



Exclusion from investment portfolios

1 December 2014

Introduction

KLP and the KLP Mutual Funds have decided to exclude the company Agrium Inc. from their investments as of 1 December 2014.

Agrium Inc. markets and sells nutrients, including fertilizers, which are used by the agriculture industry.¹ The company is incorporated and headquartered in Canada, and does business in North America, South America and Australia.² Agrium is listed on the stock exchanges in Toronto (AGU: TSX) and New York (AGU: NYSE). In 2013, the company generated sales revenues of USD 15,727 million. Agrium has been a member of the UN Global Compact since 2008.³ Agrium is vertically integrated, e.g. the company itself mines a substantial proportion of the raw materials used in its fertilizer products.⁴ However, its own mining operations are not sufficient to meet all of Agrium's fertilizer production requirements.⁵ The company therefore depends on the purchase of raw materials, including phosphates, from third-party mining companies.

KLP and the KLP funds' investment in Agrium Inc. shares is worth some NOK 15,500,000.⁶

Phosphate mining in Western Sahara

In 2010, based on the recommendation of the Council on Ethics for the Norwegian Government Pension Fund Global (GPF), KLP excluded FMC Corporation and Potash Corporation of Saskatchewan for violations of fundamental ethical norms in connection with their purchases of phosphates produced in Western Sahara. The exclusion of FMC Corporation was revoked in June 2013, when it became clear that this company no longer purchased phosphates from Western Sahara. However, the exclusion of Potash Corporation of Saskatchewan remains in force.

¹ Agrium, *About Us*, http://www.agrium.com/about_us.jsp (last visited 3 July 2014).

² Ibid.

³ United Nations Global Compact, *Participants & Stakeholders*, http://www.unglobalcompact.org/participants/search?utf8=%E2%9C%93&commit=Search&keyword=agri um&joined_after=&joined_before=&business_type=all§or_id=all&listing_status_id=all&cop_status=all&organization_type_id=&commit=Search (last visited 3 July 2014).

⁴ Agrium, *About Us*, http://www.agrium.com/about_us.jsp (last visited 3 July 2014).

⁵ Agrium, *Agrium Executes Long-Term Rock Agreement with OCP S.A.* (26 September 2011). URL: <http://www.agrium.com/news/1943.jsp>

⁶ Based on the share price and NOK/CAD exchange rate on 9 July 2014.

This recommendation presents only a brief summary of the situation in Western Sahara. For a detailed description, see KLP's Decision with Respect to Exclusion from Investment Portfolios, dated 3 June 2013, regarding the exclusion of Total S.A.⁷

According to the UN, Western Sahara has the status of a non-self-governing territory with no recognised administrator.⁸ Morocco claims sovereignty over Western Sahara, and the majority of the territory is subject to Moroccan control. In 1975, the International Court of Justice (ICJ) in The Hague rejected Morocco's claims of sovereignty in an advisory opinion that recognised the people of Western Sahara's right to self-determination.⁹ Since then, the population of Western Sahara has increased through an influx of Moroccan settlers into the territory,¹⁰ while Western Sahara's original inhabitants, the *Sahrawis*, live in refugee camps in Algeria.¹¹ A UN peacekeeping force, MINURSO, monitors the ceasefire in Western Sahara, but a referendum to determine the territory's final status has been postponed indefinitely.¹²

Although the issue of Western Sahara's definitive legal status has not been clarified, Morocco exports phosphates extracted in Western Sahara through the state-owned Moroccan company Office Chérifien des Phosphates (OCP).¹³

According to the US Geological Survey, phosphate mining represents a significant source of export revenue for Morocco.¹⁴ OCP owns around 75 per cent of the world's phosphate reserves, including reserves in Western Sahara.¹⁵ Since Morocco considers Western Sahara to be Moroccan

⁷ KLP, *Decision with Respect to Exclusion from Investment Portfolios* (3 June 2013). URL: https://www.klp.no/polopoly_fs/1.24654.1391185123!/menu/standard/file/Total_beslutning%20om%20utelukkelse_03062013_NORSK_korrigert.pdf See also the UN General Assembly's annual resolutions on Western Sahara, from 2003. United Nations General Assembly, Resolution 68/91. "Question of Western Sahara" (17 December 2013). URL: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/91

⁸ See, for example, United Nations, "Non-self-governing territories", *The United Nations and Decolonization*, <http://www.un.org/en/decolonization/nonselfgovterritories.shtml> (last visited 4 July 2014).

