July 23, 2021

Mr. Alan Jope, CEO
Unilever PLC
Unilever House
100 Victoria Embankment
London EC4Y 0DY
GB

Dear Mr. Jope:

I write as the Executive Director of Corporate Governance for the New York State Common Retirement Fund (Fund), the third-largest public pension fund in the United States, which holds and invests the assets of the New York State and Local Retirement System on behalf of its more than one million members, retirees, and beneficiaries. To safeguard the Fund’s investments, we actively engage with companies when we identify business practices that may expose investments to undue risk.

In June 2016, the Fund adopted a policy to address the investment risks posed by companies that engage in so-called “Boycott, Divest, Sanction” (BDS) activities, which include actions that are intended to penalize, inflict economic harm on, or limit commercial relations with the State of Israel. The Fund views BDS activities as a potential threat to Israel, its economy, and, as a result, the Fund’s relevant investments. Further, a number of U.S. states have acted or are considering actions to penalize companies that engage in such behavior. As a result, companies that engage in BDS activities may face legal, reputational and financial risks. The Fund’s policy provides that companies determined to be engaging in such activities may be subject to investment restrictions.

State Comptroller Thomas DiNapoli, as Trustee of the Fund, is troubled and concerned about reports suggesting that Ben & Jerry’s, a Unilever wholly owned subsidiary, is involved in BDS activities. Therefore, pursuant to the requirements of the Fund’s policy, this letter serves as notice that the Fund intends to include Unilever on our list of companies participating in BDS activity if these reports are correct.

I would appreciate hearing from you, within 90 days, as to whether these reports are accurate. Please confirm or deny whether Unilever or its subsidiaries have undertaken any activities with
NY State Comptroller: Divestment From Unilever an Economic, Not Political, Matter
Posted By Mike Wagenheim On November 2nd 2021 @ 3:10 pm In Top Stories

New York State’s comptroller says his decision to divest the state’s pension fund of around $111 million of Unilever holdings is simple. It has less to do with the politics of Ben & Jerry’s, the independent Unilever subsidiary that protested Israeli policies in Judea and Samaria (the West Bank) and eastern Jerusalem by planning to end its ice cream sales there. It has more to do, he says, with state business.

We as a pension fund have significant investments in Israel and Israeli companies. It’s been a very profitable area for us to invest in. ... So, any effort with a BDS action to harm the Israeli economy presents a risk to our pension fund investments. And we’re in business to make money, to secure retirement benefits for the 1.1 million New Yorkers who are part of our retirement system.

“We established a policy back in 2016 that we would not invest any of our public equity dollars with our pension fund in companies that were engaging in BDS activity,” Comptroller Thomas DiNapoli told The Media Line, referring to the anti-Israel boycott, divestment and sanctions movement, in his first extended comments since his decision was made public on Friday.

Ben & Jerry’s is not boycotting Israel within the Green Line (the 1949-1967 armistice line) but New York and other select states define BDS activity as including boycotts of any territory under Israeli control.

“Our view is that the Boycott, Divestment and Sanctions movement targeting Israel seeks to harm the Israeli economy,” DiNapoli said. “We as a pension fund have significant investments in Israel and Israeli companies. It’s been a very profitable area for us to invest in. We’ve got fixed-income investments. We do a lot with the State of Israel bonds, public equity investments and private equity, as well. So, any effort with a BDS action to harm the Israeli economy presents a risk to our pension fund investments. And we’re in business to make money, to secure retirement benefits for the 1.1 million New Yorkers who are part of our retirement system.”

Several US states have taken actions against Unilever since Ben & Jerry’s boycott announcement in July. Steps have included pension divestment and restrictions, Unilever bond sales and threats to cease state contracts with Unilever, a multinational consumer goods behemoth headquartered in London, which owns the likes of Cornetto, Dove, Hellmann’s, Knorr, Lifebuoy, Lipton, Magnum, Marmite, Persil, TRESemmé and Vaseline, to
name a few of its 400 brands.

Following the Ben & Jerry’s boycott, Unilever said it remains committed to doing business in Israel. Many of its products can be found on Israeli shelves, both within the internationally recognized borders and in Judea and Samaria/the West Bank, both in Jewish settlements and Palestinian Authority-controlled territories.

We’re disappointed in the comptroller’s decision more than anything. It’s our belief that Ben & Jerry’s is doing the thing that conscience and international law suggests

“I think we’re disappointed in the comptroller’s decision more than anything. It’s our belief that Ben & Jerry’s is doing the thing that conscience and international law suggests,” Jeremy Cohan, a representative of the Democratic Socialists of America’s New York City branch, told The Media Line.

