Reforming Climate Finance through Investment Codes of Conduct

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I. THE DYADIC QUALITIES OF FINANCIAL MARKETS

Whether environmentally conscious investors can help abate climate change, and thereby put the economy on more sustainable foundations, is an important question for policy-makers to consider. The long-standing movement for socially responsible investment (SRI), which seeks to harness the resources and power of the financial sector as a catalyst to change corporate social and environmental behavior, has become increasingly concerned about a warming climate. The SRI movement not only seeks to target individual corporate polluters through divestment, shareholder activism, and other mechanisms of pressure; but it has also begun to promote a framework for more systemic change through the propagation of various investment codes of conduct. Some of these codes specifically address global warming, such as the Climate Principles and the Carbon Disclosure Project, while others seek to promote SRI more generally, such as the United Nations Principles for Responsible Investment. This Article assesses the contribution of SRI to climate change and in particular critiques whether the new SRI codes of conduct offer an effective way of improving how investors respond to global climate change issues.

This Article begins by examining the dyadic qualities of modern financial markets in order to explain the broader context in which efforts to promote environmentally responsible finance must function. While some actors in the financial sector increasingly perceive that it is in their financial self-interest to address climate change, a comprehensive, environmentally responsible response is unlikely to arise from this...
The movement for SRI, as the second section of the Article examines, once championed a transformative ethical agenda, but since the late 1990s SRI's radical edge has been somewhat muted by its drift towards a pragmatic business case approach to investment decisions. The third section of the Article focuses on the capacity of SRI to galvanize action on climate change issues, especially through voluntary codes of conduct on climate finance. Deficiencies in the aspirations and design of such codes suggest the need for governmental regulation of the climate finance market, including reforms to investment institutions' fiduciary duties, as explained in the final section of the Article.

Before canvassing SRI and the field of climate finance, it is helpful to understand its broader context, the financial economy itself. The financial sector transforms money into an instrument of economic development. Economic historians have shown how measures of financial system sophistication, such as the system's liquidity, and stock and bond market capitalization, positively correlate to economic growth generally. Financial institutions such as banks and pension funds have become one of the most ubiquitous influences in modern economies, mobilizing capital resources for new development in the real economy, brokering financial transactions, and managing investment risks. Their influence is so great that economists often describe our era as one of "finance capitalism." Sustained partly by surging household wealth and the participation of mass society in investment schemes, such as pension plans and mutual funds, the financial sector has become pivotal to global economic conditions. For instance, in 2005, forty of the one hundred largest companies in the world were financial firms.


See also John Hicks, A Theory of Economic History 150-51 (1969).
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Professor of Economic History at Harvard University, such trends are economically very positive, "financial innovation has been an indispensable factor in man's advance from wretched subsistence to the giddy heights of material prosperity that so many people know today."\(^9\)

Yet, incongruously, the financial economy within which SRI operates can also wreak great economic, social, and environmental harm. It has been disparaged as a world of irrational exuberance\(^9\) and a vector of economic crisis.\(^11\) The turmoil in international financial markets in 2008 and 2009 that has engendered a deep global economic recession poignantly demonstrates these hazards.\(^12\) By fuelling economic growth, often of a wasteful and speculative nature that does not contribute to the real economy,\(^13\) the finance economy intensifies humanity's ecological footprint. Financial markets can accelerate trends toward environmental degradation by allowing capital to be transferred quickly to those companies that profit from exploitation of the environment. Being further removed from the environmental impacts of companies and developments they fund, financial institutions are perhaps even more inclined to be oblivious to the costs of the environmental externalities they generate.

In relation to climate change, the financial sector displays a similar dyadic character. Benignly, financiers are praised for their ability to help price climate risks and facilitate investment in renewable energy and efficient technologies.\(^14\) The investment community increasingly perceives some action on climate change as in its financial self-interest, for it poses risks to the value of their investment portfolios or their

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13 Robert Brenner, The World Economy at the Turn of the Millennium: Toward Boom or Crisis, 8 Rev. of Int'l. Pol. Econ. 6 (2001).
borrowers' solvency through tightening regulations, impairment of physical assets, and reduced income.\textsuperscript{15} Several lawsuits initiated in North America against major greenhouse gas (GHG) emitters may ignite fears of a litigation onslaught reminiscent of the anti-tobacco campaign.\textsuperscript{16} Further, polluting industries in the oil and gas, heavy manufacturing, and transport sectors should be competitively disadvantaged by GHG control regulation; thereby reducing future earnings and hurting their investors through lower dividend payments and share prices.\textsuperscript{17} Civil society groups increasingly target financial institutions associated with fossil fuel firms. In 2006, a coalition of mostly United States (U.S.) environmental groups started a campaign that demanded major banks cease lending to coal power plants.\textsuperscript{18} A report by the International Finance Corporation has thus assessed climate change as "a particularly powerful catalyst" for the incorporation of environmental factors into investment decision-making.\textsuperscript{19}

The financial sector is beginning to respond to such advice. Collaborative groups such as the Investor Network on Climate Risk\textsuperscript{20} and the Institutional Investors' Group on Climate Change\textsuperscript{21} are raising awareness of climate issues in the financial sector and educating fund managers about climate risks and investment opportunities.

Beyond risk management, climate change also creates new market opportunities for the financial sector. Companies that pioneer


\textsuperscript{19} INT'L FIN. CORP., "WHO CARES WHO WINS": ONE YEAR ON 8 (2005).


low carbon and energy efficient technologies stand to gain financially.\textsuperscript{22} Many investors, at least before the global financial crisis in 2008 and 2009, were looking for opportunities in renewable energies, ethanol production, environmentally efficient technologies, and carbon offset projects.\textsuperscript{23} The Kyoto Protocol’s provision of several economic policy instruments to facilitate cost effective reduction of GHG emissions has also created a means for financial institutions to play a more strategic role such as being intermediaries for carbon trading and financiers for Clean Development Mechanism projects.\textsuperscript{24} The World Bank estimated that the value of the global carbon market reached US$64 billion in 2007 (up from US$31 billion in 2006), mostly associated with the European Union’s GHG trading scheme.\textsuperscript{25} The financial sector has also pioneered voluntary trading schemes, the most successful example being the Chicago Climate Exchange (CCX). Established in 2003, the CCX is a trading hub for GHG emission allowances from sources and projects predominantly in North America.\textsuperscript{26} The CCX members made voluntary commitments to reduce their GHG emissions in 2010 by six percent below a baseline period calculated on participating companies’ average annual GHG emissions from 1998-2001.\textsuperscript{27} Such initiatives exemplify the potential of the financial sector to create its own mechanisms for climate finance without waiting for governments to act. Governments by themselves do not have the capital resources to address the necessary speed of the transition to a low-carbon economy. Moreover, the slowness of current negotiations on strengthening the international climate law regime, and the prospect that political compromises between the North and South will severely weaken the resulting agreed commitments, make initiatives from the

\textsuperscript{22} See World Resources Institute, Questions and Answers for Investors on Climate Risk 4 (2004).
financial sector crucial to mobilizing efforts to a low-carbon modernization of the economy.

