$1,632,087.60
2,575,000.00	NEWCREST FINANCE PTY LTD	4.45	11/15/2021	\$2,539,902.75	35,000.00	PIONEER NATURAL RESOURCE	7.50	1/15/2020	\$41,049.44
13,755,000.00	NEWS AMERICA INC	6.15	2/15/2041	\$15,917,162.18	2,030,000.00	PLAINS ALL AMER PIPELINE	5.00	2/1/2021	\$2,216,243.94
7,413,000.00	NEVEN INC	6.40	5/15/2037	\$8,281,344.79	260,000.00	POLYPORE INTERNATIONAL I	7.50	11/15/2017	\$269,100.00
500,000.00	NELSEN FINANCE LLC CO	7.75	10/15/2018	\$540,000.00	2,810,000.00	PORT AUTH OF NEW YORK + NEW JE	6.04	12/1/2029	\$3,408,192.80
9,464,000.00	NBSOURCE FINANCE CORP	6.15	3/1/2013	\$10,351,385.76	1,922,927.80	POSTAL SQUARE LP	6.50	6/15/2022	\$2,352,155.09
4,795,000.00	NOBLE ENERGY INC	6.00	3/1/2041	\$5,753,069.56	1,945,000.00	PPL YEM HOLDINGS PLC	5.38	5/1/2021	\$2,064,018.05
4,210,000.00	NORDEA BANK AS	3.70	11/13/2014	\$3,860,411.54	1,725,000.00	PRIDE INTERNATIONAL INC	6.88	8/15/2020	\$2,022,440.03
16,635,000.00	NORDEA EENDOMSKREDDIT A	2.13	9/22/2017	\$16,384,231.56	4,090,000.00	PRIVATE EXPORT FUNDING	5.45	9/15/2017	\$4,955,284.49
2,300,000.00	NORDSTROM INC	6.75	6/1/2014	\$2,579,068.20	6,240,000.00	PROGRESS ENERGY INC	6.05	3/15/2014	\$7,489,394.30
4,930,000.00	NORFOLK SOUTHERN RAILWAY	5.75	6/15/2020	\$7,133,463.50	1,250,000.00	PROVIDENT COMPANIES INC	7.25	2/15/2028	\$1,334,568.75
285,000.00	NORTHSTAR EDUC FIN INC DE	0.42	4/28/2017	\$284,256.15	12,560,000.00	PRUDENTIAL FINANCIAL INC	3.88	1/14/2015	\$13,446,636.14
769,801.26	NORTHSTAR EDUCATION FINANCE, I	0.52	10/28/2026	\$759,864.96	1,960,000.00	PUBLIC SERVICE CO OF NEW	7.95	5/15/2018	\$2,291,096.92
4,165,000.00	NORTHWEST PIPELINE CORP	7.00	6/15/2016	\$4,825,159.75	2,600,000.00	QBE INS GROUP LTD	5.65	7/1/2023	\$2,328,045.20
5,930,000.00	NORTHWESTERN MUTUAL LIFE	0.00	3/30/2040	\$7,118,561.76	1,515,000.00	QEP RESOURCES INC	6.68	3/1/2021	\$1,632,412.50
325,000.00	NOVELIS INC	6.75	12/15/2020	\$348,562.50	715,000.00	QUEBECOR MEDIA	7.75	3/15/2016	\$734,652.50
435,000.00	NRG ENERGY INC	4.28	1/15/2017	\$451,312.50	2,835,000.00	QUEST DIAGNOSTIC INC	3.20	4/1/2016	\$2,935,385.66
1,625,000.00	OBP DEPOSITOR LLC TRUST	4.60	7/15/2045	\$2,040,202.18	587,000.00	QVC INC	7.38	10/15/2020	\$627,087.50
1,330,000.00	OCCIDENTAL PETROLEUM COR	3.43	2/15/2022	\$1,364,375.18	4,723,000.00	QWEST COMMUNICATIONS INT	7.13	4/1/2018	\$4,910,872.56
12,700,000.00	OEBB INFRASTRUKTUR AG	4.53	11/21/2013	\$13,342,962.90	9,523,000.00	QWEST CORP	8.38	5/1/2016	\$10,217,387.79
2,020,000.00	OHO EDISON	5.45	5/1/2015	\$2,836,340.96	555,000.00	R.R. DONNELLEY & SONS	4.95	4/1/2014	\$542,512.50
930,000.00	OLSC RUSS AGRIC BK(SHS)	6.20	5/15/2017	\$928,837.50	1,751,000.00	RABOBANK NEDERLAND	11.00	12/29/2049	\$2,048,670.00
207,000.00	OMNIGARE INC	7.75	6/1/2020	\$222,266.25	1,110,000.00	RAMAMERICA INC	9.25	7/1/2017	\$1,212,675.00
1,000,000.00	OMNICO GROUP INC	4.45	6/15/2020	\$1,030,787.00	291,000.00	RAIN CH CARBON LLC(C)	8.00	12/1/2018	\$291,727.50
5,985,000.00	ONCOR ELECTRIC DELIVERY	6.38	1/15/2015	\$6,519,289.67	1,880,000.00	RANGE RESOURCES CORP	8.00	5/15/2019	\$2,064,250.00
2,338,682.76	OPTELUM MORTGAGE ACCEPTANCE CO	0.55	7/25/2035	\$2,144,748.29	1,760,000.00	RAYTHEON COMPANY	3.13	10/15/2020	\$1,773,703.36
361,269.64	OPTION ONE MORTGAGE LOAN TRUST	0.41	2/25/2038	\$355,818.32	2,430,000.00	RBSCF TRUST	5.90	2/16/2051	\$2,397,875.40
620,000.00	OSHKOSH CORP	0.50	2/1/2020	\$640,870.00	5,750,382.34	RBSP RESECURITIZATION TRUST	5.64	3/25/2036	\$5,211,514.01
674,135.81	OVERSEAS PRIVATE INVEST	7.50	12/15/2012	\$685,117.48	7,685,000.00	RECO ELSEVIER CAPITAL	7.75	1/15/2014	\$9,465,786.48
1,745,000.00	PACCAR FINANCIAL CORP	1.50	9/29/2014	\$1,765,531.67	290,000.00	REGAL CINEMAS CORP	8.63	7/15/2019	\$313,200.00
2,840,000.00	PACIFIC GAS & ELECTRIC	3.50	10/1/2020	\$3,299,587.18	1,338,000.00	REGENCY ENERGY PARTNERS	6.50	7/15/2021	\$1,391,520.00
4,615,000.00	PACIFICORP	6.26	10/15/2037	\$5,687,501.57	2,375,000.00	REGIONS FINANCIAL CORP	5.75	6/15/2015	\$2,268,125.00
3,941,165.06	PARK PLACE SECURITIES INC	0.93	10/25/2034	\$3,779,940.50	2,325,000.00	REINSURANCE GRP OF AMER	5.63	3/15/2017	\$2,530,355.63
2,156,359.60	PATRONS LEGACY 2003 III	5.65	7/10/2058	\$2,078,249.52	6,040,000.00	REPUBLIC OF COLOMBIA	4.38	7/12/2021	\$6,493,000.00
2,480,000.00	PEABODY ENERGY CORP	6.80	11/15/2018	\$2,582,850.00	1,371,000.00	REPUBLIC OF ITALY	6.88	9/27/2023	\$1,320,821.40
5,670,767.02	PEGASUS AVIATION LEASE SECURIT	4.98	3/25/2030	\$0.59	3,002,000.00	REPUBLIC SERVICES INC	5.25	11/15/2021	\$3,403,931.76
3,568,000.00	PENEX PROJ FID MASTER TR	6.60	6/15/2035	\$4,065,627.50	12,872,513.52	RESIDENTIAL ACCREDIT LOANS, IN	5.50	8/25/2034	\$6,460,387.32
674,000.00	PENN NATIONAL GAMING INC	8.75	8/15/2019	\$732,975.00	4,231,292.63	RESIDENTIAL ASSET MORTGAGE PRO	4.72	7/25/2034	\$3,272,224.82
7,900,000.00	PENNSYLVANIA STATEGR EDU ASSIS	1.93	5/1/2046	\$7,303,515.79	20,924.41	RESIDENTIAL ASSET SECURITIES C	0.76	3/25/2032	\$20,286.61
2,330,000.00	PEPSICO INC	4.95	11/1/2040	\$2,841,364.57	169,336.76	RESIDENTIAL FUNDING SECURITIES	1.15	3/25/2033	\$120,532.32
2,825,000.00	PERKINELMER INC	5.00	11/15/2021	\$7,858,600.55	5,115,000.00	RESONA PFD GLOBAL SECS	7.19	12/1/2049	\$5,057,926.83
5,870,000.00	PERMANENT MASTER ISSUER PLC	1.20	7/15/2042	\$5,850,437.74	1,750,000.00	REYNOLDS AMERICAN INC	6.75	6/15/2017	\$1,848,652.75
10,120,000.00	PERNOOD RICARD SA	4.45	11/15/2022	\$10,601,560.20	888,000.00	REYNOLDS GRP ISS/REYNOLD	7.88	8/15/2019	\$931,027.50
260,000.00	PETRO CANADA	4.00	7/15/2013	\$290,028.48	11,625,000.00	RIO TINTO FIN USA LTD	6.50	7/15/2018	\$12,780,765.58
21,369,000.00	PETROBRAS INTL FIN CO	0.38	1/27/2021	\$22,705,536.98	1,190,000.00	ROCHE HLDGS INC	6.00	3/1/2019	\$1,446,341.47
1,240,000.00	PETROLEOS MEXICANOS	5.26	1/21/2021	\$1,345,400.00	3,275,000.00	ROCKIES EXPRESS PIPELINE	5.63	4/15/2020	\$3,118,900.40
2,070,000.00	PFIZER INC	6.70	3/15/2019	\$2,554,187.49	3,885,000.00	ROGERS COMMUNICATIONS IN	6.60	8/15/2018	\$4,732,489.44

