

A Fiduciary's Role in the Measurement, Management and Maintenance of *Sustainability Risk*

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Objectives. This paper examines the investment industry's potential role in progressing sustainability through Sustainable Investing. This paper identifies a new category of risk that is currently mismanaged by fiduciaries, defines this quantifiable risk as *sustainability risk*, and examines the personal, financial and societal implications should this risk continue to go unmanaged. Further, the paper shows that in managing an investor's *sustainability risk*, the gap between the business case for SRI and the ethical case for SRI is bridged. This allows for a simplistic, yet powerful development of portfolio theory, allowing investment practitioners to better apply sustainability factors in practice. Methods. A qualitative research design was used to investigate the roles, standards of conduct and procedures of the fiduciary in the investment industry. Regulatory manuals, texts and documents used by financial advisors, academic literature, past legal proceedings, and journal articles were consulted. Results. A simple, quantifiable investment management process between the fiduciary and the investor is outlined, in order to incorporate *sustainability risk* into the investment process. Conclusions. This paper finds that the Standards of Conduct of fiduciaries must be modified to mandate fiduciaries to educate, measure and manage the *sustainability risk* of their clients. A number of Sustainable Investment Strategies are outlined, as tools for fiduciaries to reduce *sustainability risk* in investment portfolios. Further, should a client have a low tolerance for *sustainability risk*, it must be reduced through Sustainable Investment Strategies.

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I. Introduction

There have been many papers written recently on: the need for a reformation to fiduciary duty, on the gap between the business case and a normative case for sustainable investing and on the need for revisions to modern portfolio theory to better promote sustainable investing practices. This paper will explore the principal-agent relationships within the investment industry, leading to an expansion of the responsibilities of fiduciary duty, leading to an improvement in portfolio theory.

Specifically, this paper will identify a category of risk currently mismanaged by fiduciaries, define this risk as sustainability risk and outline how through the measurement, management and maintenance of a principals sustainability risk, many of the sustainability reforms called on for the investment industry can begin to be implemented. The reforms include: bridging the gap between the business case and the normative case for sustainable investing, creating active shareholders, promoting long term investment decision making, more actively incorporating ESG factors into investment analysis, greater reliance on sustainability/non-financial data reports and analysts, greater clarity for fiduciaries to incorporate ESG issues into proxy voting, increasing the breadth and depth of investment mandates, as well as others.

A sustainability pedagogical framework is also outlined, in order to examine and confront the impediments to the adoption of both sustainable investing strategies and the introduction of sustainability risk, including costs, power structures, education and choice architecture.

The Principal – Agent Relationship

This paper will investigate will be the principal-agent relationships in the Investment Industry, specifically the investor–investment agent relationship, the beneficiary–trustee relationship and the shareholder – corporate manager relationship. In each of these relationships, a fiduciary relationship is formed. Depending on the relationship, different sources to outline the fiduciary relationship have been sourced.

Generally, a fiduciary is an individual or institution responsible for acting in the best interests of another party, and is bound by law and duty to put aside personal interests and act in good faith when making decisions for the benefit of another (Watt, 2009). In order to analyze what it means for a fiduciary to act in the ‘best interests’ of another party, standards of Investment Agents developed by Securities Acts and Regulatory Organizations, reports issued by the CFA Institute and the UNEP, academic papers, and judicial decisions will be investigated.

Focusing first on the investor – investment agent relationship, a set of standards in Canada developed by Provincial Securities Acts and Regulatory Organizations guide fiduciaries to act in the best interests of their clients. The Standards of Conduct are made up of the following five standards: ‘Duty of Care’, ‘Trustworthiness’, ‘Honesty and Fairness’, ‘Professionalism’, ‘Conduct in Accordance with Securities Acts’ and ‘Confidentiality’ (CSI, 2007, p.1-5). Within ‘Duty of Care’, the ‘Know Your Client’ (KYC) rule is established, in order for the fiduciary to understand the ‘best interests’ of their client. The Know Your Client Rule states:

All registrants, except those granted the exemption from the suitability requirement, must make a diligent and business-like effort to learn the essential financial and personal circumstances and the investment objectives of each client. Client account documentation should reflect all material information about the client’s current status, and should be updated to reflect any material changes to the client’s status in order to assure suitability of investment recommendations (CSI, 2007).

But, what circumstances are considered ‘the essential financial and *personal* circumstances’? What is considered ‘material information about the client’s current status’? Which aspects of an investment do fiduciaries consider to ‘assure suitability’ of their investment recommendations? How do fiduciaries satisfy each of these requirements, while still creating and maintaining a functional and practical investment relationship, given the cost to the client for the investment service?

The *essential personal circumstances* and *material information about the client’s current status* is that information collected in order to measure the client’s appetite and tolerance for risk. In Canada, this is computed collecting the following five most important factors¹ in assessing a client’s situation (CSI, 2007, p.4-3):

1. Age
2. Income and Net Worth
3. Investment Knowledge (Poor/Nil, Limited, Good, Sophisticated)
4. Investment Objective (Combination of Safety, Income and Growth)
5. Financial Risk Tolerance (High, Moderate or Low)

A client’s preference to a variety of simulated financial scenarios is also gauged, in order to further measure the client’s tolerance for financial risk. Once the Know Your Client Assessment is

¹ Other details such as name, banking information etc. are also gathered, however are not required to assess the client’s situation.

completed using a New Account Application Form (NAAF), under current investment procedures the investment advisor is deemed to sufficiently know the best interests of the client. The aspects of an investment evaluated in order to ensure suitability to the client are simplified to the *financial risk* profile of the investments. An investment portfolio is then designed within the financial risk tolerance of the investor, made up of various securities and asset types in order to best suit the client's needs.

But, is this a sufficient level of understanding by the fiduciary, in order to assure suitability of investments in order to truly act in the best interests of the client? Is an essential component of this suitability assessment missing? Is enough information collected by the fiduciary? Are all investors' expectations uniform, in so far as they all expect profit maximization within a financial risk tolerance on their capital at any cost to other external factors, specifically Environmental, Social and Corporate Governance (ESG) factors?

