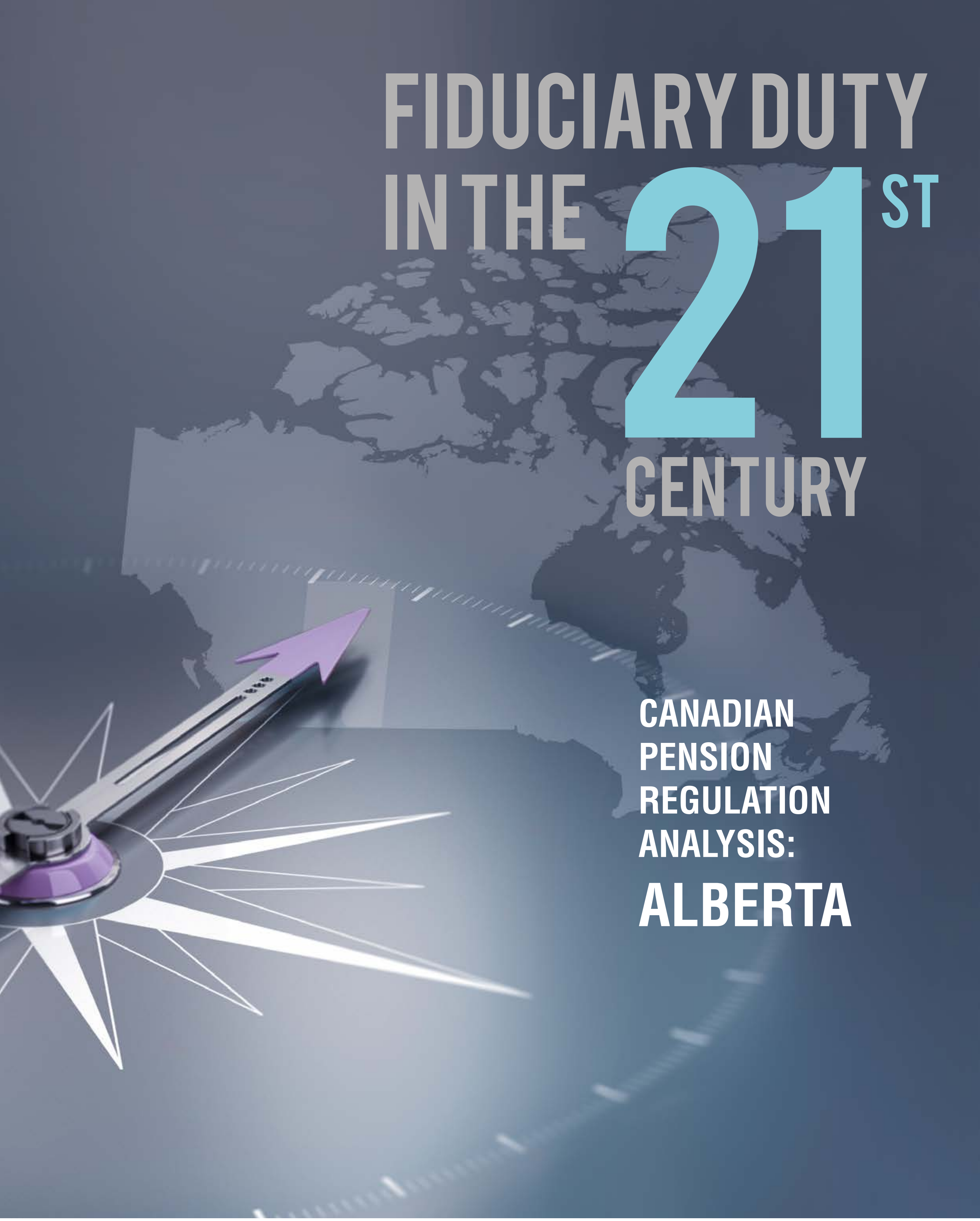
FIDUCIARY DUTY IN THE 21ST CENTURY



CANADIAN PENSION REGULATION ANALYSIS:

ALBERTA

generation foundation

UNEP FINANCE INITIATIVE

PRI Principles for Responsible Investment

SHARE SHAREHOLDER ASSOCIATION for RESEARCH & EDUCATION

BACKGROUND

This document provides an international analysis of pension regulation to support the Alberta Treasury Board and Finance (ATBF) in updating regulation and guidance on environmental, social and governance (ESG) disclosure. Similar versions will be developed for other provincial pension regulators in Canada, as well as the Office of the Superintendent of Financial Institutions.