II. CLIMATE FINANCE AND SOCIALLY RESPONSIBLE INVESTMENT GOVERNANCE

Beyond being a neutral transactional agent in the emerging climate finance market or, conversely, a sponsor of the fossil fuel economy, some investors view climate change as an ethical issue requiring a more enlightened response to safeguard the planet. The SRI movement, historically associated with the campaign against investments in South Africa during its apartheid era, has recently embraced climate change as one of its critical environmental causes. As it has matured, SRI has sought to influence financial markets through several techniques including, ethical screens (i.e., excluding assets in problematic firms), "best-in-class" portfolios (i.e., selecting the firms that act the most responsibly relative to their peers), shareholder advocacy (i.e., using shareholder rights to advocate change within companies), and in the banking sector, financing on preferential terms to socially or environmentally beneficial projects. In recent years, SRI has also sought to exert change, especially on climate change issues, through the propagation of codes of conduct and related standards for financial institutions. Thus, rather than merely targeting individual firms this form of SRI hopes to engender systematic changes across the market.

Through investment screening, shareholder advocacy, and other techniques, SRI seeks improvements in corporate social and environmental behavior beyond the letter of the law. In a sense, therefore, SRI aspires to be a form of market governance in its own right. Traditionally, when SRI was associated primarily with religious-based investors who, strictly for ethical reasons, sought to avoid profit from "sinful" activities such as tobacco, alcohol, or gambling businesses (a stance associated with deontological ethics), SRI did not aspire to be a

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30 Id.
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means of market governance. Its proponents did not seek to change corporate behavior; they wished only to avoid profiting from corporate misdeeds. The divestment movement against the apartheid regime in South Africa\(^3\) marked a seminal shift in SRI towards a teleological (i.e., focusing on the consequences of decisions) ethical position; investors increasingly sought to use their financial resources to leverage positive change in the world.\(^2\) Through shareholder activism, divestment, or preferential financing, SRI has sought to promote sustainable development, respect for human rights, and other ethical objectives valued for their own sake and not merely as a means to gain a financial advantage. In relation to climate change, SRI may help overcome the limitations and gaps in official regulation by pushing for early corporate action to reduce GHG emissions.

Yet, in recent years, the potential of SRI to act as a means of market governance has diminished as its conceptual basis has shifted profoundly. By tying social and environmental activism to furthering the bottom line, SRI has diminished its pretences to stand for change; there often remains a countervailing business case for financing socially irresponsible activities. Many SRI actors have jettisoned pretensions to invest solely or primarily on ethical grounds; instead, they are driven to tackle social and environmental problems on a business case. The business case relies on a cost-benefit analysis whereby the relative financial risks and opportunities of SRI issues are weighed instrumentally. This approach is said to be congruous with ethical investment on the assumption that socially responsible choices increasingly are also financially advantageous ones.\(^3\) In the industry's parlance, SRI is a way to achieve "alpha" (i.e., above-market returns).\(^4\) The massive investment in Canada's oil sands, in the province of

\(^{31}\) See, e.g., Russell Sparkes, A Historical Perspective on Growth of Socially Responsible Investment, in RESPONSIBLE INVESTMENT 39, 40-42 (Rory Sullivan & Craig Mackenzie eds., 2006).


\(^{34}\) See, e.g., INNOVEST, NEW ALPHA SOURCE FOR ASSET MANAGERS: ENVIRONMENTALLY-ENHANCED INVESTMENT PORTFOLIOS (2003) (discussing above-market advantages with environmentally sound investment styles).
Alberta, is one sensational example. Moreover, even if investors wish to be virtuous, social and environmental values often cannot be factored into their cost-benefit calculations. Values such as biodiversity or climate integrity cannot be captured by conventional financial accounting systems unless they give rise to specific expenses and income attributable to an individual organization.

From about the late 1990s, as mainstream institutional investors such as large pension plans came under pressure to be more mindful of the social and environmental impacts associated with their financing, they sought to redefine SRI in a way to neutralize its more radical connotations. In line with their fiduciary duties requiring promotion of optimal financial returns for their beneficiaries, they reframed SRI as a way to be prosperous rather than simply virtuous. Further, financial institutions have marshaled other arguments to avoid prioritizing ethical investment. Investing on behalf of thousands or millions of investors, financial institutions fear immersion in acrimonious and irresolvable debates about the correct ethical course. On the assumption that their fund members hold diverse ethical views on social and environmental issues, they conclude that it would be impossible to reach a consensus to guide investment policy. Alternatively, the maximization of financial returns is considered by fund managers as a clear and easily measurable benchmark to which they should be held to account.

Corporate environmental performance is thus no longer commonly evaluated against uncompromising ethical standards such as the value of maintaining the integrity of the global climate. Rather, environmental problems including climate change impacts are

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conceptualized as challenges of financial risk management. But only those risks that are deemed to be “financially material” (i.e., posing tangible risks to investment assets or lucrative investment opportunities) receive attention. For example, the International Investors Group on Climate Change (IIGCC) proclaims its goals are to:

- Promote better understanding of the implications of climate change amongst our members and other institutional investors.

- Encourage companies and markets in which IIGCC members invest to address any material risks and opportunities to their businesses associated with climate change and a shift to a lower carbon economy.

By contrast, the Interfaith Center for Corporate Responsibility (ICCR), a North American group that coordinates SRI among ethically-driven religious investors, explains that its Global Warming Working Group will:

- Encourage companies to report on their global warming emissions “footprints”, as well as disclose global warming related risks and opportunities to shareholders; and

- In recognition of future limits on global warming pollutants, encourage companies to behave proactively by reducing greenhouse gas emissions to sustainable levels.

The ICCR goes further than the IIGCC by stressing the priority of reducing GHG emissions. It aims to prevent or mitigate global warming as a valuable goal in its own right, not merely as a means to enhance or protect shareholder value.

