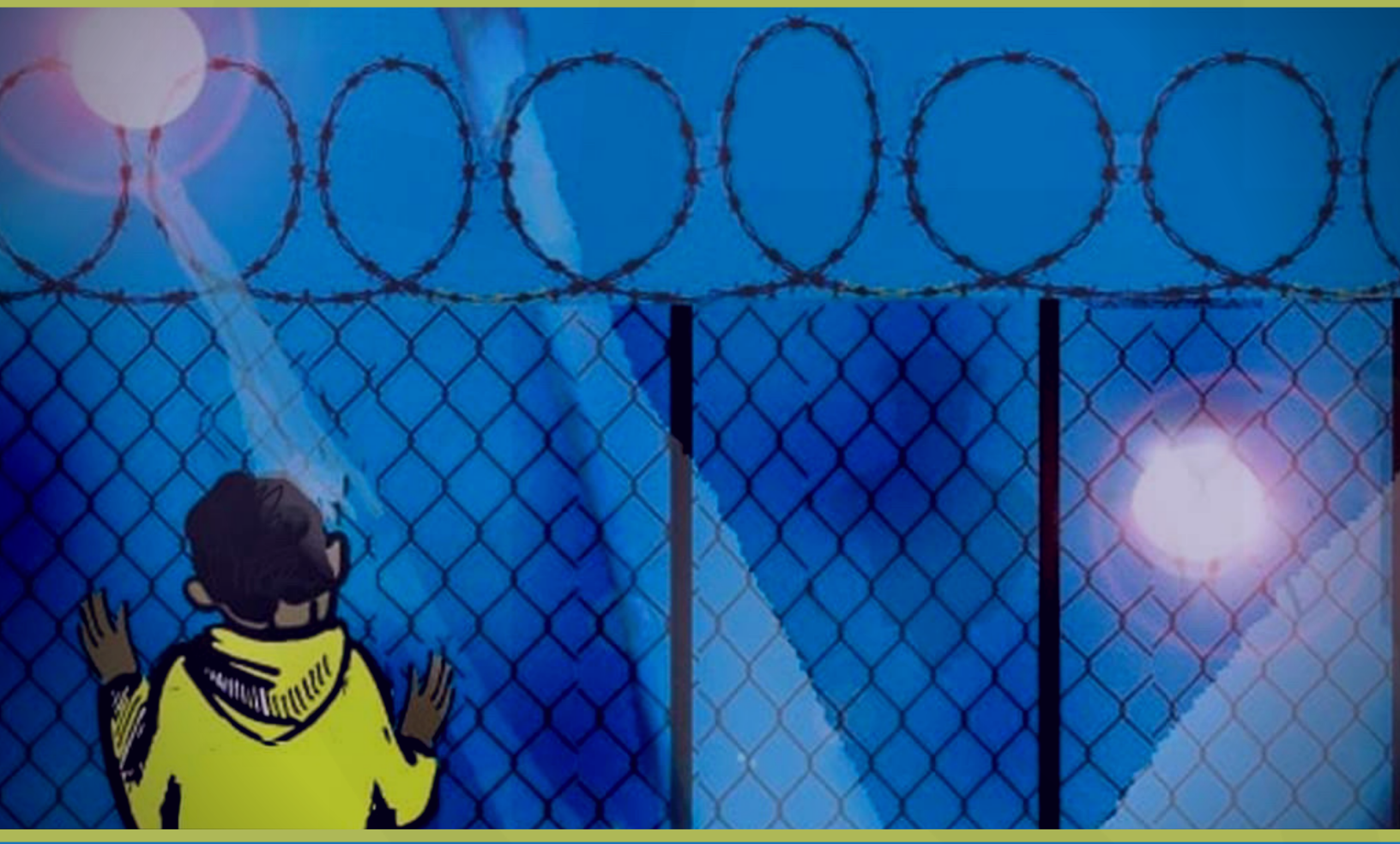
High Risk, Low Reward

The Business Case for Divesting from For-Profit Prisons

JULY 2020



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This report was written by Emily Claire Goldman and provided to the California Public Employees' Retirement System (CalPERS) Board of Administration in June 2019. This published version includes updates as of June 2020. Research for this report was conducted as part of ESG Transparency Initiative's Educators for Migrant Justice campaign. The author did not receive any external funding for this research.

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Cover photo courtesy of the Meme Team of the Badass Teachers Association. Artist Sue Goncarovs.

