The Prudent Trustee:

The Evolution of the Long-Term Investor

By

Jed Emerson
and
Tim Little

With Contributions from
Jonas Kron

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The Authors:

Jed Emerson is a Senior Research Fellow with the Said Business School, Oxford University; and a Senior Fellow with Generation Foundation, Washington, D.C. He has served as the Bloomburg Senior Research Fellow at Harvard Business School and a Lecturer in Business at Stanford Business School.
jed.emerson@generationim.com

Tim Little is co-founder & Executive Director of the Rose Foundation for Communities and the Environment, a grantmaking public charity dedicated to the positive interlock between environmental protection, a healthy economy and livable communities. He has co-authored a series of publications related to fiduciary responsibility and corporate environmental performance.
tlittle_rose@earthlink.net

Jonas Kron is an attorney specializing in shareholder resolutions, fiduciary duties, and natural resource protection. His clients include private investors, non-profit organizations, and unions.
jdkron@kronlaw.net

The Rose Foundation for Communities and the Environment
6008 College Ave., Ste. 10
Oakland, CA 94618
rosefdn@earthlink.net
www.rosefdn.org
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Introduction

Capital markets and investing are undergoing a sea change today, the early indicators of which are increasingly clear. The crux of change is the irrefutable case for long-term investing and the compelling relationship between a company's financial performance and its performance around sustainability issues.

In this context, the responsible trustee (especially trustees charged with maintaining long-term funds, such as pensions and endowments) must understand that

The investment objectives set by trustees should compliment the investment horizon of funds under management – namely, assets managed to satisfy long-term liabilities should be invested to achieve returns over the long-term.

And that

The definition of prudence and trustee responsibility that governs our understanding of fiduciary responsibility has evolved over time. As more evidence unfolds supporting the connection between sustainability and financial performance, those who do not consider these factors in investment decisions could ultimately leave themselves open to charges of imprudence.

This paper presents an overview of the evolution of the concept of the "Prudent Man", makes the case for long-term investing, begins to identify long-term risks and rewards fiduciaries or their investment managers must consider when investing over the long-term, addresses several questions regarding the legality of considering sustainability issues within an investment context, and concludes by discussing the importance of aligning the interests of the investment manager with the asset owners.

The intention behind this paper is to spark fresh dialogue, not articulate the final word. The authors welcome feedback on this document and the many aspects of what is clearly an emerging public discussion.

Historical Overview

To understand some of the important changes taking place within today's capital markets, it is necessary to know of several milestones in the evolution of investment itself. Today, investment assets are increasingly aggregated in the form of pension funds, mutual funds, or institutional investment funds. In each of these cases individuals entrust others to oversee these investments on their behalf, to act as "fiduciaries" in oversight of their retirement savings or, in the case of charitable foundations, private or publicly held community trusts to be managed for larger, societal benefit.

The evolution of trust law and its assessment of fiduciary responsibility has also been fluid, with changes in analytic techniques, economic trends, business opportunities, market pressures, and investment vehicles repeatedly forcing changes in legal interpretation. Indeed, many of today's investment practices that we consider prudent were prohibited in the past.

Some legal scholars mark the beginning of modern trust law to England in 1719. Impressed by the apparently limitless potential of England's overseas colonies and trade, the British Parliament passed a law allowing trustees to invest in shares of the South Sea Company.[i] A year later, after a number of the country's largest trustees had jumped in with both feet, what became known as "the South Sea bubble" suddenly burst and shares lost 90% of their value. Stung by the disaster, British authorities swung the pendulum hard in the other direction, creating a short restricted list of allowable investments – a practice that governed trust law for more than two centuries.

Over the years, the push and pull of the markets lengthened the list, but the concept that specific types of asset classes or investment vehicles might be inherently imprudent continues to this day. For example, a landmark British statute adopted in 1961 limited investment in common stock to no more than half the value of any given trust fund. Greater exposure to common stocks – today considered plain vanilla in comparison to such investment vehicles as hedge funds – was thought to be imprudent.

Unsurprisingly, in the United States for the first 100 years American courts tracked British law in enforcing long lists of prohibited investments. For example, as late as 1869, the New York Court of Appeals held that nearly every investment vehicle now deemed prudent, including common stock, real estate, gold, venture capital, hedging, futures, and options, was speculative and impermissible.[ii] In fact, for a period of some years, nearly the only investment considered prudent for fiduciaries based in New York (and therefore considered permissible by the state's courts) was debt paper issued by the State of New York!

