

Investor responsibility and Norway's Government Pension Fund – Global

Hilde W. Nagell

This article identifies and critically examines three different aspects of investor responsibility. First, investors have responsibilities toward their clients (the so-called fiduciary duties). Second, investors are responsible for taking steps to reduce the risk that an investment directly or indirectly contributes to harm (avoid complicity). Finally, investors should take into consideration the symbolic and signalling effects of an investment decision. This article discusses how these responsibilities should be interpreted and also how they play out in practice. Norway's Government Pension Fund is used as a case in point.

Hilde W. Nagell
The Ethics Programme,
University of Oslo
h.w.nagell@ifikk.uio.no

Keywords: investor responsibility, fiduciary duties, complicity, signalling effects, Norway's Government Pension Fund Global

Investor responsibility

The responsibilities of investors can roughly be grouped under three main headings. First and foremost, investors are bound by their fiduciary duties. The core responsibility of investors is to manage financial resources in the best interests of their clients. However, the content and scope of the fiduciary duties of investors have recently been subject to considerable debate, and attempts have

been made to redefine and broaden the scope of such fiduciary duties. Section 2 will give a brief overview of this development.

In addition to the responsibilities investors have vis-a-vis their clients, investors should also take into consideration the risk of an investment decision directly or indirectly harming others. Reports from the U.N. Special Representative of the Secretary General, John Ruggie, show that it is difficult to define the conditions under which a company can be blamed for being involved in activities that directly or indirectly harm others (the question of complicity) (Ruggie 2008). If we concede that it is difficult to assess the responsibility of harm by a company, it is an even harder challenge to figure out under what conditions *investors* are complicit in a harm that a company is directly or indirectly contributing to. Attempts to specify such a responsibility will be discussed in Section 3.

Section 4 discusses the signalling effects of investment decisions. A divestment signals to others that a company is involved with something the investor believes is wrong and wants to distance himself from. When they come from large institutional investors, signals like these may have a high impact on corporate policies and influence the investment decisions of other investors.

Section 5 aims at drawing some practical implications from the more theoretical discussion, and Norway's oil fund, the Government Pension Fund – Global, is used as a case in point.

Fiduciary duties

Fiduciary duties are defined by a relationship in which one party (the fiduciary) is bound to act for the benefit of and in the interests of another, the beneficiary. Applied to the investment case, the investor is obliged to do what is considered right by the client. One (and up to recently the standard) interpretation of fiduciary duties is that the investor must choose investments that optimize financial returns for beneficiaries. New developments have somewhat altered this picture.

First, it should be noted that in modern portfolio theory (MPF), investments are not evaluated in isolation, but by their contribution to the larger risk profile or portfolio. Since diversification is important to diffuse the risk according to MPF, an investment that does not seem favorable in isolation, may be so when judged in light of all the other investments (Richardson forthcoming). Consequently, fiduciaries are required to assess investments with reference to the larger investment portfolio, rather than optimize the return on individual investments.

Second, there has been a trend toward including social, environmental and other noneconomic factors in investment mandates. This requires a

certain degree of *materiality*. A report from the U.N. concludes that there is now sufficient evidence on the materiality of climate change that all investors should routinely include climate change as a factor in asset management practice (UNEP-FI 2009a: 10).

Third, there has been a change in how the interests and benefits of beneficiaries are being defined. In an investment fund, the interests will typically be financial interests. However, interests and benefits need not be defined purely in economic terms. There is a growing tendency that institutional investors define value based goals beyond or in conjunction with financial goals. According to the 2010 Report on Socially Responsible Investing Trends in the United States, the total assets managed under policies that explicitly incorporate environmental, social, and governance (ESG) criteria into investment analysis and portfolio construction (ESG assets) are valued at \$2.51 trillion. Of these ESG assets, at least \$2.03 trillion were identified as owned or administered by institutional investors (Social Investment Forum 2010: 8).

For pension funds or other large institutional owners, the so-called «universal owner»-thesis also applies.¹ Since these funds are invested broadly, they have a general interest in stable and healthy markets worldwide rather than a narrow concern for the profitability or growth of selected industries or companies. Their long-term planning horizon and absence of short-term liabilities also allow them to forego short-term financial gains for the prospect of larger long-term gains on their investments.

