FIDUCIARY DUTY IN THE 21ST CENTURY

FINAL ACTIVITY REPORT 2015–2019
This report summarises the research and outreach activities carried out under the Fiduciary Duty in the 21st Century programme, convened by UNEP FI and PRI, with the generous financial support of the Generation Foundation.

The final report on Fiduciary Duty in the 21st Century presents the conclusions of the 4-year research and detailed analysis by country.

All programme publications are available online at

fiduciaryduty21.org/
unpri.org/sustainable-markets/fiduciary-duty
unepfi.org/investment/fiduciary-duty/

CONTENTS

Programme overview ..................................................................................................... 2
Key results & deliverables .............................................................................................. 4
Policy impact .................................................................................................................. 6
Regional activity report .................................................................................................. 8
  Asia Pacific (APAC) ........................................................................................................ 9
  Middle East & North Africa (MENA) and Latin America (LATAM) ......................... 11
  North America ........................................................................................................... 13
  Europe ........................................................................................................................ 15
  Global / Multilaterals ............................................................................................... 17
Communications report ................................................................................................ 21
  Events ....................................................................................................................... 22
  Publications .............................................................................................................. 23
  A selection of media articles ..................................................................................... 25
  Partner news stories ................................................................................................ 26
  Websites and webpages ........................................................................................... 26
  Videos ....................................................................................................................... 27
PROGRAMME OVERVIEW

In January 2016, the Principles for Responsible Investment (PRI) and United Nations Environment Programme Finance Initiative (UNEP FI), with the generous financial support of The Generation Foundation, launched a four-year work programme to end the debate on whether fiduciary duty is a legitimate barrier to the integration of environmental, social and governance (ESG) issues in investment practice and decision-making. This followed the original publication in September 2015 of Fiduciary Duty in the 21st Century by the PRI, UNEP FI, UNEP Inquiry and UN Global Compact. Despite significant progress, many investors had yet to fully integrate ESG issues into their investment decision-making processes.

The programme had three main components:

- Working with investors, governments and intergovernmental organisations, to develop and publish an international statement on fiduciary duty, which includes the requirement to integrate ESG issues into investment processes and practices.
- Publishing and implementing roadmaps on the policy changes required to achieve full integration of ESG issues in investment processes and practices across eight countries.
- Extending the research into fiduciary duties—and, more broadly, investor duties—to six Asian markets: China, Hong Kong SAR, India, Korea, Malaysia and Singapore.

This work was underpinned by legal analysis of fiduciary duty and a rigorous research programme including extensive peer review. The initial research programme was extended for a fourth year to support implementation of the roadmaps’ recommendations in the US, China and the Organisation for Economic Development and Cooperation (OECD).

A final report summarizing all progress towards a modern interpretation of fiduciary duty at global and country level was published in October 2019 and widely disseminated to policymakers and investors around the world.

The research concluded that the fiduciary duties of investors require them to:

- Incorporate environmental, social and governance (ESG) issues into investment analysis and decision-making processes, consistent with their investment time horizons.
- Encourage high standards of ESG performance in the companies or other entities in which they invest.
- Understand and incorporate beneficiaries’ and savers’ sustainability-related preferences, regardless of whether these preferences are financially material.
- Support the stability and resilience of the financial system.
- Report on how they have implemented these commitments.

Investors that fail to incorporate ESG issues are failing their fiduciary duties and are increasingly likely to be subject to legal challenge.