Yet, even as New York courts were doing their level best to prudently restrict trustees' investments to their own state's paper, their colleagues in rival Boston issued radically different guidance. In 1830, in a landmark case that became the foundation of the "prudent man" rule, the Massachusetts Supreme Judicial Court held that trustees should, "observe how men of prudence…manage their own affairs…in considering the probable income, as well as the probable safety of the capital invested."[iii]

By coining one simple phrase – the "prudent man" – Massachusetts courts ripped a gaping hole in the fabric of previously settled trust law. Unfettered by the old concept of a restricted or permitted list of investments, the prudent man was suddenly free to invest in a variety of corporate stocks and bonds, as well any number of formerly speculative instruments. The standard of prudence was quite simple: if an investment seemed reasonable and other trustees made similar investments, then it was prudent. And, in Boston, a lot of prudent men began to open themselves to new ideas about how to diversify their portfolios.

Of course, the old concept of a restricted list did not evaporate overnight. As late as 1959, prevailing U.S. law (at least in some states) still considered asset classes such as discount bonds, junior mortgages, and venture capital to be speculative and categorically prohibited – and perhaps rightly so. Depending upon a fund's size, payout requirements, risk/return tolerance and mission, prudence for one is not necessarily prudence for all. But the central point is this: *the definition of prudence is often subjective, based upon the particular goals of a given investor, and evolving, based upon practice that is shifting to respond to changing market conditions and opportunities.* Therefore, determinations of materiality (i.e. – the facts that a prudent investor needs to make an informed and reasonable decision) must be driven by what the individual prudent investor needs to know.[iv]

It should also be acknowledged that in addition to the dictates of law, investors are driven by the dictates of the masses—and that there is often a virtual "herd mentality" operating in capital markets. Within this group-think mindset, investors assume a level of collective reassurance and sense of safety in numbers. As investors, we often move together, as one, following the pack and engaging in largely similar strategies of asset management.

While one may comfortably embrace the "conservative" dictate to simply go along in order to get along within a capital-market context, in truth we may be assuming a level of common market knowledge that is founded on nothing more than shared prejudice, recent history, or conceit—having little to do with actual risk or the real opportunity to manage our assets for optimized returns. Indeed, those investors capable of raising their horns above the herd may well be rewarded by seeing the oasis to the side—or avoiding the cliff up ahead!

In summary, we would argue that concepts of fiduciary responsibility and materiality are not static, but have evolved over time in cycles. In each instance, corporate practice and the market have shifted, with official guidance and regulations catching up much later. We are at the forefront of another such stage in the evolution of fiduciary responsibility and materiality.

The Long-Term Investor

William Donaldson, former Chairman of the Securities and Exchange Commission, recently commented on the need to move from a short-term to a long-term investment perspective:

> The backdrop to this phenomenon is the pressure that many analysts have felt to justify their existence on a quarterly – if not daily – basis. Many have believed, with some justification, that it is no longer good enough to tell your clients where the best investments are – particularly if those investments require the fortitude of bearing with a company through a few lean quarters while a solid management team sharpens its strategy and plans for the long-term. Over time the key question has changed from "what is the best investment?" to "where are the best short-term profit opportunities?" These are two different questions that more often than not will yield different answers.
>
> Over time, analysts have become obsessed with the question of whether a company meets its quarterly EPS numbers, and not with whether a company is built to last. And because of the considerable clout of the sell-side analyst, this shift from long-term-thinking to short-term results has echoed through to company managements and to professional investors. The focus on short-term results has, I believe, had a counter-productive influence on companies, on investors and on analysts themselves.[v]

Of all those with capital to manage, pension funds, foundations, and other institutional investors are those who should be especially interested in protecting their assets as well as generating steady, reliable returns over extended time horizons of 30-to-50 years (sometimes more). Therefore, they are challenged to pursue an investment strategy oriented toward the long-term, both in terms of the types of investments made and the risk exposure a portfolio may be subject to. As the Head of Research for one of the word's largest pension funds, British-based U.S.S., recently observed,

> We, the global financial industry as a whole, discount these expectations to today's values and arrive at a certain valuation. Investors however tend to extrapolate current earnings too far into the future, assuming that short-term earnings will be symptomatic for the long term. Companies then have an incentive to game this system and meet investor expectations in the short term, despite longer-term economic and social impacts. This discourages a focus on sustainable economic growth. [vi]

It is worth noting that there is an implicit assumption that the future business context will be the same as the past, something that is unlikely with issues such as climate change, where there is near certainty that change will occur and business will need a prepared response, although the specific scale and pace of future change is uncertain.