The series is a collaboration between the Fiduciary Duty in the 21st Century project team[1] and the Shareholder Association for Research and Education (SHARE).

The Fiduciary duty in the 21st century report concluded that failing to consider long-term investment value drivers, which include ESG issues, in investment practice is a failure of fiduciary duty. Despite significant progress, many investors have yet to fully integrate ESG issues into their investment decision-making processes.

Following the publication of the report, the Principles for Responsible Investment (PRI), UNEP FI and The Generation Foundation launched a three-year project in January 2016 to implement the report's recommendations, including the preparation of country roadmaps. The roadmaps enable the PRI and UNEP FI to support national investors and stakeholders such as SHARE, as well as policy makers, in developing and implementing clear and accountable policy and practice that embraces the modern interpretation of fiduciary duty.

The Canada roadmap was developed through extensive industry consultation in Canada and sets out recommendations in four categories: regulatory action, stewardship, corporate reporting and investor education.

It includes a recommendation for federal and provincial regulators to require pension plans to disclose whether – and, if so, how – they incorporate ESG factors in investment decision-making, consistent with regulations adopted in Ontario in 2014.

1 The Principles for Responsible Investment (PRI), United Nations Environment Program Finance Initiative (UNEP FI) and The Generation Foundation

PRECEDENT EXISTS IN CANADA AND INTERNATIONALLY

Key Strategy 2.2 in the 2017-20 Business Plan of ATBF was to: "Lead and implement changes to keep the policy and regulation of Alberta's liquor, gaming, financial, securities, insurance and pensions sectors relevant and based on best practices."[2]

As ATBF noted, that regulatory space is evolving:

> "Innovative trends and emerging technological advancements are altering the products and services industry offers, particularly in the financial marketplace. Ensuring effective regulatory oversight, to protect consumers and ensure vibrant, well-functioning, markets, is essential. Government will work to increase its understanding of systematic change and position itself to respond proactively to new and emerging issues."

One positive innovation in pension regulation gaining momentum globally is a requirement that plans produce statements summarizing responsible investment practices in annual regulatory disclosures or governing documents.

In 2014, the Government of Ontario updated the *Pension Benefits Act* to require Ontario-registered pension funds to disclose in their Statement of Investment Policies and Practice (SIPP) "information about whether environmental, social and governance factors are incorporated into the plan's investment policies and procedures and, if so, how those factors are incorporated." In line with international best practice, the Financial Services Commission of Ontario (FSCO) published additional guidance (*Investment Guidance Notes: IGN-004: Environmental Social and Governance (ESG) Factors*) to help pension plan administrators meet the new requirement.

Such disclosures have long-since been a feature of pension regulation in other markets. The list below captures a number of comparable international examples.

International examples

- **The UK Pensions Regulator (2005)**: The Occupational Pension Schemes (Investment) Regulations require pension funds' Statement of Investment Principles to cover "the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realization of investments; and their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments."[3] This was strengthened by supporting guidance from The Pensions Regulator on the importance of ESG issues to prudent scheme practice.[4]
- **The National Monetary Council of Brazil (2009)**: Resolution Nr. 3,792/2009, Article 16, § 3rd., VIII requires pension funds to disclose in their investment policies if social and environmental responsibility is factored into investment policies.[5]
- **The National Assembly of South Korea (2014)**: The National Pension Service Act was amended to require the government pension fund to consider ESG issues and to declare the extent to which ESG considerations are taken into account.[6]