The shifting rationale for SRI has been paralleled by complementary changes in its methods. The strict exclusionary screening and shareholder activism that were characteristic of the

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sometimes belligerent style of SRI in the 1970s and 1980s have given way to more polite, flexible, and inclusive methods of responsible investing. Thus, rather than divesting from entire industry sectors, social investors now tend to select those firms that are “best-of-sector.” This inclusive approach follows from the assumption that corporate environmental and social behavior should be judged relative to an industry sector’s average performance because only firms operating in the same sector face comparable sustainability challenges. Investors holding long-term positions in the market also sometimes prefer to influence corporate behavior from within through exercise of shareholder rights and dialogue. In place of forceful shareholder advocacy, social investors today often prefer courteous engagement with corporate management and behind-the-scenes, informal dialogue.

III. SRI AS A MEANS OF CLIMATE GOVERNANCE

A. VOLUNTARY CODES OF CONDUCT

A further seminal change in SRI, which is particularly evident in the field of climate finance, is the sector’s issuance of a range of codes of conduct that have sought to provide more systemic governance of the market. These voluntary mechanisms, drafted by both market and civil society institutions, have proliferated in the last decade (as detailed in Table 1 below). Their emergence coincided with the development of some official regulations to stimulate SRI, such as requirements introduced in some European countries for pension funds to disclose their policies for SRI. Thus, the financial sector’s initiative to sponsor its own SRI codes of conduct was quite possibly a measure to preempt any further unwelcome intensification of governmental regulation of investment choices, given that other voluntary environmental codes of

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conduct have been shown to be introduced by businesses often to avoid mandatory regulation.\textsuperscript{48}

**TABLE 1: SRI-RELATED CODES OF CONDUCT**

<table>
<thead>
<tr>
<th>Code of Conduct</th>
<th>Principal Sponsor</th>
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<tbody>
<tr>
<td>Carbon Principles, 2008</td>
<td>Consortium of US banks</td>
</tr>
<tr>
<td>Climate Principles, 2008</td>
<td>Climate Group</td>
</tr>
<tr>
<td>CERES Principles, 1989</td>
<td>Coalition for Environmentally Responsible Economies (CERES)</td>
</tr>
<tr>
<td>Collevecchio Declaration on Financial Institutions, 2003</td>
<td>Coalition of nongovernmental organizations</td>
</tr>
<tr>
<td>Eurosif Transparency Guidelines, 2004</td>
<td>European Social Investment Forum (Eurosif)</td>
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<tr>
<td>Global Sullivan Principles, 1977</td>
<td>Reverend Leon Sullivan</td>
</tr>
<tr>
<td>London Principles of Sustainable Finance, 2002</td>
<td>UK Department of Environment and Corporation of London</td>
</tr>
<tr>
<td>UN Principles for Responsible Investment, 2005</td>
<td>United Nations</td>
</tr>
</tbody>
</table>

These SRI codes of conduct, if widely ratified and implemented earnestly, may enhance the capacity of the financial sector to influence corporate environmental behavior. Until now, the SRI sector has remained a boutique niche of the financial economy;\textsuperscript{49} and, as corporate

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\textsuperscript{48} Stepan Wood, *Voluntary Environmental Codes and Sustainability*, in *ENVIRONMENTAL LAW FOR SUSTAINABILITY* 229, 250 (Benjamin Richardson & Stepan Wood eds., 2006).

\textsuperscript{49} In the US, it has been estimated that about 11 percent of the capital markets are dedicated to SRI causes. See *SOCIAL INVESTMENT FORUM, 2007 REPORT ON SOCIALLY RESPONSIBLE INVESTING TRENDS IN THE UNITED STATES* \textit{IV}, 52-56 (2008). Yet the surveys likely greatly exaggerate the size of the SRI sector because they use overly inclusive definitions and insubstantial methodologies that allow much finance to be treated as socially responsible. See *EUROPEAN SOCIAL INVESTMENT FORUM, SOCIALLY RESPONSIBLE INVESTMENT AMONG EUROPEAN INSTITUTIONAL INVESTORS* (2006) \textit{available at
finance theory predicts,\textsuperscript{50} it has lacked the capacity to alter the cost of capital of targeted firms and therefore to create a financial incentive for them to act more responsibly. The most comprehensively studied action is the South African divestment campaign, which had a modest effect on the targeted companies.\textsuperscript{51} The more recent widespread divestment from the tobacco industry also appears to have had only a slight affect on their stock prices.\textsuperscript{52}

The SRI codes of conduct embrace a range of methods and objectives, which are broadly classifiable into four types (although any individual instrument code may contain several of these features). First, there are normative frameworks that set substantive performance standards for social and environmental conduct. One example is the Collevecchio Declaration on Financial Institutions of 2003, which requires signatories to actively promote sustainable development.\textsuperscript{53} Second, process standards, enabling the assessment, verification, and communication of performance, constitute another form of market governance. Examples include the Equator Principles\textsuperscript{54} and the Global Reporting Initiative.\textsuperscript{55} Third, management systems, such as the International Organization for Standardization’s ISO 14001 regime, create a structure to guide organizations’ management of their environmental and social activities and impacts.\textsuperscript{56} Organizations that successfully follow this management regime may be formally certified by the ISO. Finally, comparative evaluation mechanisms have been developed by the SRI industry to evaluate and rank corporate

\textsuperscript{50} Michael Knoll, Ethical Screening in Modern Financial Markets: The Conflicting Claims Underlying Socially Responsible Investment, 57 BUS. LAW. 681 (2002).


\textsuperscript{52} See, e.g., RICHARDSON, supra note 29, at 168 (citations omitted).


\textsuperscript{56} See generally CASE STUDIES AND PRACTICAL EXPERIENCES (Ruth Hillary ed., 2000).
performance for the purpose of selecting investments. These rating mechanisms include SRI stock market indexes such as the Dow Jones Sustainability Indexes\(^57\) and the FTSE4Good Index Series.\(^58\) The criteria for inclusion in the indexes provide a means of ordering the market and defining standards for socially conscious firms to aspire to.

Overall, the increasing accommodation of corporate self-regulation found in most Western economies in recent decades is also evident in the SRI industry. The trend has been analyzed extensively in the literature, which need not be repeated in depth here.\(^59\) It should be noted that many commentators and policy-makers are skeptical of corporate intentions and doubt that voluntary mechanisms can provide a credible means of environmental regulation.\(^60\) This concern is particularly applicable to the SRI codes, given that they tend to be very ambiguous and open-ended in their expectations. The most demanding standards are contained in the Collevecchio Declaration, a product of civil society institutions, which has been largely ignored by mainstream investors. The financial community has favored discretionary or procedural-based standards dealing with disclosure, reporting, and auditing of investment activities. While some reflexive law scholars believe that such measures can induce positive changes in affected organizations’ behavior\(^61\) by encouraging their reflection and learning, the empirical evidence is inconclusive.\(^62\) Voluntary mechanisms also typically lack credible sanctions or enforcement mechanisms so that


\(^{60}\) See, e.g., Ian Maitland, The Limits of Business Self-Regulation, 27 CAL. MGMT. REV. 132 (1985); Wood, supra note 59.