Other stakeholders' long-term concerns may also be relevant. For example, beneficiaries of pension funds may want to know that dollars they invest for retirement are not being put to use in ways that undermine the life goals of either individual investors or the communities in which they live. As a fiduciary, one is not ignoring the lifetime goals of pension beneficiaries by taking into account sustainability factors relative to portfolio management—one is acting to safeguard the *financial* goals of beneficiaries by not compromising on factors that will affect corporate performance over time.

And, although it is understandably not a topic that most foundation grantees feel comfortable raising with their grantors, many grantees see a troubling contradiction between the social or environmental issues they address and the generation of foundation grant income from investments in companies that are often contributing to the very problems they seek to solve.

In each instance of decision making by fiduciaries charged with stewardship over long term assets, it becomes especially critical that trustees:

A. "Know what they own";
B. Fulfill their responsibility to ensure investments are made consistent with not simply the financial goals of the institution but its overall mission; and
C. Do all this while protecting the assets under management from foreseeable risk over an extended time horizon.

In structuring a portfolio for the long-term investor one encounters a challenge because the lightning speed of money is so much faster than the measured pace of long-term, sustainable growth. We especially see this in the longer time horizon of potential risk exposures for both corporations and investors in regard to important social and environmental factors. In considering such factors, it is not a question of giving them greater "weighting" but rather developing additional and more relevant information/data on their potential risk, which may then be used to make more informed financial investment decisions. Traditional, competitive, financial return achieved with consideration of sustainability factors, is—for many—the ultimate measure of portfolio success.

Indeed, the attainment of maximized investment returns and the best corporate performance <u>cannot</u> be achieved in the absence of consideration of the social and environmental risks that may potentially inhibit the realization of competitive financial returns over coming years.

Conservative, long-term investors, therefore, are those who consider potential financial performance of companies while assessing their exposure for contingent risks (represented in part by these environmental and social liabilities) that could have a negative effect upon those future financial returns. It is in this way that sustainable, long-term investing is both a risk-management strategy and a strategy that positions the investor to exploit emerging opportunities within the market—it is an investment practice that is simultaneously *both* offensive and defensive.

Over the long run, there are a host of macroeconomic trends that will affect portfolio performance in the future. The responsible *and* effective fiduciary is one who seeks to overcome the "tyranny of the Dow" and its orientation toward short-term risk and reward strategies, as well as one who looks past cultural demands for maintaining short-term returns even at the risk of long-term losses.

The responsible fiduciary is one who seeks to assess long-term economic, social, and environmental factors that are already major (if poorly understood) value drivers today. The responsible fiduciary is also one who seeks to understand how these factors may represent both risk and reward to their portfolio of investments—and one who then seeks out fund managers capable of allocating assets with an eye to protecting against such risks while positioning investments to capture potential rewards.

The Question of Legality

As growing numbers of fiduciaries consider their evolving role, one obvious question that arises has to do with whether trustees have the legal right to consider long-term factors that may be "extra financial" or involve qualitative elements (since many long-term issues cannot be boiled down to short-term quantitative and financial analysis).

While the legal aspect of fiduciary responsibility requires thorough review and thought, for now let us make the following points:

First, *whenever a trustee makes an investment decision with respect to the funds under his/her responsibility, it is done in the context of legally binding "fiduciary duties."*

In the U.S., the "two legs" of fiduciary responsibility are the duties of loyalty[vii] and of prudence.[viii] These duties, established under state and federal law, define the parameters of legally permissible conduct. They also identify certain required actions. In this way they serve as a legal floor and ceiling – that is, certain actions *must* be taken, while other actions *may* be taken.

After the Enron and WorldCom corporate scandals and the adoption in the U.S. of the Sarbanes-Oxley Act these fiduciary duties have received new and more critical attention. Both in the letter of the law and in its intent, Sarbanes-Oxley's focus on the fiduciary duties of corporate executives, boards and auditors is clearly a wake-up call to all fiduciaries that in this climate of accountability they must fully understand the parameters of their fiduciary duties.

Many U.S. pension funds, such as the two huge California public funds CalPERS and CalSTRS, as well as many foundation trustees, use the standards set in the federal Employee Retirement Income Security Act (ERISA). As a consequence, the authors of this paper will use ERISA as the gold standard in examining fiduciary duties. Because the overarching ERISA guidance is generally more restrictive than other applicable standards, we conclude that if long-term investor considerations are allowed under ERISA, then they are quite likely allowed under the less restrictive standards.

It is also important to observe that while the standard set by these duties is regarded as very high, trustees are entitled to the presumption that they have met this standard and the burden is upon an objecting beneficiary to show a bad-faith exercise of the fiduciary's powers.[ix] Therefore, a fiduciary who carefully documents why he or she considers a particular analysis factor (such as sustainability) to be important, is generally entitled to the benefit of the doubt in any challenge of their prudence in regard to that factor.