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ESG Transparency Initiative (ESGTI) is a human rights organization working to shift the business sector's approach to responsible corporate conduct. Guided by the belief that transparency is the key to accountability, we are building a grassroots movement of investors, consumers, and investment beneficiaries who can drive corporate social responsibility from the bottom up. Educators for Migrant Justice is ESG Transparency Initiative's flagship advocacy campaign to end pension fund complicity in the migrant abuse crisis. For more information, please visit www.esg-transparency.org.

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EXECUTIVE SUMMARY

Systemic human rights abuses pose material risks for investors, and divesting from companies with a history of egregious human rights abuses is an important risk-mitigation strategy to protect market-rate returns. As the largest for-profit prison companies in the US, CoreCivic and GEO Group's business model poses material risks to investors, as it creates a financial incentive for both companies to incarcerate as many people as possible, relying on deliberate understaffing, medical neglect, and forced labor to cut corners for profitability. These practices have contributed to the deaths of numerous detainees and placed both companies at the center of dozens of lawsuits that have led to costly payouts, reduced profitability, damage to their public reputation, and numerous contract cancellations.

Human rights abuses aren't just a moral issue; they create legal, reputational, and financial risks that have adversely impacted both companies' bottom line. CoreCivic and GEO Group's financial performance continues to decline as a result, and both companies have dramatically underperformed the market in recent years despite soaring demand. Divesting from both CoreCivic and GEO Group due to the risk both companies' business practices pose to their bottom lines is therefore consistent with CalPERS' fiduciary duty.

ABOUT THIS REPORT

This report was originally prepared for the California Public Employees' Retirement System (CalPERS) Board of Administration in June 2019; it was developed as part of ongoing dialogue on for-profit prison divestment for the Educators for Migrant Justice advocacy campaign and it lays out the argument and financial foundation that led CalPERS to divest from CoreCivic and GEO Group in October 2019. It has since been updated and has been published as a resource for investors, stakeholders, and fiduciaries who wish to better understand how the for-profit prison business model affects financial performance, as well as the larger risks systemic human rights abuses pose for investors. While institutional investors have historically preferred to engage with companies and use their influence as shareholders to push for better corporate practices, the inherent nature of human rights abuses in the for-profit prison business model and their severe and irremediable character rendered divestment as the only appropriate course of action.

Understanding that the target audience was initially pension fund fiduciaries, this report devotes significant attention to financial concepts and analyses that are not typically included in advocacy materials. On fiduciary duty specifically, this report cites the legal standard applicable to CalPERS, but it is important to note that other states and pension systems may be subject to different legal standards codified under state law.

Publishing this report with such financial information included serves a dual purpose: not only does it provide detailed and up-to-date information that advocates can use to guide ongoing work pushing for divestment from for-profit prisons, but it also offers a successful case study and practical application on the financial materiality of human rights issues and

the evolving standard of fiduciary duty. With increasing recognition of the importance of incorporating environmental, social, and corporate governance (ESG) issues into investment decisions, this case study provides a much-needed example of what an assessment of the "social" or human rights issues can or should look like.

FIDUCIARY DUTY

As members of CalPERS' Board of Administration, your fiduciary duty[a] requires you to act 'with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.'"[1] "Whenever you're facing a divestment mandate, it is critical that you go through the fiduciary analysis to determine whether it's prudent and whether it's in the overall best interest of your members and beneficiaries to actually divest." Any divestment analysis "entails [...] true evidence, not simply speculation and theories. There needs to be material in front of you that you can rely on to reach a reasonable conclusion that is in the overall best interest of your members' retirement security [...] and other matters [including] employment security under certain circumstances and prudence."[2]

ESG RISKS & FINANCIAL MATERIALITY

All material risks must be taken into consideration in the fiduciary analyses, and that includes environmental, social, and governance (ESG) risks. In a 2018 letter to the SEC, CalPERS itself recognized that environmental, social and governance risks are material to investors[3] and, according to a 2015 report from the UN Principles for Responsible Investment, to which CalPERS is a signatory, "failing to consider long-term investment value drivers – which include environmental, social and governance issues – in investment practice is a failure of fiduciary duty."[4] Investment industry analyses continue to confirm the financial materiality of ESG information.[5] In a comprehensive review of empirical studies, Oxford University and Arabesque Asset Management "found that 90% of studies show that sound sustainability standards lower firms' cost of capital; 80% of studies show that companies' stock price performance is positively influenced by good sustainability practices; and 88% of studies show that better E, S, or G practices result in better operational performance,"[6] "which ultimately translates into cash flows."[7]

Despite what some may believe, socially responsible investing – and divesting – is not political; it is a risk-mitigation strategy to protect market-rate returns. This is reflected in a June 2017 study by Bank of America Merrill Lynch – and highlighted by the Sustainability Accounting Standards Board – which found sustainability factors to be "strong indicators of future volatility, earnings risk, price declines, and