2 http://www.finance.alberta.ca/publications/budget/budget2017/treasury-board-and-finance.pdf

3 The Occupational Pension Schemes (Investment) Regulations 2005: http://www.legislation.gov.uk/uksi/2005/3378/regulation/2/made

4 Guide to Investment Governance – The Pensions Regulator: http://www.thepensionsregulator.gov.uk/docs/dc-investment-guide.pdf

5 Resolution Nr. 3,792/2009: http://www.bcb.gov.br/pre/normativos/busca/downloadNormativo.asp?arquivo=/Lists/Normativos/Attachments/47507/Res_3792_v5_L.pdf

6 National Pension Service Act: http://english.nps.or.kr/jsppage/english/act/act_01.jsp

- **The Federal Government of Norway (2005, 2015)**: The Government Pension Fund's mandate commits the fund to upholding principles based on the UN Global Compact, the OECD Principles of Corporate Governance and the OECD Guidelines for Multinational Enterprises, as well as considering environmental factors in management of the real estate portfolio.[7] The fund is also subject to an exclusions list, including companies that pose serious human rights violations, severe environmental damage, and, as of 2016, those that produce coal, or a coal-based energy source.[8]
- **Article 173 of the French Energy Transition Law (2015)**: Article 173 requires institutional investors to disclose in their annual report information on how ESG criteria are considered in their investment decisions and how their policies align with the national strategy for energy and ecological transition. It also places disclosure requirements on listed companies, banks and credit providers.[9]
- **The European Commission (2016)**: The Revision of the Institutions for Occupational Retirement Provision Directive (IORP II) requires pension funds above a certain size to consider ESG issues and disclose how related risks are considered in the Investment Policy Statement. The Directive has been approved by the European Parliament and must be transposed into Member State law within 24 months.[10]
- **The Financial Stability Board Task Force on Climate-Related Financial Disclosures (FSB TCFD) Recommendations (2017)**: The FSB TCFD recommends disclosures across four key areas: governance, strategy, risk management, and metrics and targets. The Task Force developed supplemental guidance for asset owners on the following recommendations:
    - **Strategy:**
        - Describe the impact of climate-related risks on the business and the resilience of the strategy taking into consideration a 2-degrees scenario;
    - **Risk management**:
        - Describe the organization's processes for assessing and managing climate-related risks;
    - **Metrics and targets:**
        - Disclose the Scope 1, Scope 2, and, if appropriate, Scope 3 emissions as well as the metrics used by the organization to assess climate risk.[11]

Disclosure requirements are a light-touch intervention to improve pension fund practice. Even if they do not dictate whether or how a fund should incorporate ESG factors in its decision-making, they have the effect of initiating a timely discussion between an asset owner and its advisors, such as lawyers, investment consultants, investment managers and actuaries, to comply with the regulation.[12] They also provide a critical signal from regulators that ESG factors are a legitimate consideration for investment decisions as fiduciaries.

A better flow of information from pension fund trustees and administrators to regulators and stakeholders may also help build trust with beneficiaries by providing context for investment decisions and the broader management of beneficiary assets. This can be achieved through disclosure requirements without materially raising compliance costs, as additional information can be included in existing statutory disclosures.

Best practice examples of Alberta pension funds that already incorporate and report on ESG factors

Canadian public pension plans were early adopters of ESG integration.[13] In Canada, 32 asset owners are signatories to the PRI, demonstrating their commitment to responsible investment.