\(^{61}\) See ENVIRONMENTAL LAW AND ECOLOGICAL RESPONSIBILITY: THE CONCEPT AND PRACTICE OF SELF-ORGANIZATION I (Gunther Teubner et al. eds., 1994).

compliance has come to depend on peer pressure, the discipline of the market, or sustained demands from nongovernmental organizations (NGOs). BankTrack, an NGO based in Belgium, has been the most vociferous critic of investors' compliance with the SRI codes. The SRI codes of conduct are imbued with the same business case values of the contemporary SRI movement generally. The work of the United Nations Environment Program's Finance Initiative (UNEPFI), which is an industry partnership coordinated by the UN to promote SRI and which sponsored the UNEP Statement by Financial Institutions on the Environment and Sustainable Development, illustrates this tendency. It explains in its advisory report, *Show Me the Money*, that: "[t]he first—and arguably for investors the most important—reason to integrate [SRI] issues is, simply, to make more money." The UNEPFI believes that companies' social and environmental performance can increasingly be accurately financially quantified and valued, thus justifying this approach. Another UNEPFI publication thus advises financial analysts to "[c]ommunicate on issue-specific, proven, quantifiable, material links to business value; [and to] avoid moral arguments." Such advice may simply reflect a pragmatic decision that the financial sector is unlikely to voluntarily prioritize social and environmental causes and will only be induced to act responsibly if it believes that it is in its economic self-interest.

B. THE CLIMATE PRINCIPLES AND CARBON PRINCIPLES

Because of the relative complexity of climate change as an investment issue and the belief that climate change should be prioritized over other potential environmental concerns of social investors, some voluntary codes and standards have been drafted specifically for the climate finance market. The first such initiative was UNEPFI's "Declaration on Climate Change by the Financial Services Sector" issued in 2007; the Declaration called on financial institutions to take greater action and to integrate climate change considerations into their decision-

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making including to reduce their carbon footprint.\textsuperscript{66} However, since the Declaration did not provide a detailed framework to guide investors in addressing climate change, efforts to develop further codes and standards continued.

The “Climate Principles: A Framework for the Financial Sector” were adopted to “provide a common global standard of best practice not only to assist the finance sector in managing its own climate impact but also to assist the sector in supporting its clients and stakeholders in managing their own impacts.”\textsuperscript{67} The Climate Principles were finalized in December 2008 by the Climate Group, a coalition of NGOs and businesses, in dialogue with some twenty financial institutions. The preamble to the Climate Principles explains that: “[i]n our capacity as advisors, lenders, investors and insurers, we are in a position to play a stewardship role by assisting the individuals, companies and projects we help finance, and clients that we offer insurance cover to, to understand and manage the risks, opportunities and adaptation needs relating to climate change.”\textsuperscript{68} The initial signatories to the Climate Principles were Crédit Agricole, HSBC, Standard Chartered, Munich Re, and Swiss Re.

Unlike most other SRI codes of conduct, the Climate Principles are tailored to specific parts of the finance industry including investment management, retail banking, insurance, and project finance. Signatory retail banks are asked to address customer willingness for tackling global warming and the barriers currently hindering them from taking action. The insurance sector is expected to advise clients on climate risks and GHG mitigation technologies. Investment and corporate banks should facilitate investment in low carbon technologies and GHG reduction projects, as well as assess the climate consequences of their investments. Further, investment banks are expected to strengthen expertise to support trading in GHG emission allowances, weather derivatives, carbon offset credits, and other climate related commodities. For financiers of projects that involve the release of at least 100,000 tons of CO\textsubscript{2} (carbon dioxide) equivalent annually, the banks are expected to request that their clients


"quantify and disclose" GHG emissions associated with the project, to "monitor and report GHG emissions annually in accordance with internationally-recognised methodologies," and to "evaluate technically and financially feasible options to reduce or offset project-related GHG emissions."  

The Climate Principles provide more specific and tangible performance standards than most SRI codes of conduct. Yet, like its peers, the Climate Principles lack public reporting and compliance standards. Signatories are not specifically required to report on their progress toward implementing the Principles, and there are no sanctions for failure to make meaningful progress. The Climate Principles focus on the banking and insurance sectors and do not directly address institutional investors such as pension plans and investment companies. While it is essential to improve climate risk and mitigation strategies in the lending and insurance services, much of the financing of the fossil fuel and energy sectors is undertaken by institutional investors through the equity markets.

The principal benefit of the Climate Principles will likely be to put signatories in the spotlight, making them more vulnerable to scrutiny from their peers and environmental NGOs. There is some early evidence that some signatories are taking their responsibilities seriously. The HSBC has apparently started to sever financial relationships with clients in the forestry sector in countries such as Malaysia and Indonesia that lack rigorous environmental controls. The Climate Group, which drafted the Principles, has committed itself to regularly monitoring implementation of the Climate Principles and to providing a forum through working groups and other collaborative mechanisms for various stakeholders to be involved in overseeing the dissemination of the Climate Principles.

The Climate Principles build on the Carbon Principles, adopted in February 2008 by six U.S. banks. They aim to "provide a consistent approach for banks and their US power clients to evaluate and address carbon risks in the financing of electric power projects."  

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69 Id.
Commendably, the Carbon Principles were prepared by the banks during a nine-month consultation with the Environmental Defense, Natural Resources Defense Council, and several U.S. power utilities. Yet, similarly to the Climate Principles, the Carbon Principles emphasize procedural standards rather than mandatory performance standards, such as prohibitions on the financing of fossil fuel-intensive developments or companies. Consequently, the Carbon Principles potentially provide latitude for business-as-usual. The three specific commitments of the Carbon Principles are to:

- Encourage clients to pursue cost-effective energy efficiency, renewable energy and other low carbon alternatives to conventional generation, taking into consideration the potential value of avoided CO₂ emissions.

- Ascertain and evaluate the financial and operational risk to fossil fuel generation financings posed by the prospect of domestic CO₂ emissions controls through the application of the Enhanced Diligence Process. Use the results of this diligence as a contribution to the determination whether a transaction is eligible for financing and under what terms.

- Educate clients, regulators, and other industry participants regarding the additional diligence required for fossil fuel generation financings, and encourage regulatory and legislative changes consistent with the Principles.