[a] *This legal standard is codified in the California Constitution. Other states and pension systems may be subject to different legal standards under state or federal law.*

bankruptcies.[8] Divesting from companies that have consistently demonstrated poor ESG or sustainability practices is consistent with CalPERS' fiduciary duty precisely because it helps safeguard long-term investment returns. A report by Norway's Government Pension Fund found that conduct-based exclusions [divestment] – where there is an "unacceptable risk of conduct that contributes to serious or systematic human rights violations, serious violations of the rights of individuals in situations of war or conflict, severe environmental damage, gross corruption or other serious violations of fundamental ethical norms" – increased the cumulative return on the equity reference index by around 0.7 percentage points, or 0.03 percentage points annually from 2006 through 2018.[9]

THE FOR-PROFIT PRISON BUSINESS MODEL & INCENTIVE STRUCTURE

As the responsible investing research firm, Sustainalytics, described in a client briefing on private prisons and immigration detention, "having secured a contract, [for-profit prison] companies strive to maximize revenue (which is usually dependent on the number of people incarcerated, detained, or processed), while minimizing the associated costs (number of guards, training for staff, employee screening, employee supervision, facility maintenance, and inmate medical care)."[10] In other words, CoreCivic and GEO Group's business model creates a financial incentive to maximize the number of detainees held in each facility to increase profits and then cut costs by neglecting medical care, and understaffing facilities, relying instead on a captive labor force to keep the facilities up and running. As a result of their attempts to cut costs in these essential areas, private prisons present significant safety and security concerns and frequently face lawsuits with costly payouts, reduced profitability, and a damaged public reputation, according to a 2016 report from the DOJ.[11]

In stakeholder demand letters issued to CoreCivic and GEO Group in January 2020, the Oregon State Treasurer and Oregon Attorney General cited persistent and widespread violations of health and safety standards as well as "labor practices that may constitute human trafficking," ultimately concluding that CoreCivic and GEO Group's "abuse of detainees and failure to provide basic necessities is a violation of [their] legal and contractual obligations" that exposes them to "loss of business, reputational harm, and damages."[12] Several lawsuits against CoreCivic have specifically noted that "CoreCivic's economic windfall, and the profitability of its immigration detention enterprise, arises from its corporate scheme, plan, and pattern of systemically withholding basic necessities from detained immigrants to ensure a readily available, captive labor force that cleans, maintains, and operates its facilities for subminimum wages under threat of solitary confinement, criminal prosecution, and other sanctions. Without this nearly free labor, CoreCivic's windfall from immigrant detention would be substantially decreased."[13]

LAWSUITS

CoreCivic is facing at least 13 ongoing lawsuits, 11 of which are class-action suits, and over the past two decades, the company has been sued at least 32 times. This includes a 2013 lawsuit in which a jury found that CoreCivic (known as CCA at that time) "was deliberately indifferent to a substantial risk of serious harm to Plaintiffs and disregarded it by failing to take reasonable measures to address it," and that CCA "had a widespread or longstanding practice or custom of understaffing at the Idaho Correctional Center."[14] Abuses at CoreCivic's Idaho Correctional Center have been raised in a total of six lawsuits over a period of four years. The first of these lawsuits triggered events that cost the company its $29 million contract with the state.[15] Other CoreCivic facilities, including the Laredo Detention Center in Texas, the Leavenworth Detention Center in Kansas, and the Crowley County Correctional Facility in Colorado have also faced repeated lawsuits, with no evidence of changes to CoreCivic's policies or practices.

In February 2020, the 11th Circuit Court of Appeals held that CoreCivic may be held liable for forced labor under the federal law – Trafficking Victims Protection Act (TVPA). Meanwhile, GEO has at least eight pending lawsuits, of which three are class-actions. GEO Group itself has acknowledged the similarities between the suits, stating in a May 2019 SEC filing that "In the time since the [Aurora] Colorado [class action] suit was initially filed, three similar lawsuits have been filed - two in Washington and one in California."[16] All three class-action lawsuits include allegations of forced labor extracted under threat of solitary confinement. The Colorado suit "carries the most risk for the company"[17] with the class-action representing around 62,000 people.