Alberta is home to strong responsible investment practice among its largest funds. There are 657 active private sector pension plans monitored by the Office of Alberta Superintendent of Pensions with approximately C$50.9 billion in assets under management.[14] In addition, there are 26 public pension plans registered in the province.[15]

The Alberta Investment Management Corporation (AIMCO) manages C$52.5 billion in assets for many of the public plans,[16] and the Alberta Teachers Retirement Fund (ATRF) manages another C$13.4 billion in assets.[17]

7 Government Pension Fund Global Management Mandate: https://www.regjeringen.no/globalassets/upload/fin/statens-pensjonsfond/gpfg-management-mandate-14-april-2015.pdf

8 Guidelines for the observation and exclusion from the Government Pension Fund Global: https://www.regjeringen.no/globalassets/upload/fin/statens-pensjonsfond/gpfg-management-mandate-14-april-2015.pdf

9 PRI. Analysis of Article 173.

10 Revision of the Institutions for Occupational Retirement Provision Directive (IORP II): http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2016)579101

11 The FSB TCFD. Final Report Recommendations.

12 PRI, UNEP FI and The Generation Foundation. Fiduciary Duty in the 21st Century Canada Roadmap.

13 PRI, UNEP FI and The Generation Foundation. Fiduciary Duty in the 21st Century Canada Roadmap.

14 https://open.alberta.ca/dataset/5a03321d-01b4-4d20-a47d-098c0b67d88b/resource/27921e3c-01ba-4d5f-91ba-83b7815c6a25/download/2015-16-TBF-Annual-Report.pdf

15 http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil117j-eng.htm

16 https://www.aimco.alberta.ca/What-We-Do/Our-Clients (Pension Plans)

17 http://www.atrf.com/Publications/2016AnnualReport_FinancialStatements.pdf

Both AIMCO and ATRF already address ESG considerations in their investment policies and practice, including integrating ESG factors into the evaluation of investments, taking a responsible approach to proxy voting, and engaging in active ownership and engagement.[18] As the ATRF notes:

> "Integrating the identification and evaluation of ESG factors into the investment process allows for a more comprehensive understanding of the risks and opportunities of an investment. Environmental and social factors such as water usage, greenhouse gas emissions and labour safety practices can represent risks to the long-term success and sustainability of an organization, but can also present positive opportunities if managed well. Similarly, an organization's corporate governance practices, such as the composition of the board or the rights it grants to its shareholders can have a significant impact on its risk profile and potential return."

While AIMCO and ATRF have adopted modern risk management techniques, a disclosure requirement would extend that practice to a larger segment of the market, particularly to private sector plans, which, in Alberta, have largely not incorporated ESG factors into formal investment policies and practices, and may be uncertain as to the legality of doing so.

A provincially-mandated disclosure requirement will assist pension plans in identifying relevant risks and opportunities, and clarify that it is within the fiduciary duty of trustees to consider those factors in their decision-making.

18 For example, see the ATRF Approach to Responsible Investing, http://www.atrf.com/Publications/OurApproachToResponsibleInvesting.pdf, and AIMCO's 2016-2017 Responsible Investment Report, available at http://www.aimco.alberta.ca/DesktopModules/AIMCoWhitepaper/Whitepapers/AIMCo-RI_Report17-Final-Combined-URL-PDF-Oct02-2017.pdf

ESG INTEGRATION LEADS TO BETTER PROFITABILITY AND CAN SUPPORT PRIORITY POLICY OUTCOMES

The experience of ESG integration by pension funds globally suggests that the outcomes of a new disclosure regulation may assist with achieving enhanced performance for Alberta companies, as well as promoting Alberta priorities such as economic diversification, reducing income inequality, and promoting gender equity.

How can pension fund ESG integration and disclosure requirements lead to enhanced corporate performance?

As providers of capital, asset owners sit squarely at the top of the investment chain. When asset owners send signals to the investment market that ESG performance is a priority, it increases the willingness of investment consultants and investment managers to focus on responsible investment and ESG issues in their products and advice. By implementing their commitments to responsible investment with sufficient scale and depth, asset owners can accelerate the development of responsible investment through the entire investment chain.[19]

The PRI tested the impact of pension fund ESG requirements on the investment chain in its Global guide to responsible investment regulation. The report is the first global study to analyse the impact of responsible investment-related public policy initiatives.