Fourth, voluntary initiatives have emerged as the centerpiece of international cooperation on governing institutional investment. The six principles known as the U.N. Principles of Responsible Investment (UNPRI) were launched in 2006 and have since been voluntarily adopted by more than 600 institutional investors. Signatories have among other things committed to incorporate ESG issues into investment analysis and decision-making processes (UNPRI: first principle).

UNEP-FI, a partnership between the U.N.'s environmental arm and over 180 financial institutions worldwide, has played an important role in clarifying the content of fiduciary duties relative to responsible investment issues. Two recent reports, referred to as Fiduciary I (UNEP-FI 2005) and Fiduciary II (UNEP-FI 2009b), argue that the welfare and interests of fiduciaries extend beyond financial considerations. The first report concludes that including ESG issues among fiduciary duties is permissible with regard to current legislation. The second report provides practical guidance to investors on how ESG issues can be integrated in investment analysis and how it is possible to engage with companies to promote these issues. The report further recommends that integrating ESG considerations into investment decisions should be a legal responsibility.

Avoid complicity

The second aspect of investor responsibility relates to the potential harmful consequences of an investment decision. Complicity is primarily a legal concept, and is usually defined as that of knowingly providing material support to the commission of a crime. Intentionally aiding or encouraging or abetting perpetrators of crime would count as complicity under criminal law. In the domain of investment ethics, however, the term has much less established meanings. The Oxford Dictionary defines complicity as «the state of being involved with others in an illegal activity or wrongdoing.»² However, what should qualify as conditions for relevant involvement is not straightforward.

One answer would be to look for a causal component. The investor is complicit if his action or inaction makes a difference to the outcome. There are at least two different ways of defining what it means to make a difference to an outcome. One strategy is to ask for the counterfactual. In order to answer questions on responsibility, I should ask what would have happened if I had not acted in the way I did. By asking for the counterfactual, it becomes evident how my act caused the harm. Call this the counterfactual account of responsibility. Another strategy would be to look at how a choice influences the probabilities of some outcome. One way of doing that would be to compare the probabilities of some outcome prior to a choice with the probability of the outcome given that choice. This approach is sensitive to the difference choice makes to the chances (Vallentyne 2008). The particular approach I have in mind is developed by Peter Vallentyne, but there may be other similar attempts to address partial responsibility in terms of changes in probabilities. Call this the probabilistic account of responsibility.

According to both the counterfactual account of responsibility and the probabilistic account of responsibility, each individual investor is morally responsible only for his or her causal contribution. It follows that a decision to increase the maximum share of investment in any given company would also generally increase the potential causal complicity of the investor with regard to the company in question. Similarly, a minority shareholder has less potential for being complicit.

However, there is also another approach to complicity in the philosophical literature and one where the causal condition is thought to play less of a role. According to this view, investor responsibility can be grounded in *Social practices*. Christopher Kutz, in his book «Complicity – Ethics and Law for a Collective age,» defines the domain of complicity as the «cultural and legal practices surrounding relations of an agent to harm that are mediated by other agents» (Kutz 2000: 2). Participation in wrongdoing should not, according to Kutz, be assessed in terms of causal contribution to the harm in question, but rather in terms of *the individual intention* to take part

in the collective act. It is this participatory intention that defines complicity.³

If I acted jointly with others, although my causal contribution in itself made no difference to the outcome, I nevertheless intended the collective act, and so can be held accountable for my (participatory) intentions. In Kutz' words «[w]hen we act together, we are each accountable for what all do, because we are each authors of our collective acts.» (Kutz 2000: 138). Joint action refers to those situations where each acts in such way that he or she deliberately is doing his or her part, knowing that the others do their parts too. Going on a picnic, performing a symphony, or painting the house together are all examples of joint action. Following Michael Bratman, these joint actions can best be explained in the language of «shared intentions.» We have shared intentions if it is true of us that I intend that we together do x, you intend that we together do X, and all this is common knowledge between us (Bratman 1999: 93–165).