GEO Group does not maintain insurance for "claims related to employment matters," a category that likely applies to claims made in all three class-action suits.[18] Prior lawsuits against GEO Group include a 2010 class-action case that resulted in the state of Mississippi prohibiting the detention of children at GEO Group's Walnut Grove facility, as well as three separate lawsuits – between 2013 and 2018 – all of which alleged sexual harassment and retaliation at GEO Group's Florence West prison in Arizona. GEO's May 2019 SEC filing specifically identifies "an increase in unreimbursed labor rates" and their "exposure to rising employee and inmate medical costs" as threats to their bottom line, and in a recent JP Morgan investor report, analysts cast doubt on GEO Group's ability to cover litigation expenses and fines stemming from the company's human rights practices.[19] These concerns were reinforced in GEO's latest 10-K SEC filing, where the company's estimated cost of uninsured claims was identified as a critical audit measure. [20] Despite recognizing that these practices create material financial risks, GEO has admitted that they "may not always successfully comply with [...] regulations to which [they] are subject and failure to comply can result in material penalties or the non-renewal or termination of facility management contracts."[21]

According to investment research firm MSCI, neither CoreCivic nor GEO Group has "areas of substantial strengths in managing material risks."[22] MSCI goes on to state that "the public and legal scrutiny emanating from several of [CoreCivic's] facilities around

detainee living conditions and rights suggests that there are structural issues within these company operations. Further, the company appears poorly positioned to manage these issues, which may result in additional operating costs, or ultimately loss of contracts."[23]

Internal communications from CoreCivic reveal that company executives not only recognize the risks these practices pose to their bottom line, but have, according to a recently certified class action securities suit, also misrepresented and downplayed them to shareholders. The "U.S. District Judge Aleta Trauger, who ruled in favor of the class certification, is the same judge who earlier denied the suit's evolution. Her decision [...] was influenced by CoreCivic's internal communications, which demonstrated a discord between what [CoreCivic's CEO] was telling shareholders and what corporate employees themselves knew."[24] When CoreCivic employees were given an advance version of a 2016 report from the Office of the Inspector General, the federal oversight body for Immigration and Customs Enforcement, one executive wrote, "What I'm shocked over is they totally overlooked the consequences of our staff vacancies."[25]

The company has settled at least three lawsuits for undisclosed sums stemming from understaffing at their facilities, with one pending class action lawsuit alleging that understaffing at CoreCivic's Trousdale Turner Correctional Facility has put diabetic prisoners' lives at risk.[26] The judge's ruling in the securities litigation also cited a CoreCivic executive who was "worried that health care problems might be putting contracts in jeopardy at two facilities and wrote in an email, "this is going to kill us."[27] CoreCivic is now facing four new lawsuits, including two class-action suits, over the company's response and handling of the COVID-19 pandemic as it surges through the detention facilities. Two of the lawsuits, brought by guards at CoreCivic's Otay Mesa facility allege that CoreCivic is failing to take reasonable steps to protect their health amid the outbreak of COVID-19, echoing health and safety concerns raised by detainees in other lawsuits.[28]

According to the guards, CoreCivic not only refused to provide face masks to officers but also prohibited them from wearing their own masks in crowded housing units, even as detainees became sick with symptoms consistent with COVID-19 and one guard tested positive.[29] On May 6, 2020, a CoreCivic Otay Mesa detainee was the first person to die of COVID-19 while in immigration custody.[30]

CONTRACT CANCELLATIONS

CoreCivic lost at least 7 contracts in 2019 and 2020: one with the city of Indianapolis;[31] another with the Federal Bureau of Prisons (BOP) for the Adams County Correctional Facility, the latter of which generated more than $60 million in revenue alone;[32] two in Colorado: one with the city of Denver[33] and the other with Boulder;[34] and three in Pennsylvania valued at $9.3 million."[35] In October 2019, California passed a law, AB-32, that prohibits the state of California from entering into or renewing contracts with CoreCivic or GEO Group.

The mere reduction in California's inmate population has already created material financial impacts for