The analysis uses the industry-adjusted MSCI ESG Ratings score and the PRI's database of regulation across the largest 50 economies[20] to test whether regulation is encouraging better investor action, ultimately resulting in more robust ESG risk management by companies.

Of the 50 markets studied, approximately half have, or are developing, rules that govern how pension funds consider ESG issues.

The quantitative analysis shows that, on average, companies in markets with pension fund ESG regulation score an average of 32% higher on ESG risk management, and 36% higher when looking only at developed markets.

That positive impact goes both ways. Management of ESG risks and opportunities has been widely acknowledged to have a material impact on investment performance, which is better for pension fund returns, risk management, and stability. A meta-analysis of over 2,200 empirical studies found a positive correlation between ESG and corporate financial performance.[21] A similar study shows that: companies with strong sustainability scores yield better operational performance with lower risk; investment strategies that incorporate ESG issues outperform comparable non-ESG strategies; and active ownership creates value for companies and investors.[22]

19 PRI. How Asset Owners Can Drive Responsible Investment.

20 PRI: Responsible Investment Regulation Database

21 Deutsche Asset & Wealth Management & the University of Hamburg. ESG and financial performance: aggregated evidence from more than 2000 empirical studies.

22 Arabesque. From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Performance.

Asset owners driving better responsible investment through the investment chain can also support broader policy outcomes, including:

Pension fund and beneficiary protection

The incorporation of ESG factors into investment processes and research is a critical addition to the analytical toolkit available to investors in assessing investee companies, constructing investment portfolios and driving enhanced returns. Neglecting analysis of ESG factors may cause the mispricing of risk and poor asset allocation decisions. The Volkswagen emissions scandal and BP's Deepwater Horizon oil spill are prominent examples, among many others, of how poorly-managed ESG issues can damage investment value in the short and long term. As a result, ESG integration can help protect retirement savings from poor investment practices and corporate governance failures that may have gone undetected by outdated financial-only analysis.

Long-termism

Just as the Alberta Heritage Fund is guided by the principle of maximizing long-term financial returns,[23] pension investors that adopt an analysis of ESG factors can help steer companies towards long-term investment horizons.

Many ESG factors have near-term urgency, but are also of long-term relevance to sustainable corporate performance and resilient business models. Management of ESG risks and opportunities is often a reliable proxy for a firm's overall management quality.[24] Through enabling a comprehensive view of a company's business model, its dependencies and vulnerabilities, ESG analysis can assist in understanding the long-term sustainability of existing financial performance.

Long-termism was one of six global trends MSCI placed on its watch list for 2017, noting that investors can increasingly differentiate themselves by "owning the long-game" in a market dominated by short-termism.[25] Companies with long-term strategies have shown to generate 47% more revenue with less volatility than other firms, and to grow by US$7 billion in market capitalization over a 14-year period.[26]

If, however, short-termism is embedded at the top of the investment chain, short-term objectives and thinking may spread throughout the investment system. A focus on short-term investment performance means that investors are less likely to invest in opportunities with a positive long-term net present value, including those that provide wider societal or sustainability-related benefits.[27]

By requiring pension plans to consider ESG issues, regulators can help end this cycle and re-orient the market towards long-term objectives.

Economic diversification

A long-term outlook can help meet the goal of economic diversification. For example, the Government of Alberta has set a firm renewable energy target to ensure 30% of electricity used in Alberta will come from renewable sources – such as wind, hydro and solar – by 2030, aimed at making Alberta the largest market for renewable energy investment in Canada.[28] Institutional investors are seeking opportunities to invest in renewable energy projects, with the flow of funds to renewable energy projects[29] exceeding that for conventional energy for the first time. Meanwhile, institutional investors are using indices and other products to tilt their portfolios towards sustainable or ESG factors.[30]

Adopting a disclosure regulation that encourages the consideration of ESG factors and signals their legitimacy within a fiduciary context can help unlock private investment capital to support this critical goal.