Should we think of investments in a company as being part of a joint action? Interestingly, Kutz seems to think that we should not. The reason is that the divorce of control and ownership is a general feature of the corporate form (Kutz 2000: Ch. 7). Kutz compares the case of shareholding to the case of being employed in a company and argues that «[e]mployment is a pervasive relationship to a collective endeavour, both functionally and psychologically,» as shareholding is not (Kutz 2000: 245). Along the same line, Larry May has argued that shareholder does not participate (in the relevant sense) just by virtue of owning shares (May 2000: 483). For Kutz, shareholding does not expose investors to the breadth of moral accountability: shareholders have done nothing wrong by owning shares and consequently cannot be blamed. Alternatively, Kutz argues that they should bear the «moral agency costs» of their engagements – simply viewed as the downside of their investment or a cost of ownership. For Kutz, a voluntary decision to participate in an intrinsically risk-bearing collective venture makes shareholders liable – they are accountable in the domain of repair. A related take on complicity comes from the literature of restitution of collective harm. David Lyons and Jeremy Waldron have both argued that being member of a group that did some harm in the past entails a responsibility of material reparation and symbolic restitution (Lyons 1977; Waldron 1992). According to Kutz, shareholders are complicit only in a weak sense, since individual shareholders are not to be blamed for their partial contribution, and disassociation from the company is not required. Instead, being associated in certain ways with a wrong implies a responsibility of repair or compensation.

It is interesting to note that in the Principles for Responsible Investment (PRI) referred to in the previous section, there is no principle on avoiding complicity. We have seen from this discussion that it is difficult to pinpoint

exactly what it is in the relation between the investor and the company that should make it the case that the investor contributes to the harm caused by the company. However, a more in depth analysis of the concept of complicity will have to be the topic of another article.

Signaling effects

A common idea in the history of investment ethics is that investors should keep their hands clean, call this the argument from clean hands. Companies that have traditionally been thought of as dirty have been those involved in «sinful» activities such as gambling, tobacco, or alcohol. Recently, certain forms of weapon production, human rights violations, or production thought to be particularly damaging to the environment (like the extraction of oil sand) are also seen by some investors to qualify as unacceptable. The idea of clean hands has been the core rationale of the early responsible investment movement and in practice implies a focus on negative screening and divestment from companies.

From a clean hands argument perspective, investments in morally problematic companies should be avoided irrespective of whether there is a causal connection between the investor and the unacceptable behavior of the company, or whether there would be any positive consequences of such a divestment on company practice. This is because the association is thought to be bad in itself in that it morally pollutes or taints the investor.

According to the clean hands argument, the right thing to do for an investor who realizes that he owns shares in a company with a morally unacceptable practice would always be to sell his shares. This line of thinking invites a host of critical remarks, but the problem with the view is first and foremost that it puts to little weight on consequences. Disassociation is thought to be the preferable option (because a commitment to values is preserved) regardless of overall consequences. The inefficiency of this strategy is nicely formulated by Mark Anson, a former CIO of the Californian Pension Fund CalPERS⁴: «It is hard to do well by doing good when you shrink your opportunity set.» An alternative strategy would be one of maximizing expected values. The investor would then be concerned with what investment decision is the most effective tool for maximizing expected value. The theory of maximizing expected value states that you do what under the circumstances has the best overall consequences. A more moderate version states that you maximize expected value up to a certain point. In practice, it implies that a much larger tool box of investment strategies should be considered. Policies of engagement may for instance be combined with threats of divestment, and a listing of companies under observation may have a similar shaming and naming effect as a divestment.

Consequently, the clean hands argument is not the only way in which a decision to divest could be defended. In an influential paper on the investments in South Africa during the time of apartheid, the Princeton-based philosopher Anthony Appiah suggests another way in which taint may be relevant for an investment choice, namely, when a disinvestment is likely to contribute to the general recognition of the wrong (Appiah 1991: 221). Divestment is a public or symbolic act that expresses the moral convictions of the actor. When this is for instance done by a government investment fund, divestment signals to others that the company is involved with something the fund believes is wrong and wants to distance itself from. Signals like these are not only important expressions of values; they may also influence the behavior of other investors.

Under such a forward-looking account of taint, the investor should be concerned with what investment decision is the most effective tool for maximizing the effect on some moral value. In this perspective, what an investment decision 'signals' should be considered in addition to the more direct consequences of taking action. Appiah focused on the signalling effect of disinvestment, but the argument has more general application.