The accompanying Enhanced Diligence Process (EDP) applies to financing sought by both public and private sector entities for construction of fossil fuel generation facilities of at least two hundred mega-watt capacity. Given that the banks recognized the virtual inevitability of governmental controls on GHG emissions during the life of new power plants, the EDP seeks to “identify potential risks posed by the recognized cost of CO₂ emissions.” Thus, the EDP requires the

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76 Id. at 1.
banks to: evaluate specific environmental, economic, and technical issues in light of the regulation that may be imposed upon the project; assess the borrower’s GHG mitigation plans; conduct an independent assessment of the borrower’s risks from potential costs associated with GHG controls; and encourage the borrower to consult with affected stakeholders either through a public regulatory process or through the borrower’s project planning process. Further, each bank must periodically disclose the methods by which it implements the EDP. The Carbon Principles state that if a borrower is unwilling to provide the requested information for the EDP, “the financial institution will not proceed with the financing” – the closest the Principles come to embodying a substantive environmental performance standard.77

The Carbon Principles and the EDP illustrate how the private sector can take the lead in anticipation of regulatory actions targeting GHG emissions. While we may wish to laud such financiers for taking the lead over the U.S. government, it should not be forgotten that U.S. business groups including financial organizations have long sought to stonewall regulatory action to tackle GHG emissions along with many other environmental problems.78 The corporate sector normally is only prepared to deal with the environmental externalities of the market on terms that do not unduly disturb business-as-usual. The only domain where financiers have acted ambitiously is in relation to environmental reporting, probably because improved environmental information can dovetail closely with better financial risk management.79

C. CLIMATE-RELATED REPORTING STANDARDS

Thus, the most beneficial and effective SRI governance codes to date are those that aim to improve disclosure of corporate social and environmental behavior. Several such codes have been designed specifically to solicit climate-related information. Social investors need to know about companies’ GHG emissions if they are to construct environmentally responsible investment portfolios. The current lack of well-established legal obligations to report such information, coupled

77 Id. at 4.
79 See UNEP FI, supra note 40, at 40, for a discussion on the importance of financiers’ access to information on corporate environmental performance.
with the lack of comprehensive, standardized methods for reporting such emissions on a voluntary basis, has hindered SRI on climate issues.\textsuperscript{80} Further, companies facing material climate-related financial risks are disinclined to disclose fully such information.\textsuperscript{81} In some jurisdictions such as the UK and the U.S., general corporate financial reporting laws require companies to disclose any costs or benefits associated with their environmental performance that might affect the firm’s financial health.\textsuperscript{82} Lackluster implementation of such standards, owing partly to lax regulatory oversight and lack of precision in regulatory standards, has encouraged the SRI industry to develop its own reporting protocols. Among its initiatives are the Carbon Disclosure Project (CDP) and the Greenhouse Gas Protocol Initiative (GHGPI).\textsuperscript{83} They generate data that help facilitate dialogue between financial institutions and firms on climate change.

The CDP is a transparency mechanism that coordinates requests from institutional investors for information on companies’ climate change-related activities.\textsuperscript{84} Launched in December 2000, the CDP allows investors to collectively endorse a single global request for disclosure of information regarding companies’ GHG emissions, vulnerability to climate change impacts, carbon emission trading activities, and their policies on climate change. These requests are made annually to an ever-larger pool of major companies. By mid 2008, over three thousand corporations were asked to report to the CDP, on behalf of nearly four hundred investment institutions.\textsuperscript{85} About half responded. Since 2007, the CDP has also asked for information about companies’ emissions connected to their supply chains, thereby helping to provide a more

\begin{thebibliography}{9}
\item[	extsuperscript{80}] PRICEWATERHOUSECOOPERS & INT'L EMISSIONS TRADING ASS'N, UNCERTAINTY IN ACCOUNTING FOR THE EU EMISSIONS TRADING SCHEME AND CERTIFIED EMISSION REDUCTIONS 15-16 (2007).
\item[	extsuperscript{81}] ECONOMIST INTELLIGENCE UNIT, A CHANGE IN THE CLIMATE: IS BUSINESS GOING GREEN? 8 (2006).
\item[	extsuperscript{82}] E.g. CAN. PERFORMANCE REPORTING BD., MD&A DISCLOSURE ABOUT THE FINANCIAL IMPACT OF CLIMATE CHANGE AND OTHER ENVIRONMENTAL ISSUES 9 (2005); Jeffrey Smith, The Implications of the Kyoto Protocol and the Global Warming Debate for Business Transaction, 1 N.Y.U. J. L. & Bus. 511, 529 (2005); MICHELLE CHAN-FISHEL, FIFTH SURVEY OF CLIMATE CHANGE DISCLOSURE IN SEC FILING OF AUTOMOBILE, INSURANCE, OIL AND GAS, PETROCHEMICAL, AND UTILITIES COMPANIES 6-7 (2006).
\item[	extsuperscript{84}] See Carbon Disclosure Project, supra note 83.
\end{thebibliography}
comprehensive picture of GHG pollution. The CDP is the largest registry of corporate GHG emissions data in the world, for the benefit of numerous institutional investors. While reporting to the CDP is a voluntary process, some participating companies are probably motivated by the desire to avoid unwelcome pressure and adverse publicity from investors if they decline to cooperate. Others that are making good progress in reducing their carbon footprint are likely attracted by the opportunity to gain publicity for their efforts.

While the CDP is a mechanism to collect data, the GHGPI seeks to improve how data are gathered and accounted for. An initiative of the World Business Council for Sustainable Development and the World Resources Institute, the GHGPI consists of two modules. The Corporate Accounting and Reporting Standard Module assists companies and other organizations to identify, calculate, and report GHG emissions. A limitation of the modules in relation to financial institutions is that they do not have to account for the GHG emissions of their borrowers (the latter are deemed to be the “responsible entities” for reporting). The second GHGPI module is the Project Accounting Protocol and Guidelines, designed for calculating reductions in GHG emissions from specific projects and land use changes. The GHGPI has become widely accepted, and it provides the accounting framework for the European Union’s Emissions Trading Scheme and other initiatives.

Some other disclosure regimes utilize the CDP and GHGPI. One example is the World Economic Forum’s Global Greenhouse Gas Register (GHG Register), established to provide a global inventory of corporate emissions and reduction targets. The Global Reporting

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89 See id.
Initiative, to some observers the gold standard for sustainability reporting, contains directions on reporting relevant information regarding climate change. The Global Reporting Initiative’s G3 Reporting Framework of October 2006 introduced a specific reporting indicator on the “financial implications due to climate change.” Another initiative also informed by the GHGPI is the ISO 14064 standard, released in March 2006. It aims to promote consistency, transparency, and credibility in GHG emission quantification, reporting, and verification in order to facilitate trade in GHG allowances and credits. The ISO 14064 is complemented by ISO 14065, containing requirements to accredit or recognize bodies that undertake GHG validation or verification.