PROJECT REACH 2015–2019

Outstanding Industry Contribution

Gold award from Investments and Pensions Europe in 2017

1000+
policymakers and investors engaged and interviewed to raise awareness of the importance of ESG issues to the fiduciary duties of investors

30+
workshops in 15 countries with investors and regulators to discuss ESG integration, regulatory clarification and investor practice

25
country roadmaps and related reports published in 6 languages, on the policy changes required to achieve full integration of ESG issues into investment processes and practices

6
major jurisdictions including the EU have issued investor guidance and/or clarified investor duties in regulation to include ESG factors
Five years after the launch of the flagship report Fiduciary Duty in the 21st Century, fiduciary duty is no longer perceived as a barrier to sustainable investment. Extensive research, policy and investor engagement and communication have contributed towards overcoming what was perceived as a major barrier by investors. Although some investors in some markets continue to cite their fiduciary duty as a barrier to incorporation of ESG issues, generally, it is now widely accepted that it is investors’ duty to incorporate all value drivers, including ESG issues, in investment decision making, in order to make informed investment decisions.

Examples of regulations and guidance that have changed the perception of fiduciary duty and ESG integration include:

- The UK Department for Work and Pensions clarified that from October 2019, pension schemes are required to set out their approach to material ESG risks in their Statements of Investment Principles.
- The EU’s IORP II Directive, adopted at the end of 2016, requires occupational pension providers to evaluate ESG risks and disclose information to current and prospective scheme members.
- The EU Sustainable Finance Action Plan launched in 2018 presented ten measures to finance sustainable growth, and four legislative proposals including on disclosure and investor duties. The EU Sustainability Disclosures Regulation adopted in 2019 introduces new requirements and clarifies sustainability-related disclosure obligations in the financial services sector.
- The United States Department of Labor released a Field Assistance Bulletin reiterating its long-standing position that fiduciaries are obliged to consider ESG factors as part of investment decisions. However, the explanatory language of the bulletin created confusion for fiduciaries of private sector pension plans.
- Australia’s Prudential Regulation Authority (APRA) published a letter in early 2020 to its regulated entities outlining plans to develop a prudential practice guide focused on climate-related financial risks, as well as a climate change vulnerability assessment. APRA will also update its practice guide SPG 530 in relation to ESG considerations.
- The International Organisation of Securities Commissions (IOSCO) statement setting out the importance for issuers of considering the inclusion of ESG matters when disclosing information material to investors’ decisions.  

Worldwide, sustainable investment policies are being adopted at an increasing pace. Since the inception of the Fiduciary Duty in the 21st Century programme, there have been over 300 policy instruments or revisions adopted in markets covered by the programme with 38 of those revisions aimed specifically at asset owners.

Fig.2: Sustainable finance policy growth globally: Number of policy instruments

Source: PRI Regulation database

---

BETWEEN 2015 THROUGH 2019, THE PROGRAMME:

- Engaged with over 1000 policymakers and investors to raise awareness of the importance of ESG issues to the fiduciary duties of investors.
- Published the Global Statement on Investor Obligations and Duties, which was signed by 124 institutional investors from 22 countries.
- Published and started to implement ‘the recommendations developed for each country roadmap’ on the policy changes required to achieve full integration of ESG issues into investment processes and practices across 11 countries (Australia, Brazil, Canada, China, France, Germany, Ireland, Japan, South Africa, UK and US).
- Extended the research into fiduciary duties – and, more broadly, investor duties – to six Asian markets: China, Hong Kong SAR, India, Korea, Malaysia and Singapore.
- Published ten related reports, including ESG and Alpha in the US, Aligning values: why corporate pension plans should mirror their sponsors, etc.
- Engaged with the OECD on integrating sustainability in mainstream finance and investment work of the organisation.
- Engaged with the European Commission and the HLEG (European Commission High Level Expert Group on Sustainable Finance) to help formulate recommendations on the clarification of investor duties throughout the European Union.
- Hosted over 30 workshops and conferences with investors and regulators in 15 countries to discuss regulatory clarification and investor practice on ESG integration as part of their fiduciary duty. Additionally, the programme was featured at many additional industry events with panelists speaking to the programme findings and developments.
- The programme was recognised by Investments and Pensions Europe with a gold award for Outstanding Industry Contribution in November 2017.
- The rate of regulatory action on fiduciary duty and ESG issues has accelerated markedly during the programme activity. Six major jurisdictions including the EU have issued investor guidance and/or clarified investor duties in regulation to include ESG factors.