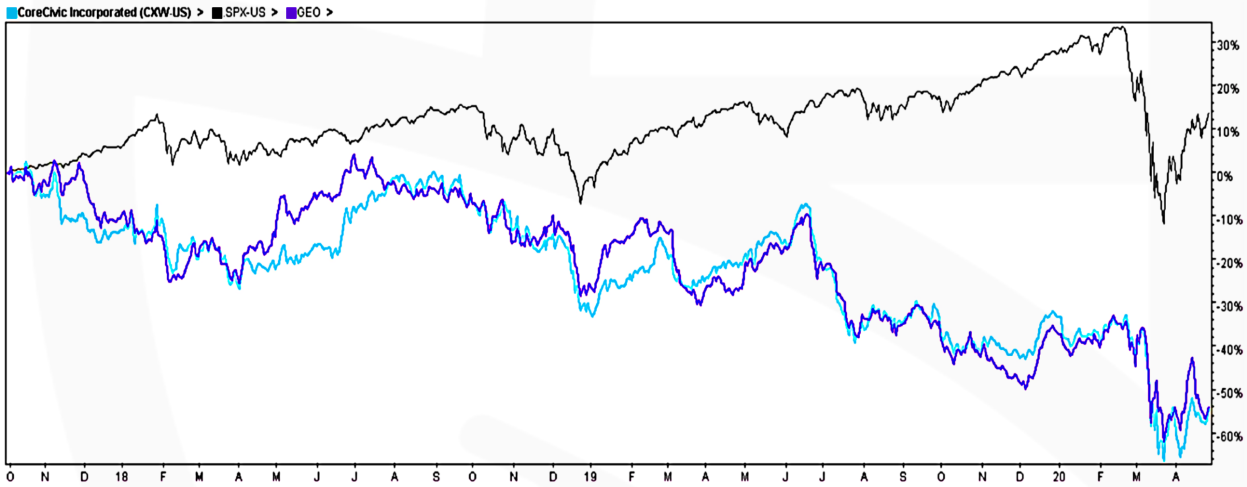
CoreCivic, resulting in a decline in revenue of $56.1 million from 2018 to 2019.[36] This reduction also directly affected the value of CoreCivic stock, such that "per share results in the second quarter of 2018 compared with the second quarter of 2017 were negatively impacted primarily by (i) approximately $0.02 per share as a result of the previously disclosed and expected continued decline in populations from the state of California in two facilities we own and operated outside the state of California."[37] AB-32, the new law in California, can reasonably be expected to decrease both companies' revenues in a comparable manner, and according to GEO Group's own estimates, the company expects to lose more than $4 billion in capital investment and future revenue over the next 15 years as a result of the legislation.[38] CoreCivic noted in their recent 10-K SEC filing that "non-renewal" of CoreCivic's contract to operate the Otay Mesa Detention Facility "would have a significant impact on [their] results of operation and cash flows."[39]

STOCK PRICE

Declining revenue from government contracts poses a significant threat given that both CoreCivic and GEO Group's stocks have plummeted in recent years, and dramatically underperformed the market.

> ***In recent years, this [CoreCivic] stock has performed terribly.*** *In 2015, the stock traded as high as $42.31, versus $11.26 on 4/9/2020.*[40]
>
> ***CoreCivic, Inc.*** *(NYSE: CXW),* ***has slumped 48.5%*** *in the past five years to close at $15.60 today.* ***Compared with the S&P 500 Index which has risen 59.7% over the same period, this is a relative price change of-108.2%.***[41]

> ***The Geo Group,*** *Inc. (NYSE: GEO),* ***has fallen 26.3%*** *in the past five years to close at $16.61 today.* ***Compared with the S&P 500 Index which has risen 55.3% over the same period, this is a relative price change of -81.6%.***[42]