MINNESOTA STATE BOARD OF INVESTMENT  
ALPHABETICAL ASSET LISTING  
As Of December 31, 2011

SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE	SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE
1,855,000.00	ROHM & HAAS COMPANY	6.00	9/15/2017	\$1,893,131.64	961,000.00	SPECTRUM BRANDS HLDGS	9.50	6/15/2018	\$1,051,093.75
1,850,000.00	ROWAN COMPANIES INC	7.11	8/1/2019	\$2,321,150.04	405,000.00	SPEEDWAY MOTORSPORTS INC	8.75	6/1/2016	\$441,450.00
13,980,000.00	ROYAL BANK OF CANADA	1.45	10/30/2014	\$14,052,570.18	110,000.00	SPRINGLEAF FINANCE CORP	6.90	12/15/2017	\$79,200.00
24,745,000.00	ROYAL BK OF SCOTLAND PLC	5.63	6/24/2020	\$24,168,056.04	4,960,000.00	SPRINT CAPITAL CORP	6.88	11/15/2028	\$3,089,500.00
1,700,000.00	ROYAL BK SCOTLAND GRP PLC	6.40	10/21/2019	\$1,591,519.50	6,465,000.00	SPRINT NEXTEL CORP	9.00	11/15/2018	\$5,578,250.00
1,633,105.00	RUSSIA FOREIGN BOND	7.50	3/31/2030	\$1,503,410.68	2,380,000.00	STATE STREET CORP	4.96	3/15/2018	\$2,473,821.98
6,330,000.00	SABMiller PLC	5.70	9/15/2014	\$7,002,974.32	30,000.00	STATION CASINOS INC	6.88	3/1/2016	\$0.00
431,271.84	SACO I TRUST	0.35	9/25/2035	\$397,947.46	1,275,000.00	STEEL DYNAMICS INC	7.28	11/1/2012	\$1,321,081.25
1,790,000.00	SAFEWAY INC	3.50	8/15/2020	\$1,812,980.94	2,685,885.30	STEEL RIVER TRANSMISSION	4.71	6/30/2017	\$2,738,861.87
175,000.00	SALLY HOLDINGS / SALLY CAP	6.64	1/15/2019	\$182,875.00	95,000.00	STH HOLDING CORP	8.00	2/15/2018	\$97,612.50
4,130,000.00	SAN BERNARDINO CA JT PARTS FUND	5.45	5/1/2027	\$4,185,920.20	36,450,000.00	STRIP PRINC	0.00	11/15/2022	\$28,888,447.50
2,500,000.00	SAN DIEGO CNTY CA PEDIAL TRANSPR	5.31	4/1/2048	\$3,145,658.00	3,908,970.75	STRUCTURED ADJUSTABLE RATE MOR	2.67	5/25/2034	\$2,995,046.66
70,000.00	SAN MATEO CNTY CA CNTY CLC DI	5.60	9/1/2038	\$72,581.60	0.00	STRUCTURED ASSET SECURITIES CO	2.45	7/25/2033	\$0.00
1,180,000.00	SANTA CLARA VLY CA TRANSPRTN A	5.62	4/1/2032	\$1,403,848.00	360,000.00	STRYKER CORP	2.00	9/30/2016	\$368,399.52
10,734,662.38	SANTANDER CONSUMER ACQUIRED RE	1.64	9/15/2016	\$10,633,228.48	2,280,000.00	SUMITOMO MITSUBI BANKING	3.15	7/22/2015	\$2,388,129.85
39,034,201.27	SANTANDER DRIVE AUTO RECEIVABL	3.09	5/15/2017	\$38,959,887.77	1,995,000.00	SUNCOR ENERGY INC	6.10	6/1/2018	\$2,361,609.18
35,000.00	SANTANDER HOLDINGS USA	4.03	4/1/2016	\$33,610.82	2,075,000.00	SUNTRUST BANKS INC	3.60	4/15/2016	\$2,113,049.28
2,800,000.00	SANTANDER US DEBT SA UNV	3.78	10/7/2015	\$2,540,858.00	4,735,000.00	SVENSKA HANDELSBANKEN AB	2.88	9/1/2012	\$4,779,778.90
86,942.24	SAXON ASSET SECURITIES TRUST	0.43	3/25/2035	\$59,627.77	0.00	SWEDBANK AB	3.00	12/22/2011	\$0.00
930,000.00	SBA TELECOMMUNICATIONS	8.00	9/19/2016	\$1,007,825.00	5,440,000.00	SWEDBANK HYPOTEK AB	2.95	3/28/2016	\$5,576,690.88
7,565,000.00	SBA TOWER TRUST	4.75	4/19/2040	\$7,814,011.16	1,750,000.00	SYMANTEC CORP	4.20	9/15/2020	\$1,759,675.75
2,200,000.00	SBAB BANK AB	3.13	3/23/2012	\$2,213,528.44	2,615,000.00	TAMPA ELECTRIC	6.10	5/15/2018	\$3,144,623.80
1,300,000.00	SCANA CORPORATION	4.75	5/15/2021	\$1,378,283.40	1,385,000.00	TARGET CORP	4.00	6/15/2013	\$1,451,905.20
4,875,000.00	SCHLUMBERGER INVESTMENT	3.03	5/15/2021	\$4,975,950.13	2,638,000.00	TCI COMMUNICATIONS INC	8.75	8/1/2015	\$3,344,669.54
3,538,945.71	SDART 2011 S1A B	1.48	5/15/2017	\$3,501,016.71	4,005,000.00	TCI SUB LLC	3.55	1/15/2015	\$4,152,147.71
131,191.05	SECURITIZED ASSET BACKED NM T	6.25	8/25/2035	\$1.31	1,500,000.00	TEACHERS INSUR & ANNUITY	6.85	12/19/2009	\$1,925,103.00
1,650,000.00	SELUPRA ENERGY	5.90	10/15/2039	\$2,035,865.10	3,115,000.00	TECK RESOURCES LIMITED	10.75	5/15/2019	\$3,762,075.67
378,000.00	SENECA GAMING CORP	8.25	12/1/2018	\$369,495.00	16,014,000.00	TELECOM ITALIA CAPITAL	7.20	7/1/2036	\$14,001,675.11
3,632,655.19	SEQUOIA MORTGAGE TRUST	3.41	2/1/2047	\$2,648,538.78	21,930,000.00	TELEFONICA EMISIONES SAU	4.95	11/15/2015	\$21,345,848.27
665,000.00	SERVICES CORP INTL	7.02	12/1/2018	\$641,450.00	2,290,000.00	TELSTRA CORP LTD	4.80	10/12/2021	\$2,428,666.37
330,000.00	SESI LLC	7.13	12/15/2021	\$346,500.00	3,756,000.00	TENET HEALTHCARE CORP	10.00	5/1/2018	\$4,222,510.00
1,350,000.00	SIERRA PACIFIC POWER CO	6.00	5/15/2016	\$1,566,086.40	18,260,000.00	TENN VALLEY AUTHORITY	5.38	4/1/2056	\$19,927,712.93
2,402,713.55	SIERRA RECEIVABLES FUNDING CO	4.42	7/20/2026	\$2,376,043.62	1,175,000.00	TENNESSEE GAS PIPELINE	8.38	6/15/2032	\$1,490,720.15
2,420,000.00	SILVERSTONE MASTER ISSUER	1.96	1/21/2055	\$2,414,872.75	2,200,000.00	TESCO PLC	2.70	1/5/2017	\$2,232,128.80
5,555,000.00	SIMON PROPERTY GROUP LP	10.35	4/1/2019	\$6,607,841.94	6,365,000.00	TEVA PHARM FIN IV BV	3.65	11/10/2021	\$6,474,064.28
7,815,000.00	SLM CORP	6.75	1/25/2016	\$7,817,723.70	9,920,000.00	TEVA PHARMACEUT FIN BV	3.65	11/10/2021	\$5,044,304.20
26,294,969.10	SLM STUDENT LOAN TRUST	2.12	7/25/2023	\$26,427,087.09	600,000.00	THERMO FISHER SCIENTIFIC	3.60	8/15/2021	\$628,642.40
230,000.00	SM ENERGY CO	6.50	11/15/2021	\$226,600.00	2,626,045.12	THORNBURG MORTGAGE SECURITIES	6.16	9/25/2037	\$2,331,187.52
20,173,608.47	SMALL BUSINESS ADMINISTRATION	6.12	9/1/2021	\$22,396,020.37	975,000.00	TIAA SEASONED COMMERCIAL MORTG	5.74	8/15/2039	\$1,054,366.95
2,730,000.00	SMART TRUST	2.31	4/14/2017	\$2,749,289.63	39,285,000.00	TIME WARNER CABLE INC	6.75	7/1/2018	\$40,547,777.05
141,916.21	SOUNDVIEW HOME EQUITY LOAN TRU	6.40	10/25/2036	\$139,496.14	26,020,000.00	TIME WARNER INC	6.25	3/29/2041	\$30,910,311.69
320,000.00	SOUNDVIEW NM TRUST	1.00	7/25/2035	\$3.20	370,000.00	TNK BP FINANCE SA	6.63	3/29/2017	\$382,750.00
1,530,000.00	SOUTHERN COPPER CORP	5.38	4/10/2020	\$1,613,707.83	2,770,000.00	TOLEDO EDISON COMPANY	6.15	5/15/2037	\$3,331,537.17
4,685,000.00	SOUTHERN NATURAL GAS	5.50	4/1/2017	\$5,452,085.16	16,414,000.00	TORONTO DOMINION BANK	2.38	10/19/2016	\$16,600,308.67
915,000.00	SOUTHERN STAR CENT CORP	6.75	3/1/2016	\$931,012.50	5,755,000.00	TOYOTA MOTOR CREDIT CORP	3.40	9/15/2021	\$5,931,120.27
2,500,000.00	SOUTHWESTERN ENERGY CO	7.50	3/1/2018	\$2,881,250.00	2,375,000.00	TRANS CANADA PIPELINES	6.35	5/15/2067	\$2,382,991.88
1,500,000.00	SOVEREIGN BANK	6.75	5/31/2018	\$2,118,479.10	1,370,000.00	TRANSALTA CORP	4.75	11/5/2015	\$1,471,534.81
1,579,816.03	SPECIALTY UNDERWRITING & RESRY	0.70	12/25/2035	\$1,541,067.86	1,450,000.00	TRANSATLANTIC HOLDINGS	8.00	11/30/2039	\$1,645,861.65