Just as the Alberta Jobs Plan mandated AIMCO to invest a portion of the province's Heritage Fund in Alberta businesses with strong growth potential, allowing other pension investors to consider similar ESG factors in their investment decision-making may help boost investment in high-growth areas that have traditionally been overlooked by investors with short-term mandates.

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23 https://www.alberta.ca/release.cfm?xID=434830EA331EC-BE2B-087D-207D5E344717FF4E

24 Turning a Profit While Doing Good: https://www.brookings.edu/research/turning-a-profit-while-doing-good-aligning-sustainability-with-corporate-performance/

25 MSCI: 2017 ESG Trends to Watch.

26 McKinsey Global Institute. Measuring the Economic Impact of Short-Termism.

27 PRI. Nine priority conditions for a sustainable financial system.

28 https://www.alberta.ca/documents/Alberta-Jobs-Plan-2016.pdf

29 Alicia McElhaney, "Fundraising for Renewable Resources Exceeds Conventional Energy," Institutional Investor, http://www.institutionalinvestor.com/article/3723719/investors-pensions/fundraising-for-renewable-resources-exceeds-conventional-energy.html#/.WXjlqhXyu71

30 MSCI, Keep it Broad: An Approach to ESG Strategic Tilting: https://www.msci.com/documents/10199/5849471/KEEP+IT+BROAD_+AN+APPROACH+TO+ESG+STRATEGIC+TILTING.pdf/a5e04bd2-5f2d-4f8e-889e-bdc7fb558136

Addressing economic inequality

Where ESG factors have been incorporated into pension fund investment decision-making, responsible investors have taken steps to address practices that may extract value from companies in the short term at the expense of wage increases and other investments that might drive long-term value creation both for the company and the broader economy.[31]

Once regulation clarifies the legitimacy of ESG considerations, there are opportunities for Alberta pension funds to apply an ESG lens to improve workforce relations and management practices. For example, 79 institutional investors with almost US$8 trillion in assets under management (including 19 Canadian institutions) recently launched the Workforce Disclosure Initiative (WDI). The WDI asks companies about how they govern workforce issues, global workforce composition and stability, training and employee development, and worker engagement. Central to this initiative is the understanding that stable employment, better health and safety performance, a corporate strategy that views labour as a source of value creation and strong employee engagement are indicators of enhanced long-term financial and operating performance.[32]

A small number of thematic funds have been developed by pension funds with an ESG mandate. For example, affordable housing funds have a direct impact on inequality and have been shown to deliver market-rate returns.[33] The Dutch pension fund manager, PGGM, has invested in workforce multi-family housing in the UK on the theory that this can help mitigate the inequality-exacerbating rise in housing prices and support urban regeneration in strategic areas.[34]

Some institutional investors have introduced responsible contractor policies to engage private equity, real estate and infrastructure funds on labour practices.[35] These may be seen as addressing the "hollowing out of the middle class" associated with growth in in-country inequality.[36] The French pension fund ERAFP, for instance, has an explicit commitment to favour issuers with strong labour standards and a commitment to democratic labour relations.[37] These types of investment practices are expected to gain support as literature shows that increased union density helps mitigate inequality.[38]

Supporting gender equality

Research by SHARE in 2017 indicates that due to the limited capacity investors have to engage with investee companies (given the high ownership threshold required to file shareholder proposals, on average) companies incorporated under the *Alberta Business Corporations Act* (ABCA) underperform their TSX Composite Index peers on some ESG issues.[39]

SHARE cites gender as a specific issue on which ABCA-incorporated companies are lagging their peers. The analysis shows the following discrepancies:

- 33.5% of Alberta-incorporated companies had no women on their boards in 2016 compared to 10.8% in the TSX Composite Index;
- The average percentage of women in executive positions at ABCA-incorporated companies on the TSX Composite Index was 13.5% in 2016, compared to 16.8% for those incorporated in other jurisdictions;
- Only nine (20%) of the 45 Alberta-incorporated companies on the TSX Composite Index disclosed written gender diversity policies in 2016.[40]

By underperforming on gender, those companies are missing out on opportunities for value creation. Studies by Morgan Stanley, McKinsey, EY, the International Monetary Fund and others consistently find that addressing gender equality will unlock trillions of dollars of currently unrealised economic value.