An important source enforcing global investment standards is the CFA Institute. In May 2008, the CFA Institute released, *Environmental, Social and Governance Factors at Listed Companies, A Manual for Investors*, aimed to "Help investment professionals identify and properly evaluate the risks and opportunities ESG issues present for investors in public companies, and in the process clarify the relatively sparse and inconsistent information provided in current financial statements" (CFA Institute Centre for Financial Market Integrity, 2008, p.1). The report addresses the contributions that environmental, legislative, regulatory, legal, reputational and operating factors have on the long and short term financial risks of investments, and the opportunities available to create long term value. The report takes a business case view of incorporating ESG factors into investment analysis, stating, "[Investors] may favor a product for its "social good"—but such uses are beyond the scope of this manual" (p.1).

The fiduciary of a beneficiary-trustee relationship follow very different protocols than between the investor-investment agent relationship, primarily because there is very limited to no consultation between the trustees and the beneficiaries of the trust. Lord Nicholls of Birkenhead (1995), simplified the goals of the trustee investment to depend upon the goals of the particular trust, as stated "The lodestar which should guide [trustees] is the promotion of the purposes of their trust, that is, the best interests of the beneficiaries". Charitable trusts are an example of a trust in which the goals of trustee investment can and should be aligned with the charitable purposes of the trust. (Nobles, 1992) The best interests of the beneficiaries are not always their best financial interests, since this would forbid funding charitable organizations, counter to the goals of the trust. In most trusts, however, such as pensions, the aim is to provide financial benefits to the beneficiaries. Where this is the case, the best interests of beneficiaries are defined for trustees as stated by presiding judge, Megarry VC in the decision *Cowan v. Scargill*, 'the best interests of beneficiaries are normally their best financial interests.'² "This means that, in most trusts, the immediate goal of investment, no matter how worthy the ulterior goal, is the selfish, materialistic goal of wealth maximization". (Watt, 2009, p. 396)

² *Cowan v. Scargill* [1985] Ch. 270 at 287

The sole obligation to maximize shareholder profits, subject to the obligation to comply with legal constraints, leaves little room for social or moral considerations. There is evidence that not all shareholders, nor all beneficiaries want profit maximization at any cost.

A survey carried out by the Ethical Investment Research Service (EIRIS) in February 1999, found that 73% of the UK Adult population would like to have pension funds run on ethical lines. Almost one third of those questioned would have been prepared to accept some reduction in their pension benefits as a result (The Independent, 10 March 1999). Political polls and the behavior of shareholders as voters in the political process suggest they are strongly influenced by public interest views (Elhauge, 2005, p.37). Further, one survey found that ninety-seven percent of corporate shareholders agreed (seventy-five percent strongly) that managers should consider other constituency interests and about eight-eight percent agreed that managers considering a plant move that would be profitable to shareholders should weigh the effect the move would have on its employees, customers, suppliers and people in the community it presently is in before deciding to move (Soderquist & Vecchio, 1978).

Prospect theory, indicates that expected utility theory, underlying much of neo-classical economics, is not sufficient to describe behaviour, as in some situations, decisions are reference based. An evolutionary model for the origin of Prospect theory preferences holds significant implications to understand the nature and function of human decision-making processes. Tooby and Cosmides (1999) state:

One should not expect the cognitive architectures of evolved organisms to be “rational”, when rationality is defined as adherence to a normative theory drawn from mathematics or logic. One should expect their cognitive architectures to be *ecologically rational*: well designed for solving adapted problems their ancestors faced during their evolutionary history (Cosmides and Tooby 1996; [Tooby and Cosmides 1999]).

Robins, Krosinsky and Viederman (2009) also attack the normative notion of rational, stating, “While a rational man may not be able to appreciate the importance of fairness, integrity or environmental health, these factors can be quickly understood by the ‘reasonable person’ on the basis of evidence and argument” (p. 26).

and

A more empirically based theory of finance would acknowledge modern psychological and neurobiological understandings which highlight the importance of emotional drivers that “motivate us, help us to think and make life meaningful”, indeed which act as “core drivers of our capacity to act” (Tuckett, 2009)

What is specifically at issue then is, as outlined above, the investment industry is aligned to systematically prepare investment agents and trustees to pursue profit maximization in their investments, at any expense to issues that can be understood by the ‘reasonable person’. Profit maximization creates a one-dimensional goal of business direction that creates an on going list of externalities as “states can lack the

capacity to effectively govern the multifarious social and environmental externalities of the market³” (Richardson & Cragg).

Due to this reality, reflected in the environmental degradation, social and corporate governance problems resulting from irresponsible business practices, there have been corporate responsibility movements by businesses, through the voices of shareholders and the development of the responsible investment industry. The Socially Responsible Investment (SRI) movement, or Responsible Investing, has promoted a push for the integration of environmental, social and governance (ESG) factors into investment practices, in the expectation that business behaviour become more responsible, and accountable to all stakeholders, leading to a reduction in externalities. As stated by Richardson (2008), “Financial markets have become the single most important sector of the global economy, and reducing their ecological footprint through credible legal standards for SRI may yield a better dividend than any other environmental law strategy currently available” (p.290-291)

Though this movement indicates progress and has contributed to the Corporate Social Responsibility movement, major challenges exist. Perhaps the greatest challenge in the industry has been the advocating of a ‘business case’ approach to responsible investment, over an ethical, or normative case for investing. The business case advises only incorporating ESG factors, if it is profitable, (or there is a business case) to do so. Major problems to advising the business case exist, as it is likely that the business case for responsible investment is an insufficient method to account for externalities. Richardson & Cragg (2009) comment

While the SRI market is ostensibly flourishing, the financial economy remains largely unchanged. An unresolved tension between the financial and ethical aspirations of SRI persists. Some investors may acknowledge environmental or social problems where they are financially material to the bottom line, but they usually eschew engagement with the moral issues at stake... The problem is that some financiers masquerading as responsible investors merely tinker with unsustainable practices. Based on a philosophy of financial materiality, the business case may address some environmental and social problems through improved research and analysis. However, it cannot accommodate those issues not valued by the market, and existing strategies in this model are unlikely to transform investment ‘value’ to incorporate other non-financial factors (p. 27).

What is at issue then, is the limitations the business case for responsible investing puts on it’s ability to sufficiently create more sustainable business policies, and greater accountability to stakeholders. Given these limitations, there have been calls to improve the responsible investment industry by reforming fiduciary duty.

