



ESG investing—a governance guide for nonprofit fiduciaries

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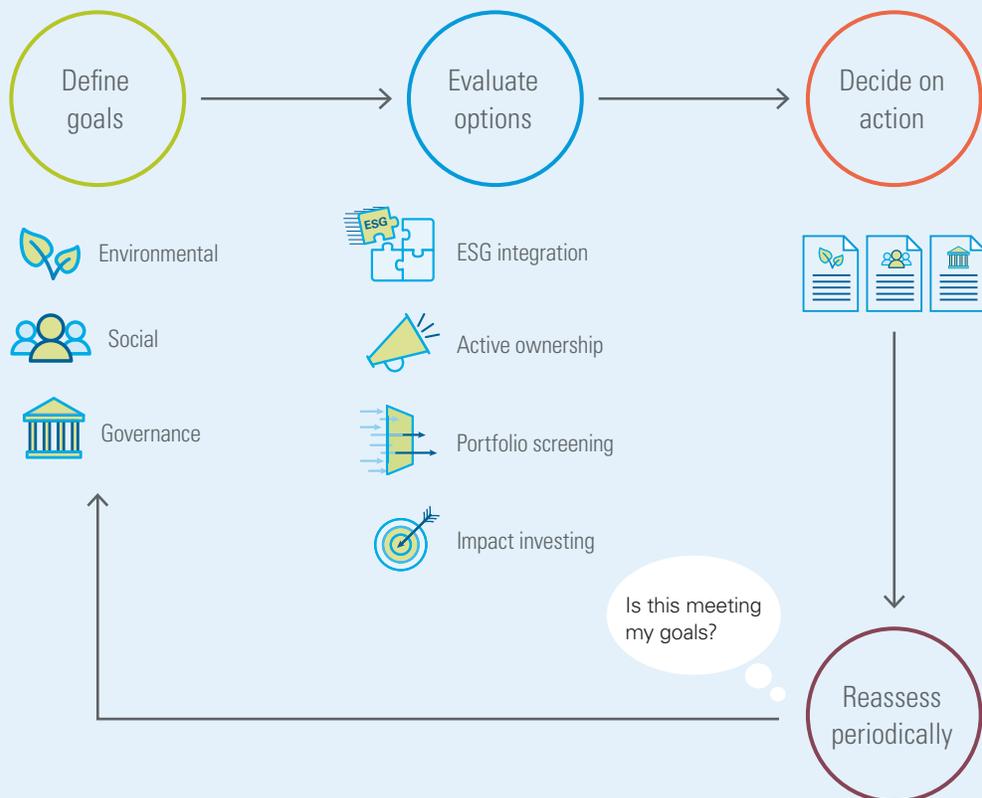
More and more nonprofits are seeking to align their behaviors—including how they invest—with their values. We recognize this desire and want nonprofit fiduciaries to understand the various steps involved in considering this objective, both in terms of the investment process as well as the governance issues.

In this research paper we address *governance issues* that must be considered by nonprofits contemplating ESG investment approaches. Nonprofits are likely aware that there is an active debate raging within the legal community as to whether and when various approaches are consistent with a nonprofit fiduciary's obligations. The debate is complicated by the fact that different types of organizations and even separate investment pools within the same nonprofit may be governed by alternative rules.

ESG and the investment process

In our August 2018 white paper, *ESG, SRI, and Impact Investing: A Primer for Decision-Making*, we discussed many issues involved in assessing ESG investment strategies and deciding on their role in a portfolio. We also outlined four steps institutions must take to make a prudent ESG investment decision:

1. **Define your goals.** Selecting the issue or set of issues that is right for your nonprofit is crucial. We've identified a list of more than 40 ESG issues (and growing), some of which can be mutually exclusive (a company can be great at recycling and have a poor record on living wage issues). For each issue, the investor should define the objective, whether that's to satisfy your values, achieve financial benefit, effect meaningful change, or meet legal requirements.
2. **Evaluate your options.** Address your ESG goals by utilizing one or more of the following approaches: ESG integration, active ownership, portfolio screening, and impact investing.
3. **Decide on action.** A decision matrix (on page 17 of our white paper) is a helpful tool for investment committees. Regardless of whether the committee acts, nonprofit fiduciaries should undertake procedural due diligence by documenting the ESG issue in question, along with considerations related to the final decision.
4. **Reassess periodically.**



Answering key governance questions for ESG

Anyone helping to run a nonprofit's endowment and other pools is considered to be a fiduciary and is bound by the fiduciary duties of obedience, loyalty, and care (prudence). For more detail on the fiduciary duties, please refer to the appendix as well as another Vanguard resource, *A Guide to Best Practices for Nonprofit Fiduciaries*.