31 William Lazonick, "Profits Without Prosperity," Harvard Business Review, https://hbr.org/2014/09/profits-without-prosperity

32 http://share.ca/canadian-investors-among-7-9-trillion-coalition-pushing-companies-for-disclosure-on-global-workforces/

33 Cornerstone Capital Group: The Art of the Possible: Investing to Address Inequality.

34 PGGM: Legal & General and PGGM announce 3000 new homes with 600 million euro partnership.

35 http://share.ca/documents/investor_briefs/Social/2012/Cleaning_Up_Responsible_Contracting_Real_Estate.pdf

36 PRI and the Initiative for Responsible Investment at the Harvard Kennedy School Discussion Paper: Why and How Might Investors Respond to Economic Inequality?

37 Charter on Socially Responsible Investment 2006, found at: https://www.rafp.fr/en/sites/rafp_en/files/publication/file/charter_on_socially_responsible_investment.pdf

38 Larry Summers and Ed Balls, Report of the Commission on Inclusive Prosperity, Center for American Progress, 2015, p. 14.

39 SHARE. Off the Ballot: Why Alberta's business laws need to catch up on shareholder democracy.

40 SHARE. Off the Ballot: Why Alberta's business laws need to catch up on shareholder democracy.

Specifically, female representation in leadership has been shown to correlate to better returns on equity, net profit margins and earnings per share[41], along with lower volatility.[42] Academic research suggests the financial outperformance of gender-diverse companies may include greater employee productivity, innovation, talent recruitment and retention, as well as customer acquisition and retention.[43] Private sector associations such as the 30% Club[44] advocate for a minimum of one-third female board composition, as research suggests this is the threshold beyond which minorities can meaningfully disrupt groupthink.[45]

Given the momentum gender equality has gained in the private sector through research and investor demand, the ATBF has great potential to drive gender equality in its market by introducing ESG disclosure requirements. This would help local companies operate in line with best practice set by their peers listed on the TSX, as well as those internationally.

41 Value for Women. The bottom line: Why Gender Inclusion is Good for Business.

42 Morgan Stanley. An Investor's Guide to Gender Diversity.

43 Morgan Stanley. Why it pays to invest in gender diversity.

44 https://30percentclub.org/

45 MSCI. Women on Boards: Global Trends in Gender Diversity on Corporate Boards.

About The Generation Foundation

The Generation Foundation ('The Foundation') is the advocacy initiative funded by Generation Investment Management. The goal of the Foundation is to strengthen the case for Sustainable Capitalism. Its strategy in pursuit of this vision is to mobilise asset owners, asset managers, companies and other key participants in financial markets in support of the business case for Sustainable Capitalism. For more information, see www.genfound.org.

About the PRI

The PRI works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system. For more information, see www.unpri.org.

About UNEP FI

The United Nations Environment Programme Finance Initiative (UNEP FI) is a unique global partnership between the United Nations Environment Programme (UNEP) and the global financial sector founded in 1992. UNEP FI works closely with over 200 financial institutions who have signed the UNEP FI Statements as well as a range of partner organizations to develop and promote linkages between sustainability and financial performance. Through peer-to-peer networks, research and training, UNEP FI carries out its mission to identify, promote, and realize the adoption of best environmental and sustainability practice at all levels of financial institution operations. For more information, see www.unepfi.org.

About SHARE

SHARE is a Canadian leader in responsible investment services. SHARE provides policy development, proxy voting and shareholder engagement services to investment managers, public and multi-employer pension funds, foundations, and faith-based organizations, as well as investment and governance educational programs for pension trustees and other investment decision-makers, and practical research on important and emerging responsible investment issues. For more information, see www.share.ca.

CREDITS

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