³ See Richardson, Benjamin J 2008, Putting Ethics into Environmental Law: Fiduciary Duties for Ethical Investment, Osgoode Hall Law School, York University, 291 for a full discussion on the impediments of regulation

Richardson & Cragg (2009) comment on this stating

The legal system translates a society's values and expectations into workable policy instruments for implementation... Through fiduciary duties the traditional concept of "benefit" to investors can be ethically redefined, and thereby financiers steered towards sustainability (p.28)

Urwin & Wood (2009), comment that "Prevailing pension fund views of fiduciary duty have led to an over-emphasis on maximization of financial returns, without regard to externalities. This need not be the case, but fiduciaries are unlikely to change their ingrained behavior without legislative signaling from governments" (p.21)

And Lord Nicolls has described ethical investment as "An example par excellence of an instance where, if social conditions today are thought by some to dictate a need for a change in the law, the change out to be made by the legislature" (Watts, 2009, p.424).

The focus of this paper will now be to focus on one method of reforming fiduciary duty, by investigating methods to expand on the methods used to determine the 'best interests' of shareholders.

Given the understanding by fiduciaries that the best interests of investors, beneficiaries and shareholders is their best financial interests, how then are social or moral issues addressed by fiduciaries, specifically investment advisors, trustees and corporate management? As we have seen above, for trusts and investment portfolios, they are generally approached through a business case framework.

For corporations, however, Elhauge (2005) suggests that it is possible for controlling shareholders to act on social or moral issues, however in general management should have the operational discretion to make decisions on social or moral issues as they are best exposed to the social or moral sanctions.

The manager who is confronted by the environmental harm she has caused will be more likely to feel social sanctions or moral guilt about it that might motivate donations. The manager who has operated in a local community and seen first hand the sundry ways in which the corporation has impacted or benefited from that community will be more likely to want to make donations to benefit that local community. The manager who has experienced the enormous value of innovation in her industry will be more likely to make donations to fund research universities (p. 67).

In fact, Elhauge (2005) suggests profit can be sacrificed in the process, since "incentives to be excessively generous are constrained by various market forces" and "courts cannot distinguish profit-enhancing donations from profit-sacrificing ones" (p. i). However, for smaller shareholders "the structure of large publicly-held corporations insulates dispersed shareholders" .. and "creates collective action obstacles to acting on any social or moral impulses they do feel" (p. 33)

Unfortunately, the structure responsible for not giving agency to smaller shareholders on these issues is significant as most frequently, the small shareholders, as a whole, represent the majority of the trust, fund or corporation.

There are dangers of giving management discretion to act on social or moral issues, as, “if her moral convictions are sufficiently powerful, this might override the threat that this decision would lose her the job and all prospects of obtaining a similar job in the future” (Elhauge, 2005, p. 69).

In most cases, however, management does not make decisions on social or moral sanctions, as their conduct is guided by the fiduciary duty calling for the best financial interests of their principals. It is important to note here that not only must the methods in which social or moral issues are addressed lead to profitability, corporate managers are pressure to constantly be maximizing profitability. This results in a business decision making framework that alleviates social or moral considerations, should they be costly.

This systematically leads to the inevitable result, which Elhauge (2005) states “A corporation run by managers perfectly accountable to shareholders would be “soulless” because the corporate structure insulates shareholders from the social and moral processes that give us “soul” (p. 41).

Certainly the business case for Responsible Investing cannot address this systematic inevitability. Neither can the call for large controlling shareholders or corporate management to address social or moral issues at their discretion. What is required is a fundamental change in fiduciary duty, which involves the consultation of all shareholders of corporations, or beneficiaries of trustees to be explicitly consulted on their best interests and as will be discussed later, their intents.

III. Consulting Beneficiaries

Principal-Agent relationships, or agency relationships, arise whenever one or more individuals, (principals), hire one or more other individuals (agents) to perform some service and then delegate decision making to the agents. Regarding shareholder – manager relationship, agency theory suggests that managers will seek to maximize their own utility at the expense of corporate shareholders because of asymmetric information. Asymmetric information is what affects decisions in transactions where one of the parties has more or better information than the other. Agency theory makes very little mention to the obligations, moral or otherwise, that principals have to their agents. The emphasis focuses on what the agents should or must do for the principals, within a framework. There are also arguments that shareholders should be seen as agents to managers, employees and the broader society, which would, supposedly then make corporate managers agents to employees and the broader society as well.

This paper will look at the problems in the principal – agent relationship as a contractual problem, in which agents in the investment industry are doing an insufficient job in understanding and managing the ‘best interests’ of their principals. It will investigate non-financial factors which may be a component of a principals ‘best interests’ and look at methods of expanding to the responsibilities of fiduciaries to include these interests. Richardson & Cragg (2009), comment on a need for this, when they state, “unless required by special legislation, fiduciaries need not consult with beneficiaries. They only need to act in their “best interests”, though they need not inquire what those best interests are” (p.22).

It was discussed earlier that ‘the structure of large publicly-held corporations insulates dispersed shareholders’ .. and ‘creates collective action obstacles to acting on any social or moral impulses they do

feel' (Elhauge, 2005, p. 33) . This being said, there has been academic and legal precedence to trustees consulting all beneficiaries and to consider their views on issues in the past. Watt recommends this "as for the administrative simplicity of unanimity-based ethical investment; this need not be sacrificed completely if, instead of insisting on unanimity, it were possible to identify those issues about which a majority... of the beneficiaries feels strongly. It could also be made a statutory requirement of the trustee investment that the trustees consult the beneficiaries and consider their views.(Watt, 2009, p. 427)

One of the obstacles to consulting beneficiaries is that as stated by Robins, Krosinsky and Viederman (2009)

Certainly, the basic architecture of 'shareholder democracy' remains primitive. In the UK, for example, "shareholders are not, in the eyes of the law, part owners of the company." And the question remains whether if shareholders became full owners that they would actually exercise these rights and obligations in a responsible manner (p.20).

Motivating appropriate economic growth through business practices that do not sacrifice stakeholders or lead to externalities has been a challenge with current systems of governance. The paradox of a business owned by shareholders, yet run with a "soullessness" that does not consider any of the moral or ethical components of its owners seems a systematic failure. Ultimately all sustainability or moral considerations of corporations, and investment capital are not derived from the owners of business or capital. They are considered almost exclusively by those parties at the agent level, whom frequently ignore all moral considerations due to a call in their fiduciary duty exclusively seek the financial interests of principals, as decided by a judge. If this sounds disconcerting, that is because it is. As the investigation goes further, the choice architecture and institutional power relations in these paradoxes will be further explored.

Watt (2009) states that "The frequent lack of any meaningful personal relationship between trustee and beneficiary produces another paradox: that the trust relationship becomes a relationship of mistrust instead of trust, social trust having been replaced by trust mediated through the terms of the trust and general law" (p. 29).