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4,326,000.00	TRANSCONT GAS PIPE CORP	5.40	8/15/2041	\$4,914,622.78	2,715,000.00	WEATHERFORD BERMUDA	9.63	3/1/2019	\$3,511,287.78
295,000.00	TRANSIDGM INC	7.75	12/15/2018	\$318,200.00	12,990,000.00	WELLPOINT INC	7.00	2/15/2019	\$14,528,482.93
3,850,000.00	TRANSNET LTD	4.50	7/10/2016	\$3,898,895.00	13,595,000.00	WELLS FARGO & COMPANY	4.60	4/1/2021	\$14,307,112.17
11,175,000.00	TRANSOCEAN INC	6.50	11/15/2020	\$11,630,109.28	410,000.00	WELLS FARGO CAPITAL X	5.95	12/1/2008	\$410,512.50
7,500,000.00	TRAVELERS COS INC	5.50	12/1/2015	\$8,782,695.90	2,050,000.00	WELLS FARGO HOME EQUITY TRUST	0.70	11/25/2035	\$1,702,643.90
110,383,821.06	TSY INFL BX N/B	1.25	4/15/2014	\$120,754,017.99	21,770,543.69	WELLS FARGO MORTGAGE BACKED SE	5.50	9/25/2037	\$19,800,043.50
171,000.00	TURNER BROADCASTING	6.75	7/1/2013	\$188,408.83	2,650,000.00	WESFARMERS LTD	2.98	5/18/2016	\$2,671,080.75
337,000.00	TW TELECOM HOLDINGS INC	6.00	3/1/2018	\$358,905.00	2,400,000.00	WESTERN GAS PARTNERS	5.38	6/1/2021	\$2,544,408.00
3,605,000.00	U S BANCORP MTN BK ENT	2.20	11/15/2016	\$3,841,558.44	2,255,000.00	WESTERN POWER DISTR HLDG	7.25	12/15/2017	\$2,623,527.10
168,974.98	UAL 2009 2A PASS THRU TR	9.75	9/15/2017	\$182,492.98	1,600,000.00	WESTPAC SECURITIES NZ LT	2.50	5/25/2012	\$1,811,008.80
760,000.00	USM PLC	5.75	11/3/2020	\$766,578.56	7,187,503.72	WF RBS COMMERCIAL MORTGAGE TRU	4.90	6/15/2044	\$1,420,518.67
1,240,000.00	USG AG STAMFORD	2.25	1/28/2014	\$1,206,666.32	16,000.00	WHITING PETROLEUM CORP	6.50	10/1/2018	\$16,720.00
6,153,000.00	USG AG STAMFORD CT	5.85	12/20/2017	\$6,197,060.46	103,922,000.00	WI TREASURY N/B	1.75	10/31/2018	\$105,309,402.52
2,525,000.00	USD INC	4.25	6/1/2018	\$2,811,824.65	1,898,000.00	WILLIAMS COS INC	7.75	8/15/2031	\$2,352,330.17
1,063,000.00	UNION PACIFIC CORP	6.18	7/15/2022	\$1,175,958.26	430,000.00	WILLIAMS PARTNERS LP	5.25	3/15/2020	\$475,896.24
5,887,297.17	UNION PACIFIC RR CO 07 3	6.18	1/2/2031	\$7,280,602.58	3,825,000.00	WILLIAMS PARTNERS LP/AVL	7.25	2/1/2017	\$4,537,742.85
7,851,000.00	UNITED MEXICAN STATES	5.75	10/12/2049	\$8,907,602.50	630,000.00	WILLIS GROUP HOLDINGS LT	5.75	3/15/2021	\$668,115.00
555,000.00	UNITED RENTALS NORTH AM	9.25	12/15/2019	\$555,867.50	896,000.00	WINDSTREAM CORP	7.88	11/1/2017	\$969,920.00
8,165,000.00	UNITEDHEALTH GROUP INC	6.00	2/15/2018	\$9,375,680.91	280,000.00	WIRECO WORLDGROUP INC	10.00	5/15/2017	\$281,400.00
6,841,141.15	URP RR CO 2000 PASS TRST	3.50	1/10/2021	\$8,168,504.16	3,615,000.00	WOODSIDE FINANCE LTD	4.50	11/10/2014	\$3,750,066.67
1,759,000.00	URUM GROUP	7.19	2/1/2028	\$1,965,342.43	5,900,000.00	WOOLWORTHS LIMITED	2.55	9/22/2015	\$6,027,687.50
1,125,000.00	URUMPROVIDENT FINANCE CO	6.85	11/15/2015	\$1,245,539.25	2,545,000.00	WORLD FINANCIAL NETWORK CREDIT	0.49	2/15/2017	\$2,654,889.92
2,620,000.00	UPPER IL RIVER VLY DEV AUTH IN	8.55	2/1/2030	\$2,886,889.80	2,082,000.00	WPP FINANCE (UK)	8.00	9/15/2014	\$2,319,158.54
3,140,000.00	US CELLULAR CORP	8.70	12/15/2033	\$3,152,776.66	853,000.00	WPX ENERGY INC	6.00	1/15/2022	\$873,258.75
1,209,105.28	US EDUCATION LOAN TRUST LLC	0.96	3/1/2025	\$1,170,404.84	1,100,000.00	WRINGLEY WJ JR CO	3.70	6/30/2014	\$1,134,024.10
1,634,264,900.00	US TREASURY N/B	0.13	9/30/2013	\$1,783,010,168.99	2,575,000.00	WYNDHAM WORLDWIDE	8.00	12/1/2016	\$2,776,880.00
1,187,879.93	UTILITY CONTRACT FUNDING	7.94	10/1/2016	\$1,282,304.51	20,115,000.00	XEROX CORPORATION	5.65	5/15/2013	\$22,164,147.11
390,000.00	VAIL RESORTS INC	6.50	5/1/2019	\$397,800.00	7,530,000.00	XSTRATA CANADA FIN CORP	2.85	11/10/2014	\$7,579,017.29
5,595,000.00	VALE OVERSEAS LIMITED	6.83	1/2/2036	\$5,993,661.41	6,031,000.00	XYLEM INC	3.55	9/20/2016	\$6,218,931.99
1,850,000.00	VALMONT INDUSTRIES INC	6.83	4/20/2020	\$2,141,256.60	1,310,000.00	YUM BRANDS INC	3.75	11/1/2021	\$1,330,822.45
20,535,000.00	VERIZON COMMUNICATIONS	4.75	11/1/2041	\$23,699,590.32	9,052,420,141.39	TOTAL FIXED INCOME			\$9,054,908,614.35
490,000.00	VERIZON NEW ENGLAND INC	7.84	11/15/2029	\$516,483.15		FUTURE			
3,075,000.00	VERIZON NEW YORK INC	7.28	4/1/2032	\$3,580,668.38		US DOLLAR			
3,655,000.00	VIACOM INC	6.13	10/5/2017	\$3,797,521.18	-50,200,000.00	10YR US TREASURY NOTE FUTURES			\$0.00
1,050,000.00	VIRGIN MEDIA SECURED FIN	6.50	1/15/2018	\$1,115,625.00	-37,000,000.00	2YR US TREASURY NOTE FUTURES			\$0.00
519,000.00	VISTEON CORP	6.75	4/15/2019	\$508,620.00	-39,700,000.00	30YR US TREASURY BOND FUTURES			\$0.00
7,740,000.00	VODAFONE GROUP PLC	4.15	6/10/2014	\$8,206,838.10	-28,900,000.00	5YR US TREASURY NOTE FUTURES			\$0.00
5,700,000.00	VULCAN MATERIALS	5.50	12/1/2016	\$6,075,250.00	-6,400,000.00	ULTRA LONG US TREAS BOND FTTH			\$0.00
34,370,590.67	WACHOVIA BANK COMMERCIAL MORTG	5.73	7/15/2045	\$36,520,763.36	-160,200,000.00	TOTAL FUTURE			\$0.00
10,080,000.00	WACHOVIA BANK NA	5.00	11/15/2017	\$11,105,202.84		OPTIONS			
1,050,000.00	WACHOVIA CAP TRUST III	5.67	12/31/2049	\$904,500.00		US DOLLAR			
4,915,000.00	WAL MART STORES INC	6.03	4/15/2041	\$5,963,033.87	614,000.00	10YR US TREASURY NOTE FTR OPTN			\$28,781.25
21,076,910.62	WAMU MORTGAGE PASS THROUGH CE	7.25	3/25/2033	\$14,617,598.30	614,000.00	TOTAL OPTIONS			\$28,781.25
964,820.88	WASHINGTON MUTUAL MDC MORTGAG	2.56	1/25/2035	\$887,379.22	9,812,015,511.16	TOTAL BOND ACCOUNT			\$9,782,357,834.55
4,580,000.00	WASTE MANAGEMENT INC	7.33	5/15/2029	\$5,125,835.80					
1,807,000.00	WEA FIN LLC/AVCI FIN LLC	5.40	10/1/2012	\$1,851,405.22					
2,510,000.00	WEA FINANCE LLC	4.63	5/10/2021	\$2,463,549.94					
1,990,000.00	WEA FINANCE/WT FIN AUG1	7.50	6/2/2014	\$2,181,521.58					