Together, these accounting and reporting mechanisms furnish one of the most significant contributions of the financial sector to addressing climate change. Transparency is a tool to promote scrutiny and evaluation, and even if financiers make conservative uses of the information, other stakeholders such as environmental NGOs can find them a crucial resource for monitoring and challenging corporations. Such improved transparency provides a rare example of where SRI can provide leadership, setting an example for others including governments to follow. These successes likely owe to the fact that they hardly require any changes in the behavior of financial institutions themselves, changes are only required of the companies they fund. While there has been

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95 See id. at 26.


some industry resistance to increased opacity on the basis of cost and potential utility, the financial sector has been able to leverage change through its economic power coupled with the industry’s anticipation of possible increased governmental disclosure regulation. The transparency trend in SRI governance has coincided with the rising clamor in many other policy contexts for transparency in economic, financial, and business activities, including auditing and accounting standards, national fiscal practices, and multilateral development assistance.\textsuperscript{98}

Disclosure standards are sometimes welcomed by the market because they redress information asymmetry among actors, thereby promoting capital market efficiency.\textsuperscript{99} Specifically, they help investors to make informed decisions about the risks and benefits at stake. In this sense, they dovetail with the business case approach to SRI. Furthermore, improved disclosure may yield environmental management benefits. Reflexive law theorists contend that environmental auditing and reporting processes can help reform the organizational culture of businesses from within by encouraging greater reflection, learning, and behavioural changes.\textsuperscript{100}

**D. OTHER SRI CODES OF CONDUCT**

There are a growing number of other codes of conduct devised by the financial sector for promoting SRI generally. While none deal specifically with climate change, nearly all of them are generically relevant to the task of encouraging financiers to act more environmentally responsibly. This section of the Article assesses two codes that take different approaches to governing SRI, namely the United Nations Principles for Responsible Investment (UNPRI) and the Collevecchio Declaration on Financial Institutions (CDFI).

Catering primarily to institutional investors, the UNPRI predominantly contain process standards to encourage SRI. The Principles were drafted under the auspices of UNEPFI, which used a two-tiered process comprising an inner working group of invited

\textsuperscript{98} \textit{JOHN BRAITHWAITE & PETER DRAHOS}, \textit{GLOBAL BUSINESS REGULATION} 162-169 (2000).


\textsuperscript{100} Karl-Heinz Ladeur, \textit{Coping with Uncertainty: Ecological Risks and Proceduralization of Environmental Law, in ENVIRONMENTAL LAW AND ECOCLOGICAL RESPONSIBILITY, supra note 60, at 299, 322-23.}
investment professionals and a wider multi-stakeholder advisory group that included representatives from some major environmental NGOs.

A succinct code, the UNPRI are just six core principles, each one is illustrated by several possible actions. The principles are:

1) We will incorporate environmental, social and corporate governance (ESG) issues into investment analysis and decision-making processes.

2) We will be active owners and incorporate ESG issues into our ownership policies and practices.

3) We will seek appropriate disclosure on ESG issues by the entities in which we invest.

4) We will promote acceptance and implementation of the Principles within the investment industry.

5) We will work together to enhance our effectiveness in implementing the Principles.

6) We will each report on our activities and progress towards implementing the Principles.101

Clearly, the UNPRI fall far short of providing a comprehensive framework for promoting SRI, let alone for addressing climate change specifically. Among the list of conceivable actions for the first principle, there is no stated expectation that investors actually incorporate social or environmental factors into their ultimate portfolios. The UNPRI principles do not require a signatory to demonstrate any particular performance standards with regard to human rights or environmental protection. Conceivably, therefore, a UNPRI signatory could continue to invest in the fossil fuel industry and satisfy principle one by merely reviewing the direct financial risks posed by global warming.

The second principle on active ownership focuses on participation in investee companies, while curiously ignoring the pressing need to also democratize decision-making within financial institutions. Among the accompanying list of possible actions to the

UNPRI principles, the suggested actions for implementing principle two on active ownership include “exercise voting rights,” “develop an engagement capability,” and “file shareholder resolutions consistent with long-term ESG considerations.”

Financiers sometimes file shareholder resolutions to spur corporate management to meet their demands on climate change issues, such as asking companies to report their GHG emissions or how they propose to reduce them. Such resolutions on environmental subjects are generally rare and have garnered little open support until recently. Most such resolutions have been filed in the U.S.; the 2008 proxy season featured fifty-seven climate change-related shareholder resolutions filed in American companies, up from twenty-five such resolutions in 2003. These resolutions typically garner ten to twelve percent of shareholder votes. Thus, the UNPRI’s advice on active ownership at least helpfully counters the long-standing passive nature of much institutional investment.

But such recommendations, like the rest of the UNPRI, are not backed by any compliance machinery. The UNPRI do not provide an independent audit or verification mechanism to assess the quality of signatories’ implementation, a curious omission given how the financier sector in other contexts such as the CDP is so insistent on opacity by the firms they fund. While the UNPRI do not explicitly refer to climate change, conceivably it is the type of environmental issue that signatories to the UNPRI principles should address. The UNPRI Secretariat does not appear yet to have established any working groups or projects that focus on global warming.

Some individual UNPRI signatories mention how they use the principles to inform their policies. For example, the Australian financial group AMP Capital states that it “is progressively applying the UNPRI to our investment activities across all asset classes . . . on the potential risks and issues around policy response

102 Id.
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to climate change. However, most financiers ostensibly interested in SRI typically are signatories to several codes and regimes, and they do not purport to attribute actions on climate change or other environmental issues to any one standard such as the UNPRI. Thus, it can be difficult to isolate the effect of the UNPRI from other SRI codes or other factors.

Nonetheless, by accommodating rather than radically challenging the financial sector, the UNPRI will likely remain one of the main benchmarks for SRI. As of June 2008, over 350 institutions had signed the UNPRI principles, holding more than US$14 trillion in assets. The UNPRI have been generally well-received by the finance sector, it being attracted to their sponsorship by the eminent UN while leaving signatories with considerable latitude to implement the open-ended standards.

In contrast, the CDFI has attracted little interest from financiers. Indeed, only one major financial institution, the California Public Employees' Retirement System (CalPERS), is among the approximately one hundred signatories to the CDFI. It was drafted in 2003 by a coalition of NGOs critical of the facile standards found in some other SRI codes of conduct. Encapsulating civil society's vision of sustainability for the finance sector, the CDFI is comprised of six principles that stress accountability, transparency, and stakeholder rights. Specifically, the CDFI requires financiers' commitment to: sustainability, "no harm," responsibility, accountability, transparency, and sustainable markets and governance. The accompanying implementation guide outlines immediate steps that financial institutions should take, such as the adoption of internationally recognized industry standards for credit, investing, and underwriting transactions.