Going forward, this paper will investigate adding additional elements to fiduciary duty, in order to allow sustainability and moral/ethical considerations to be derived, or pulled, from principals or owners through a consultation process of agents with their principals. In this manner a sustainability framework is defined by principals, and not agents. This does not imply that shareholders or beneficiaries will define a moral framework any different than the profit maximization framework currently used today. It does imply, however, that the principals are guiding this framework, ultimately allowing liability for corporate actions to come from the principals, including investors, shareholders and beneficiaries.

As stated by Richardson & Cragg (2009) "What is crucially at issue, then, is not the end to be achieved of a socially just and ecologically sustainable world community, but the allocation and implementation of responsibilities among various economic actors and stakeholders for achieving that goal. An unchecked free market is certainly not capable of achieving that goal" (p. 9)

In relation to trusts there is precedent to the trustees having to consult the beneficiaries and to consider their views. The Trusts of Land and Appointment of Trustees Act 1996 is an act of parliament in the United Kingdom, which altered the law regarding trusts of land.

An excerpt of Section 11, Consultation with beneficiaries, states:

(1) The trustees of land shall in the exercise of any function relating to land subject to the trust—

(a) so far as practicable, consult the beneficiaries of full age and beneficially entitled to an interest in possession in the land, and

(b) so far as consistent with the general interest of the trust, give effect to the wishes of those beneficiaries, or (in case of dispute) of the majority (according to the value of their combined interests).

Notice that both (1)(a) and (b) specify ‘so far as practicable, consult the beneficiaries’ and ‘give effect to the wishes of those beneficiaries’, ‘so far as consistent with the general interest of the trust’. One of the challenges in the investment industry is that it is not ‘practicable’ to consult beneficiaries of trusts or investors on moral considerations. It certainly is possible to do so, and this paper will outline one method of doing so.

Elhauge (2005) comments on whether fiduciaries can take moral or ethical considerations into account, and his response is “My response to all these questions would be that the answer is yes only if (respectively) the client, investor, or corporate CEO have approved the profit-sacrificing conduct” (p. 80). This paper is not suggesting that profit-sacrificing is necessary, as many studies have shown that in the long run, a sustainability framework outperforms a traditional investment framework, rather that fiduciaries can take these actions into account if principals have approved of such conduct.

The market resilience hypothesis (Kostrinsky, 2009) states that “capital markets themselves need to be recast to confront the risks of financial collapse posed by long-term economic, social and environmental realities” (p.4). Though this may seem an insurmountable goal, the reality is that there is precedent for drastic restructuring of the investment expectations of fiduciaries. In 1992, the Restatement (Third) of Trusts, Prudent Investor Rule was published and codified through the Uniform Prudent Investor Act in the US. The restatement revised the prudent man rule to include an analysis of the total portfolio and incorporate a risk and return analysis with respect to investments (Duronio, 1996). It is debatable whether this change allowing trusts to purchase more risky assets has truly benefited beneficiaries, however it is important to note that changes to Investment Acts are attainable.

IV. Introducing Sustainability Risk

Responsible Investing is has currently entered into a gray area. Transparency regulation gives financiers the option of choosing not to take social, environmental, and other ethical matters into account, provided that they disclose that decision (Richardson, 2008, p.257). Meanwhile, the UNEP (2009) argued

that it is not a breach of fiduciary duties per se [for trustees] to have regard to ESG considerations while pursuing the purposes of the trust. Rather, in our opinion, it may be a breach of fiduciary duties to fail to take account of ESG considerations that are relevant and to give them appropriate weight. But what is the appropriate weight? And whom decides? Do the agents decide, or do principals? Do judges?

As stated, this paper explores a change to fiduciary duty that allow the appropriate amount of ESG considerations to come from principals, ultimately creating a sustainability and moral framework for business to operate within. To do so, a new portfolio risk defined as sustainability risk is proposed.

To define sustainability risk, we can isolate and define financial risk in a portfolio as the exposure to the chance of financial loss in a portfolio. In a similar manner then, *sustainability risk* is isolated and defined as the *exposure to the chance of loss to non-financial factors in the portfolio*. This would include environmental, social or governance losses. It is important to note that sustainability risk expands the term ‘loss’ to not simply be restricted to financial loss.

The UNEP (2009) does advise Fiduciaries to recognize these risks in the portfolio, by stating, “Fiduciaries must recognize that integrating ESG issues into investment and ownership processes is part of responsible investment, and is necessary to managing risk” (p. 11)

Currently, however, these risks are systematically unmeasured and unmanaged by fiduciaries. As such, several negative consequences are occurring: (include quoted reasons)

1. The flawed message that short term financial performance, at any cost and in any non-sustainable manner, is preferred by all principals to sustainable business practices is being delivered by the fiduciary to each recipient of the client’s capital. This oversimplified message perpetuates a miscommunication between the principal and the recipients of the investor’s capital, promoting unsustainable business decisions and a generally misguided business direction. Not only may this message not match the intent of investors, it forces business leaders to act in a non-sustainable manner due to pressure from fiduciaries. As United Nations Secretary-General Ban Ki-Moon states “.. we must put an end to unethical and irresponsible behaviour, and the tyrannical demand for short-term profit.”⁴
2. Each principal is being exposed to long term environmental and social risk factors, which are destroying the natural environment of the investor and are damaging to the livelihood of the investor. The fact that the investor is contributing to these destructive factors, and yet is vulnerable to them, is beyond the investor’s control if they are not able to offer input on actions taken on their behalf.
3. Principals are exposed to more *sustainability risk* in their investments, and stakeholders are exposed to the sustainability risk of owners of business.

Quayle Watchman Consulting advises that fiduciaries must be aware of and proactive in addressing these risks, as they provided the following:

⁴ UN Secretary-General Ban Ki-Moon, May 2009, as found in UNEP report

“Professionals must act as experts and advise their clients without being prompted or questioned by their clients on relevant and material issues. Institutional investment consultants (‘investment consultants’) and asset managers have a legal duty at common law to raise ESG considerations with their clients.”(UNEP, 2009, p.28)

A Consultant in the investment industry, in addressing the uncertainty on how to measure managers’ ESG aptitude stated “the challenge is that there is a great amount of subjectivity to such an assessment and the distinct priorities and values of clients are bound to lead to a diverse range of views of any given managers’ incorporation of ESG factors.”(UNEP, 2009, p.39) Further, another consultant commented, “The trustees of the Scheme should demand ESG integration once they have established it is in the best interests of the beneficiaries.” (UNEP, 2009, p. 37)

The concept of managing a client’s sustainability risk, as outlined later in the paper, will address this uncertainty and help to establish the best interests of beneficiaries. The fiduciary has a responsibility to understand the multi-dimensional view of risk investors have and that their financial return should be sought within this multidimensional risk framework. Unique to each investors, this risk tolerance based on referencing, derived from personal and experiential factors.