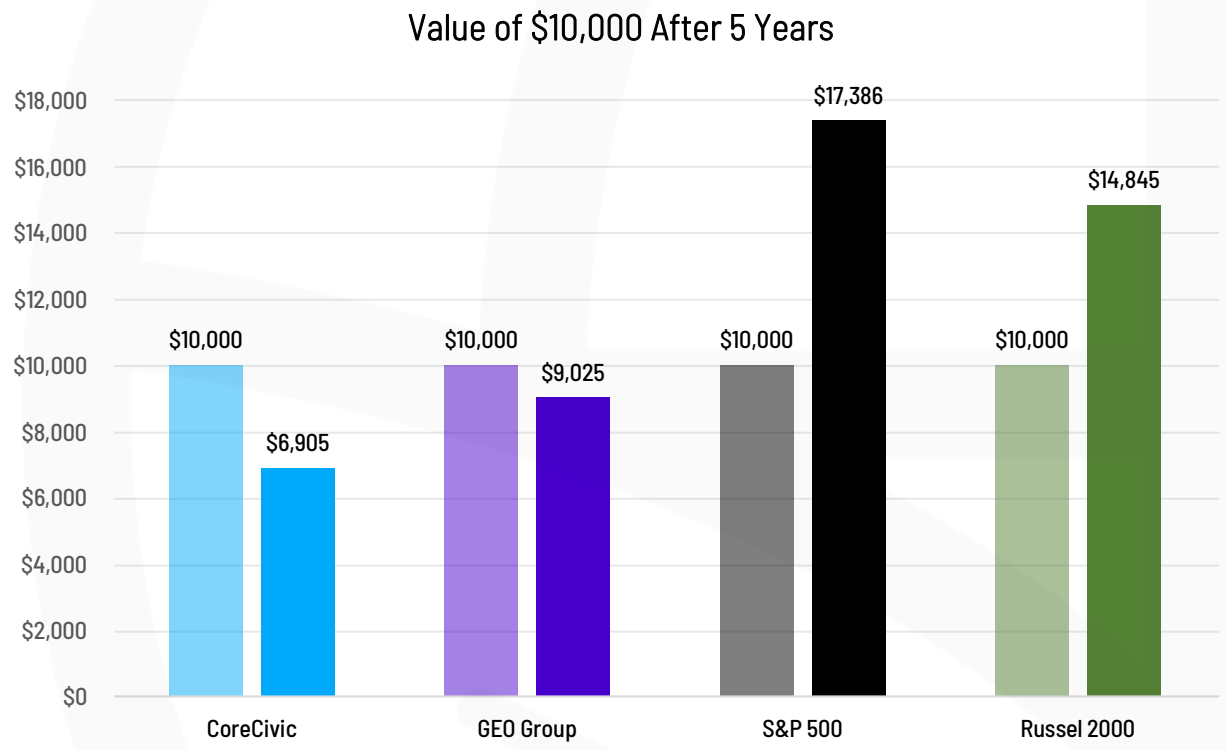


The price chart above provides an historical comparison for CoreCivic (blue) and GEO Group (purple) in relation to the S&P 500 (black) from October 4, 2017 to April 27, 2020.

The above graph shows the precipitous drop across the market after the World Health Organization (WHO) characterized the COVID-19 outbreak as a pandemic on March 11, 2020.[43] The widening gap in stock performance between for-profit prisons and the S&P 500 that existed prior to the pandemic has continued its pre-pandemic trend even as the market recovers from the initial shock of the WHO's official label of COVID-19 a global pandemic.

INVESTMENT VALUE & RETURNS

While the previous graph looks solely at stock price, factoring dividends into the equation does not produce better results for CoreCivic or GEO Group. Had you invested $10,000 in CoreCivic and GEO Group on December 31, 2014 and reinvested all dividends received thereafter, five years later, that $10,000 invested in CoreCivic would be worth $6,905 and the $10,000 invested in GEO would be worth $9,025. Had you, however, invested $10,000 in the Russell 2000 and the S&P 500 on December 31, 2014, five years later, your investment in the Russell 2000 would be worth $14,845 and your $10,000 investment in the S&P 500 would be worth $17,386.



CoreCivic and GEO Group's investment returns are also volatile,[44] and CalPERS has explicitly highlighted the potential impact such volatility can have on contribution rates as well as funding status.[45]

CXW Annual Return on Investment	2019	2018	2017	2016	2015	2014
Total Investments in Millions	*3,410*	*3,263*	*2,982*	*2,999*	*3,031*	*2,808*
Y / Y Investment Growth	*4.51%*	*9.44%*	*-0.6%*	*-1.06%*	*7.95%*	*2%*
Net Income in Millions	*189*	*159*	*178*	*220*	*222*	*195*
Y / Y Net Income Growth	*18.64%*	*-10.58%*	*-19.04%*	*-0.87%*	*13.76%*	*-35.17%*
Annual Return On Investment	**5.54%**	**4.88%**	**5.97%**	**7.33%**	**7.32%**	**6.94%**

Table: CoreCivic's Annual Investment Return for 2014-2019

GEO Annual Return on Investment	2019	2018	2017	2016	2015	2014
Total Investments in Millions	*3,511*	*3,537*	*3,492*	*3,006*	*2,990*	*2,616*
Y / Y Investment Growth	*-0.73%*	*1.31%*	*16.14%*	*0.54%*	*14.29%*	*0.61%*
Net Income in Millions	*166*	*145*	*146*	*148*	*139*	*144*
Y / Y Net Income Growth	*14.90%*	*-0.82%*	*-1.67%*	*6.59%*	*-3.15%*	*24.86%*
Annual Return On Investment	**4.74%**	**4.09%**	**4.18%**	**4.94%**	**4.66%**	**5.50%**