Although these duties developed in trust law (applying to both personal and charitable trusts with named beneficiaries and trustees), they are broadly applicable in corporate law (most U.S. nonprofits are corporations managed by directors).

The Uniform Prudent Investor Act (UPIA), issued in 1994 to govern trusts, incorporated the teachings of modern portfolio theory and laid out the revised prudent investor standard. With the issuance of the Uniform Prudent Management of Institutional Funds Act (UPMIFA) for nonprofit corporations in 2006, explicitly designed to reflect UPIA's language, trust and corporate charitable law have largely converged.

We'd like to explore how the three fiduciary duties, as well as the UPMIFA statute, impact investing in ESG. The key governance questions around ESG are as follows:

1. Does investing in ESG strategies violate a fiduciary's duty of loyalty?
2. Does investing in ESG strategies violate a fiduciary's duty of care (prudence)?
3. Does investing in ESG strategies violate a fiduciary's duty of obedience?
4. Does investing in ESG strategies violate the factors laid out in UPMIFA?

1 Duty of loyalty

Fiduciaries managing a nonprofit are enjoined to act "in a manner the director reasonably believes to be in the best interests of the corporation." The fiduciary must put the interests of the corporation or trust before their own interests and cannot act for personal benefit. Nor can the fiduciary act in a manner that benefits a third party.

Commentators agree that a fiduciary can't invest charitable assets to promote the fiduciary's personal views on social or political issues. However, as noted by Oregon Law School Professor Susan Gary, who served as official reporter for UPMIFA, the Restatement (Third) of Trusts (the authoritative repository of trust law) states "social considerations may be taken into account in investing the funds of charitable trusts to the extent the charitable purposes would justify an expenditure of... funds for the social issue or cause in question or to the extent the... decision can be justified on grounds of advancing... a charitable activity conducted by the trust."

2 Duty of care (prudence)

In addition to care, skill, and caution, when it comes to investing, fiduciaries must consider the entire portfolio, allocate risk across the portfolio, and diversify assets. In contrast to prior guidance, fiduciaries are encouraged to delegate some investment responsibilities, though they must monitor the agent and think about the reasonableness of fees and other costs.



A framework to think about the duties of loyalty and care: Professors Max Schanzenbach of Northwestern University School of Law and Robert Sitkoff of Harvard Law School, well-known scholars of fiduciary law, differentiate between two justifications for ESG investing: collateral benefits and risk-return. Collateral benefits is ESG investing done for moral or ethical reasons or to benefit a third party. Risk-return is ESG investing done in the belief it will maintain (or even improve) risk-adjusted returns. They (and others) believe that ESG investing done for collateral benefits violates fiduciary duties. As they write in *The Law and Economics of Environmental, Social, and Governance Investing by a Fiduciary*:

“ ESG investing is permissible by a trustee or other fiduciary of a private trust, pension, or charitable endowment only if: (1) the fiduciary believes in good faith that the ESG investment program will benefit the beneficiary directly by improving risk-adjusted return, and (2) the fiduciary’s exclusive motive for adopting the ESG investment program is to obtain this direct benefit. In other words... risk-return ESG can be consistent with fiduciary duty but is not required by it, and collateral benefits ESG is generally not consistent with fiduciary duty. ”

3 Duty of obedience

Both UPIA and UPMIFA emphasize that fiduciaries must adhere to the duty of obedience. The very first factor UPMIFA cites—donor intent—is critical. If a donor makes a gift and asks that it be invested according to ESG principles, that request trumps other concerns.

As noted below, UPMIFA calls out “an asset’s special relationship... to the charitable purposes of the institution,” which find expression in the governing documents of the organization.