An interesting question in relation to the signalling effects of investments is whether special moral requirements apply to influential investors. Signals from large institutional investors may have large impact on corporate policies and influence the investment decisions of other investors. When an investor is in a better position to influence other investors or the general public, he or she may have a moral obligation to do so, call this the ability to influence principle. Consequently, if the investors have reasons to believe that they can influence corporate policies from within the firm, it is not obvious that the best strategy would be to sell their stocks.

According to the ability to influence principle, large investors should use their power in terms of size and potential influence. Sometimes the most effective strategy would be to divest. In other cases, more can be accomplished with other investment strategies, for instance, to put pressure on the company in cooperation with other investors. Coordinated behavior could for instance take the form of collective divestments or coalitions of investors filing investor resolutions and also collective engagement in forums for collaboration to develop guidelines for best practice etc.

However, where the argument from clean hands gives a clear and straightforward prescription for action, it is much less well-defined what a forward-looking account of taint actually requires of the investor. If there is a shaming effect of a disinvestment, it is natural to assume that there is a corresponding legitimizing effect of staying invested.⁵ Inaction should therefore not be considered a neutral option. It still remains to be answered how much and what the investor is required to do. The latter has to do with the practical implications of this argument and will depend on the empirical

evidence for the effect of various investment decisions. Although there are results that point in the opposite direction (see e.g. Beck & Fidora 2008; Hong & Kacperczyk 2009), a number of studies indicate that large institutional investor's investment decisions influence stock prices and returns indirectly through what these decisions signal to other investors.⁶

To sum up, on the standard picture, investors should do what they can to keep their hands clean and avoid investing in companies with a morally unacceptable practice. Applied to the investment case, the clean hands argument is in part wrong and in part right; wrong because it recommends divestment as the only viable strategy, but right in that it acknowledges the potential signalling effects of a divestment. The remaining of the article will turn to Norway's Government Pension Fund – Global for a practical illustration of the discussion.

Norway's Government Pension Fund – Global

Background

Since 2004, Norway's Government Pension Fund – Global has been subject to ethical guidelines. Since 1990, Norway has channelled its surplus from the petroleum sector into a fund. The fund currently has assets of 3 trillion NOK or well above 500 billion US dollars, and is invested broadly in more than 8300 companies worldwide (Government Pension Fund – Global Annual report 2009). Now one of the largest Sovereign Wealth Funds in the world, Norway's Government Pension Fund – Global, known as the «Oil Fund», invests under ethical guidelines set by the government. After a name change in 2006, the real name of the fund is now the Norwegian Government Pension Fund – Global. To call the fund a pension fund is, however, misleading, since there are no direct liabilities to pensioners. In a more accurate description, the fund is the piggybank of the Norwegian citizens, built up by revenues from the petroleum sector.⁷ Two distinct features of the oil fund are particularly worth noticing: its size and its long-term planning horizon. The fund is the largest Sovereign Wealth Fund in Europe and among the third largest in the world. Since the fund is to serve the interests of both present and future generations, it has a particularly long-term perspective on its investments.

The fund has two main objectives. The first objective is to invest capital abroad to avoid overheating the Norwegian economy and separate the effects of oil price fluctuations from the national budget. Since 2001, there has been a rule of thumb, the so-called «spending rule» which implies that only the real return on the fund, estimated at 4 percent, should be spent on

the annual national budget. The second objective is to save on behalf of present and future Norwegians.

From 2004, the fund has been subject to ethical guidelines. The ethical guidelines for the fund were implemented by the Norwegian Parliament on the recommendations of the so-called Graver commission (NOU 2003:22), and evaluated and reformulated in 2007–2009.⁸ The guidelines have two main elements: first, a principle that obligates the fund to benefit future generations of Norwegians, and second, a principle that permits the fund to avoid investing in companies when there is a risk of being complicit in grossly unethical behavior.⁹

Fiduciary duties

Reflecting a primary fiduciary duty, the mandate states that the fund should be managed with a view to achieving the highest possible financial return for the benefit of present and future Norwegians. The overall aim is to have a diversified investment mix that will give the highest possible risk-adjusted return within the guidelines set by the Ministry.¹⁰ In the foreword to the UNEP-FI 2009 report on fiduciary duties, Kristin Halvorsen (then Minister of Finance) gave the following formulation of the relationship between the fund and its owners:

The Fund is managed by the Ministry on behalf of the people of Norway—both present and future generations—who are the ultimate beneficiaries. (UNEP-FI 2009b: 7)

She continues with a broad definition of the content of these fiduciary duties:

By virtue of our long-term investments in a large number of the world's companies, we have a responsibility for and an interest in promoting good corporate governance and safeguarding environmental and social concerns. In this vein, the Ministry aims toward integrating material environmental, social and governance issues, such as the risks and opportunities associated with climate change, into different parts of the management of the fund. (UNEP-FI 2009b)

The first part of the first sentence in the above quote refers to the Universal owner thesis presented in section 2. The core insight is that for large institutional investors with a diversified portfolio, their performance depends to an important degree on the performance of the economy at large. The rest of the quote states that the environmental, social and governmental issues must have a certain degree of materiality, and mention one area where such materiality is already present, namely with regard to risks and opportunities related to climate change.

In 2009, The Norwegian Bank considered a proposed mandate to invest \$3.1 billion in renewable energy and clean technology by 2015. The bank recommended a gradual inclusion of other asset classes such as private equity and venture capitalism (which a large part of clean tech investments belongs to) into the general portfolio of the fund, but did not recommend a targeted investment program in this area (Norges Bank 2010). One point in their discussion is particularly relevant for the question of the nature and scope of the fiduciary duties of the fund. The Bank referred to the argument that the fund should not make priorities in competition with the national budget. This can also be understood as part of a larger argument for preventing institutional investors to play a political role. Since Sovereign Wealth Funds, such as the Norwegian fund, are owned and controlled by governments, they are more likely to be used to advance political objectives than privately owned and operated funds.¹¹

Avoiding complicity

At first glance, the ethical guidelines of the government pension fund – global seem to follow a clean hands approach. First, there is a principle of negative screening. The fund screens for certain types of weapon production and since 2007 also for tobacco. Second, there is a principle that restrains the fund from divesting from morally unacceptable companies. The fund should divest from companies on the basis of unacceptable risk of contributing to serious violations of important values, further specified in section three of the guidelines.¹² According to the guidelines, companies may be excluded from the investment universe on the basis of *unacceptable risk of contributing to* serious or systematic human rights violations, grave breaches of individual rights in situations of war or conflict, severe environmental degradation, gross corruption and other particularly serious violations of fundamental ethical norms. In the report from the Graver commission, it is argued that even though it raises difficult problems, the issue of complicity is relevant with regard to the investment policies of the fund. Assessment of complicity is relevant when investments are «directly intended to achieve returns from the company, a permanent connection is established between the fund and the company, and the question of whether or not to invest is a matter of free choice» (NOU 2003:22: Ch. 2.2).

The report from the Graver commission comments on the potential causal link in the following way:

It is reasonable to assume that by holding ownership shares in a company an investor contributes towards the company's production of goods. It is not equally clear that an owner is also complicit in the company's actions and behavior. Some form of systematic or causal relationship must exist between the company's activities and the actions to which the investor does not wish to contribute. (NOU 2003:22: Ch. 2.2)

The quote indicates that the Graver commission presupposes a causal condition for investor complicity. We have seen that under this definition of complicity, size of ownership shares matter. The fund is invested in more than 8300 companies worldwide, and the average ownership interest is 0.8% (Government Pension Fund – Global Annual report 2009). In light of the previous discussion, it is also somewhat paradoxical that the fund is determined to avoid being complicit in the unethical behavior of companies in which it is invested, but invests broadly and with very small ownership shares in each company.

However, it is interesting to note that the development has been toward allowing larger ownership shares in a single company. The maximum share the Norwegian oil fund can hold is 10% in any given company. By the end of 2008, the largest ownership interest in any company was 8,7%. The fund owned more than 5% of four companies, and more than 2% of 195 companies. Initially, the fund could hold a maximum of 1% of a given company's equity. This level was increased to 3% in 2000 and 10% in 2005. In 2008, the bank proposed a further increase to 15% of active shares (Norges Bank 2008).