⁹ International Court of Justice, *Summary of the Summary of the Advisory Opinion of 16 October 1975*, <http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5>

¹⁰ BBC News Africa, *Western Sahara profile*, <http://www.bbc.com/news/world-africa-14115273> (last updated 7 January 2014).

¹¹ UN High Commissioner for Refugees, *Algeria: 2014-2015 Global Appeal*. URL: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=528a0a2ab&query=algeria>

¹² United Nations, *MINURSO: United Nations Mission for the Referendum in Western Sahara*, <http://www.un.org/en/peacekeeping/missions/minurso/background.shtml> (last visited 7 July 2014).

¹³ Council on Ethics of the Norwegian Government Pension Fund Global, *Recommendation on the Exclusion of Companies from the GPF* (15 November 2010), p. 6-8. URL: <http://www.regjeringen.no/upload/FIN/etikk/2011/Tilradningfosfat.pdf>

¹⁴ Harold R. Newman, "The mineral industries of Morocco and Western Sahara", *US Geological Survey Minerals Yearbook* (February 2013), p. 30.1. URL: <http://minerals.usgs.gov/minerals/pubs/country/2011/myb3-2011-mo-wi.pdf>

¹⁵ *Ibid.*, p. 30.2.

territory, the country does not specify how much of its phosphate exports derive from Western Sahara.¹⁶

Incident

In September 2011, Agrium published a press release announcing the company had signed a contract with the state-owned Moroccan company Office Chérifien des Phosphates (OCP) for the import of phosphates for use at Agrium's fertilizer plant in Canada.¹⁷ The parties to the contract, stipulated to run until 2020, expected the first deliveries to take place at the end of 2013.¹⁸ In October 2013, a Canadian news source confirmed that the first delivery from OCP, comprising 60,000 tonnes of phosphate, was on its way to Canada.¹⁹ Agrium has confirmed to GES that "some" of the phosphate covered by the agreement with OCP comes from the Phosboucraa mine.²⁰ This mine lies in the Bou Craa region of Western Sahara.²¹

National and international frameworks

As stated in the Norwegian GPF Global Council on Ethics' *Recommendation to Exclude FMC Corporation and Potash Corporation of Saskatchewan*, under the UN Charter's Article 73, the administrators of non-self-governing territories have a duty to ensure that any exploitation of natural resources in the territory benefits the local population.²² Even though Morocco is not recognized as administrator, it is logical that, in analogous circumstances, the same minimum standard be required of *de facto* administrators.²³ Furthermore, the Norwegian authorities have maintained the following warning since 2007:

Norway considers it important to refrain from actions that may be perceived as legitimizing the situation in Western Sahara. To prevent trade, investment, resource exploitation and other forms of commercial enterprise that are not in the local

¹⁶ Ibid., p. 6-8.

¹⁷ Agrium, *Agrium Executes Long-Term Rock Agreement with OCP S.A.* (26 September 2011). URL: <http://www.agrium.com/news/1943.jsp>

¹⁸ Ibid.

¹⁹ Mitchell Anderson, "Canadian agri-business linked to Moroccan conflict mineral", *The Tyee* (14 October 2013). URL: <http://thetyee.ca/News/2013/10/14/Canadian-AgriBusiness-Morocco/>

²⁰ Email on file with KLP.

²¹ See, for example, Council on Ethics of the Norwegian Government Pension Fund Global, *Recommendation on the Exclusion of Companies from the GPF Global* (15 November 2010), p. 7, n. 23. URL: <http://www.regjeringen.no/upload/FIN/etikk/2011/Tilradningfosfat.pdf>

²² Council on Ethics of the Norwegian Government Pension Fund Global, *Recommendation on the Exclusion of Companies from the GPF Global* (15 November 2010), p. 9. URL: <http://www.regjeringen.no/upload/FIN/etikk/2011/Tilradningfosfat.pdf>

²³ Ibid.