4 UPMIFA

In addition to the fiduciary duties cited above, factors identified by UPMIFA affect a nonprofit’s latitude to invest in ESG.

For nonprofit corporations, UPMIFA calls out two sets of factors for fiduciaries to consider in investing charitable assets, and we review them in Appendix B. Two of the terms are essential in formulating answers to the questions we posed above.

1. (h) In general, develop an investment strategy appropriate for the fund and the organization or charity.
2. (h) Consider an asset’s special relationship or special value, if any, to the charitable purposes of the institution.

Factors 1(h) and 2(h) are important, as they provide latitude for charities to make ESG investments and to target two objectives: achieving the highest risk-adjusted return as well as mission-related benefits.

Determining latitude to use ESG investments

It is critical to remember that not all nonprofit investment pools have equal latitude to use ESG investment products. The courts have held that the “sole interest” rule under the duty of loyalty applies for personal trusts and for ERISA pools such as pensions or a 403b. However, the duty of loyalty for a charitable trust or charitable pool follows a “best interests rule.” While a private trust exists for the benefit of “ascertainable beneficiaries” and an ERISA pool is run solely for the benefit of its participants, a charitable trust or charitable pool must be for the benefit of a recognized charitable purpose.

Hence a charitable pool can invest not only to achieve returns but to further its charitable purpose. As Professor Gary notes, “Although a charity should not invest for vague social benefits unrelated to the charity’s mission, an examination of investment options can include consideration of ways in which the investments can support the charity’s mission.” We discuss incorporating your mission into your ESG decision-making process in the following section.

Below we illustrate those pools with increased and decreased latitude to use ESG.

⊖	←	→	⊕
Decreased latitude to invest in ESG		Increased latitude to invest in ESG	
Pools governed by ERISA		Pools not governed by ERISA	
Pools governed by sole interest rule		Pools governed by best interests rule	
Nonprofits with more restrictive bylaws and governance documents		Nonprofits with more conducive bylaws and governance documents	
Private foundations privy to jeopardizing investment rules		Nonprofits not bound by jeopardizing investments rules	
Pools without direct and supporting donor intent		Pools with direct and supporting donor intent	

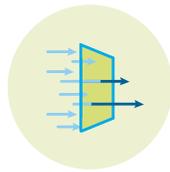
Notes: Please refer to Appendix D for more details concerning the relevant legal and regulatory frameworks for different types of nonprofit pools. Jeopardizing investments is a term found in Section 4944 of the Internal Revenue Code applying to private foundations. The basic idea is to keep foundation fiduciaries from allocating assets to risky investments that might jeopardize the foundation’s existence.

Defining your nonprofit's ESG focus

If the board of your nonprofit (after consultation with legal counsel) has determined it has both the latitude and the interest in investing in ESG, the next step is to understand what types of ESG investments are both available to your organization and relevant to your mission.

ESG investment strategies

Vanguard's August 2018 research paper outlines four different types of ESG investing strategies:



Portfolio screening

The inclusion or exclusion from a portfolio of certain sectors, companies, or practices based on specific ESG criteria or minimum standards of practice (norms-based).



Impact investing

Targeting specific social or environmental outcomes alongside financial returns, either through private or public investments. Impact investing is often thought of in two buckets: program-related investments (PRIs), which are restricted to private foundations, and mission-related investments (MRIs).



ESG integration

Systematic inclusion of financially material ESG information (risks and opportunities) to complement standard investment analysis.



Active ownership

The use of shareholder power to influence corporate behavior, including direct corporate engagement and proxy voting.



With the exception of PRIs, these four strategies are available to charitable pools at organizations with clearly defined missions. Private foundations can choose all four and, moreover, have the latitude to do both PRIs and MRIs. For more information on PRIs and MRIs, please refer to Appendix C.



Organizations with more diffuse missions or organizations with place-based missions should be careful and deliberate in how they approach the four strategies, particularly impact investing. A community foundation might well invest in a supermarket in a community marked by “food deserts,” but a microlending opportunity in sub-Saharan Africa is likely to be out of scope. A hospital foundation promoting healthy lifestyles and behaviors would be on firm ground to invest in an ESG fund that excluded tobacco companies and distillers.