The Quayle Watchman Consulting Group recently stated

In tendering for investment mandates, it would be expected that the investment consultant or asset manager would raise ESG considerations as an issue to be taken into account and discussed with the client even if the pension fund had not specified ESG considerations as material to the tender. If the investment consultant or asset manager fails to do so, there is a very real risk that they will be sued for negligence on the ground that they failed to discharge their professional duty of care to the client by failing to raise and take into account ESG considerations (UNEP, 2005, p.44)

The recent comments above in the UNEP report (referred to as Fiduciary II) states that the fiduciary would “raise”, “take into account”, and “discuss” ESG considerations with the client, even if “not specified as material to the tender” . This paper extends these comments, viewing the potential loss from environmental, social and corporate governance risks that must be managed in the portfolio through the sustainable investment strategies outlined in Section VII. Further, by modifying the Standards of Conduct of fiduciaries to include this process, the legal aspect of negligence surrounding professional duty of care would be clarified. Though the comments above were written regarding pension funds, these considerations also apply to fiduciaries of retail investors in the same way that they applies to fiduciaries of trusts.

Another approach to confront sustainability issues has been through the use of full cost accounting. Continued progress in full cost accounting is an excellent complement to the methods to reform fiduciary duty outlined in this paper, in order to help facilitate and improve the effectiveness of responsible investing practices. Regulatory implementation challenges as well as other practical obstacles of full cost accounting further motivate a platform which accounts not only for losses that have not been yet

quantified through full cost accounting challenges, but rather one which accounts for the ‘risk of losses’ to ESG related factors. This type of measure allows even greater management of ESG related issues, as ESG related items need not be specifically quantified.

V. Measurement of Sustainability Risk

Robins, Krosinsky and Viederman (2009) state:

‘The UNEP report recommends that investors should ask their managers to include social, environmental and governance issues in financial-decision making. But given institutional cultures, there is no discussion of how to move the institution to make that request. This is the continuing dilemma.’ (p.28)

This paper proposes that the *sustainability risk* of a client can be assessed through a standardized, ‘Sustainability Risk Survey’, made up of both qualitative and quantitative questions. The survey will measure the tolerance of investors to environmental, social and governance losses, as they relate to business practices. Through the survey, the fiduciary will be able to derive a sustainability risk score of either high, medium or low for the investor.

There are a number of platforms for agents to assess the sustainability risk of their principals. For retail investors, the survey would become an obligatory component of the Know Your Client Interview. Thus, in order to measure the client’s best interests, and appetite and tolerance for both financial and *sustainability risk*, the Sustainability Risk Survey would be added to the checklist of other information is required to be collected and measured. This would give fiduciaries more information to better manage the risk/reward expectations of their clients and will lend more detailed information in order to communicate the best interests of their clients to the business or other recipients of their capital.

Below is a summary of the information collected from the Know Your Client Interview, revised to incorporate *sustainability risk* into the investment process:

1. Age
2. Income and Net Worth
3. Investment knowledge
4. Investment Objective (combination of safety, income and growth)
5. Financial Risk Tolerance (high, moderate or low)
6. Sustainability Risk Tolerance (high, moderate or low)

This option allots each investor a specific sustainability risk profile, which is then translated into a score of low, moderate or high. The details of this profile will be discussed further later in the paper in section V.

What is unique about the approached outline above is that, rather than simply “pushing” the importance of ESG criteria to agents, asset managers and businesses, this method “pulls” information from shareholders, trustee’s and potentially beneficiaries. By pulling information, ESG and sustainability factors becomes a demand as opposed to a supply.

As the framework for civilian responsibility and accountability functions through complex behavioral and cognitive characteristics which is taken for granted when law treats corporations with the same autonomy as individual persons. This sustainability risk profile will begin the process of creating a behavioral identity formed with sustainability principles. Further, it has the potential to facilitate shareholders to become active owners, with greater influence over management decisions, creating a stronger system of self governance on ESG issues. Richardson & Cragg states:

“Ethical investment should no longer be a discretionary choice for financiers, to follow only if there is a compelling business case. All investors, whether or not they profess to follow SRI, should act within a framework of ethical values. In a world facing grave ecological problems and social injustices, the financial sector must should some of the responsibility to mitigate these problems” (p.2). and “We need new kinds of policy instruments to help inculcate ethical behaviour”. (p.3)

When measuring sustainability risk, a low sustainability risk tolerance derived from the survey indicates that the investor’s investment intent has a low tolerance for companies with poor sustainability practices. This signifies to the fiduciary that the investor must utilize sustainable investing strategies (see section VI) which are appropriate given the Age, Financial Risk Tolerance, Income and Net Worth, Investment Knowledge and Investment Objective of the client.

It is clear that there is a struggle between the inconsistencies of traditional investment management principles and the need for an incorporation of more sustainable investment policies. The struggle to reconcile the business case with the ethical case is evidenced by practitioners, whom call on academics to bridge the gap from the theoretical to the practical. The introduction, education, measurement and management of sustainability risk allows investors to define and steer the sustainability values of business. Under this method, the degree of the incorporation of sustainability values can be defined to be purely profit drive (the business case), or one which requires the management of a sustainability risk tolerance going beyond profit (the ethical case), or somewhere in between. This allows bridging the gap between the business case and the ethical case, and between the theoretical and the practical. This approach offers both the theoretical and practical platform to develop an investment process that incorporates sustainability values into the investment process, offering results that are better in the long term for investors, businesses, the market, and all stakeholders.

There are several more areas in the Fiduciary II, that support the concept and the implementation of sustainability risk into the investment process.

The Principles for Responsible Investment (PRI) should specify that – in order to maintain their membership –all asset manager and asset owner signatories will be required to embed ESG issues in their legal contracts – such as interment management agreements, and Statement of Investment Principles or Investment Policy Statements. (UNEP, 2009, p. 56)

Of course, this paper views the ESG issues to be imbedded in the form of *sustainability risk*, differing from the way that it is advised in Fiduciary II, as this method will allow principals to be the major contributor to the framework of ESG incorporation.