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1,635,000.00	EDEN PRAIRIE MN INDEP SCH DIST	5.75	2/1/2019	\$2,165,104.85	4,500,000.00	FNR 2885 DX	4.50	11/15/2019	\$4,910,406.75
315,000.00	EL PASO CNTY TX	4.99	2/15/2014	\$330,992.55	2,250,000.00	FINANCE FOR DANISH HD	2.45	8/17/2012	\$2,272,891.50
1,775,000.00	EL PASO TX	3.61	8/15/2014	\$1,900,279.50	550,000.00	FLORIDA POWER CORP	5.65	6/15/2018	\$657,153.20
975,000.00	ELI LILLY & CO	3.55	3/6/2012	\$980,688.53	3,418,954.39	FNMA POOL 555743	5.00	9/1/2033	\$3,697,399.27
600,000.00	EMERSON ELECTRIC CO	4.13	4/15/2015	\$655,143.00	32,913.70	FNMA POOL 254717	4.50	4/1/2013	\$34,333.60
500,000.00	ESTRN IA CNTY CLG DIST	5.09	6/1/2015	\$561,070.00	853,349.20	FNMA POOL 255076	4.50	1/1/2019	\$592,500.69
2,925,000.00	EUROPEAN INVESTMENT BANK	3.00	4/8/2014	\$3,039,734.75	377,444.74	FNMA POOL 295541	4.14	10/1/2032	\$401,498.17
2,600,000.00	EXPORT DEVELOPMENT CANADA	1.13	4/30/2014	\$2,731,039.80	2,409.41	FNMA POOL 344692	1.84	10/1/2025	\$2,425.77
3,000,000.00	FANKEIMAE GRANTOR TRUST	4.26	3/25/2013	\$3,103,704.00	1,250,000.00	FNMA POOL 387463	4.61	7/1/2012	\$1,240,330.51
17,050,000.00	FANKEIMAE	1.25	5/28/2016	\$17,463,972.25	1,647,747.02	FNMA POOL 464268	4.18	8/1/2015	\$1,707,850.39
480,000.00	FARMERS BRANCH TX	2.66	11/1/2019	\$484,589.60	2,433,146.94	FNMA POOL 468311	2.82	6/1/2016	\$2,547,129.51
2,600,000.00	FDIC STRICT SALE GTD NTS	0.00	10/25/2012	\$2,777,852.00	1,385,738.80	FNMA POOL 555506	4.65	7/1/2013	\$1,403,552.23
2,505,432.93	FED HM LN PC POOL 1B4924	3.70	9/1/2040	\$2,632,229.51	40,940.55	FNMA POOL 708318	4.01	6/1/2033	\$41,783.78
1,830,721.21	FED HM LN PC POOL 1B4747	2.97	9/1/2041	\$1,910,436.19	1,267,571.13	FNMA POOL 721420	4.00	7/1/2018	\$1,348,343.78
2,489,892.28	FED HM LN PC POOL 1B5738	2.75	11/1/2041	\$2,573,282.48	726,139.07	FNMA POOL 723399	4.50	9/1/2018	\$799,495.75
617,423.52	FED HM LN PC POOL 1G0062	2.51	2/1/2035	\$649,270.81	5,267,494.82	FNMA POOL 725027	5.00	11/1/2033	\$5,696,487.66
191,520.99	FED HM LN PC POOL 1G0028	2.51	4/1/2035	\$203,544.11	5,596,837.32	FNMA POOL 725205	5.00	3/1/2034	\$6,052,652.31
394,640.63	FED HM LN PC POOL 1G1494	5.25	2/1/2037	\$415,148.10	2,708,703.15	FNMA POOL 725206	5.50	2/1/2034	\$2,961,046.56
330,713.13	FED HM LN PC POOL 1G1503	4.59	2/1/2037	\$348,806.00	1,121,068.40	FNMA POOL 725232	5.00	3/1/2034	\$1,212,359.93
306,716.69	FED HM LN PC POOL 130243	5.01	2/1/2037	\$321,509.04	2,703,882.60	FNMA POOL 725238	5.00	3/1/2034	\$2,924,090.94
1,517,684.82	FED HM LN PC POOL 1J1064	4.80	5/1/2038	\$1,620,092.25	165,853.60	FNMA POOL 725436	4.50	5/1/2014	\$176,862.74
1,083,893.84	FED HM LN PC POOL 1J1068	4.90	4/1/2038	\$1,155,101.39	156,118.90	FNMA POOL 725527	5.50	5/1/2019	\$167,522.14
439,538.99	FED HM LN PC POOL 1J2841	5.75	9/1/2037	\$469,153.48	56,313.67	FNMA POOL 735008	5.00	10/1/2014	\$60,666.12
470,177.33	FED HM LN PC POOL 1Q0091	4.88	1/1/2036	\$496,619.08	1,942,183.40	FNMA POOL 735803	5.02	7/1/2035	\$2,063,222.38
90,235.01	FED HM LN PC POOL 781804	5.08	7/1/2034	\$96,578.70	70,058.71	FNMA POOL 739757	1.94	8/1/2033	\$73,088.82
81,582.77	FED HM LN PC POOL 782650	2.85	3/1/2036	\$86,127.21	754,154.37	FNMA POOL 739759	1.84	8/1/2033	\$786,772.35
7,743.69	FED HM LN PC POOL 786614	2.60	3/1/2025	\$8,185.43	484,142.06	FNMA POOL 745484	2.24	12/1/2035	\$509,411.40
259,209.70	FED HM LN PC POOL 817565	2.50	4/1/2036	\$274,234.60	152,385.69	FNMA POOL 745606	4.99	5/1/2036	\$162,926.58
246,219.59	FED HM LN PC POOL 811906	5.00	1/1/2019	\$267,559.60	384,215.08	FNMA POOL 745777	2.38	7/1/2036	\$405,868.81
803,728.42	FED HM LN PC POOL E99770	4.50	9/1/2018	\$857,066.28	339,925.91	FNMA POOL 745859	2.75	11/1/2035	\$361,936.48
2,111,908.32	FED HM LN PC POOL G04549	6.09	8/1/2038	\$2,359,142.10	813,832.36	FNMA POOL 753465	5.00	11/1/2018	\$883,845.88
1,506,639.09	FED HM LN PC POOL G12354	5.00	5/1/2021	\$1,710,246.24	172,723.63	FNMA POOL 761327	4.50	5/1/2019	\$187,589.29
1,096,208.87	FED HM LN PC POOL G13121	5.00	4/1/2023	\$1,191,200.20	41,978.87	FNMA POOL 762339	2.00	1/1/2034	\$43,289.36
3,451,467.94	FED HM LN PC POOL G18305	4.00	4/1/2024	\$3,623,406.89	296,118.07	FNMA POOL 764364	1.91	6/1/2034	\$306,252.64
1,704,594.74	FED HM LN PC POOL J13882	3.00	12/1/2025	\$1,894,038.78	169,168.31	FNMA POOL 776486	1.93	3/1/2034	\$190,159.00
1,800,375.08	FED HM LN PC POOL J14492	4.00	2/1/2026	\$1,928,348.15	130,053.33	FNMA POOL 778917	2.38	5/1/2034	\$136,959.33
5,500,000.00	FED HM LN PC POOL J17526	3.00	12/1/2021	\$5,718,837.58	2,257,231.99	FNMA POOL 789483	2.03	6/1/2034	\$2,368,747.89
5,500,000.00	FED HM LN PC POOL J17545	3.00	12/1/2026	\$5,698,970.59	1,433,687.36	FNMA POOL 793413	5.00	10/1/2019	\$1,583,299.02
26,696,881.81	FEDERAL HOME LN MTG CORP	4.00	12/15/2018	\$28,139,204.87	154,201.93	FNMA POOL 796389	1.95	8/1/2034	\$161,284.07
2,143,389.67	FEDERAL HOME LOAN BANKS	5.14	10/25/2012	\$2,206,604.49	993,560.82	FNMA POOL 801908	5.00	11/1/2019	\$1,083,383.10
2,500,000.00	FEDERAL NATIONAL MTG ASSN	6.00	4/25/2019	\$2,678,580.00	1,075,199.04	FNMA POOL 809958	5.00	12/1/2019	\$1,172,401.78
785,792.05	FEDERAL NATL MTG ASSOC	4.00	11/25/2016	\$828,818.02	417,356.32	FNMA POOL 815055	4.85	4/1/2035	\$441,335.79
3,297,624.52	FEDERAL NATL MTG ASSN	7.00	5/25/2044	\$3,514,674.45	1,604,995.21	FNMA POOL 818982	2.41	3/1/2035	\$1,896,464.05
78,632.96	FEDERAL NATL MTG ASSN GTD	7.00	7/25/2042	\$89,154.23	1,140,609.14	FNMA POOL 832729	4.71	9/1/2035	\$1,207,622.01
336,046.00	FEDERAL NATL MTG ASSN REMA	4.50	9/25/2018	\$362,024.98	1,235,690.49	FNMA POOL 873236	5.09	2/1/2016	\$1,360,283.84
3,200,000.00	FHLJAC	5.00	4/15/2020	\$3,481,008.32	1,934,049.40	FNMA POOL 888635	5.50	9/1/2036	\$2,114,225.89
9,075,000.00	FHLJAC MULTIFAMILY STRUCTURED P	3.15	7/25/2018	\$9,395,120.48	5,833,909.75	FNMA POOL 899911	4.05	5/1/2036	\$6,027,767.13
3,200,000.00	FHMS K701 A2	3.68	11/25/2017	\$3,495,988.16	753,731.68	FNMA POOL 911733	5.50	12/1/2021	\$828,467.50