Thinking in detail about your mission, and the best way to carry it out

We believe it is essential, in order to adhere to your fiduciary duties, for nonprofits to spend time thinking in detail about their missions. As Professor Gary notes, “In developing an investment policy for an organization, the fiduciaries must be careful to determine what strategies will best support their mission... The fiduciaries may determine that a mission-related investment strategy feels good but does not benefit the mission. In that case, the charity might conclude that it should spend its time and effort to maximize profit and then use the profit for its mission. If the fiduciaries conclude that mission investing will support the mission of the charity, they should establish a process that will result in competent decision-making about investments.”

Understanding the issues most relevant to your mission

Vanguard research on ESG investing identifies more than 40 different ESG issues, which can be mutually exclusive. Remember that ESG is not an asset class but a wide-ranging set of criteria that can be applied using various approaches to assess issuers of securities. Firms that meet one set of ESG criteria may not meet others. One of the largest retailers in the world has devoted massive resources to using recycled materials, but some investors driven by “living wage” considerations don’t view them with as favorable a lens. A well-known consumer electronics firm has received high marks from some investors concerned with LGBTQ issues but lower marks in the past from those concerned about the use of child labor in the supply chain. With regards to the supply chain, some investors struggle to decide which phases of the cycle reflect their concerns. For example, if gender diversity is the issue at hand, should companies demonstrate diversity at the board level, executive level, supplier level, or all of the above?

Addressing key organizational challenges related to ESG

Even if your board decides that ESG is in scope and has a clear idea of what is relevant to your nonprofit's mission, you must still address a number of organizational challenges: resources and costs (including human capital); evaluation and oversight (monitoring and benchmarking); and your attitude concerning the likelihood of achieving materially different risk-return outcomes (both versus conventional indexes and versus your expectations). Your choice of what ESG strategy to pursue depends on your nonprofit's willingness and ability to cope with the organizational challenges.

Resources and costs: Staff time and capabilities, investment costs, due diligence costs

How big is your staff, and how knowledgeable are they about investments? If they have experience and skill assessing conventional equity and fixed income managers, do they possess the expertise needed to assess an investment in an impact investing drawdown structure? What about the ability to perform due diligence on a direct investment in a facility in your community?

If the staff has expertise, does it have the time? It might take a day or two to properly evaluate a conventional manager but weeks to evaluate a direct investment, perform diligence on the backgrounds of the promoters of the investment, get comfortable with legal and regulatory issues in the investment, etc. In certain cases, investment managers within your portfolio may already be employing certain ESG approaches, such as ESG integration or active ownership.

If your staff doesn't have the expertise, how much will it cost to hire a qualified outside firm? Are the fees consistent with your budget?

If you have a small staff without much investment expertise, you might be happy putting a portion of your endowment into a broad, low-cost ESG mutual fund or exchange-traded fund (ETF). If you have trained investment staff and a clear mission, you might feel more comfortable venturing into impact investing. Using a tool such as the decision matrix (page 17 in Vanguard's white paper on ESG investing) can be helpful for evaluating potential actions in the context of the stated goal or set of goals (i.e., values preference, financial benefit, meaningful change, or legal requirement).

Evaluation and oversight: Monitoring, benchmarking

If you invest in an ESG mutual fund or ETF run by an asset management company, you are counting on them to monitor the issuers of the underlying stocks and bonds and assess them using one or more ESG factors. However, how do you benchmark the performance of your investment? Do you measure it against a broad market index or do you track performance versus specialized ESG indexes from the likes of MSCI, FTSE Russell, or S&P?

Monitoring a direct investment or an investment in an illiquid fund carries its own set of challenges. How frequently do you receive reports? How do you assess the accuracy of the values ascribed to the investment? Are there metrics available to external investors to enable them to form their own assessment of progress? Performing the due diligence necessary to evaluate these types of questions is crucial to effective oversight. After attaining committee consensus, it is equally important to document the policies established for monitoring and benchmarking the investment. For more detail on how investment committees should approach procedural documentation, please refer to Vanguard white paper *Duty, Opportunity, Mastery: Investment Committee Best Practices*.



