

# The Evolving Fiduciary Obligations of Pension Plans: Appreciating the New Emphasis on Evaluating Risks to Sustainable Performance

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## Evolution of Fiduciary Standards

- > Feudal system
- > Transplanting legal standards into and back out of corporate law/contract
- > Quantitative standards
- > Qualitative standards
- > Back to the Future
  - Duty of loyalty
  - Focus on risk mitigation/management

## The Impact of Modern Portfolio Theory

- > Assumption
  - Rational economic actors maximize returns
  - They operate in efficient markets
- > Impact on Fiduciary Norms
  - Prudent investor standard
  - Reversal of non-delegation doctrine
- > Impact on Fiduciary Behaviour
  - Increased agency costs
  - Perverse effects of benchmarking performance
  - Portfolio-wide and collective action feedback loops

## A Broader View of Risk Management

- > Universal ownership
- > Efficient markets?
- > Longer term sustainability – need for new benchmarks
- > Connectedness/feedback effects
  - What connects us are not just contracts
  - Nor do governments have sufficient information/power to intervene in the necessary ways

## Refining Fiduciary Norms (aligning incentives to interests of beneficiaries)

- > Duty of loyalty (to beneficiaries vs. the “plan”)
- > Duty of impartiality
- > Duty of attentiveness (constraints on delegation)
- > Duty to monitor (do no harm), including risks posed by changed circumstances
- > Duty to engage/consult and of candor (investees, beneficiaries)
- > Duty to minimize costs (and align incentives)

## Implications for Disclosure/Reporting

- > “Fit for Purpose” Boards
- > Incentives/Accountability in the supply chain
  - Addressing conflicts of interest
- > Refining performance measurement
  - Asking the right questions
  - Relevance vs. reliability
- > A broader view of materiality
  - TSC vs. Northway Industries
- > Reporting/assurance as a process (vs. outcome)



# QUESTIONS & ANSWERS

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