Fig. 3: Market analysis

The Fiduciary Duty in the 21st Century programme has conducted extensive market analysis in 21 jurisdictions around the globe engaging hundreds of respective market regulators, policymakers and investors.
REGIONAL ACTIVITY REPORT

4 For details on regulatory analysis see the final report on Fiduciary Duty in the 21st Century
ASIA PACIFIC

Investor Obligations and Duties in Six Asian Markets
(Chinese and English) Launch events in Singapore at PRI in Person; Seoul, with NABO and KOSIF; Beijing with China SIF.

Australia Roadmap
Fiduciary Duty in the 21st Century roundtables in Hong Kong, Shanghai and India with BNP Paribas.

Japan Roadmap (Japanese and English)
Aligning values: why corporate pension plans should mirror their sponsors (Japanese)
Stakeholder events on investor duties and ESG integration in Beijing and Shanghai.

ESG data in China with recommendations for primary ESG indicators (Chinese and English). Launch event in Shanghai with UNEP FI.

Legend:
Programme publications & events
Key regulatory updates
LATIN AMERICA & AFRICA

Fiduciary Duty in the 21st Century (Portuguese)
Roundtable - Institutional Investment Governance for Sustainability
– Dubai Wednesday 26 October 2016, UNEP FI Global Roundtable
Hosted by the Ministry of Environment, UAE

Brazil Roadmap (Portuguese and English)
South Africa Roadmap, Launch at UNEP FI Africa & Middle East Regional Roundtable.
Brazil Pension regulator workshop series (3)

Brazil
The Resolution 4557/2017 included environmental and social risks in the role of risks that banking institutions shall identify and mitigate. In addition, the central bank’s audit department adopted some criteria to measure the level of exposure to ESG risks, which has guided supervisory activities. These criteria are focused on economic activities with a high potential for environmental damage.

Brazil
National Monetary Council launched Resolution 4661 requiring pension funds to consider in their risk analysis their investments’ economic sustainability together with their ESG risks.

Brazil
Previc introduced Instruction 6, which requires that pension funds consider ESG risks in their investment policy.

South Africa
The Financial Sector Conduct Authority (FSCA) (formerly the FSB) released a Guidance Note on the Sustainability of Investments, along with a communication explaining how investors are expected to apply it. The ASISA Responsible Investment Committee commissioned a review of the Code for Responsible Investment in South Africa, which is underway. The FSB published a Guidance Notice relating to sustainability of investments and assets in the context of a retirement fund’s investment policy statement.

Legend:
Programme publications & events
Key regulatory updates
US Roadmap

Addressing ESG factors under ERISA
Fiduciary Duty in the 21st Century roundtable in NYC
Canada events: Fiduciary Duty panel at the British Columbia Pension Forum; Fiduciary Duty panel in Vancouver at the North West America PRI network

Canada Roadmap (French and English)
Canadian Pension Regulation Analysis: Alberta
Working towards a sustainable financial system: investment consultant services review

US Roadmap

ESG and Alpha: Financial Performance of ESG Integration in US Investing

Ohio Roadmap

Untangling Stakeholders for Broader Impact: ERISA Plans and ESG Incorporation
High-level dinner and discussion on “The global state of fiduciary duty and sustainability”, San Francisco

Fiduciary Duty in the 21st Century Final Report Launch, NYC
California roadmap (planned for 2020)

In 2016, the Department of Labor released a Field Assistance Bulletin reiterating its long-standing position that fiduciaries are obliged to consider ESG factors as part of investment decisions. However, the explanatory language of the bulletin created confusion for fiduciaries of private sector pension plans.

In 2019, the Climate Risk Disclosure Act of 2019, which would require public companies to disclose information on their climate-related risks, passed the House Financial Services Committee. Similar legislation was introduced in the Senate. It is unlikely this bill will advance in the near-term.