The guidelines require the fund to divest from companies on the basis of unacceptable risk of contributing to unethical behavior. However, as mentioned earlier, to carve out the exact relations that give rise to such coreponsibility is surprisingly difficult. Here are only some of the questions that need to be answered: How do ownership shares affect the risk of complicity? How is it possible to implement a principle that one should avoid complicity when the investor owns shares in many thousands of companies, or as is the case with the Norwegian Government Pension Fund – Global, more than 8000 companies? Does it make a difference whether the investment is in the first or the secondary market? Does it make a difference if the investor is a bondholder or a shareholder? Is it relevant how the company is organized? Or what information the investor could have or should have acquired? Some have argued that these are mere practical difficulties that can be solved if the investor hires more people for surveillance or work with its ethics (see e.g. the proposal from three representatives to the Norwegian Parliament from the Christian Democratic Party who proposed that the Council on Ethics should be given more resources in order for them to better investigate potential cases of complicity¹³). As already indicated, questions such as those referred to above may also point to theoretical and conceptual problems, which in part has to do with an unclear definition of the term complicity in the case of investor responsibility.

Signaling effects

Surprisingly, a closer look at the Government Pension Fund and its guidelines reveals a thinking that seems to acknowledge the signalling effects of investment decisions. A characteristic feature of the ethical guidelines of the fund is that they are forward-looking. The principle of avoiding complicity is defined as the potential risk of contributing to *future* wrong. Wrong committed in the past is thought to be relevant for a decision to divest only to the degree that this past wrong makes future wrongs more likely. This allows the fund to use both carrot and sticks: if a company does not perform according to the funds principles, it may be excluded from the portfolio. However, should the company make significant changes in its practice, there is a possibility that the company will be reincluded in the investment universe of the fund. This has happened in several cases, recently with the South African mining company, DRD Gold Ltd., which had been excluded in 2005 because of the risk of contributing to environmental degradation.¹⁴ The practice of the council on ethics is that it

[...] shall review on a regular basis whether the reasons for exclusion still apply and may against the background of new information recommend that the Ministry of Finance reverse a decision to exclude a company.

Unlike a clean hands approach, a forward-looking account of taint indicates that we should think of the funds' investments in consequentialist terms as what action will produce the outcome with the highest expected value. In some cases, the right thing to do would be to divest and contribute to a «shaming» of the company. In other cases, it would mean to stay invested and seek to influence the company to change its attitudes. Threats to divest may also have favourable consequences, and divestment will under some circumstances be expected to have better consequences than to stay invested. This is compatible with how paragraph 4 and 5 in the guidelines have recently been reframed and particularly evident if we look at the last part of Section 3, Paragraph 5.¹⁵

After the evaluation of the guidelines from 2007 to 2009, the practice of an observation list was also introduced. So far, Siemens is the only company on the list. The documentation list represents an additional tool for the fund to express and signal a negative attitude to a company while still stay invested. Just as with the excluded companies, the companies on the observation list are to be regularly assessed as to whether they should remain on the list. The fact that the observation list is public contributes to the shaming effect of the companies in question and makes the information easily accessible to other investors.

The oil fund is likely to be in a good position to influence the reputation of a company, even though the size of the actual share owned in that parti-

cular company is small. An example of how a NGO, Global Witness, picks up on a recent divestment from the Malaysian foresting company. Samling, can illustrate how the shaming of a company works in practice:

Global Witness welcomes Norwegian government disinvestment from predatory loggers Samling

Other pension funds, banks, and private sector investors who have not already done so should take note of this decision and follow suit by disinvesting from any companies whose environmental or human rights records make them incompatible with «ethical investment» aspirations.¹⁶

When the guidelines were evaluated in 2007, the independent evaluation report from the Chesterman–Albright group pointed out that even though the purpose of divestment is to avoid involvement with morally unacceptable companies, the rationale behind the publication of these recommendations seems to be to influence the company and encourage other investors to divest too. They indicated that this pointed to a central tension in the previous ethical guidelines (The Albright Group LLC & Chesterman 2008: 11, Section 10).