Table: GEO Group's Annual Investment Return for 2014-2019

BOND RATINGS & VALUATION

The dramatically higher risk both CoreCivic and GEO Group pose has led to a sharp decline in the value of their bonds. MSCI gave CoreCivic and GEO Group its lowest rating (CCC) in March 2019, after noting that neither company has "areas of substantial strengths in managing material risks."[46] Both companies received MSCI's lowest rating (CCC) upon review yet again in early 2020. In its review of CoreCivic, MSCI noted that "the public and legal scrutiny faced by several of [CoreCivic's] facilities into the detainees' living conditions and rights suggests that there are structural issues within these company operations. Further, the company appears poorly-positioned for managing these issues, which could result in additional operating costs, or ultimately loss of contracts."[47] For GEO Group, MSCI explained that its CCC rating remain unchanged, highlighting that "recurrent human rights and civil liberties abuse allegations and ongoing litigations call into question [GEO's] ability to enforce [its anti-corruption and human rights policies]," while concerns over labor rights abuses, MSCI added, "were allegedly overlooked and not addressed seriously by the company."[48]

When Canadian asset manager Addenda Capital opted not to participate in CoreCivic's 2017 bond issuance, they noted "multiple ESG-related investment concerns including that the company had changed its name to rebrand its image, raising a red flag." They explained that "Between when we started

following CoreCivic and the writing of this note, the yield spread over US Treasury bonds on the company's longest maturity bond (2027-10-15) widened by 45bps, equivalent to a 3.3% price erosion due to a spread widening. Our expectations about ESG risk being concentrated in the industry as well as the issuer appear to have been warranted, as the spreads of a similarly termed bond from its main competitor, The GEO Group, also widened (by 49bps). By contrast, the spread on the US high-yield (junk bond) market widened by only 8bps (from 348bps to 355 bps) over the same period."[49]

DEBT & ACCESS TO CAPITAL

CoreCivic and GEO Group are both saddled with significant – and increasing – debt and limited access to the equity and debt markets. As of December 2019, GEO Group's total debt to equity ratio was 2.88, more than double the sector average of 1.37,[50] while CoreCivic's total debt to equity ratio of 1.49 was also above the sector average.[51] Both companies' debt to equity ratios have deteriorated for the past two years in a row. For the past four out of five years, CoreCivic has also had an acid test ratio below 1,[52] which signals financial distress.[53] Both companies' high debt-to-equity ratios and low liquidity indicate they are more likely to have difficulty paying off their current liabilities.[54]

Analysts have also identified potential concerns with GEO's asset-liability valuation ratios, and indicated that GEO's accounting and financial reporting practices "may warrant close attention from shareholders."[55] GEO's goodwill valuation, which includes the value of the company's brand name and its customer base, has also raised red flags,[56] as the company reported $776.4 million in goodwill as of December 2019 while total assets were valued at $4,317 million.[57] CoreCivic, in comparison, valued its goodwill at $50.5 million, with total assets worth $3,791.6.[58] Goodwill can be used as a "workaround" by accountants to balance a company's books, and large goodwill can indicate overvaluation of assets, potentially resulting in high impairment expenses in the future.[59] According to SEC filings, GEO did not perform a quantitative impairment test of its goodwill assets.[60]

CoreCivic and GEO Group are also facing potential problems accessing loans after J.P. Morgan, Wells Fargo, Bank of America, SunTrust, BNP Paribas,[61] Fifth Third Bancorp,[62] Barclays, and PNC, some of the largest banks in the world, all announced they will no longer finance lines of credit to either company. Because both CoreCivic and GEO Group are structured as real estate investment trusts (REITs), they must constantly raise capital from the debt and equity markets to expand and finance their operations, and they rely heavily on loans from big banks to do so.[63] The capital markets' shift away from financing for-profit prisons is therefore expected to significantly impact CoreCivic and GEO Group's ability to expand their operations, and jeopardize their dividends and share price as a result. This is compounded by the companies' declining share price and market cap – CoreCivic's market cap has dropped nearly 64% from $3.77 billion[64] to $1.34 billion[65] over the past five years, while GEO's market cap decreased by 31% from $2.45 billion[66] to $1.69 billion[67] – which makes accessing the equity market an undesirable alternative.

Fitch Ratings assigned a negative outlook for CoreCivic's new term loan in December 2019, explaining that "[t]he rating and outlook reflect negative capital access trends for private prison operators, including CXW. The list of banks that have publicly announced plans to exit lending and providing financial services to private prison operators due to environmental, social and governance (ESG) concerns has recently grown beyond the largest U.S. money centers to include regional and European banks."[68] The credit agency once again downgraded CoreCivic in April 2020, with both CoreCivic's Issuer Default Rating and their senior unsecured notes downgraded to BB-, which is considered non-investment grade, speculative, or "junk." Fitch explained that the "primary factor underpinning the continued Negative Outlook is the weaker access to traditional capital sources as institutional capital providers incorporate ESG considerations into their investment decisions."[69]