The launch of the report of the Expert Panel on Sustainable Finance with recommendations to align Canada’s financial system with a sustainable future.

Legend:
Programme publications & events
Key regulatory updates

2016
2017
2018
2019
**EUROPE**

**UK Roadmap**
- UK Stakeholder engagement event
- **2016**
  - UK Stakeholder engagement event

**Germany Roadmap (German and English)**
- Launch event in Frankfurt
- **2017**
  - Fiduciary Duties Roundtable / EU HLEG, Brussels
  - Webinar with European Commission on investor duties and sustainability consultation

**Ireland Roadmap**
- Ireland Roadmap
- Webinar with Responsible Investor on European Sustainable Investment Policy: Fiduciary Duty
- **2018**
  - Ireland Roadmap
  - Launch at a high-level dinner event, Paris and UNEP FI Global Roundtable session on Fiduciary Duty, Paris

**France Roadmap (French, Executive Summary in English)**
- France Roadmap
- Webinar with European Commission on investor duties and sustainability consultation
- **2019**
  - France Roadmap
  - Launch event in Paris
  - Germand Roadmap (German and English)
  - Launch in Frankfort

**EU**
- The EU’s IORP II Directive requires occupational pension providers to evaluate ESG risks and disclose information to current and prospective scheme members.
- **2016**
  - EU Stakeholder engagement event

**France**
- Loi relative au devoir de vigilance (Duty of Care law) requires large French companies to establish and disclose due diligence policies for environmental and social risks in their supply chain.
- **2017**
  - Loi relative au devoir de vigilance (Duty of Care law)

**EU**
- The Sustainable Finance Action Plan presented ten measures to finance sustainable growth, and four legislative proposals including on disclosure and investor duties.
- **2017**
  - The Sustainable Finance Action Plan

**France**
- Roadmap for sustainable finance of the French Securities Market Authority (AMF), which sets the priorities for the supervision of the responsible investment market in France.
- **2018**
  - Roadmap for sustainable finance of the French Securities Market Authority (AMF)

**EU**
- The Sustainability Disclosures Regulation introduced new requirements and clarified the sustainability-related disclosure obligations in the financial services sector.
- **2018**
  - The Sustainability Disclosures Regulation

**France**
- Loi Plan d’Action pour la Croissance et la Transformation des Entreprises, which includes several provisions to clarify directors’ duties, introduce new product-level ESG requirements for employee saving schemes and transpose the Shareholder Rights Directive. Also Loi Energie et Climat updates the 2015 Energy Transition law, including Article 173.
- **2019**
  - Loi Plan d’Action pour la Croissance et la Transformation des Entreprises

**UK**
- The Department for Work and Pensions clarified that from October 2019, pension schemes are required to set out their approach to material ESG risks in their Statements of Investment Principles.
- **2019**
  - The Department for Work and Pensions

**Legend:**
- Programme publications & events
- Key regulatory updates
- EU Stakeholder engagement event
- UK Stakeholder engagement event
- Germany Roadmap (German and English)
- Launch event in Frankfurt
- Fiduciary Duties Roundtable / EU HLEG, Brussels
- Webinar with European Commission on investor duties and sustainability consultation
- Ireland Roadmap
- Ireland Roadmap
- Launch at a high-level dinner event, Paris and UNEP FI Global Roundtable session on Fiduciary Duty, Paris
- France Roadmap (French, Executive Summary in English)
- Launch event in Paris
- Germany Roadmap (German and English)
- Launch in Frankfort
- The EU’s IORP II Directive requires occupational pension providers to evaluate ESG risks and disclose information to current and prospective scheme members.
- Loi relative au devoir de vigilance (Duty of Care law) requires large French companies to establish and disclose due diligence policies for environmental and social risks in their supply chain.
- The Sustainable Finance Action Plan presented ten measures to finance sustainable growth, and four legislative proposals including on disclosure and investor duties.
- Roadmap for sustainable finance of the French Securities Market Authority (AMF), which sets the priorities for the supervision of the responsible investment market in France.
- The Sustainability Disclosures Regulation introduced new requirements and clarified the sustainability-related disclosure obligations in the financial services sector.
- The Department for Work and Pensions clarified that from October 2019, pension schemes are required to set out their approach to material ESG risks in their Statements of Investment Principles.
- The FRC published an updated Stewardship Code explicitly incorporating material ESG factors across all asset classes. The FCA requested an expanded regulatory remit from HM Treasury to include all of the main activities of investment consultants, which would include ESG-related services, following an investigation into competition issues within the industry. The Competition and Markets Authority (CMA) introduced a rule requiring trustees to set objectives for their investment consultants. The TPR published a draft guide for trustees on how to set such objectives.
- The Sustainability Disclosures Regulation introduced new requirements and clarified the sustainability-related disclosure obligations in the financial services sector.
GLOBAL / MULTILATERALS


