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September 21, 2015

President Richard Brodhead
Box 90001
Duke University
Durham NC 27708

Re: ACIR Report and Recommendations on Endowment Transparency

Dear President Brodhead:

Please consider this the Advisory Committee on Investment Responsibility's response to your December, 4, 2013 request that ACIR provide advice regarding "any additional steps Duke might take in relation to the issue of public disclosure of investments." As background to this report, we observe that presently the targets for asset allocations within the endowment are online and therefore public at <http://dukeforward.duke.edu/ways-to-give/endowment/risk-management>. We also understand that the goal of the endowment is to provide a perpetual source of financial support for the teaching, research and service missions of the university.

In considering this request we have reviewed the "Cover Letter and Proposal" of DukeOpen (Spring 2013) and canvassed representatives at five comparable institutions to learn their experiences and practices in addressing endowment transparency. Additional institutions were not contacted because the experiences and practices at each of the contacted universities were identical, except for the one that was uniformly recognized as something of an outlier with respect to its approach to transparency.

As a prelude for discussing the transparency of the endowment, we note that many items other than endowment transparency were raised for action by DukeOpen that have been already addressed by you and the Board of Trustees.

Summary of Experiences of Other University Endowments

Most contacted institutions are not now experiencing requests for transparency. All contacted institutions see the dominant voice of the student movement regarding the endowment

as being linked to issues of sustainability, particularly fossil fuels. Typically the cycle has been that when there is increased student focus on fossil fuels or sustainable investing there has been diminished student calls for transparency with respect to endowment holdings and practices.

With the exception of a single institution (whose practices are separately described below), each of the universities follows a strict confidentiality standard with respect to specific endowment holdings and managers of funds; they do not release information regarding specific investments regardless of whether a particular investment is held directly or indirectly. Each endowment officer stressed the importance to endowment performance and believed that confidentiality with respect to holdings or the identity of investment managers protected their competitive advantage in the area of their investment performance. That is, providing specific information regarding direct holdings or identifying outside managers was believed harmful to the performance of their endowment. Each of the contacted representatives emphasized that confidentiality was important to their outside managers, and that confidentiality agreements were often imposed by their outside advisors which further limited disclosure of investment holdings.

One of the contacted institutions is well-known for its unique practices because it has a process whereby on a quarterly basis members of its “community” can learn the names of companies in which the endowment has a direct equity holding. This information is provided under a fairly strict protocol: the list provided does not reveal the number shares (or their value) owned in a company, the list is available in the investment officer’s office, the list cannot be copied (while notes may be taken of some specific holdings, this is not viewed as permission to transcribe the entire list of holdings), and the list does not include direct holdings in any derivatives. The endowment office updates the list each quarter. The endowment officer reported that during her six years very few requests have been made to access the list of direct equity holdings. Its own version of ACIR’s website notes the right of community member’s to review the list of direct equity holdings. Of interest is that the updated quarterly list is provided to the chair of its ACIR; but the chair only reviews the list for the purpose of identifying social issues that may require committee action.

Some schools disclose annually holdings by broad asset categories and some report annually (in at least its alumni magazine) performance for each broadly-described asset class. One of the contacted institutions, even though it holds substantial funds directly, does not disclose the identity of securities so held.

Each school, including the one with the reputation for high transparency, takes the position that individuals or groups concerned with socially responsible investing are better advised to identify and raise the particular social issue that is of concern through established procedures (e.g., Duke’s ACIR process). In this way the focus remains squarely on the social issue without the complication of frequently changing holdings within many asset categories. In reality the continuous management of assets and daily changes in holdings could easily have the unintended consequence that while providing transparency on a particular reporting date, e.g., the end of the fiscal year, that reassurance may be momentary as concern would persist that thereafter and before the next disclosure date an investment piquing a substantial social concern would be made. Thus, the approach followed by all the surveyed institutions (with the exception of one described earlier as pursuing a different practice) is that rather than disclosing specific

holdings it is more constructive—both for the institution and for the individuals and groups concerned with social responsibility—to maintain a welcoming and robust process for the university to receive, evaluate, fully consider and respond to serious social issues.

Developments at ACIR

The ACIR, with its recently reconstituted membership and expanded responsibility, appears well structured to balance the university community's commitment to being a socially responsible investor without the potential harm that has guided Duke and our sister institutions to eschew disclosure of holdings and advisors. ACIR can be viewed as a resource to the university community. The December 2013 charge to the committee, among other provisions, calls upon the ACIR to meet on a regular basis to:

- Receive issues referred to it by members of the Duke community;
- Monitor trends and activities in investment responsibility that have an impact on educational institutional investors;
- Conduct research, update Duke's files on companies, and provide analyses when requested by the president

Responding to its charge, ACIR has over the last many months developed internal and external procedures by which members of the Duke community can raise issues for ACIR to consider. The procedures now in place position Duke to remain attuned to the practices of peer institutions. We believe current ACIR procedures are appropriate and consistent with respect to endowment transparency and addressing emerging social responsibility. ACIR is at the early stage of determining how it can best monitor developments and concerns - both within Duke and outside of Duke - that might raise serious social issues with respect to the endowment. To this end, we are considering whether additional information may be available for inclusion on the committee's website relevant to existing policies and practices (e.g., contemporary proxy voting guidelines) as they may relate to socially responsible investing. Therefore, we expect even more progress to be made by ACIR to strengthen our capacity to monitor developments and campus concerns as we develop protocols for networking with various university groups and expand efforts to publicize our processes and practices.

Suggested Course of Action

Having addressed the intricate and time-consuming task of establishing optimal internal rules for our operation and thereafter grappling with the serious and intricate issues raised by the thoughtful proposal of DivestDuke, ACIR is now prepared to move forward in addressing the monitoring and researching aspects of our charge. We believe this will invariably lead to initiatives that address concerns focused on assurance that endowment holdings and practices are consistent with shared values of being a socially responsible investor. The process we counsel here avoids the disquieting effects of upending well-considered practices regarding confidentiality that are practiced by Duke and our sister institutions. Simply stated, we do not

believe the case has been made that current practices impede the endowment being managed in a socially responsible manner. For these reasons, we recommend the following:

1. Because we do not believe broad disclosure of the endowment's investment holdings and investment advisors would improve the ability of Duke to address social responsibility concerns, and because there are genuine concerns such disclosure would reduce competitive advantages and jeopardize existing relations with advisors, we do not believe a policy of disclosing particular investment holdings or investment advisors is desirable for the endowment.

2. We believe continued improvement in ACIR procedures that are designed to fulfill its mandate, including periodic engagement of the Duke community by ACIR such as via open forums, will focus members of the Duke community on productive dialog around investment responsibility through ACIR and away from the less productive disclosure of holdings and advisors which has the potential to be misinterpreted or misleading.

Sincerely yours,

A handwritten signature in black ink that reads "James D. Cox". The signature is written in a cursive style with a large, prominent "J" and "C".

Brainerd Currie Professor of Law
Duke University School of Law
Chair, Advisory Committee on Investment Responsibility