Similarly, Quayle Watchman Consulting cited in the Fiduciary II report:

It is necessary for investment management agreements or the equivalent contract between pension funds and asset managers to use ESG language in order to clarify the expectations of the parties to the contract. In particular, it is important that it is made absolutely clear to beneficiaries, pension fund trustees and asset managers that ESG is regarded as a mainstream investment consideration (p.14)

Further, that “Discussion of ESG considerations and their application in practice should be included in the investment management contract as part of the periodic portfolio review to be held between pension fund trustees and the asset manager” (p.26)

It is important to note that the implementation of the requirement for fiduciaries to manage their client’s *sustainability risk* may result in absolutely no change to the current investment management process. It all depends on the choices that the investors themselves make, regarding their tolerance to *sustainability risk*.

For trustees a sustainable risk profile on their investments should be generated through consultation with their beneficiaries, to allow an expansion of the purpose of the trust, and then matching this purpose with its investment policies. Trustees should have an aggregate understanding of the risk profile of their beneficiaries and from there, could incorporate ESG appropriately according to the aggregate profile and use the sustainable investing methods described in section VI.

VI. Sustainability Risk Categories

A sustainability risk survey is necessary to outline the tolerance principals have to sustainability risk. Sir Donald Nicolls states, ‘Different minds within the Church of England, applying the highest moral standards, will reach different conclusions’ as to the merits of a particular investment (see Watt page 426). Despite this challenge, it is possible to create a sustainability framework for a ‘reasonable’ person, elected by principals and managed and maintained by fiduciaries. The three sustainability risk tolerances a principal will be allocated, upon completion of a sustainability risk survey are:

Low Sustainability Risk Tolerance:

- Investors/beneficiaries have a low tolerance for non-financial losses in their portfolio. Fiduciaries will subscribe to all Sustainable Investing Methods (as outlined in Section VII) promoting long – term considerations, integrating ESG factors and other sustainability related Non-Financial considerations.
- Consultations on new investment opportunities should include both expected financial performance and expected non-financial performance of investments, as they relate to ESG and sustainability issues.

- Along with financial performance reports, impact assessment reports outlining the impact their investments had on ESG and sustainability related issues should be distributed to the client
- A sustainable approach to business should be promoted, so that systematic risks in the market resulting from ESG factors are reduced.

Medium Sustainability Risk Tolerance:

- Investors/beneficiaries have a medium tolerance for non-financial losses in their portfolio. Fiduciaries should subscribe to some of the Sustainable Investing Methods, as outlined in Section VII.
- Consultations on new investment opportunities should include both the expected financial performance and the expected non-financial performance of the investment relating to principal/investor specified ESG and sustainability issues.
- Along with financial performance reports, impact assessment reports outlining the impact their investment had on principal specified ESG and sustainability related issues should be included
- A sustainable approach to business should be promoted, so that systematic risks in the market resulting from ESG factors are reduced.

High Sustainability Risk Tolerance:

- A high sustainability risk tolerance indicates the investments the principal/investor should engage utilize the ‘business case’ approach of responsible investment. ESG factors should be incorporated into investment where they are deemed profitable to do so.
- Consultations on new investment opportunities should include only the expected financial performance of the investment
- Financial performance reports should include only financial performance related issues
- A sustainable approach to business should be promoted, so that systematic risks in the market resulting from ESG factors are reduced.

In managing sustainability risk, what must be considered is not if the investment has helped to achieve sustainability, rather if the fiduciary/agent/managers have put themselves in the position of potential conflict with the sustainability risk tolerance of the beneficiaries.

VII. Sustainable Investing Methods

Traditional ethical or SRI strategies seldom accompanied active ownership, which question the potential sustainable investing has in affecting corporate and governmental behaviour on ESG issues.

As communicated by Elhauge (2005) regarding SRI Funds:

After all, their individual decision to invest in such a fund would definitely reap them a monetary loss but have little impact on whether such funds were generally successful in changing corporate conduct. Thus, even if investors do have public interest views, they will have little incentive to act on them when making investment decisions among funds or corporations. Indeed, it is remarkable that many people do invest in socially responsible funds considering that their individual decision to do so has no significant impact on furthering even their most altruistic of motives. (p. 37)

It is important then, that sustainable investing strategies have a strong focus on engagement. Outlined below are sustainable investment strategies that have become common place in the investment industry. In this paper, they are organized into three strategies, with commentary outlining the ways that the concept of *sustainability risk* will make each strategy more effective. This paper considers investments that have incorporated these three strategies to be deemed, ‘Sustainable Investments’.

1) Engagement

Engagement is the sustainable investment strategy that perhaps enables fiduciaries to best proactively manage their clients *sustainability risk*. Given that the fiduciary has the *sustainability risk* of its clients computed, it is now more straight forward to vote proxies as the fiduciary has more information from the client to base this decision. All proxy votes must be in the best interests of the investor, such that the vote aligns a goal of long term value for the investor, within their *sustainability risk* tolerance. The clarity *sustainability risk* brings regarding how to vote proxies, is a great usefulness of its measurement.

Regarding management meetings, it is important to note that these meetings should not be limited to solely a discussion of the financial performance and financial risks inherent in the business, but also to a discussion of the *sustainability risks* associated with the business. As the representative of the investors best interests and intents, the fiduciary must proactively manage that *sustainability risk* tolerance in the companies that they invest in, and communicate this sustainability risk tolerance framework with the business that their investors hold.

The UNEP (2009) asks the question, “What are the aims of the engagement process – just to improve long-term shareholder returns, just to improve corporate responsibility – or both?” (p.69). Using the concept of *sustainability risk*, the answer is that engagement aims to improve long-term shareholder returns, while communicating the *sustainability risk* tolerance of its investors to the business. Should the *sustainability risk* of the business be higher than their investors tolerance, the fiduciary must challenge and motivate significant corporate changes to business practices, actions or decisions in order to bring the *sustainability risk* of the business into a range that meets their investors tolerance level. If the *sustainability risk* tolerance of the business is adequate, then the fiduciary must ensure the business does not go beyond its current *sustainability risk* tolerance. This is discussed further in the negative screening strategy below.

2) Preference / Positive screening

A positive screening method would work quite well, following legislation enacting mandatory sustainability reports issued by companies, along with a mandatory sustainability rating score delivered in a similar manner as credit ratings. This would facilitate the implementation of positive screens. An investment policy could be designed, such that, for example, only securities that were rated ‘BBB’ or higher could be purchased.