Aligning values: why corporate pension plans should mirror their sponsors.

OECD roadmap: Aligning Investors with Sustainable Finance. Online launch with letter to the Secretary General of the OECD.

World Bank
Published a Call to Action aimed at boosting public-private collaboration needed to meet the world’s development challenges. The World Bank calls for the definition of fiduciary duty to include ESG factors within investment and market processes.

IOSCO
Published a statement setting out the importance for issuers of considering the inclusion of environmental, social and governance (ESG) matters when disclosing information material to investors’ decisions.

IOPS
Published Guidelines on the Integration of ESG Factors in the Investment and Risk Management of Pension Funds, stating that “Supervisory authorities should clarify to a pension fund governing body or the asset managers, possibly through regulations, rules or guidelines, that the explicit integration of ESG factors into pension fund investment and risk management process is in line with their fiduciary duties.”

Legend:
Programme publications & events
Key regulatory updates
COMMUNICATIONS REPORT

EVENTS

Since launching, the programme hosted numerous stakeholder meetings, including:

1000+ investors and regulators
30+ workshops and conferences
21 jurisdictions

2016

1. UK Stakeholder engagement kick-off meeting hosted by Schroders Q1 2016
2. In Canada, an event on Fiduciary Duty was convened at the BC Pension Forum in Feb 2016
3. A panel on Fiduciary Duty was held in Apr 2016 in Vancouver at the North West America PRI network
14. Germany Roadmap Launch event Jul 2017 in Frankfurt
15. Brussels Fiduciary Duties Roundtable re by the EU HLEG, Oct 2017
17. Shanghai Roundtable on Investor Obligations and Duties and ESG Integration Oct 2017
18. Beijing Roundtable on Investor Obligations and Duties and ESG Integration Oct 2017
19. UNEP FI Africa & Middle East Regional Roundtable, session featured the South Africa Roadmap presented by Adrian Bertrand, Nov 2017
20. Webinar with European Commission on investor duties and sustainability consultation, Dec 2017
21. UNEP FI Asia Pacific Regional Roundtable, session on Investors Duties and Obligations to Integrate ESG issues in Asia Pacific, Dec 2017

2017

22. Webinar with RI on European Sustainable Investment Policy: Series 1/3 Mandates / Fiduciary Duty Feb 2018
23. Brazil Pension regulator workshop series
24. China Report Launch Event, Mar 2018
25. Brazil Stewardship and regulators workshops with AMEC, CVM and others 2018

2018

27. UNEP FI Global Roundtable session on Fiduciary Duty, Paris, Nov 2018
28. France Roadmap launch dinner event, Paris, Nov 2018
29. UNEP FI Asia Pacific Regional Roundtable, Jun 2019, Shanghai, China: Session on ESG Disclosure in China
33. ChinaSIF session including viewing of final FD21C video, Dec 2019