ESG investing infrastructure

Over the past 20 years, ESG investing has migrated from a single approach using exclusionary (negative or “thou shalt not”) screening to multiple strategies. Vanguard’s August 2018 white paper *ESG, SRI, and Impact Investing: A Primer for Decision-Making* outlines four different types of ESG investing strategies. All four (ESG integration, active ownership, portfolio screening, and impact investing) are dependent on users being able to screen companies and funds based on one or more ESG issues.

However, it is important to note the comparative immaturity of the ESG investment infrastructure. Bond ratings have been available to investors for well over a century, and both fundamental data and third-party research reports are available on the equity of thousands of companies around the world. Investors can also get information from Morningstar, Bloomberg, and other sources on a variety of funds in different asset classes.

In contrast, the infrastructure to assess firms along the three dimensions of environmental, social, and governance factors is still being developed and remains incomplete, according to the Department of Labor’s review of ESG investment tools. Moreover, government-mandated disclosure of information important to assess environmental and social issues has lagged mandates concerning governance. The good news is that growth in the number of tools and assessments has been exploding over the past decade.

Governance. Of the three pillars, governance has the most advanced tools and data. Fundamental equity and bond analysts have systematically assessed corporate governance for more than a century. The Securities and Exchange Commission (SEC) has long mandated disclosure of information on board and management compensation and company governance structures, and services such as Glass, Lewis & Co. and Institutional Shareholder Services (ISS) issue voting recommendations on thousands of corporate proxies every year.

Environmental. Environmental lags governance, in large part because of the absence of government-mandated disclosures. This can be attributed in part to a lack of agreement on materiality and measurement practices. That said, firms that pollute are often being sued, and there is 10-K disclosure mandated for material events and risks. Moreover, a number of suppliers (consulting firms that sell their expertise to investors) comb through legal filings to make environmental assessments. In addition, firms worldwide are under increasing pressure to disclose how they might be impacted by climate change (e.g., the Financial Stability Board sponsors the Task Force on Climate-related Financial Disclosures).

Social. This may have the least advanced tools of the three, in part because the list of relevant social factors is large and growing. Moreover, many of the factors are ill-defined: When investors target firms for not paying living wages, what do they mean? Are they focused only on hourly wage rates? What about firms that pay a high hourly wage rate but have many part-time workers? What about benefits?

The amorphous nature of the factors has slowed tool development. That said, there are many single-focus organizations that track one or more of the ESG issues Vanguard identified in our August 2018 white paper. For example, the Fair Labor Association and the International Labor Organization both monitor child labor conditions.

Materially different risk/return profiles

There have been many claims about whether ESG outperforms other types of investment. All we can know with certainty is that ESG portfolios, over long periods of time, produce results that may differ materially from broad market portfolios. We expect there will be periods when ESG results are better and times when they will be worse. In our view, it is essential for boards who have received a legal opinion that they can invest according to ESG guidelines to ask themselves if they are willing to take on the risk of having materially different results from both broad market indexes as well as peer organization portfolios.

Conclusion

We've interpreted the nonprofit fiduciary duties and UPMIFA in the context of ESG investing and then demonstrated how various laws and court rulings impact the latitude that different nonprofit pools have to invest using ESG investment strategies. The nature of the pool you manage, the language of the gift instruments that might comprise that pool, and the structure of your organization are all important considerations.

Law, particularly fiduciary law, changes more slowly than the pace of financial innovation and often lags evolving organizational aims and goals. We suspect that fiduciary law may start to place fewer restrictions on the behavior of fiduciaries, but the law has not yet reached that point. This means it is incumbent upon nonprofit fiduciaries to follow robust processes for governance issues relating to ESG.

If your organization wishes to consider ESG investment approaches, we encourage you to:

- Confer with legal counsel about the latitude your organization and its investment pools have to implement ESG investing strategies.
- Have the board (ideally at a retreat separate from a normal board meeting) review and reaffirm the mission of the organization.
- Discuss and document the sorts of investments most relevant to your nonprofit's mission and what might be too far afield.
- Prepare for the organizational challenges inherent in assessing and implementing ESG strategies.
 - + Review the capabilities of your staff and other investing resources available to you (consultants, advisors, etc.).
 - + Determine the resources you wish to deploy to assess ESG investment opportunities.