Do special requirements apply to the Government Pension Fund as a large institutional investor? In a recent report from PRI and the UNEP-FI (2010), institutional investors are called to act with regard to environmental issues along two main dimensions. First, investors should initially «[j]oin other investors and engage collaboratively with companies through platforms such as the PRI Clearinghouse to address key issues» (PRI & UNEP-FI 2010). PRI Clearinghouse is a forum for investor collaboration. The idea is that signatories together can achieve more by pooling their resources and influence. Examples of such collaborations are advocating better labor conditions in the iron and steel industry in Brazil, put pressure on companies to sign up and report to the Global Compact, and influence companies to work for water sustainability (the so-called CEO water mandate). The aim of the third initiative is to improve corporate policies and practices around use of water in companies such as Starbucks Coffee Company, GlaxoSmithKline, and Carlsberg Group.¹⁷

Second, institutional investors should «engage individually or collaboratively with public policy makers and regulators, through platforms such as the INCR, IIGCC, IGCC or PRI, to encourage policies that promote the internalization of costs and establish clear regulatory frameworks» (PRI & UNEP-FI 2010). INCR (Investor Network on Climate Risk) is a North America-based coalition of more than 90 institutional investors, and their purpose is «Identifying the financial opportunities and risks in climate change» and «tackling the policy and governance issues that impede investor progress toward more sustainable capital markets.» They are coordinated by Ceres and have been in existence since 2003. The Institutional Investors

Group on Climate Change (IIGCC) is a European counterpart to INCR and has currently over 50 members including some of the largest pension funds and asset managers in Europe, representing around €5trillion. The explicit aim of the IIGCC is to use their collective influence and put pressure on policymakers, investors, and companies to encourage a shift to a low carbon economy. The investor group on Climate change (IGCC) is a similar initiative in Australia and New Zealand.

The 16th United Nations Climate Conference in Cancun, Mexico, received attention. Less known to many, a two days *World Climate Summit* (WCS), took place (December 4–5, 2010), parallel to the COP 16.¹⁸ This was the beginning of a 10-year initiative that will provide a new, open, and collaborative framework where business, investors, and government officials in collaboration with United Nations Global Compact will work to find solutions to climate change. It will also gather the largest coalition of investors, aiming to tackle climate change, ever assembled (\$15tr). Although one may be only moderately optimistic with regard to what summits like this can accomplish in terms of actual policy changes, there nevertheless seems to be a substantial potential for collective investor initiatives not previously seen in the history of responsible investment. A statement from 259 investors representing 15 trillion dollars urged for government action on climate change.¹⁹ Norway has been an active contributor to the PRI. However, the fund was late to sign up to initiatives such as the Carbon Disclosure Project and was not among the signatories to the statement referred to above. This is an area where the fund could intensify its engagement.

Concluding remarks

This article has identified and discussed three aspects of investor responsibility. First, the fiduciary duties define the responsibilities of investors toward their clients. Broadening the definition of fiduciary duties to include considerations other than those that are purely financial ones, challenges the standard view and calls for the inclusion of Ethical Social and Governmental (ESG) issues in investment strategies. Second, investors are responsible for considering the risk that their activities may contribute to harm. The discussion shows that it is difficult to define the conditions under which investors contribute to the harm done by a company. Third, investors should take into consideration the signalling effects of their investment decisions. This is particularly important for large institutional investors with a considerable potential for influence. A focus on signalling effects implies that a variety of tools should be considered for how an investor can directly or indirectly put pressure on a company in order to change an unacceptable practice.

Acknowledgments

I want to thank the participants at the National CSR Conference in Trondheim 1–2 Dec. 2010 for their valuable comments on an early draft of this article.