MINNESOTA STATE BOARD OF INVESTMENT  
ALPHABETICAL ASSET LISTING  
As Of December 31, 2011

SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE	SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE
200,000.00	KIMBERLY CLARK CORP	6.12	8/1/2017	\$244,638.00	2,922,697.24	OVERSEAS PRIVATE INV CORP	3.37	5/15/2021	\$3,095,428.64
1,000,000.00	KING CNTY WA	5.02	12/1/2023	\$1,140,700.00	550,000.00	PACIFIC LIFE GLOBAL FNDG	5.15	4/15/2013	\$574,486.65
2,975,044.10	LB USBS COMMERCIAL MORTGAGE TRU	4.85	9/15/2031	\$3,083,748.92	200,000.00	PACIFICORP	5.50	1/15/2019	\$236,018.60
420,000.00	LENEXA KS	4.86	9/1/2016	\$485,255.40	400,000.00	PARKER HANNAFIN CORP	5.50	5/15/2018	\$470,364.40
1,000,000.00	LEXINGTON CNTY SC SCH DIST 1	4.50	2/1/2016	\$1,108,040.00	500,000.00	PECO ENERGY CO	5.00	10/1/2014	\$551,912.50
1,775,000.00	LLOYDS TSB BANK PLC	2.80	4/2/2012	\$1,782,877.45	100,000.00	PENNSYLVANIA ST HSG FIN AGY SF	5.84	4/1/2037	\$100,284.00
525,000.00	LOS ANGELES CA UNIF SCH DIST	6.00	7/1/2013	\$558,274.50	1,400,000.00	PEPSIAMERICAS INC	4.38	2/15/2014	\$1,536,901.20
220,000.00	MARSHFIELD WI UNIF SCH DIST	5.07	4/1/2013	\$232,397.00	500,000.00	PEPSICO INC	5.00	6/1/2016	\$80,875.00
1,000,000.00	MASSACHUSETTS ST	3.00	7/1/2012	\$1,012,090.00	830,000.00	PLANO TX INDEP SCH DIST	4.56	2/15/2018	\$936,728.70
300,000.00	MASSACHUSETTS ST HLT + EDUC TN	5.26	10/1/2018	\$354,420.00	500,000.00	PNC BANK NA	5.25	1/15/2017	\$542,412.00
1,593,000.00	MASSACHUSETTS GLOBAL FUNDING	2.33	5/28/2015	\$1,505,968.50	5,000,000.00	POOLED FUNDING TRUST I	2.74	2/15/2012	\$5,013,460.00
1,050,000.00	MCCORLECK & CO	5.75	9/1/2013	\$1,216,492.65	3,337,000.00	PRAXAIR INC	5.25	11/15/2014	\$3,606,350.69
400,000.00	MCDONALD S CORP	5.00	2/1/2019	\$474,645.60	703,000.00	PRES & FELLOWS OF HARVAR	3.70	4/1/2013	\$751,777.03
1,700,000.00	MEDTRONIC INC	4.50	3/15/2014	\$1,844,044.10	800,000.00	PRINCETON UNIVERSITY	4.95	3/1/2019	\$946,112.00
17,050.00	MELLOW RESIDENTIAL FUNDING COR	0.98	11/15/2031	\$16,405.21	2,940,000.00	PROCTER & GAMBLE CO/THE	1.45	8/15/2016	\$2,963,988.47
2,225,000.00	MERCEDES BENZ AUTO LEASE TRUST	0.90	1/15/2014	\$2,223,828.98	970,000.00	PROGRESS ENERGY CAROLINA	5.30	1/15/2019	\$1,049,860.85
2,761,833.00	MERCEDES BENZ AUTO RECEIVABLES	1.67	1/15/2014	\$2,769,960.77	325,000.00	PRUDENTIAL FINANCIAL INC	6.00	12/1/2017	\$361,453.63
300,000.00	MERRILL LYNCH & CO	6.05	5/16/2016	\$289,274.70	1,005,000.00	PUB SVC ELEC & GAS	5.30	5/1/2018	\$1,189,749.15
4,691,779.41	MERRILL LYNCH MORTGAGE TRUST	4.67	6/12/2043	\$4,950,315.03	1,050,000.00	PUBLIC SERVICE COLORADO	5.13	6/1/2019	\$1,176,113.85
2,750,000.00	MET LIFE GLOB FUNDING I	5.13	6/1/2014	\$2,828,885.50	250,000.00	PUBLIC SERVICE EL + GAS	5.00	1/1/2013	\$259,967.25
95,000.00	METLIFE INC	5.33	12/15/2012	\$98,865.93	650,000.00	PUBLIC SVC ELEC GAS CO	5.00	8/15/2014	\$711,390.55
700,000.00	MIDAMERICAN ENERGY CO	4.68	10/1/2014	\$762,114.50	900,000.00	RABOBANK NEDERLAND	4.20	5/13/2014	\$942,991.20
900,000.00	MILWAUKEE CNTY WI	5.06	12/1/2016	\$1,039,365.00	325,000.00	RALEIGH NC	4.20	4/1/2013	\$339,202.50
150,000.00	MISSISSIPPI ST	5.60	6/1/2012	\$153,226.50	1,650,000.00	RHODE ISLAND ST + PROVIDENCE P	5.96	2/1/2015	\$1,826,362.00
3,418,963.58	MISSOURI HIGHER EDUCATION LOAN	1.11	8/26/2030	\$3,396,159.10	500,000.00	RICHLAND CNTY SC SCH DIST 2	3.80	5/1/2019	\$506,265.00
1,004,000.00	MONTGOMERY CNTY MD	4.34	11/1/2018	\$1,125,760.00	1,750,000.00	ROCHE HDGS INC	5.00	3/1/2014	\$1,893,155.25
1,975,000.00	MORGAN STANLEY	3.00	5/13/2014	\$1,964,108.00	325,000.00	ROCKWELL AUTOMATION	5.65	12/1/2017	\$380,159.98
3,975,000.00	MORGAN STANLEY CAPITAL I	5.22	5/15/2042	\$4,373,764.05	1,955,000.00	ROSEMOUNT MN INDEP SCH DIST 1	5.00	2/1/2018	\$2,259,706.30
500,000.00	NATIONAL AUSTRALIA BANK	2.50	1/8/2013	\$502,554.50	2,575,000.00	ROYAL BANK OF CANADA	3.13	4/14/2015	\$2,701,738.93
815,000.00	NATIONAL CITY BANK	0.50	6/7/2017	\$810,913.85	4,850,000.00	ROYAL BK OF SCOTLAND PLC	2.63	5/11/2012	\$4,845,883.81
9,745,050.51	NCLIA GUARANTEED NOTES	0.65	5/7/2020	\$9,744,800.29	550,000.00	SAN FRANCISCO CITY + CNTY CA	5.00	6/15/2014	\$597,971.00
1,900,000.00	NEW HAMPSHIRE ST	3.50	6/1/2021	\$1,055,890.00	1,340,000.00	SANOFI	1.20	9/30/2014	\$1,357,710.42
2,600,000.00	NEW YORK LIFE GLOBAL FDG	4.65	5/9/2013	\$2,679,394.45	410,184.39	SANTANDER DRIVE AUTO RECEIVABL	1.36	3/15/2013	\$410,408.60
800,000.00	NEW YORK ST URBAN DEV CORP REV	6.50	12/15/2016	\$716,412.00	1,000,000.00	SCHLUMBERGER SA	2.65	1/15/2016	\$1,039,313.00
2,475,000.00	NISSAN AUTO RECEIVABLES OWNER	1.18	2/16/2015	\$2,485,852.38	2,690,000.00	SFEF	3.36	5/6/2014	\$2,752,870.68
3,000,000.00	NORDIC INVESTMENT BANK	3.50	9/11/2013	\$3,139,833.00	2,000,000.00	SHELL INTERNATIONAL FIN	4.00	3/2/2014	\$2,330,533.50
1,525,000.00	NORTHERN STATES PARK DIST	5.25	3/1/2018	\$1,321,711.45	905,000.00	SKAGIT CNTY WA SCH DIST 101 S	4.81	12/1/2023	\$991,456.35
645,200.00	NORTHSTAR EDUCATION FINANCE I	1.17	10/23/2045	\$599,228.65	4,465,921.28	SLC STUDENT LOAN TRUST	1.00	6/15/2017	\$4,400,506.84
1,400,000.00	NOVARTIS CAPITAL CORP	4.13	2/10/2014	\$1,497,892.20	1,390,877.38	SLM STUDENT LOAN TRUST	0.69	3/25/2025	\$1,377,536.51
135,000.00	OAK PARK IL	5.25	11/1/2012	\$139,291.65	65,897,934.39	SMALL BUSINESS ADMINISTRATION	4.75	8/10/2014	\$71,946,591.68
655,000.00	OAKLAND CNTY MI COPS	6.00	4/1/2012	\$604,925.65	1,925,000.00	SOUTH CAROLINA ST STUDENT LOAN	0.42	12/2/2019	\$1,835,237.25
550,000.00	OCCIDENTAL PETROLEUM CORP	1.75	2/15/2017	\$557,067.50	2,510,000.00	SOUTHERN CAL EDISON	4.15	9/15/2014	\$2,731,417.47
1,250,000.00	OHIO ST	5.40	5/1/2017	\$1,428,417.50	300,000.00	SOUTHERN CO	4.15	5/15/2014	\$320,414.70
1,250,000.00	ONTARIO (PROVINCE OF)	4.10	6/18/2014	\$1,343,168.75	2,200,000.00	STANFORD UNIVERSITY	4.25	5/1/2016	\$2,447,712.00
750,000.00	ORACLE CORP	4.95	4/15/2013	\$792,036.00	200,000.00	STANLEY BLACK & DECKER	6.15	10/1/2013	\$215,415.40
680,000.00	ORANGE CNTY NY	5.70	7/1/2013	\$727,219.20	1,250,000.00	STATE STREET BANK & TRST	5.30	1/15/2016	\$1,402,725.00
755,000.00	OREGON ST	5.26	8/1/2016	\$913,221.90	700,000.00	STATE STREET CORP	4.30	5/30/2014	\$749,189.70
1,500,000.00	OVERSEAS PRIVATE INV CORP	0.88	7/12/2014	\$1,557,950.00	250,000.00	SUNTRUST BANK	0.59	5/21/2012	\$249,379.50

MINNESOTA STATE BOARD OF INVESTMENT  
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SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE	SHARES	SECURITY NAME	INTEREST RATE	MATURITY DATE	MARKET VALUE
<b>SHORT TERM FUNDS</b>									
<b>CASH EQUIVALENT</b>									
US DOLLAR									
2,000,000.00	BANK OF MONTREAL			\$2,000,000.00	24,000,000.00	AUST & NZ BANKING GROUP	0.65	2/13/2012	\$23,999,510.40
46,500,000.00	BANK OF NOVA SCOTIA			\$46,500,000.00	2,390,000.00	CARGILL INC	5.20	1/22/2013	\$2,495,666.68
101,000,000.00	BARCLAYS BANK PLC			\$101,000,000.00	1,788,000.00	CATERPILLAR FIN SERV CRP	6.20	9/30/2013	\$1,949,116.68
118,447,000.00	BARCLAYS CAPITAL A			\$118,447,000.00	5,000,000.00	CITIGROUP INC	6.00	12/13/2013	\$5,173,795.00
76,000,000.00	BK OF TOKYO-MITSUBISHI			\$76,000,000.00	4,000,000.00	COLGATE PALMOLIVE CO	1.25	5/1/2014	\$4,054,168.00
732,000,000.00	BNP TRI PARTY C			\$132,000,000.00	2,000,000.00	COLGATE PALMOLIVE CO MTN	1.30	1/15/2017	\$1,986,654.00
118,000,000.00	CITIGROUP TRI PARTY C			\$118,000,000.00	83,665,000.00	FANNIE MAE	2.00	4/30/2015	\$83,906,898.54
3,000,000.00	COMMONWALTH BNK OF AUS			\$3,000,000.00	25,000,000.00	FEDERAL FARM CREDIT BANK	0.63	8/10/2012	\$25,058,900.00
75,000,000.00	COOPERATIVE CENTRALE RAJFFELS			\$75,000,000.00	15,500,000.00	FEDERAL HOME LOAN BANK	1.14	9/29/2014	\$15,536,279.00
50,000,000.00	CREDIT SUISSE NY			\$50,000,000.00	19,459,000.00	FREDDIE MAC	2.00	3/28/2016	\$19,509,282.06
15,000,000.00	CSFB TRI PARTY C			\$15,000,000.00	8,600,000.00	GENERAL ELEC CAP CORP	0.70	6/20/2014	\$8,573,620.80
61,000,000.00	DEUTSCHE BANK AG NY			\$61,000,000.00	10,000,000.00	GOLDMAN SACHS GROUP INC	3.63	8/1/2012	\$10,060,240.00
16,000,000.00	DNS NOR BANK ASA			\$16,000,000.00	5,000,000.00	IBM CORP	6.50	10/15/2013	\$5,513,985.00
40,000,000.00	GENERAL ELEC CAPT CO			\$39,987,052.77	2,000,000.00	INTEL CORP	1.95	10/1/2016	\$2,056,034.00
4,000,000.00	GENERAL ELECTRIC CO			\$3,998,566.67	10,000,000.00	INTEL BK RECON & DEVELOP	1.38	2/10/2014	\$10,008,480.00
50,000,000.00	ING BANK AMSTERDAM			\$50,000,000.00	5,000,000.00	JOHNSON & JOHNSON	5.15	8/15/2012	\$5,143,845.00
16,300,000.00	KELLS FDG LLC			\$16,896,190.39	41,000,000.00	JP MORGAN CHASE BANK NA	0.43	4/18/2017	\$41,006,232.00
93,000,000.00	LLOYDS BK PLC NY BRN			\$96,000,000.00	5,845,000.00	JP MORGAN CHASE & CO	1.33	9/30/2013	\$5,784,334.75
100,000,000.00	MERRILL LYNN A			\$100,000,000.00	7,680,000.00	MBNA CORP	6.13	3/1/2013	\$7,723,572.20
44,475,000.00	MINNESOTA ST			\$44,475,000.00	20,000,000.00	NORDEA BANK AB	0.57	11/16/2012	\$20,000,000.00
3,000,000.00	NATIONAL AUSTRALIA BANK			\$3,000,034.13	10,000,000.00	RABOBANK NEDERLAND	0.43	1/26/2012	\$4,999,715.00
10,000,000.00	NATIONAL BK OF CANAD			\$10,000,000.00	10,000,000.00	STATE OF ISRAEL	1.35	7/1/2015	\$10,000,000.00
52,000,000.00	NATL AUSTRALIA BK LT			\$52,000,000.00	350,615,000.00	<del>WALMART STORES INC</del>	7.85	9/13/2012	<del>\$3,041,965.00</del>
48,000,000.00	NORDEA BANK FLD PLC			\$48,000,000.00	2,141,087,036.45	US BANCORP	1.38	9/13/2013	\$1,278,735.31
7,000,000.00	NRW BANK			\$6,999,580.00		WAL MART STORES INC	0.75	10/25/2013	\$4,922,814.40
18,500,000.00	RABOBANK NEDERLAND			\$18,500,000.00		WELLS FARGO & COMPANY	5.25	10/23/2012	\$10,350,770.00
11,000,000.00	ROYAL BANK OF SCOTLAND PLC			\$11,000,000.00		TOTAL FIXED INCOME			\$353,277,454.93
33,000,000.00	SKANDIN ENB BANKEN			\$33,000,000.00		TOTAL SHORT TERM FUNDS			\$2,143,723,419.35
66,000,000.00	SOLITAIRE FDG LLC			\$65,995,387.22					
17,655,036.45	SSGA FDS			\$17,665,036.45					
23,000,000.00	STANDARD CHRTD BNKN			\$23,000,000.00					
41,000,000.00	SUMITOMO MTSU BKG CORP			\$41,000,013.69					
10,000,000.00	SVENSKA HANDELSBNK A			\$10,000,003.33					
38,000,000.00	TORONTO-DOMINION			\$38,000,000.00					
2,835,000.00	TOYOTA MOTOR CREDIT			\$2,962,099.57					
67,000,000.00	UBS AG STAMFORD BRAN			\$67,000,000.00					
115,000,000.00	USS WARBURG TRI PARTY C			\$115,000,000.00					
62,000,000.00	WESTPAC BANKING CORP			\$62,000,000.00					
1,790,472,036.45	TOTAL CASH EQUIVALENT			\$1,790,445,984.42					
<b>FIXED INCOME</b>									
US DOLLAR									
9,517,000.00	3M COMPANY	4.38	8/15/2013	\$10,116,352.11					
5,000,000.00	AMERICAN HONDA FIN CORP MTN	1.85	9/18/2014	\$5,023,425.00					
2,000,000.00	AMERICAN HONDA FINANCE	0.81	11/7/2012	\$2,003,074.00					