The CDFI differs from other normative standards in its rigorous and detailed requirements. The ambitious "commitment to sustainability" principle obliges investors to:

107 U.N. Env't Program Fin. Initiative [UNEP FI], PRI Reports on Progress 2008 2 (2008). The value of such assets was no doubt affected by the 2008 financial crisis and ensuing global recession.
108 BankTrack, supra note 53, at 8.
109 Id. at 2-4.
110 Id. at 4.
... expand their missions from ones that prioritize profit maximization to a vision of social and environmental sustainability. A commitment to sustainability would require financial institutions to fully integrate the consideration of ecological limits, social equity and economic justice into corporate strategies and core business areas (including credit, investing, underwriting, advising), to put sustainability objectives on an equal footing to shareholder maximization and client satisfaction, and to actively strive to finance transactions that promote sustainability.111

Concomitantly, the CDFI’s “do no harm” principle entails an explicit commitment to categorical prohibitions for the most socially and environmentally egregious transactions. Such standards, if adopted widely by financial institutions, would provide a strong platform to address climate change as a valuable goal in its own right. The implementation guidance to the CDFI usefully elaborates on these principles and gives financiers specific advice for promoting environmentally sound financing.112 For example, concerning the “Commitment to Transparency,” it recommends that financial institutions “publish annual sustainability reports,” which should provide “a breakdown of core business activity by sector and region, and the implementation of the financial institution’s sustainability policies and objectives.”113

These and other Collevecchio standards offer a framework for ethically guided SRI. That framework is surely too demanding for most financiers to accept voluntarily. The CDFI, however, retains its value as a point of reference to assess the ethical adequacy of other standards and codes, and in guiding necessary governmental regulation as the following section explains.

IV. STRENGTHENING THE GOVERNANCE OF CLIMATE FINANCE

The global financial crisis during 2008 and 2009 has put the basic structure and architecture of financial markets under unprecedented scrutiny and generated calls for comprehensive reform of financial markets that go beyond merely the targeting of unscrupulous

111 Id. at 3.
112 Id. at 3-4.
113 Id. at 6-7.
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financiers. Systemic changes are demanded. Apart from exposing the inadequacies of governments' laissez-faire approaches to supervising financial markets, the current economic crisis also exposes the impoverished agenda of the SRI movement. It has traditionally been preoccupied by ad hoc concerns and individual companies, while largely ignoring the macro-economic and overall structural issues such as controls over transnational capital movements. With their often vague and discretionary standards, the SRI codes of conduct canvassed in this Article tend to lack the ambition and teeth to remedy this deficiency. The codes have been developed in the context of a financial industry that has long been accustomed to focusing only on investment returns and risk management. Consequently, any social and environmental concerns can only be legitimately incorporated into that framework in the absence of mandatory regulation to the extent that they are understood as furthering the bottom line.

In responding to these challenges, the opportunity must be seized to inculcate responsibilities of environmental care into the governance framework for financial markets. Promotion of sustainable development must be a goal shared by all sectors, especially the financial sector given that it is where wholesale decisions regarding capital allocation and thus future development pressures arise. So far, policy-makers and commentators have generally viewed the financial sector as only a transactional, intermediary agent in responding to climate finance; in other words, investment institutions are essentially mere brokers or passive financiers of measures to mitigate or adapt to climate change. The potential of the financial sector to take a more ambitious role to stimulate far-reaching changes in corporate behavior is only just starting to be seriously explored.

While the financial sector increasingly recognizes that climate change can be a financially salient consideration, such as a threat to investment portfolio values or as an opportunity to enhance returns, the pragmatic, business case approach to SRI does not provide a sufficiently

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114 See Soros, supra note 12; Shiller, supra note 12.
comprehensive framework to deal with global warming. Some financiers may judge that climate change is too remote to affect a company's bottom line, or that there are seemingly more pressing issues affecting investment values. Another hindrance is the general uncertainty that financiers face in determining the tangible implications of climate change, given continuing scientific uncertainties about its impacts, as well as predicting governmental policy responses to global warming. For example, presently there is insufficient research demonstrating the relationship between GHG emission regulations and investment returns.

The struggle to reach an intergovernmental agreement on GHG emission targets beyond 2012, when the Kyoto Protocol expires, overshadows the challenges of setting a durable value on carbon reduction and climate adaptation measures.

Two important insights from this exploration of climate finance can be discerned. Firstly, government policies must set a durable value for carbon emissions, reflective of their harm to the global climate, if the SRI market driven solely by the business case is to be a force for change. The climate finance market will be unable greatly to advance socially responsible solutions in the absence of such governmental intervention. This situation has already been recognized by the World Business Council for Sustainable Development. Because the unregulated market struggles to capture and reflect environmental externalities such as climate risks, the financing of renewable energy supplies and energy efficiency technologies "generally entail higher risks and initial costs..."

120 WORLD BUS. COUNCIL FOR SUSTAINABLE DEV., ENERGY AND CLIMATE CHANGE (2005).
121 For a discussion on such market deficiencies, see the ecological literature. See, e.g., MICHAEL COMMON, ENVIRONMENTAL AND RESOURCE ECONOMIES: AN INTRODUCTION (2nd ed. 1996); INVESTING IN NATURAL CAPITAL: THE ECOLOGICAL ECONOMICS APPROACH TO SUSTAINABILITY 92, 93 (Anne Marie Jansson, et al., eds., 1994); KENNETH G. WILLIS ET AL., ENVIRONMENTAL VALUATION (1999).
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than conventional projects.” Already, environmental regulation and litigation risks are emerging as drivers for financiers to factor climate change into their investment choices. The prospect of carbon emission caps, carbon taxes, renewable energy subsidies, and mandatory corporate disclosures on climate impacts, imposed by governments, are becoming influential for the climate finance market. While some legal commentators believe that “the probability of legal victories against global warming is low,” they also concede that such litigation may generate substantial legal fees and costly delays to new projects. The dependence of the climate finance market on the broader regulatory framework demonstrates the paradox of SRI. It arose with aspirations to be a form of surrogate market regulation, compensating for the lacunae or weaknesses of official regulation, yet it remains reliant on the state to set environmental and other standards necessary to make social and environmental concerns salient to the market.