Second, *it is permissible for fiduciaries to consider extra-financial, collateral benefits.*

Fiduciaries often operate under the belief that qualitatively considering social and environmental issues is improper because it is not aimed at maximizing financial return. This conclusion is far from the truth. The duty of loyalty and the duty of prudence have been consistently interpreted to mean that other considerations (such as sustainability issues) may indeed be incorporated into the decision-making process so long as those considerations do not supersede customary financial considerations.[x] That is, considerations of sustainability violate neither the requirement to act in the beneficiaries' best interests nor the mandate to make prudent investment decisions if they are properly incorporated into the investment decision-making process.

It is critical to note that legal authorities consistently point out that incorporating what have traditionally been regarded as extra-financial considerations into an investment decision is consistent with the duty of prudence when it is believed that those allegedly extra-financial considerations will lead to a better financial decision and the prospect of future returns consistent with the intent of the fiduciaries.

As long as the overall analysis is based upon economic considerations, fiduciaries are on strong legal footing when they incorporate environmental or social considerations into portfolio management—regardless of whether one characterizes them as financial or extra-financial. In fact, as a matter of preventative law, a fiduciary would be *better positioned* to defend a legal challenge to an investment or investment-management decision if he/she incorporated relevant social and environmental information into the investment decision, considering the role of these issues as value drivers or risk factors in the industry sector in question, and considering the specific sustainability performance of the enterprise being evaluated in relation to appropriate industry sector benchmarks.

Third, and finally, *traditional approaches to tracking the performance of companies and assessing their long-term liabilities (and thus potential for generating competitive shareholder returns) do not adequately consider the full cost of many firms' business practices.*

Fiduciaries and their fund managers should seek to integrate such considerations directly into their analysis of company value, in both the near and far term, if they are to make an accurate assessment of a company's real cost structure. Firms such as TruCost[xi] are working to provide more accurate assessment of company costs—along with the potential longer-term financial liabilities those costs may ultimately reflect.

There are various ways in which fiduciaries may act to engage companies in which they have investments to explore issues of unstated costs, governance and related topics of concern to fiduciaries. For example, a pension fund or foundation could review its holdings, selecting a subset of companies with poor environmental records relative to their industry peers. Similar to many funds' long-standing practice of active engagement on corporate governance issues, the fund could then approach the poor performers to discuss the companies' plans for environmental improvement. Exerting such pressure would be based on the reasonable assumption that it would be likely to improve the value of the companies and consequently the value of the pension fund's assets. A number of funds, such as the British-based USS, CalPERS, and the members of The Marathon Club (consisting of pension fund managers who meet to explore what it means to be a long-term and responsible investor) already conduct similar programs related to improving corporate governance. Including environmental considerations in this type of program could be a very cost-effective way of ensuring that the duty to monitor has been fully respected.

Much of this boils down the to simple rule of the Precautionary Principle, whereby if one may, through exercising a degree of caution, avoid exposing oneself (or one's investments!) to risk, one should certainly take appropriate steps to do so. Even if we cannot at the front end of such a decision make a specific, numeric calculation regarding the risk or if we cannot definitively demonstrate its immediate financial value, investors should still take reasonable steps to protect themselves from undue risk exposure.

Emerging Long-Term Risks & Rewards

There are a variety of factors investors might consider that will affect the long-term financial performance of their investments. For example, the strategic investor will want to consider the following possible points, presented alphabetically:

- **Corporate Culture:** In the long run, the culture of a firm may greatly affect both the return risk and growth opportunity. Over recent years, there have been many examples where unethical or "corner-cutting" firm culture created situations where shareholders ended up losing many millions of dollars. Enron is an oft-used example, but Citibank is a more contemporary one—despite its recent laudable efforts to change its culture. Specifically, Citibank has been beset by consistent and considerable fines totaling hundreds of millions of dollars per year, while also losing revenue opportunities due to unethical behavior by being banned from the asset-management business in Japan, and from controversy surrounding its Eurobond dealing. A lax culture of ethics at Citibank resulted in concrete material losses and lost future opportunities for the business, and therefore for shareholders. However, culture may also lay the foundation for significant long-term value creation. In the case of T. Rowe Price, it has been able to create real value by managing for client trust and long-term value—returns that resulted from the creation of a culture of total integrity—and its investors were rewarded by the firm's being able to avoid recent mutual-fund scandals.
- **Emerging macro-economic trends:** Overarching trends such as global warming in the context of, for example, the energy and automotive sectors, or the introduction of genetically modified organisms (GMOs) and their impact on food production and agricultural firms will inevitably affect the ability of corporations to function profitably over the long run.
- **Environmental growth potential:** The risk here is failure to capture "environmental alpha" in various emerging markets such as those that provide opportunities for either new product development or investments in equity or fixed-rate financing of renewable and emerging clean technology. An example of one company moving to capture this opportunity is GE (Please see side bar).
- **Future license to operate:** While current production or manufacturing practices may presently be legal, or even customary, these same practices may affect the firm's future license to operate (such as gas extraction or mining practices that destroy surface property). The pharmaceutical industry faces this issue as well in the context governmental reaction to treatable but still raging diseases like malaria, emerging threats to macroeconomic stability like diabetes and hard to identify and treat global pandemics like HIV/AIDS. Regulatory factors also play out with regard to