This way you will have fulfilled key fiduciary responsibilities as well as created organizational consensus on the path you wish to take.

Appendix A: Fiduciaries and their duties

1. For nonprofits, the **duty of obedience** is the duty to carry out the charitable purposes of the charity, making decisions with the charity’s mission in mind and honoring donor intent associated with restricted gifts.

Fiduciaries must follow the governing documents of the organization, ensure the entity obeys applicable laws and regulations, adhere to restrictions imposed by donors, and be vigilant that the nonprofit satisfies reporting and regulatory requirements.

2. The **duty of loyalty** requires a director of a nonprofit corporation to act in the “best interests” of the corporation (the duty of loyalty for the trustee of a private trust is to act in the “sole interest” of the beneficiary).

Personal trusts, as well as pools governed by ERISA, operate under the “sole interest” rule requiring a trustee to consider only the interests of the beneficiary, without regard for the interests of anyone else, whether a third party or the fiduciary. Courts have repeatedly held that sole interest mandates the fiduciary to seek the highest risk-adjusted return.

In contrast, many charities operate under a “best interests” rule. Moreover, charitable fiduciaries are concerned with advancing a charitable purpose, not with the well-being of an ascertainable beneficiary, as is the case with most trusts.

3. The **duty of care (prudence)** is the duty to manage the property of the trust or nonprofit corporation as a prudent person would, keeping in mind the charity’s purposes.

This duty, famously articulated in *Harvard College versus Amory* in 1830, states that a fiduciary must manage a trust as a prudent man would, exercising reasonable care, skill, and caution. This duty has been updated by UPIA with the introduction of the prudent investor rule, which states that no individual investment is prudent or imprudent on its own, but only within the context of the overall portfolio. The overall portfolio must be diversified. Fiduciaries are permitted to delegate investment management and other functions to third parties but have a duty of ongoing monitoring.

These three duties apply whether the nonprofit fiduciary is concerned with ERISA pools or those governed by broader, common law-based fiduciary standards. ERISA has detailed checklists for fiduciaries to follow, while common law sets forth broader principles that have been codified by statutes including UPIA and UPMIFA.

Appendix B: UPMIFA investment factors relating to fiduciary duties

A version of UPMIFA has been approved in 49 states (all states except Pennsylvania), and its terms govern all investment decisions by charitable corporations. Fiduciaries should be aware UPMIFA calls out two sets of factors to consider when investing charitable assets:

1. The first set addresses general fiduciary principles and requires an organization—and those who manage and invest its funds—to:
 - a) Give primary consideration to donor intent as expressed in a gift instrument.
 - b) Act in good faith, with the care an ordinarily prudent person would exercise.
 - c) Incur only reasonable costs in investing and managing charitable funds.
 - d) Make a reasonable effort to verify relevant facts.
 - e) Make decisions about each asset in the context of the portfolio of investments, as part of an overall investment strategy.
 - f) Diversify investments unless, because of special circumstances, the purposes of the fund are better served without diversification.
 - g) Dispose of unsuitable assets.
 - h) In general, develop an investment strategy appropriate for the fund and the organization or charity.
2. The second set lists factors that must be considered when managing and investing an institutional fund:
 - a) General economic conditions.
 - b) The possible effect of inflation or deflation.
 - c) Expected tax consequences, if any, of investment decisions or strategies.
 - d) The role that each investment or course of action plays within the overall investment portfolio of the fund.
 - e) Expected total return from income and the appreciation of investments.
 - f) Other resources of the institution.
 - g) The needs of the institution and the fund to make distributions and to preserve capital.
 - h) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

Appendix C: Program-related investments (PRIs) and mission-related investments (MRIs)

Impact investing is often thought of in two buckets: program-related investments (PRIs), which are restricted to private foundations, and mission-related investments (MRIs).

Program-related investments

The Internal Revenue Code (IRC) defines PRIs in Section 4944 as an exception to the jeopardizing investment rules and stipulates a three-part test:

- (1) The primary purpose of the investment must be to further one or more exempt purposes of the foundation,
- (2) No significant purpose of the investment will be to generate financial return, and
- (3) No electioneering or lobbying activity will be supported by it.