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PART TWO

MINNESOTA  
STATE BOARD  
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Bicker Aff.  
Exhibit D

R. App. 37

MINNESOTA STATE BOARD OF INVESTMENT  
ACTIVE BOND MANAGERS ACCOUNT  
ARK MANAGEMENT INC.  
ALPHABETICAL FIXED INCOME HOLDINGS  
JUNE 30, 1993

PAR VALUE	SECURITY	COUPON	MATURITY	MARKET VALUE
\$ 370,000	ANHEUSER BUSCH C&S INC	08.7500	99/12/01	\$ 423,809
1,300,000	ATLANTIC RICHFIELD CO	08.250	22/02/01	1,432,964
700,000	BOSTON EDISON	07.800	23/03/15	707,994
2,500,000	CATERPILLAR FINL SVCS MTN	08.350	93/08/05	2,493,025
1,140,000	CHEMICAL BKG CORP	08.500	02/02/15	1,270,017
1,125,000	CHOICE CR CARD	07.200	99/04/15	1,261,406
570,000	COMMERCIAL CR GROUP INC	06.750	97/01/15	595,690
650,000	CONTINENTAL BK N A CHICAGO ILL	07.875	03/02/01	685,406
700,000	CROWN CORK + SEAL INC	06.750	03/04/15	709,856
1,150,000	DISCOVER CARD TR	08.625	98/07/16	1,257,445
975,000	DISCOVER CARD TR	06.125	98/05/15	996,626
1,075,000	DISCOVER CARD TR	06.800	00/08/15	1,114,302
570,000	DU PONT E I DE NEMOURS + CO	08.450	96/10/15	628,488
920,000	EASTMAN KODAK CO	09.625	99/11/15	978,392
358,860	FED HM LN PC # 380006	09.000	02/08/01	380,391
1,141,004	FED HM LN PC # 380018	09.000	03/02/01	1,209,465
988,430	FED HM LN PC 360031	10.000	18/07/01	1,080,779
1,225,001	FED HM LN PC A00946	08.500	21/07/01	1,298,880
2,265,031	FED HM LN PC A01020	09.000	20/11/01	2,417,921
980,000	FED HM LN PC A01032	08.500	20/01/01	1,039,104
1,969,783	FED HM LN PC C00205	07.000	23/01/01	2,006,717
980,001	FED HM LN PC D13413	08.500	18/04/01	1,039,104
4,200,000	FED HM LN PC D39113	00.065	23/08/01	4,082,341
431,852	FED HM LN PC E00038	08.500	06/07/01	455,738
2,829,656	FED HM LN PC E00044	08.000	06/07/01	2,980,845
2,115,934	FED HM LN PC E00165	07.500	07/11/01	2,210,474
3,290,941	FED HM LN PC G00124	09.500	22/12/01	3,555,236
1,000,000	FINANCING CORP	09.650	18/11/02	1,298,440
1,500,000	FIRST CHICAGO MASTER TR	08.400	98/06/15	1,639,215
660,000	FLEET FINL GROUP INC	07.625	99/12/01	708,154
2,036,545	FNMA POOL 050656	07.500	22/11/01	2,111,632
3,519,786	FNMA POOL 124837	10.000	21/11/01	3,872,856
2,526,733	FNMA POOL 208646	06.500	08/04/01	2,563,042
1,200,000	FORD MTR CR CO	08.875	96/08/01	1,326,468
1,000,000	GENERAL MTRS ACCEP CORP	07.500	95/10/15	1,043,680
500,000	GENERAL MTRS ACCEP CORP	09.625	01/12/15	582,705
213,208	GNMA POOL # 291109	10.000	20/06/15	235,927
1,423,161	GNMA POOL # 291929	10.000	20/07/15	1,574,814
2,050,187	GNMA POOL # 293407	09.500	20/11/15	2,239,829
748,920	GNMA POOL # 299191	10.000	21/02/15	828,725
2,852,180	GNMA POOL # 307571	09.000	21/07/15	3,082,123
1,248,464	GNMA POOL 318190	08.500	21/12/15	1,337,018
1,878,400	GNMA POOL 342365	07.500	23/01/15	1,955,282
2,359,894	GNMA POOL 346427	08.000	23/02/15	2,500,001
1,100,000	GTE CORP	09.375	00/12/01	1,291,829
1,000,000	ISRAEL ST	05.750	00/03/15	1,003,750
700,000	KFW INTL FIN INC	07.000	13/03/01	699,622
600,000	KOREA DEV BK	07.900	02/02/01	652,398
690,000	LOUISIANA LD + EXPL CO	07.625	03/04/15	686,564



**334.03 USURIOUS CONTRACTS INVALID; EXCEPTIONS.** All bonds, bills, notes, mortgages, and all other contracts and securities, and all deposits of goods, or any other thing, whereupon or whereby there shall be reserved, secured, or taken any greater sum or value for the loan or forbearance of any money, goods, or things in action than prescribed, except such instruments which are taken or received in accordance with and in reliance upon the provisions of any statute, shall be void except as to a holder in due course. No merely clerical error in the computation of interest, made without intent to avoid the provisions of this chapter, shall constitute usury. Interest at the rate of one-twelfth of eight percent for every 30 days shall not be construed to exceed eight percent per annum; nor shall the payment of interest in advance of one year, or any less time, at a rate not exceeding eight percent per annum constitute usury; and nothing herein shall prevent the purchase of negotiable mercantile paper, usurious or otherwise, for a valuable consideration, by a purchaser without notice, at any price before the maturity of the same, when there has been no intent to evade the provisions of this chapter, or where such purchase has not been a part of the original usurious transactions; but where the original holder of a usurious note sells the same to an innocent purchaser, the maker thereof, or his representatives, may recover back from the original holder the amount of principal and interest paid by him on the note. This section does not apply when the loan or forbearance is made by a lender and the lender is liable for the penalty provided in section 2 in connection with the loan or forbearance. For purposes of this section, the term "lender" means a bank or savings bank organized under the laws of this state, a federally chartered savings and loan association, a savings association organized under chapter 51A, a federally chartered credit union, a credit union organized under chapter 52, or a mortgagee or lender approved or certified by the secretary of housing and urban development or approved or certified by the administrator of veterans affairs.

**Sec. 5. EFFECTIVE DATE.** Sections 1 to 4 are effective the day following final enactment.

Approved April 23, 1980

#### CHAPTER 607—H.F.No. 1121

*An act relating to the operation and financing of state and local government; adopting certain federal income tax changes; allowing a subtraction of certain interest and dividend income; increasing the pension exclusion; adopting technical and conforming amendments to income tax and property tax refund provisions; providing an income tax credit for contributions to candidates for federal offices; providing a definition of "quadriplegic"; increasing low income credit amounts, eliminating indexing of that credit, and allowing it to be taken as an alternative tax; modifying provisions of the renewable energy source credit; authorizing deduction of certain interest; increasing the dependent care credit; allowing involuntary conversion treatment of divestitures*

Changes or additions indicated by underline deletions by ~~strikeout~~

Anderson Aff.  
Exhibit A

**ARTICLE XIV**  
**STATE INVESTMENT BOARD**

Section 1. [11A.01] STATEMENT OF PURPOSE. The purpose of sections 1 to 23 is to establish standards which will insure that state and pension assets subject to this legislation will be responsibly invested to maximize the total rate of return without incurring undue risk.

Sec. 2. [11A.02] DEFINITIONS. Subdivision 1. For the purposes of sections 1 to 23, the terms defined in this section shall have the meanings given them.

Subd. 2. "State board" means the Minnesota state board of investment created by article XI, section 8 of the constitution of the state of Minnesota for the purpose of administering and directing the investment of all state funds and pension funds.

Subd. 3. "Council" means the investment advisory council created by section 6.

Subd. 4. "Fund" means any of the individual funds, including but not limited to the permanent school fund, general fund of the state, retirement funds and other funds and accounts for which the state board has responsibilities.

Subd. 5. "Director" means the executive director of the state board.

Subd. 6. "Management" means the performance or delegation of general management duties relating to any fund established pursuant to this chapter.

Sec. 3. [11A.03] STATE BOARD; MEMBERSHIP; ORGANIZATION. Pursuant to article XI, section 8, of the constitution of the state of Minnesota, the state board shall be composed of the governor, state auditor, state treasurer, secretary of state and attorney general. The governor shall serve as ex officio chairman of the state board.

Sec. 4. [11A.04] DUTIES AND POWERS. The state board shall:

(1) Act as trustees for each fund for which it invests or manages moneys in accordance with the standard of care set forth in section 7.

(2) Formulate policies and procedures deemed necessary and appropriate to carry out its functions. Procedures adopted by the board shall allow fund beneficiaries and members of the public to become informed of proposed board actions. Procedures and policies of the board shall not be subject to the administrative procedure act.

(3) Employ an executive director as provided in section 5.

(4) Employ investment advisors and consultants as it deems necessary.

(5) Prescribe policies concerning personal investments of all employees of the board to prevent conflicts of interest.