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Notes

- ¹ For a discussion of the universal ownership thesis, see, for instance, a special issue of *Corporate Governance* (2007), 15 (3), 415–420.
- ² *Oxford Pocket Dictionary of Current English* 2009, Encyclopedia.com March 8th 2010.
- ³ The complicity principle reads thus: (Basis) I am accountable for what others do when I intentionally participate in the wrong they do or the harm they cause. (Object) I am accountable for the harm or wrong we do together, independently of the actual difference I make (Kutz 2000: 122).
- ⁴ See http://www.institutionalinvestor.com/asset_management/Articles/2_713_954/Influential-Institutional-Investors-Are-Changing-The-Way-They-Invest.html?p=2
- ⁵ I owe this point to Kasper Lippert-Rasmussen
- ⁶ Kotter and Lel (2008) have documented that an investment by a large institutional investor leads to positive market reactions and examine the stock price impact of 163 announcements of Sovereign Wealth Fund (SWF) investments. Dewenter et al. (2009) analyze stock price reactions to announcements of purchases and sales by SWFs of the shares of privately owned companies. These results suggest that SWF acquisitions convey positive information about the firms in which they invest and that divestments convey negative information about the firms. Sun and Hesse (2008) use an event study approach (166 events between 1990 and 2009) to measure the effects on share prices of announcements of investments and divestments to firms by Sovereign Wealth Funds. Gill (2010) looks at companies which have been excluded from the investment universe of Norway's Government Pension Fund (52 companies) and finds a negative market reaction after an announcement from the Ministry of Finance to exclude a company.
- ⁷ Indirect and direct taxes and direct ownership ensure high state revenues from the petroleum sector.
- ⁸ Report No. 20 (2008–2009) to the Storting, Chap.4.
- ⁹ The fund also practices negative screening of companies that produce or sell certain kinds of weapons, and more recently companies that produce tobacco. According to new rules in 2010, 17 tobacco firms have been excluded from the portfolio of the fund.
- ¹⁰ Investment mandate amended September 2nd 2009.
- ¹¹ However, identifying how and to what ends governments manage funds based on publicly available data is difficult and is somewhat based on speculation. A survey of 48 funds found that about 77% publicly reported the purpose of their investment fund, 63% disclosed some information about their investment activities, 44% reported some information about their individual holdings, such as examples of companies in which they had invested, and only 1% (4 funds) provided disclosures of all their investments (GAO 2008).
- ¹² The relevant paragraph reads thus: (3) The Ministry of Finance may, on the advice of the Council of Ethics, exclude companies from the investment universe of the Fund if there is an unacceptable risk that the company contributes to or is responsible for: a) serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labor, the worst forms of child labor and other kinds of child exploitation; b) serious violations of the rights of individuals in situations of war or conflict; c) severe environmental damage; d) gross corruption; e) other particularly serious violations of fundamental ethical norms. (Section 3 – Guidelines for observation and exclusion from the Government Pension Fund – Global's investment universe 2010).

- ¹³ Dokument 8:22 S (2009–2010).
- ¹⁴ Recommendation from the Council on Ethics, February 19, 2010.
- ¹⁵ Section 3, Paragraphs 4 and 5: (4) In assessing whether a company shall be excluded in accordance with Paragraph 3, the Ministry may among other things consider the probability of future norm violations; the severity and extent of the violations; the connection between the norm violations and the company in which the Fund is invested; whether the company is doing what can reasonably be expected to reduce the risk of future norm violations within a reasonable time frame; the company's guidelines for, and work on, safeguarding good corporate governance, the environment and social conditions; and whether the company is making a positive contribution for those affected, presently or in the past, by the company's behavior. (5) The Ministry shall ensure that sufficient information about the case has been obtained before making any decision on exclusion. Before deciding on exclusion in accordance with paragraph 3, the Ministry shall consider whether other measures may be more suitable for reducing the risk of continued norm violations or may be more appropriate for other reasons. The Ministry may ask for an assessment by Norges Bank on the case, including whether active ownership might reduce the risk of future norm violations.
- ¹⁶ Natalie Ashworth, Campaigner at Global Witness: <http://www.globalwitness.org/library/global-witness-welcomes-norwegian-government-divestment-predatory-loggers-samling>
- ¹⁷ See <http://www.unpri.org/collaborations>
- ¹⁸ See www.worldclimatesummit.com
- ¹⁹ Media release 16/11/2010, statement: «Global Investor Statement on Climate Change: Reducing Risks, Seizing Opportunities & Closing the Climate Investment Gap November 2010.» The statement was produced by the Institutional Investors Group on Climate Change (IIGCC), the Investor Network on Climate Risk (INCR), the Investor Group on Climate Change Australia / New Zealand (IGCC), and the United Nations Environment Programme Finance Initiative (UNEP FI), and is supported by the Principles for Responsible Investment Advisory Council. Accessed from: <http://www.unpri.org>