As Joshua Mintz from the MacArthur Foundation notes, PRIs are similar to grants in that they are required to further a charitable purpose and count toward a private foundation's required 5% spend. However, PRIs seek to generate a modest return on the funds expended, differentiating them from a grant. The specific criteria laid out by the Internal Revenue Service and the U.S. Treasury allow PRIs to be easily identified and provide foundations employing this strategy a concrete framework to operate within. An investment would qualify as a PRI if made with an unambiguous mission-related objective and with one or more provisions that are less favorable than a commercial investor would accept.

According to Mark Kramer of FSG Social Impact Advisors, a foundation board should document in writing its careful consideration and conclusion that the PRI investment both advances the foundation's charitable purposes and has no significant profit motive. Because Section 4944 relies on the same prudent investor standard of state fiduciary laws, if an investment meets the Internal Revenue Code test for a PRI in these states, it not only satisfies the requirements of the IRS but also meets state tax and fiduciary law requirements, and no further analysis is necessary.

Mission-related investments

In contrast to PRIs, there is no legal definition of MRIs. They are often referred to as double bottom-line investments, as they are meant to earn both a financial return (line one) and a positive social return (line two) and are typically drawn from corpus assets, thereby diminishing the pool available for "ordinary" investments. Unlike a PRI, an MRI is treated on a par with other foundation investments and not as a charitable activity. Therefore, an MRI must meet the same applicable prudent investment standards under state and federal law as a pure commercial investment.

Mintz speaks to the variability of MRIs when he states, "MRIs can take many forms such as deposits in community development banks, loans or equity investments directly in companies or in intermediaries (like funds or partnerships) that seek to advance one or more social aims, including affordable housing, microenterprise development, alternative energy, small business development or job creation, and community development in distressed or low income areas."

Appendix D: Relevant legal and policy frameworks

All nonprofits

- By-laws and other governing documents including charters and investment policy statements.
- The terms of gift instruments.
- Relevant state law (whether trust law or corporate law).

Private foundations

- Jeopardizing investment rules (Section 4944 of the Internal Revenue Code) for private foundations.
- State laws for nonprofit corporations, such as state versions of the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and state not-for-profit corporate law.
- Internal governance documents including articles of association, corporate by-laws and committee charters, and ethics policies.

Personal trusts and charitable trusts

- The overall legal framework for trusts is the Restatement (Third) of Trusts. Volumes one and two appeared in 2003, volume three in 2007, and volume four in 2012, more than 50 years after the Restatement (Second) of Trusts. The “prudent investor” rule came out in 1992 as an appendage to the Restatement (Second) and was incorporated into the Restatement (Third) in 2007.
- Guidance as to the investment obligations of trust fiduciaries is on a state-by-state basis and follows the relevant version of the Uniform Prudent Investor Act (UPIA), first promulgated in 1992.

Retirement plans

- Employee Retirement Income Security Act (ERISA).
- U.S. Department of Labor interpretive bulletins: 2015-01, 2016-01, and 2018-01.

Please remember that ERISA does not cover federal, state, and local government retirement plans, nor does it cover some church plans.

Charitable corporations

- Revised Model Nonprofit Corporation Act (RMNCA).
- Relevant state versions of the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

It is worth noting that much of the language of UPMIFA was drawn directly from UPIA, so the rules governing trusts and charitable corporations have converged.

Appendix E: Charitable purposes

Charitable purposes were first codified in 1601 in England in the preamble to the Statute of Charitable Uses Act (also known as the Statute of Elizabeth). These purposes included:

“ ... the relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners; schools of learning; free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea banks, and highways; the education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; support, aid, and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption or prisoners or captives; and the aid or ease of any poor inhabitants covering payments of fifteens, setting out of soldiers, and other taxes.”

Before the queen would accept the charter of a charitable institution, it had to meet three requirements:

1. The purpose of the institution must be within the spirit and intendment of the preamble to the Charitable Uses Act of 1601.
2. The institution must exist for the benefit of the public.
3. The institution must be exclusively charitable.

Although charitable purposes have evolved, they still resemble those from 1601. The most recent version of the Uniform Trust Code in the U.S. lists permissible charitable purposes as “the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.”

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