Changes or additions indicated by underline deletions by ~~strikeout~~

(3) Correctional employees retirement plan established pursuant to Minnesota Statutes, Chapter 352;

(4) Highway patrol retirement fund established pursuant to Minnesota Statutes, Chapter 352B;

(5) Unclassified employees retirement plan established pursuant to Minnesota Statutes, Chapter 352D;

(6) Public employees retirement fund established pursuant to Minnesota Statutes, Chapter 353;

(7) Public employees police and fire fund established pursuant to Minnesota Statutes, Chapter 353;

(8) Teachers' retirement fund established pursuant to Minnesota Statutes, Chapter 354;

(9) Judges' retirement fund established pursuant to Minnesota Statutes, Chapter 490; and

(10) Any other funds required by law to be invested by the board.

Sec. 22. [11A.24] **AUTHORIZED INVESTMENTS.** Subdivision 1. SECURITIES GENERAL.L.Y. The state board shall have the authority to purchase, sell, lend or exchange the following securities for funds or accounts specifically made subject to this section including the writing of covered call options.

Subd. 2. GOVERNMENT OBLIGATIONS. The state board may invest funds in governmental bonds, notes, bills, mortgages and other fixed obligations, including guaranteed or insured issues of (a) the United States, its agencies or its instrumentalities, including financial contracts traded upon a contract market designated and regulated by a federal agency; (b) Canada and its provinces, provided the principal and interest is payable in United States dollars; (c) the states and their municipalities, political subdivisions, agencies or instrumentalities, where backed by the state's full faith and credit or if the issuer has not been in default in payments of principal or interest within the past ten years or in the case of revenue bonds the obligor has been completely self-supporting for the five prior years; (d) the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or any other United States Government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars and the issues are rated in the highest quality category by a nationally recognized rating agency.

Subd. 3. CORPORATE OBLIGATIONS. The state board may invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof if they conform to the following provisions:

Changes or additions indicated by underline deletions by ~~strikeout~~

(a) The principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any province thereof shall be payable in United States dollars;

(b) The consolidated net pretax earnings of corporations other than finance corporations shall have been on average for the preceding five years at least 1.5 times the annual interest charges on total funded debt applicable to that period;

(c) The consolidated net pretax earnings of banks and finance corporations shall have been on average for the preceding five years at least 1.2 times the annual interest charges on total funded debt applicable to that period;

(d) Obligations shall be rated among the top three quality categories by a nationally recognized rating agency or if unrated, then the corporation shall have other comparably secured issues similarly rated or the consolidated net pretax earnings of the corporation shall have been on average for the preceding five fiscal years at least twice the ratios required in clauses (b) and (c).

Subd. 4. OTHER OBLIGATIONS. The state board may invest funds in bankers acceptances, certificates of deposit, commercial paper, mortgage participation certificates and pools, repurchase agreements and reverse repurchase agreements and savings accounts if they conform to the following provisions:

(a) Bankers acceptances of United States banks shall be limited to those eligible for purchase by the Federal Reserve System;

(b) Certificates of deposit shall be limited to those issued by banks and savings institutions that meet the collateral requirements established in Minnesota Statutes, Section 9.031, unless sufficient volume is unavailable at competitive interest rates. In that event, noncollateralized certificates of deposit may be purchased from United States banks and savings institutions that are rated in the highest quality category by a nationally recognized rating agency;

(c) Commercial paper shall be limited to those issued by United States corporations or their Canadian subsidiaries, shall be of the highest quality and mature in 270 days or less;

(d) Mortgage participation certificates and pools secured by first mortgages or trust deeds on improved real estate located in the United States where there is a guarantee of replacement by a note or bond of comparable value and security in the event of a default, and where the loan to value ratio for each loan does not exceed 80 percent for fully amortizable residential properties and in all other respects meets the requirements of section 61A.28, subdivision 3.

(e) Repurchase agreements and reverse repurchase agreements shall be limited to the securities described in subdivision 2, clause (a);

(f) Savings accounts shall be limited to those fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

Changes or additions indicated by underline deletions by ~~strikeout~~

Subd. 5. CORPORATE STOCKS. The state board may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, the Dominion of Canada or its provinces, or any corporation listed on the New York Stock Exchange or the American Stock Exchange, if they conform to the following provisions:

(a) The aggregate value of corporate stock investments, as adjusted for realized profits and losses, shall not exceed 50 percent of the book value of a fund;

(b) Investments in any one corporation shall not exceed three percent of the book value of a fund;

(c) Investments shall not exceed five percent of the total outstanding shares of any one corporation;

(d) Cash dividends on corporate stock investments shall have been earned and paid for the preceding five years;

(e) Investments which do not conform to the dividend standard contained in clause (d) may be held but the total amount of these securities shall not exceed five percent of the book value of a fund.

Sec. 23. [11A.25] ADDITIONAL INVESTMENT PROVISIONS. When investing assets of any funds or accounts specifically made subject to this section or not otherwise referred to in sections 1 to 23, all securities shall be debt obligations maturing within three years of the date of purchase and shall conform to the applicable provisions of section 22.

Sec. 24. By January 1, 1981, the executive director shall prepare and submit to the state board and the legislature a report analyzing whether or not increased portions of the funds under the investment control of the state board could be invested in ways directly beneficial to all Minnesotans and be consistent with the investment standard of care set forth in statute for the board. The report shall assess the policy desirability of these increased investments. If the director concludes that such investments are desirable and can be accomplished consistent with the investment standard of care, he shall identify any statutory amendments needed to permit this increased investment. In preparing this report the director shall consult with representatives of fund beneficiaries and other persons interested in the investment of public moneys.

Sec. 25. Minnesota Statutes, 1979 Supplement, Section 15A.081, Subdivision 1, is amended to read:

15A.081 SALARIES AND SALARY RANGES FOR CERTAIN EMPLOYEES. Subdivision 1. The following salaries or salary ranges are provided for the below listed employees in the executive branch of government:

	Salary or Range	
	Effective July 1, 1979	Effective July 1, 1980
Administration, department of commissioner	\$44,000	\$47,000

Changes or additions indicated by underline deletions by ~~strikeout~~

Key: (1) ~~language to be deleted~~ (2) new language

1988, Regular Session

Laws of Minnesota 1988

CHAPTER 453-H.F.No. 1806

An act relating to state agencies; amending and repealing various statutes administered by the state board of investments; amending Minnesota Statutes 1986, sections 11A.17, subdivisions 1, 4, 9, 11, and 14; 11A.19, subdivision 4; and 352D.04, subdivision 1; Minnesota Statutes 1987 Supplement, sections 11A.24, subdivisions 4 and 6; 136.81, subdivision 3; and 353D.05, subdivision 2; repealing Minnesota Statutes 1986, section 11A.17, subdivisions 12 and 13.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 11A.17, subdivision 1, is amended to read:

Subdivision 1. [~~ESTABLISHMENT PURPOSE.~~] ~~There is hereby established a~~ The purpose of the supplemental investment fund for the purpose of providing is to provide an investment vehicle for the assets of various public retirement plans and funds. ~~This~~ The fund shall consist ~~consists of seven~~ six investment accounts: an income share account, a growth share account, ~~a bond account,~~ a money market account, a guaranteed return account, a bond market account, and a common stock index account. The supplemental investment fund ~~shall be~~ is a continuation of the supplemental retirement fund in existence on January 1, 1980.

Sec. 2. Minnesota Statutes 1986, section 11A.17, subdivision 4, is amended to read:

Subd. 4. [~~INVESTMENT.~~] The assets of the supplemental investment fund ~~shall~~ must be invested by the state board subject to ~~the provisions of~~ section 11A.24; provided, however, that:

(1) the bond market account and the ~~bond~~ money market account ~~shall~~ must be invested entirely in debt obligations<sup>71</sup>

(2) the growth share account and the common stock index account may be invested entirely in corporate stocks; and

~~(2)~~ (3) the guaranteed return account may be invested entirely in guaranteed investment contracts; ~~and~~

~~(3) the money market account shall be invested entirely in debt obligations maturing within three years.~~

Sec. 3. Minnesota Statutes 1986, section 11A.17, subdivision 9, is amended to read:

Subd. 9. [~~VALUATION OF INVESTMENT SHARES.~~] The value of investment shares in the income share account, the growth share account, the bond market account, and the common stock index

Anderson Aff.  
Exhibit B

~~state board will, in its judgment, be comparable to that available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency for such period, with such withdrawal privileges, and at such guaranteed rate of return, if any, as may be agreed between the state board and the agency;~~

~~(e) (5) collateral for repurchase agreements and reverse repurchase agreements shall be is limited to letters of credit and securities authorized in this section;~~

~~(f) (6) guaranteed investment contracts shall be are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency;~~

~~(g) (7) savings accounts shall be are limited to those fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.~~

(b) Sections 16A.58 and 16B.06 do not apply to certifications of deposit and collateralization agreements executed by the state board under paragraph (a), clause (2).

(c) In addition to investments authorized by paragraph (a), clause (4), the state board may purchase from the Minnesota housing finance agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The state board may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The state board may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the state board comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

Sec. 8. Minnesota Statutes 1987 Supplement, section 11A.24, subdivision 6, is amended to read:

Subd. 6. [OTHER INVESTMENTS.] (a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in clause (b), the state board may invest funds in:

(1) Venture capital investment businesses through participation in limited partnerships and corporations;

(2) Real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships, bank sponsored collective funds, trusts, and insurance company commingled accounts, including separate accounts;

(3) Regional and mutual funds through bank sponsored

collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940;

(4) Resource investments through limited partnerships, private placements and corporations; ~~and~~

(5) Debt obligations not subject to subdivision 3; and

(6) International securities.

(b) The investments authorized in clause (a) ~~may only be made if they~~ must conform to the following provisions:

(1) The aggregate value of all investments made according to clause (a) ~~shall~~ may not exceed 35 percent of the market value of the fund for which the state board is investing;

(2) There ~~shall~~ must be at least four unrelated owners of the investment other than the state board for investments made under paragraph (a), clause (1), (2), (3), or (4);

(3) State board participation in an investment vehicle ~~shall be~~ is limited to 20 percent thereof for investments made under paragraph (a), clause (1), (2), (3), or (4); and

(4) State board participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The state board ~~shall~~ may not engage in any activity as a limited partner which creates general liability.

Sec. 9. Minnesota Statutes 1987 Supplement, section 136.81, subdivision 3, is amended to read:

Subd. 3. (a) Each person described in section 136.80, subdivision 1, may elect to purchase shares in one or a combination of the income share account, the growth share account, the money market account, the bond market account, the guaranteed return account, or the common stock index account established in section 11A.17. The person may elect to participate in one or more of the investment accounts in the fund by specifying, on a form provided by the executive director of the teachers retirement fund, the percentage of salary deductions and state matching funds to be used to purchase shares in each of the accounts.

(b) Twice in any calendar year, ~~each~~ a person described in section 136.80, subdivision 1, may indicate in writing on forms provided by the teachers retirement association a choice of options for subsequent purchases of shares. After a choice is made, and until a different written indication is made, the executive director shall purchase shares in the supplemental fund as selected. A change in choice of investment ~~option~~ options is effective ~~no later than the first pay date that occurs 30 or more days after~~ the first of the month following receipt of the request for a change.