“We don’t think the state should be in the business of whitewashing the crimes of the occupation and dispossession of Palestinian land,” Cohan said.

DSA has endorsed a number of nationally recognized political candidates who support BDS, including US Rep. Alexandria Ocasio-Cortez of New York.

“BDS was called for by trade unions and working society, working-class people. That’s their money, too, in those pension funds,” said Cohan.

It is Unilever’s diverse holdings and global reach that made it attractive to the New York State Common Retirement fund to begin with, and DiNapoli said he would welcome Unilever back into the fund if it reverses course or sells Ben & Jerry’s. He sees no indication that Unilever is giving those options any real consideration, though.

“Our preference, quite frankly, would be to continue to stay invested in Unilever. If you read between the lines of our discussions with Unilever, it seems like they feel stuck [due to their lack of control over Ben & Jerry’s, which maintains control over its licensing and social policies]. But, they didn’t offer apologies for the situation, either. After our engagement with the company and asking certain questions to clarify what their position was, we did not get a satisfactory explanation of what was going on,” said DiNapoli.
Essentially, Unilever offered no alternatives and no substantive discussion when it came time to make its case to avoid New York State’s divestment.

“What we were really looking for was a clarification and hopefully a change in direction, change of policy,” the comptroller said. “We saw what happened in the past with Airbnb, when there was a delisting of properties in the West Bank announced and then they changed their position based on the engagement that we had and that others had with them.

“When it came to Unilever, it was an incomplete response and they indicated that under their arrangement, there was a certain level of independence that was accorded to the board of Ben & Jerry’s. But we then went back with a second attempt. We really were trying to work with the company and have them understand our concern and address it. And, basically, the second communication was that ‘we have nothing more to add to what we said already,’” he continued.

“So, to us, it seemed to validate the criticism that this was a BDS activity under the definition in our policy. When you look at Ben & Jerry’s statements, that wasn’t a business decision being made here. It really was a political statement, directed at Israel, and doing so in a harmful way, which again, creates a risk for our portfolio,” DiNapoli said.

The Ben & Jerry’s boycott has drawn an immense amount of attention, and both pro-Israel and pro-Palestinian communities and groups initiated pressure campaigns against Unilever, Ben & Jerry’s and various state entities in hopes of achieving their desired outcome. The founders of Ben & Jerry’s gave a widely ridiculed television interview last month in which they struggled to articulate why their namesake company singled out the Israeli-Palestinian issue as a platform for halting sales of their product, as opposed to the many other causes they pursue.

“We’ve always been clear in our positions on this issue. As far as I know, we didn’t have any specific conversations with the comptroller. But it’s not as if he doesn’t understand what our constituency stands for,” said Cohan.

DiNapoli has ultimate authority over the pension fund. New York Gov. Kathleen Hochul, who has separate authority under an executive order to bar BDS-supporting companies or organizations from engaging in business with the state, did not get involved in DiNapoli’s decision.

“When I announced that we were taking a look at the Unilever situation, we did hear from
different points of view, some suggesting, absolutely, we should take an action here, with others saying this would be inappropriate for us to even consider divestment in this case,” DiNapoli said. “But, we didn’t take a poll. At the end of the day, it didn’t matter what anybody emailed or called about, because we have a policy, which we developed when we first realized that this might be an ongoing issue with our investments. So, we just stuck to our policy, which we have great confidence in. We gave Unilever two opportunities to try to explain the situation and hopefully change course. They didn’t do that.”

The approximately $111 million in Unilever holdings is a small slice of the overall pension fund pie, and while DiNapoli says he’d like to have Unilever back in the mix under different circumstances, the fund will be fine without it.

“Keep in mind that we are the third-largest pension fund in the United States at something around $270 billion. The evaluation we make before we do a divestment like this is to ensure that we are not doing any harm. Part of the judgment that our professional staff makes is to see if there are investment opportunities that would parallel the kind of business model that Unilever has that we can substitute and maintain the profile that we want for our public equity holdings. That evaluation was made and the judgment was that there would be no harm to our fund by selling these shares,” said DiNapoli.

A 90-day window given to Unilever by the Illinois Investment Policy Board is closing quickly and barring a sudden reversal, that state will also divest its holdings in Unilever and its subsidiaries. After a similar review period, Florida decided last week that it will no longer invest in or contract business with Unilever or its subsidiaries. The Florida State Board of Administration’s investments in Unilever total about $139 million, out of its approximate $200 billion portfolio. In September, Arizona sold off $93 million in Unilever bonds and said it planned to sell its remaining $50 million, in line with a 2019 state law that bars its state government agencies from holding investments or doing more than $100,000 in business with any firm that boycotts Israel or its territories.

Thirty-five US states have anti-boycott laws or regulations on the books.