This method would also allow for a passive Sustainable Investment approach, making it easier to create Sustainable Investment Indices and Sub-Indices. This would be a viable investment option to reduce a client’s *sustainability risk*, provided there was still pro-active shareholder engagement included in the strategy.

3) Negative screening

Negative screening is a sustainable investment strategy, when *the sustainability risk* of a business is deemed too high, with little prospect for it to be reduced in the near future.

If this is the case, a fiduciary should practice shareholder engagement, in order to have the opportunity to meet with management to discuss the *sustainability risks* with the company. Smaller asset managers or advisors should write letters to management⁵, and evaluate the response (or lack of response) received from the business. Fiduciaries can also raise issues at the AGM. At a basic level, the fiduciary should communicate their tolerance to *sustainability risk* and let the businesses know how their high *sustainability risk* affects their ability to invest in their business.

Certainly, there will be times when fiduciaries determine that a certain business is in an excellent position to grow and provide a solid return to the investor’s portfolio. If the *sustainability risks* inherent in the business have been addressed with management, and in the fiduciaries judgment, steps are in place to have these risks reduced and eventually eliminated within an adequate time line, then investing in the business will remain prudent. However, if these risks are judged to be immovable, or the timeline for a reduction in the *sustainability risks* proves to be too lengthy, then the fiduciary must make it clear that they will divest in the business, as the *sustainability risk* associated with the business is too high for their investors tolerance.

Though currently offered SRI funds would seem ideal for investors with a low tolerance for *sustainability risk*, it would depend on their approach to the combination of the above three strategies. Simply incorporating positive or negative screening is not sufficient to systematically integrate *sustainability risk* management into the investment process, as shareholder engagement is required to communicate the *sustainability risks* of the investor to the company, and to properly vote proxies.

Notice that the ‘Integration’⁶ category from the Fiduciary II report was not included in this paper as a sustainable investment strategy. This paper does not consider this a sustainable investment strategy,

⁵ see <www.eiris.org>

⁶ Asset Management Working Group of the UNEP Finance Initiative, July 2009

rather simply a traditional investment strategy that is already embedded in the market, and does not manage or reduce the *sustainability risk* of an investor's portfolio.

Regarding sustainability reports issued by businesses on environmental, social and corporate governance issues, currently the issuance of these reports is voluntary. In order for fiduciaries to appropriately manage and maintain the sustainability risk of their clients portfolios, sustainability reports should be a mandatory issuance by all publicly traded companies, fixed income issuers and governments. In this way, fiduciaries have the tools to be accountable for the sustainability risks of their principals.

A rating mandatory sustainability rating of public companies, rated from AAA down to D, based on their exposure to *sustainability risk*, would help fiduciaries facilitate sustainability risk management.

As a side note, a strong concern of the Global Report Initiative (GRI), expressed at the International Sustainable Development Conference in Utrecht, The Netherlands in July 2009, was that "no one uses the GRI reports". The requirements imposed on fiduciaries in this paper regarding *sustainability risk* would, as a side benefit, create the use for these reports that many in the industry have been looking to apply.

Before advancements in sustainable investing methods, as outlined above judge Megarry VC in the decision *Cowan v. Scargill*⁷, stated "Any possible benefits from imposing the restrictions under the scheme ... are far too speculative and remote".(Watt, 2009, p.423). Sustainable investing has evolved considerable since 1985, and the judge's argument that the benefits are "remote and speculative" may no longer hold.

VIII. Sustainability Pedagogy

Do fiduciaries currently possess the knowledge and expertise to appropriately educate, manage and maintain a client's sustainability risk? Educational materials and testing standards of investment professionals rarely include any comprehensive material on sustainable or responsible investing. Similarly, post-secondary institutions rarely emphasize how environmental or social factors are connected to finance or economics.

The lack of a sustainability pedagogy in the investment industry has led to preconceptions that investors that do wish to incorporate non-financial factors in their investments are irrational or imprudent for their social or environmental views. This is not true of all financial institutions, however, there does exist a view that purportedly, these issues do not blend with finance, and investors are mistaken for thinking that their investment decisions could actual make a positive social or environmental impact and are unwise for investing in a niche market that will underperform.

As Evidence, the CFA Institute (2008) states:

⁷ *Cowan v. Scargill* [1985] Ch. 270 at 287

It is as important as ever that the analyst maintain a balanced and professional approach—factor in environmental or social issues while being careful not to distort investment decisions with political or emotional agendas that do not serve the clients’ interests.(p. xx)

What is disconcerting in this statement is that environmental or social issues are both political and emotional for investors. To imply they are not is to subscribe to the notion that environmental or social issues are limited to only those areas that are profitable. Further, the notion is that this business case for incorporating ESG factors is the “professional approach”.

The Financial Times writes “the finance world’s lack of interest in wider social matters cuts to the very heart of what has gone wrong ... elites maintain their power not simply by garnering wealth but by dominating mainstream ideologies both in terms of what is said, and also what is not discussed. Social ‘silences’ serve to maintain power structures in ways that participants often barely understand, let alone plan” (see Krosinsky)

To further enforce the concept, the CFA Institute advises that:

Some Investors may choose to consider ESG factors for emotional or political reasons—for example, they may favor a product for its “social good”—but such uses are beyond the scope of this manual, which is strictly focused on ESG factors as they relate to investment management (CFA Institute Centre for Financial Market Integrity, 2008).

Notice that, as The Financial time eludes, the CFA Institute is implying that investing using a framework that is not purely profit maximization is not even related to investment management.

There are a growing amount of SRI and sustainable investment options available, at investor request. In North America they do remain unpopular. Elhauge (2005) states “Most shareholders must ... prefer profit-maximization because the lion’s share of investors does not invest in socially conscious funds (p. 37). Is this a fair statement? Certainly, if offered the choice between responsible investment funds and traditional funds, many investors would choose traditional funds. But what is the decision based on?

Sunstein and Thaler (2008) discuss the choices people make that are the result of widely occurring biases, fallacies and heuristics. Specifically, the status quo bias discusses that people are very likely to continue a course of action, since it has been traditionally the course of action pursued, despite the fact that this course of action may clearly not be in their best interests.

Herd mentality states that people are heavily influenced by the actions of others. Sunstein and Thaler refer to a study by Solomon Asch where, due to peer pressure, people express approval and consent to answering certain questions in a way that was clearly false.