*population's best interests, and consequently may be in violation of international law, the Norwegian authorities advise against any such activities.*²⁴

The Norwegian GPF Council on Ethics further judged that the purchase of phosphates from Western Sahara by FMC Corporation and Potash Corporation of Saskatchewan constituted complicity in activities that may be deemed highly unethical.²⁵ Its recommendation emphasized the fact that the companies had entered into long-term contracts (5-10 years) with OCP, and that they had specified in the purchase agreements that the phosphate must be extracted in Western Sahara, due to its quality and chemical properties.²⁶ According to the Norwegian GPF Council on Ethics, these factors underlined the companies' complicity, since they had entered into the contracts fully cognizant of the risks they were assuming.

Dialogue

In a letter to Western Sahara Resource Watch, Agrium writes that the company complies with Canadian, US, and international law, and that Agrium's own legal assessments show that the company acted in compliance with applicable legislation. Agrium says that, generally speaking, OCP's activities do benefit the local population, without specifying how this occurs.²⁷

Agrium has given no indication that it might change its procurement practices before the contract expires in 2020. The company expects to import approximately one million tonnes of phosphates per year from OCP in the period to 2020.²⁸

KLP sent a draft copy of this recommendation and a request for comment to Agrium by e-mail on September 15, 2014.²⁹ The company did not respond.

²⁴ Norwegian Ministry of Foreign Affairs, *Western Sahara* (published September 2007), <http://www.regjeringen.no/nb/dep/ud/tema/naeringslivssamarbeid/vest-sahara.html?id=480822> (last updated 30 September 2009).

²⁵ Council on Ethics of the Norwegian Government Pension Fund Global, Recommendation on the Exclusion of Companies from the GPF (15 November 2010), p. 16. URL: <http://www.regjeringen.no/upload/FIN/etikk/2011/Tilradningfosfat.pdf>

²⁶ *Ibid.*, p. 6, 16.

²⁷ Letter from Richard Downey, Vice President, Investor/Corporate Relations and Market Research in Agrium, to Sara Eyckmans, International Coordinator, Western Sahara Resource Watch (5 March 2014). URL: http://wsrw.org/files/dated/2014-03-06/2014.03.05_agrium_-_wsrw.pdf

²⁸ Agrium's press release announces that imports of phosphates from Morocco's OCP will replace Agrium's own phosphate output from Canada. The press release also mentions that Agrium consumes one million tonnes of phosphates per annum. Agrium, *Agrium Executes Long-Term Rock Agreement with OCP S.A.* (26 September 2011). URL: <http://www.agrium.com/news/1943.jsp>

²⁹ On file with KLP.



Analysis

A comparison of Agrium's purchases of phosphates from OCP and the circumstances surrounding previous exclusions show that the situation is almost identical in these cases. They all entered into long-term contracts for the purchase of phosphates from OCP (5-10 years).

Furthermore, Agrium does not point to any new information to support the assertion that OCP is looking after the local population's interests. KLP therefore endorses the assessment made in connection with previous exclusions.

While the companies involved with previous exclusions specified that the phosphate must be extracted in Western Sahara, no information has been forthcoming to indicate whether Agrium has done the same in its contract with OCP. On the other hand, the company has confirmed that at least some of the phosphate derives from Western Sahara. In other words, the company is aware of the phosphate's source. Given the general awareness of the risks associated with the extraction of phosphates from Western Sahara, companies entering into purchase agreements with OCP should specify that the phosphate must *not* come from Western Sahara. As long as the company has not done so, and in addition confirms that some of the phosphate does indeed come from Western Sahara, the requirements for complicity are deemed to have been met.

Conclusion

In keeping with KLP's previous practice, Agrium's purchase of phosphates from Western Sahara by means of a long-term contract with OCP constitutes an unacceptable risk of complicity in the violation of fundamental ethical norms, and thereby contravenes KLP's guidelines for responsible investment. The company is therefore excluded from KLP and the KLP funds' investment portfolios as of 1 December 2014.