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# From Fiduciary Duties to Fiduciary Relationships for Socially Responsible Investment

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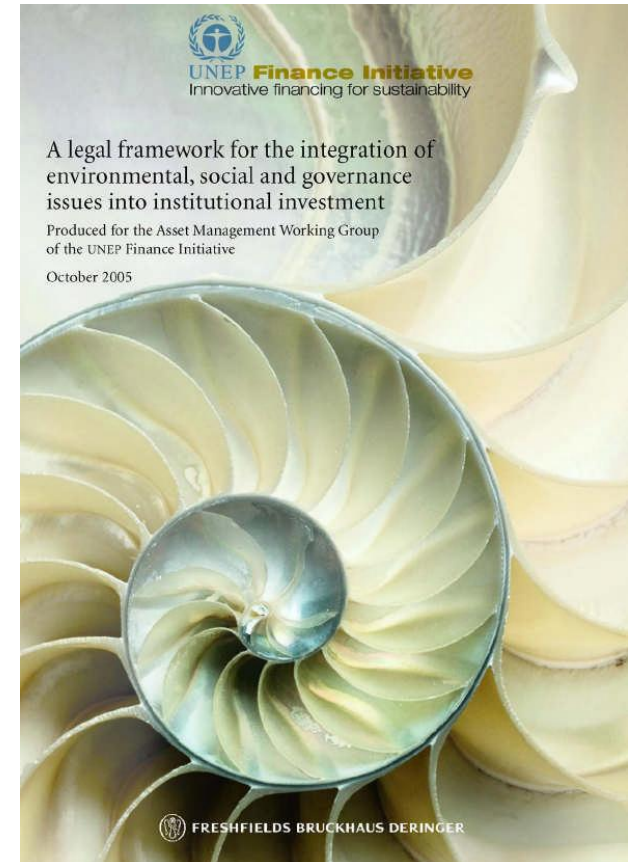
# Freshfields' report (2005)

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**A decision-maker may integrate ESG considerations into an investment decision to give effect to the views of the beneficiaries in relation to matters beyond financial return. Courts in the UK have recognised [this] ...In a similar way, US law permits investments to be excluded where the beneficiaries so consent.**

(page 12)



# Duty of Impartiality

- *Harries and others v. Church Commissioners for England (1993):*

**“Trustees should not make investment decisions on the basis of preferring one view of whether on moral grounds an investment conflicts with the objects of the charity over another.”**

# Duty of Impartiality

- ***Withers v. Teachers' Retirement System (1978)***
  - intergenerational equity required
  - This can foster long-term responsible investment

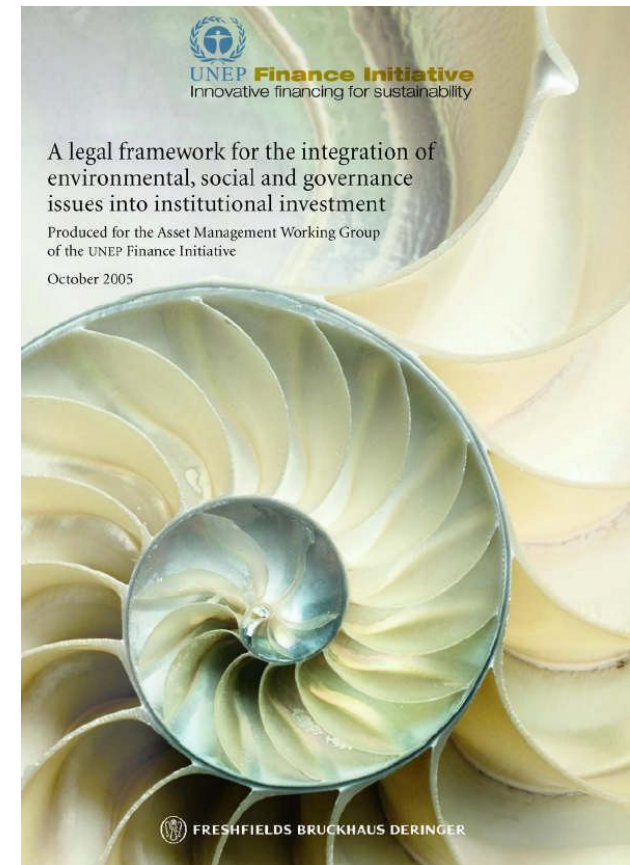
# Freshfields' report (2005)

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- “A decision maker who chooses to exclude an investment or category of investments on this basis will need to be able to point to a consensus amongst the beneficiaries in support of the exclusion.”

(page 12)



# Finding unanimity?

- *Harries and others v. Church Commissioners for England (1993)*:
- “different minds within the Church of England, applying the highest moral standards, will reach different conclusions” regarding the merits of a particular investment.

# Freshfields' report (2005)

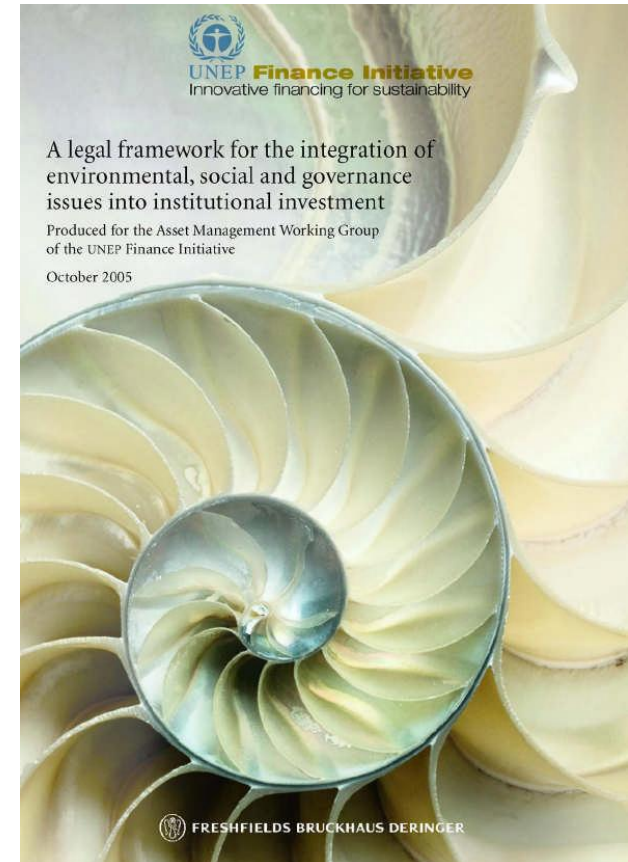
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**“There will be a class of investments that could reasonably be assumed offensive to the average beneficiary such that they could lawfully be excluded from an investment portfolio without all the beneficiaries’ express consent.”**

**“... the types of investment that might fall into that class include investments that are linked to clear breaches of widely recognised norms, such as international conventions on human rights.”**

(page 96)



# UNEPFI, *Fiduciary Responsibility* (2009)

- “A pension fund in its Statement of Investment Principles ... [refer to] international law treaties or conventions and/or voluntary guidelines or principles which the investment industry accepts widely as relevant *and having a material effect on investment value*”.

(page 26)

# Convention on Biological Diversity, 1992

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- **“Each Contracting Party shall, as far as possible and as appropriate: ... encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.”**

(article 10)

# Consulting with beneficiaries

- Ontario's former *South African Trust Investments Act of 1988*