Lastly, ‘choice architecture’, describes the way that decisions are influenced by how choices are presented. (Sunstein and Thaler, 2008) Through experimental findings, it is found that the arrangement of settings affect the way consumers make choices. For example, researchers have found that if a doctor tells its patients that after surgery 90% of patients are alive five years after a certain operation, the patient is much more likely to have the operation, than if the doctor says 10% of patients are dead five years after

having it. Similarly, if a candidate is listed first on the ballot, they will get a 4% increase in votes (LA Times, April 02, 2008).

Fiduciaries have little training or education on sustainable investing strategies. Most fiduciaries do not offer SRI or sustainable investment options to their clients, rather only on a per request basis. There is also little dedicated staff or resources for fiduciaries to truly understand the long term social and environmental risks in society and how they are relevant to business and investment risk. In general, investment advisors do not bring ESG factors or sustainability issues into the conversation with clients, and trustees rarely communicate with their beneficiaries, it is just assumed they have an infinite tolerance to non-financial losses.

But, if an investor was interested in responsible or sustainable investing strategies, would a fiduciary whom poorly understands the features of these investments, or the environmental or social issues that surrounded these issues, not be less likely to promote and sell them? What are the obstacles to adequate sustainability training standards, staff and resources for fiduciaries? Is it cost controls, in order for financial institutions to remain competitive, and maintain profit margins, at the expense of the best interests of clients .. whom may be shareholders in company? Is it a defense of the ideology of profit-maximization itself, which allows the continued ability to generate unfettered revenue for the corporation? Is it simply too hard to run an investment institution, corporation, or trust that does not use an easily quantifiable, measurable metric, such as profit for accountability and performance. Do institutions not want to risk their ability to manage risk, at the expense of the sustainability risk tolerance of all principals?

It is conceivable then, that attitudes on responsible investing are derived from a lack of a sustainability pedagogy for both fiduciaries and investors combined with financial institutions using choice architecture to frame the best interests of investors/principals as one of profit maximization ahead of environment, social, moral and economic loss minimization, in order to maintain the status quo. This is resulting in institutional pressure for the sale of traditional funds and investment strategies over sustainable and responsible investment strategies, contributing to a herd mentality and status quo bias for traditional funds. Epistemologically, profit maximization becomes an institutionalized self-fulfilling prophesy by fiduciaries, professional investment associations, security regulators and academic institutions.

As Richardson & Cragg (2009) comments: “The laissez-faire market for SRI has allowed a fungible and superficial retail “ethics” to proliferate, where salesmanship and marketing tend to prevail over reflective moral deliberation” (p.14)

Without adequate sustainability pedagogy, the measurement and management of an investor’s true sustainability risk would be futile. Choice architecture by financial institutions of traditional investing methods would likely continue, resulting in a flight to the highest sustainability risk tolerance, without proper deliberation and debate over environmental, moral and sustainability issues.

For these reasons a sustainable investing pedagogy is required for Principals (Investors, Beneficiaries), for Fiduciaries (Trustees, Investment Agent) and for Corporate Managers. Below is a list of pedagogical tools for each:

Fiduciaries:

- An expansion of the standards required for professional designations as a Financial Agent, Analyst or Portfolio Manager to include a general understanding of both industry specific and non-industry specific ESG issues and an understanding of both their financial and non-financial impacts
- an expansion of investment teams to include analysts and advisors that specialize on ESG specific issues
- Through reports, short videos and/or consultants, both industry and non-industry specific ESG related issues related to investment should be understood by trustees, in order to appropriately manage and the sustainability risk tolerances of their beneficiaries

Principals:

- Through reports, short videos and/or the general consultation process, both industry and non-industry specific ESG related issues related to investment should be communicated to principals by agents before they choose their sustainability score.
- When agents are communicating investment opportunities, principles should be made aware of the factors influencing both the expected financial and non-financial performance of the investment, to an appropriate amount given the sustainability risk tolerance of the investor.
- To receive along with financial performance reports, impact assessment report outlining the impact their investment had on ESG and sustainability issues

Corporate Managers

- Through consultants, research reports and independent research, corporate managers should come to know the environment, social and other economic impacts on their business and those resulting from corporate actions. This will make it possible for them to appropriately incorporate a sustainability framework into their business which reflects the sustainability risk tolerances of their shareholders.

Prospect theory in fact predicts: people that perceive a low probability of loss remain risk averse, yet those that perceive a higher probability of loss are willing to take on more risk. To apply this to ESG issues, such as climate change, if the risks from climate change are to be perceived to contribute a low probability of loss, both financial and non-financial loss, then investors will remain risk averse (which can be interpreted as averse to changing their traditional method of investing). However, with increasing knowledge of sustainability and climate change related issues, investor's perception of the probability of loss due to climate change is likely to increase, making investors likely to take on more risk, translating into a change in their traditional investment approach, to a sustainable or responsible investment approach.

IX. Conclusion

The financial markets are made up of collections of individuals whose decisions control the flow of capital and whose business intentions personify society. Sustainable Investing influence both of these elements of the financial markets, and has the potential to progress a more sustainable future.

This paper is not recommending an outright change, such that fiduciaries put sustainability factors before profit maximization, nor is it assuming that both cannot be achieved. What it is outlining is that fiduciaries must better understand the dynamics of the best interests of their principals, and act upon them. This paper outlines that by introducing sustainability risk, an unmanaged element of portfolio risk, defined as the exposure to the chance of loss to non-financial factors in the portfolio, fiduciaries can better measure, manage and maintain sustainability tolerances of their principals translating into broader use of sustainable investing strategies, leading to more sustainable business practices. What should no longer be tolerated is for fiduciaries to continue to ignore the sustainability risk tolerances of their investors, in the defense of prudence, ‘rationality’, or historical precedence.

“If we are to build a more successful, vibrant, modern economy we can no longer afford to view economic success as being in conflict with social and environmental goals. On the contrary these goals must be seen as integral to economic success and the very essence of sustainable development.”⁸

Ultimately, the corporate identity must evolve away from the notion that it is an organization with a single goal of maximizing profits and growing market share, into the idea a corporation is a collection of individuals whose actions, products and business decisions best reflect their shareholder's interests and intents. This definition detracts from the assumption that all shareholders want profits and growth at any cost. Ultimately, only this developed notion of the corporation can truly appease both shareholder and stakeholder needs.

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⁸ Rt. Hon. Mike O’Brien, 2008 (found in Fiduciary II)

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