(c) One month before the start of a new guaranteed investment contract, a person described in section 136.80, subdivision 1, may elect to transfer all or a portion of the participant's shares previously purchased in the income share, growth share, common stock index, bond market, or money market accounts to the new guaranteed investment contract in the guaranteed return account. If a partial transfer is made, a minimum of \$1,000 must be transferred and a minimum balance of



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**H**

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.  
KLADEK, INC., Appellant,  
v.  
AMERICAN BANK OF ST. PAUL, Respondent.

No. A09-948.  
March 16, 2010.

West KeySummaryBills and Notes 56 ↪ 129(2)

56 Bills and Notes56II Construction and Operation56k129 Time of Maturity56k129(2) k. Maturity on Nonpayment of Installment of Interest or Principal. Most Cited Cases

A lender gave a debtor sufficient notice of its default by depositing a default notice in the United States mail as first-class mail. The language of the promissory note and loan agreement's notice provision stated that the lender's notice was effective when deposited in the mail, and the debtor's allegation that actual notice was required would render that contract provision meaningless. Therefore the lender did not breach the agreement by raising the debtor's interest rate without sufficient notice upon the debtor's default.

Ramsey County District Court, File No. 62-CV-09-978.

Jack E. Pierce, Tracy Halliday, Pierce Law Firm, P.A., Minneapolis, MN, for appellant.

Mitchel C. Chargo, Norman I. Taple, Gurstel, Staloch & Chargo, P.A., Golden Valley, MN, for respondent.

Considered and decided by HUDSON, Presiding Judge; CONNOLLY, Judge; and CRIPPEN, Judge.<sup>FN\*</sup>

FN\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

HUDSON, Judge.

\*I Appellant challenges the district court's dismissal of its breach-of-contract action against respondent bank, alleging that the district court erred by interpreting the parties' loan agreement to allow notice of default to take effect when deposited in the United States mail as first-class mail, which was not registered or certified mail. Because the district court did not err by concluding that the unambiguous language of the agreement allowed respondent to provide notice by depositing the notice in the mail as first class, and respondent followed that procedure in notifying appellant of its default, summary judgment in favor of respondent was proper as a matter of law, and we affirm.

## FACTS

In February 2005, appellant Kladek, Inc., by its president, Lawrence F. Kladek (Kladek), borrowed \$1,949,900 from respondent American Bank of St. Paul, under the terms of a promissory note and business loan agreement. Kladek also signed a personal guaranty, guaranteeing appellant's obligation on the note.

The note had a stated interest rate of 6.5%, but provided that in the event of appellant's default, respondent was entitled to increase the interest rate by four percentage points. The note defined default as failure to make payment when due, or failure to comply with any "term, obligation, covenant or condition" contained in the note or related documents. The loan agreement required that appellant furnish respondent with tax returns as soon as they were available, but no later than 30 days after the end of the applicable filing date for the end of the tax-reporting period. It also provided that if a default, other than a default on indebtedness, was curable, and the borrower had not been given notice of a similar default within the previous 12 months, the borrower could cure the default "after receiving written notice from Lender demanding cure." The loan agreement stated:

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Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement.

(Emphasis added.)

Respondent did not receive appellant's corporate tax returns for the years 2003, 2004, and 2005, or Kladek's personal tax returns for 2004 and 2005. On July 5, 2006, December 15, 2006, and December 29, 2006, respondent deposited in the United States mail, first class, three successive letters to Kladek at the address stated on the loan documents. The letters, taken together, informed Kladek that the tax returns were needed as required by the loan agreement and that failure to immediately comply could result in having the default rate imposed. Respondent did not send the letters by certified or registered mail. Respondent followed its internal mailing policies in mailing the letters and did not receive them back as returned to sender.

\*2 By January 2007, appellant had not cured its default, and respondent raised the interest rate on the note four percentage points, to 10.5%. In about October 2007, appellant cured its default by providing the tax returns, and the original interest rate was reinstated.

In February 2009, appellant filed a complaint in Ramsey County District Court, alleging that respondent breached its contract by charging increased interest on the note when respondent did not provide notice of default that was actually delivered to appellant. Respondent moved to dismiss the action under Minn. R. Civ. P. 12.02(e), alleging that the complaint failed to state a claim under which relief could be granted because respondent provided proper notice of appellant's default by first-class mail and increased the interest rate when appellant failed to cure its default. Respondent submitted affidavits of two bank employees stating that they had discussed appellant's default with Kladek, who was aware of the default.

Appellant submitted Kladek's affidavit; Kladek contended that he never received the letters notifying appellant of the default.

The district court granted respondent's motion, concluding that the unambiguous language of the loan agreement did not require actual delivery of notices to appellant, but that the notices were effective if, among other options, they were mailed either by (1) first class, (2) certified, or (3) registered mail, postage prepaid. The court concluded that respondent provided three proper notices of default to appellant by depositing them in the United States mail, first class. The court concluded that the action was dismissed as a matter of law and granted respondent attorneys' fees, costs and expenses as provided by the loan agreement. This appeal follows.

## DECISION

### I

On a motion to dismiss for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e), the district court may generally consider only the complaint and the documents referenced in the complaint. Martens v. Minn. Mining & Mfg. Co., 616 N.W.2d 732, 739 n. 7 (Minn.2000). If the parties present, and the district court does not exclude, matters outside the pleading, the motion is treated as one for summary judgment. Minn. R. Civ. P. 12.02; see N. States Power Co. v. Minn. Metro. Council, 684 N.W.2d 485, 491 (Minn.2004) (applying summary-judgment standard on review after concluding that district court erred by failing to analyze rule 12.02(e) motion as motion for summary judgment when it considered affidavits from both parties). "[W]hen the complaint refers to the contract and the contract is central to the claims alleged," the district court may consider the entire written contract. In re Hennepin County 1986 Recycling Bond Litig., 540 N.W.2d 494, 497 (Minn.1995) (permitting consideration of contract provisions other than those cited in complaint in rule 12.02(e) motion).

Here, the complaint referred to the "loan documents." Appellant submitted the note as an exhibit to the complaint; respondent submitted the loan agreement and the guaranty as exhibits supporting its motion to dismiss. Because these loan documents were referenced in the complaint and relate directly to appellant's claim for relief, the district court properly reviewed them in considering respondent's motion to

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dismiss.

\*3 But respondent also submitted to the district court two affidavits from bank employees referring to discussions with Kladek to support respondent's argument that Kladek received notice of default. Appellant also submitted Kladek's affidavit, which stated that he did not receive respondent's letters of default. The district court did not exclude these documents. Because the district court received this additional evidence beyond the complaint and the materials referenced in the complaint, the district court erred by ruling on respondent's motion as a motion to dismiss, rather than a motion for summary judgment, and we review the matter as an appeal taken from summary judgment.

## II

In reviewing a ruling on summary judgment, this court determines whether a genuine issue of material fact exists and whether the district court erred in applying the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn.2002). Absent ambiguity, contract interpretation presents a question of law, which is subject to de novo review. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn.1998).

"Unambiguous contract language must be given its plain and ordinary meaning..." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn.1999). "[W]hen a contract is unambiguous, a court gives effect to the parties' intentions as expressed in the four corners of the instrument, and clear, plain and unambiguous terms are conclusive of that intent." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn.App.2003), review denied (Minn. Feb. 25, 2004). Contract language should be construed as a whole, with all clauses interpreted to be meaningful. *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn.1990).

The district court concluded that the loan agreement unambiguously provided that notice of default was effective when, among other options, it was "(i) deposited in the United States Mail, as first class; (ii) certified; or (iii) registered mail postage prepaid." Thus, the district court concluded that notice of default is effective if respondent deposits the notice in the mail, sent by first class mail, or, in the alternative, certified or registered mail. Appellant argues

that the district court erred in its interpretation and that the notice provision means instead that "registered or certified mail" is a subset of first-class mail, so that first-class mail must also be sent either as registered or certified mail for notice to be effective on mailing.

In reviewing a contract, we may examine its meaning according to the rules of grammar. See *Mattison v. Flynn*, 216 Minn. 354, 359, 13 N.W.2d 11, 14 (1944) (stating that statutes are construed in accordance with the rules of grammar unless contrary to legislature's intent). Appellant urges an interpretation of the loan agreement that relies on the grammatical rule that if a sentence lists more than two items in a series, the last item must be preceded by a comma. See *Heaslip v. Freeman*, 511 N.W.2d 21, 23 (Minn.App.1994) (describing rule), review denied (Minn. Feb. 24, 1994). But this rule is not universally applied. *Id.* Therefore, it does not dictate our analysis. See *id.* (declining to apply rules of comma usage to interpret statute). A stronger factor in our plain reading analysis is that the words "first class" directly follow the words "when deposited in the United States mail, as..." This immediate pairing of the words "as" and "first class," which are then followed by the words "certified or registered mail," supports the district court's determination that first-class mail is one of three parallel options for giving notice.

\*4 Appellant also argues that the provisions of the documents must be read together; that the loan agreement and note both allow appellant to cure a default after receiving written notice; and that the notice provision, if defined to include registered or certified mail, but not first-class mail, ensures that appellant would actually receive notice of the default. But this reading is inconsistent with the plain language of the agreement's notice provision, which states that notice is effective when actually delivered; when actually received by telefacsimile; when deposited with a nationally recognized overnight courier; or, in certain cases, when deposited in United States mail. Appellant's interpretation would render meaningless the portion of the agreement stating that notice may be effective in certain cases when sent by courier or deposited in the United States mail. See *Chergosky*, 463 N.W.2d at 526 (stating that courts attempt to avoid interpretation of contract that would render a provision meaningless).

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Further, even if we were to determine that the agreement was ambiguous, we would reach the same result. To aid in our reading of the agreement, we may take judicial notice of the United States Post Office's regulations. See *Eischen Cabinet Co. v. Hildebrandt*, 683 N.W.2d 813, 816 (Minn.2004) (citing postal service website). The United States Post Office website indicates that both certified and registered mail may be used with either priority mail or first-class mail.<sup>FN1</sup> Appellant's interpretation of the language in the agreement would unreasonably exclude priority mail, which may also be sent certified or registered, and which would presumably be more reliable in reaching the borrower. And in other contexts, when service by mail is permitted, it is generally effective when mailed. See, e.g., *Minn. R. Civ. P. 5.02* (stating that under rules of civil procedure, service of notice by mail on a party or a party's attorney is "complete upon mailing"). Therefore, the district court did not err in determining that depositing notice of default in the first-class mail, postage prepaid, is an acceptable form of giving notice under the agreement, and respondent adequately notified appellant of its default. We conclude that summary judgment was proper in favor of respondent.

<sup>FN1</sup>. See [usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm](http://usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm); [usps.com/send/waystosendmail/extraservices/registeremailservice.htm](http://usps.com/send/waystosendmail/extraservices/registeremailservice.htm) (last visited Feb. 26, 2009).

**Affirmed.**

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