New language in CoreCivic's latest 10-K SEC filing further suggests that CoreCivic may have reached its credit limit, stating: "The Term Loan B requires us to place liens on mortgaged properties representing a loan-to-value of no greater than 80%. Our Credit Agreements limit the amount of liens we can place on existing assets, further restricting the amount of additional secured debt we are able to obtain. This limitation restricts our ability to obtain financing for future needs and opportunities."[70] Such a limitation could seriously jeopardize CoreCivic's ability to "meet the distribution requirements that are necessary to achieve the tax benefits associated with qualifying as a REIT." These risks are materializing in real time for CoreCivic, with the company announcing plans in June 2020 to reevaluate its corporate (REIT) structure and suspend quarterly dividends.[71] Restructuring would not only end the preferential tax treatment that CoreCivic's REIT status currently provides, but would also mean that CoreCivic would no longer be required to pay out nearly all of its earnings as dividends to shareholders. This has significant implications for investors and the announcement sent CoreCivic's stock price plummeting nearly 20% in early morning trading.[72]

FIDUCIARY ANALYSIS

Understanding that any fiduciary analysis on divestment is based on the "prudent person" standard,[b] which is objective, not subjective, in nature, analyses and conclusions that other US pension funds and institutional investors have reached on this specific issue may be informative. In June 2017, New York City pension funds divested from CoreCivic and GEO Group after the Comptroller's office similarly found "inherent [...] reputational, legal, and regulatory risks [in for-profit prison companies]" that could lower demand for such investments and damage valuation as a result.[73] When Rhode Island's state pension divested in January 2020, the State Treasurer explained that "the business model of the for-profit prison industry creates corporate incentives for increasing the number of people who are incarcerated and cutting costs at the expense of the health and safety [of] incarcerated individuals and prison employees."[74]

[b] *This is codified in the California Constitution. Other states and pension systems may be subject to different legal standards.*

The Canadian Pension Plan Investment Board divested from both CoreCivic and GEO Group in November 2019 "because they posed a reputational risk to Canada's biggest pension fund."[75] In April 2020, two Danish pension funds, PKE and Lærernes Pension, followed suit and divested from CoreCivic and GEO Group as well, with Lærernes Pension explicitly highlighting ESG concerns.[76] CalSTRS' own fiduciary analysis on divesting from for-profit prison companies CoreCivic and GEO Group offers important insight. CalPERS oversees $379 billion and had (as of June 2019) $10.8 million invested in CoreCivic and GEO Group, while CalSTRS oversees $219 billion and had $13.7 million invested in CoreCivic and GEO Group at the time they determined that "owning private prison companies [was] de minimis to the overall portfolio return and tracking error."[77] CalSTRS' assessment compared "the actual returns of the U.S. Equity Portfolio over the past 3 and 5 years to a hypothetical portfolio assuming [they] divested [from] private prisons" and found that their US equity portfolio, along with their US Active Portfolio and US Small Cap Portfolio would have performed slightly better had they divested.[78]

Bearing in mind that any decision should be based on the "overall best interest of your members' retirement security [...] and other matters [including] employment security,"[79] two additional factors should be taken into consideration: 1) CoreCivic and GEO are privatizing public-sector jobs, thereby limiting employment opportunities for CalPERS members; and 2) the use of private contractors like CoreCivic and GEO Group diverts taxpayer dollars away from local governments, draining already limited government resources. Even with soaring demand and an environment more conducive to these companies' operations than we've seen in years, both CoreCivic and GEO Group are overloaded with debt and face limited access to the debt and equity markets on which they rely to expand, thereby jeopardizing their financial viability.

ENDNOTES

[1] California Public Employees' Retirement System, "Fiduciary Training," January 2019, *available at*: https://www.youtube.com/watch?v=ars5rbEuEEY [hereinafter "CalPERS' Fiduciary Training"].
[2] *Id.*
[3] Letter to the SEC on rulemaking for ESG disclosure, October 1, 2018, *available at*: https://www.sec.gov/rules/petitions/2018/petn4-730.pdf [hereinafter "SEC ESG Disclosure"].
[4] U.N. Principles for Responsible Investment, "Fiduciary Duty in the 21st Century," (2015), *available at*: https://www.unpri.org/fiduciary-duty/fiduciary-duty-in-the-21st-century/244.article.
[5] SEC ESG Disclosure, *supra* fn. 3.
[6] SEC ESG Disclosure, *supra* fn. 3; RBC Wealth Management, "Will ESG investing hurt my returns? Debunking the myths," *available at*: https://www.rbcwealthmanagement.com/cn/en/research-insights/will-esg-investing-hurt-my-returns-debunking-the-myths/detail/.
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