Another challenge is that the ethical issues posed by climate change have been insufficiently acknowledged in the SRI movement (let alone by financial markets generally). Business case SRI, even at its most efficient, will probably never be a satisfactory solution because it relies on perpetuating the same economic system premised on infinite growth that has wrought so much ecological damage in the last century. An ethical envelope to climate finance, providing a normative framework to safeguard ecological integrity and ensure social justice in entitlements to use limited environmental resources is essential. Humankind’s capacity to tamper with the planet’s climate raises profound concern about our exploitative relationship with nature. An ethic of restraint is needed, if anything at least for the welfare of posterity. The United Nations Framework Convention on Climate Change proclaims as one of its core principles that: “the Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective

124 Id. at 1.
125 See generally DONELLA MEADOWS ET AL., LIMITS TO GROWTH: THE 30-YEAR UPDATE 178 (2004) (discussing the needed limitations on economic growth to protect the environment).
Further, the question of who should shoulder the primary burden of addressing climate change raises significant ethical issues concerning social and economic justice between developing and developed countries. The global South has maintained in international negotiations that it should not be required to curtail its economic growth to address a climatic problem created by the historical GHG emissions of the North. The financial sector, however, has been able largely to circumvent such uncomfortable and complex questions by treating climate change as just an additional variable in the cost-benefit calculations of investment decision-making and financial transactions. The underlying perspective and assumptions of the capital investment processes remain uncritiqued. While there is nothing objectionable to investors financially benefiting from reducing their carbon footprint, the dilemma is that the business case will not always provide sufficient motivation for reform.

In conceiving how to make ethically-driven SRI on climate change more widespread in financial markets, reform of the fiduciary duties of investment institutions should be a priority for they frame how financiers view their basic purposes and to whom they are accountable. The fiduciary responsibility is particularly entrenched in institutional investors, such as occupational pension funds, which are required to invest prudently and impartially in the interests of their beneficiaries. The managers of such institutional funds thus have a fiduciary duty to pursue optimal financial returns without regard to collateral social or environmental concerns. By contrast, in the retail investment market, individuals investing on their own behalf are much freer to choose mutual funds or unit trusts that sell portfolios aligned with their social, environmental, or other values. In the retail sector, investment policies more closely reflect contractual arrangements between investors and fund managers.

128 See LAVANYA RAJAMANI, DIFFERENTIAL TREATMENT IN INTERNATIONAL ENVIRONMENTAL LAW (2006).
129 See Adil Najama et al., Climate Negotiations Beyond Kyoto: Developing Countries Concerns and Interests, 3 CLIMATE POL’Y 221 (2003).
131 George Djurasovic, The Regulation of Socially Responsible Mutual Funds, 22 J. CORP. L 257 (1997) (detailing the legal obligations of fund managers in retail funds to investors).
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One option for reform would be to require that fiduciary finance be accountable to the social and environmental costs it creates. An overarching legal responsibility to promote sustainable development or other environmentally sensitive goals could be established to hold financiers to account. Thereby, the fiduciary obligation to promote private returns would need to take into account their public costs if not adequately reflected in conventional environmental regulation. Under such a regime, a financial institution could be subject to regulatory penalties for failing to pursue environmentally responsible investments. Of course, such a fiduciary standard would need to be underpinned by concrete performance standards if it is to be workable. A vague stipulation to promote sustainability alone would not suffice. It would likely be undermined by discretionary interpretations to which financiers could not be legally challenged. One solution could be to extend the advances in designing sustainable performance indicators in environmental policy-making to financial investments.\(^\text{132}\) One such indicator is the carbon footprint of an investment portfolio, a potent indicator of environmental performance.\(^\text{133}\) Thus, the total GHG emissions attributable to an investment portfolio could provide a means to determine whether a financier was investing in accordance with an environmentally-informed fiduciary standard.

A further tool to underpin a new fiduciary standard is social accounting, which seeks to assign financial values to the social and environmental costs and benefits of economic activities. New models of social accounting have been advanced that attempt to capture the collateral benefits (e.g., job creation, public infrastructure, and environmental protection) and collateral costs (e.g., damage to natural resources and intensification of social inequalities) of economic activity.\(^\text{134}\) Extension of social accounting to investment transactions would of course be a monumental challenge to the established forms of


\(^\text{133}\) See generally TRUCOST, *CARBON COUNTS 2007: THE TRUCOST CARBON FOOTPRINT RANKING OF UK INVESTMENT FUNDS* (providing the measurements of carbon footprints in investment portfolios).

\(^\text{134}\) Jeffrey Unerman et. al, *Introduction to SUSTAINABILITY ACCOUNTING AND ACCOUNTABILITY* 1, 2-3 (Jeffrey Unerman et.al. eds., 2007); Daniel Blake Rubenstein, *Bridging the Gap Between Green Accounting and Black Ink*, 17 ACCT., ORG. & SOC'Y 501 (1992).
financial reporting and accounting geared to measuring expenses and income associated with specific market transactions.

Reforming fiduciary duties alone certainly would not suffice. In addition, decision-making within financial institutions surely should be democratized, in order to give more voice to ordinary fund members as well as to outside third parties affected by investments. Changing governance from within should enable other social values to at least be considered in investment policy-making. Another reform is to address the international legal rules governing cross-border finance. The current global financial malaise has created a window for contemplating reforms hitherto marginalized from public debate. Ideally, new fiduciary duties and investment decision-making standards that further sustainable development should be etched into new international legal rules governing cross-border finance. The existing range of voluntary international standards canvassed in this Article such as the UNPRI will not suffice. The current intergovernmental negotiations over the Copenhagen Protocol could provide a suitable forum to introduce some climate finance standards into international climate law.

Overall, while the expansion of SRI into mainstream financial markets has promised a more responsible approach to investments that have consequences for climate change, that promise remains unfulfilled. The SRI codes of conduct have yet to demonstrate that they can resolve the systemic barriers to ethically-driven climate finance. The dominant forms of SRI provide a framework for addressing climate change largely only to the extent that global warming is perceived as financially material and relevant to the financial objectives of investment institutions. In some cases, this private self-interest can serve to leverage beneficial change, such as is already occurring with regard to investors’ pressure for improved corporate disclosure of GHG emissions. But too often the financial sector will lack the innate motivations to advocate reform. In an economic system premised on infinite economic growth sustained by international financial markets, it is hard to see how the financial economy can voluntarily accept the kind of restraints that a low carbon economy demands. More official regulation of the climate finance market is necessary, but it must do more than merely perpetuate

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135 See Richardson, supra note 29, at 509-570, for a more comprehensive discussion of SRI legal reforms.
a transactional role for financiers; they must be galvanized to be vehicles for enlightened change.