2019

1000+ investors and regulators
30+ workshops and conferences
21 jurisdictions

2. Roundtable - Fiduciary Duty in the 21st Century: India Jul 2016 hosted by BNP Paribas
A SELECTION OF MEDIA ARTICLES

2015

1. The Huffington Post US & UK, Sep 2 2015 Navigating Sustainability and Your Fiduciary Duty By Al Gore and David Blood


3. Responsible Investor, Jun 30 2016 Global statement on investor obligations and duties: Looking at ESG is obligatory by Fiona Reynolds


5. Top1000 Funds, Dec 7 2016 Fiduciary Duty and Shifting Political Sands by Will Martindale

6. World Economic Forum worldforum.org/agenda/2017/05/here’s-how-investing-responsibly-can-unlock-trillions-of-dollars

7. Environmental Finance | Dec 27 2017 The role of ESG in fiduciary duty needs clarity by Nathan Fabian


11. Responsible Investor May 2018: Fiduciary Duty and Shifting Political Sands by Will Martindale


13. Erik Solheim, then Head of UN Environment, calls for Time to Retire Unsustainable Pensions. Also available in Chinese, Arabic, and Russian.


16. PRI Blog | October 2019: The final chapter of Fiduciary Duty in the 21st Century

17. Pensions & Investments | 28 October 2019: PRI asks signatories to join in effort to push U.S. to act on responsible investment

18. Expert Investor | 21 November 2019: Modern fiduciary duty includes climate change considerations, says PRI

19. ICMA Quarterly Report | Second Quarter 2020: ESG and investor duties in China

PARTNER NEWS STORIES

SINCE THE WORK PROGRAMME LAUNCHED IN 2015:

PRI’s media communications have featured the Fiduciary Duty in the 21st Century research in at least 18 news articles including:

- PRI, UNEP FI, Generation Foundation and IIGF publish China roadmap on investor duties
- ESG and alpha: the mainstream argument for ESG integration in China
- How multilaterals can change the game for sustainable finance
- France roadmap aims to further strengthen French leadership in sustainable finance
- unpri.org/pri/pri-blog/eu-policy-makers-achieve-political-agreement-on-investor-disclosures
- unpri.org/pri/pri-blog/the-final-chapter-of-fiduciary-duty-in-the-21st-century/5048.article

UNEP FI has also featured at least 15 news articles including:

- Towards better integration of ESG consistent with investor obligations and duties in China
- Al Gore Fiduciary Duty in the 21st Century and the Sustainability Revolution
- European Commission Consultation on Investors’ Duties and Sustainability
- Roundtable: “Fiduciary Duty in the 21st Century: Focus on Asia”
- unpri.org/news/industries/investment/eu-policy-makers-achieve-political-agreement-on-investor-disclosures-and-esg/

WEBSITES AND WEBPAGES

Stand alone, unique website dedicated to the work programme: fiduciaryduty21.org

Dedicated webpage on UNEP FI website: unepfi.org/investment/fiduciary-duty

Dedicated webpage on PRI website: unpri.org/sustainable-markets/fiduciary-duty

(connected to 20 separate pages for country roadmaps and related publications)
**VIDEOS**

**AL GORE INTRODUCES FIDUCIARY DUTY IN THE 21ST CENTURY**

2017

Former Vice President and Chairman of Generation Investment Management, Al Gore, introduces the Fiduciary Duty in the 21st Century project. The project finds that, far from being a barrier, there are positive duties to integrate environmental, social and governance factors in investment processes.

**FIDUCIARY DUTY IN THE 21ST CENTURY – FROM A LEGAL CASE TO REGULATORY CLARIFICATION AROUND ESG**

2019

Hear from market actors themselves how governments are updating their frameworks, regulators are moving to support the updated conception of fiduciary duty, and investors are also expressing and working towards aligning economic and sustainability objectives.

The project finds that in the 21st century there has been a marked growth in responsible investment regulation and policy around the globe. Investors that fail to incorporate ESG issues are failing their fiduciary duties and are increasingly likely to be subject to legal challenge. While the conceptual debate around whether ESG issues are a requirement of investor duties and obligations is now over, there are several areas where further work is required.