whether, how and under what conditions companies are allowed to operate. For example, the Standing Committee on Foreign Affairs and International Trade of the Canadian Parliament recently proposed regulation of Canadian companies involved in overseas mining to adhere to significant human rights and environmental regulations that would be overseen by the Canadian government—not the countries within which such practices might take place. [xii]

- **Global Climate Change:** The focus of many investor discussions and working groups, climate change represents a serious and real threat to any portfolio of investments. The recently published report, A Climate For Change: A Trustees Guide, is an excellent presentation of both the issue and challenges for trustees.[xiii]
- **Human capital:** A firm's human capital is on the one hand critical to corporate success and on the other an often mismanaged long-term asset. There are three aspects to human capital worth considering: Internal, Customer and External. With regard to internal human capital management, the difference in human capital management approaches between Costco and Wal-Mart reflects how short-term gains may be taken at the cost of possible long-term returns. Not only does Costco derive more productivity per employee due to its human resource management strategy, Wal-Mart has traditionally off-loaded its health-care costs on local public agencies by excluding many employees from employer-provided health care. This strategy is now becoming a negative as localities attempt to reclaim benefit costs from Wal-Mart. Such strategies are also being used by anti-Wal-Mart activists (and Wal-Mart's competitors) to prevent the company from obtaining local property-zoning authority to open new stores. What once looked like a long-term competitive advantage to some – low health-care costs – is now turning out to be a long-term liability.

  An example of customer-oriented human capital management was documented in a recent study exploring the benefits of improved management and services upon real estate investments. The report found that, "high quality building services improve tenant satisfaction, turnover and mix. These in turn increase rent levels, occupancy rates, lease renewals and market image, thereby enhancing the market value of a property and its rate of return. As prominent real estate industry analysts put it, "Landlords in the real estate industry with the best services, like landlords in the lodging industry with the best service, will command above-average rents and occupancies over time."[xiv]

  Finally, an example of how External Human Capital Management is assessed is found in the question of reputation risk management. What is clear is that increasingly the value of a company is not represented by tangible assets, but rather the intangible assets of the firm. Current accounting practices do not adequately track reputation, brand and cultural value within companies—yet it is those very factors which drive a significant part of the firm's competitive position within markets—whether financial markets or consumer markets. The fact is, while they play important roles, one does not *manage* companies with attorneys and accountants—one needs leadership that can nurture a solid reputation which often comes from being inspirational and responsive to employees. The truth is that markets are increasingly rewarding firms that do not force employees to "hang up their values at the door"—and the market is rewarding those companies that realize this reality.

- **Stakeholder practices:** Firms that choose to ignore the interests of various stakeholder groups do so at their own risk. Monsanto didn't pay attention to European stakeholders when introducing Genetically Modified Organisms (GMO's) to crops marketed in Europe and paid a real price in lost market share and revenues. On the other hand, firms such as Novo Nordisk (with its highly ethical and stakeholder-led design of animal testing facilities) and BP have learned how to work with and integrate the concerns of stakeholder groups to the benefit of stakeholder and shareholder alike.
- **Strategic Philanthropy:** Proactive alignment by a company between its overall interests and a philanthropic strategy is another area of both risk and opportunity. Companies such as Cisco (through its Network Academies) have learned how to create foundation strategies that complement both community needs for high-tech training and company interests in supporting the creation of a highly technically skilled and more valuable work force.
- **Unquantified or undisclosed environmental liabilities**: Many firms face very real, but not well measured or acknowledged, historical liabilities such as mercury, asbestos, and abandoned facilities with toxic contamination. These liabilities exist across industries from heavy manufacturing to automobiles to computer hardware and the long-term costs of these liabilities are increasingly difficult for corporations to ignore.

The practice of taking into consideration investment factors that go beyond traditional financial analysis is evolving. Yet, at present, the type and degree of sustainability practices used by corporate managers may serve as a measure of sound management and value-creation activities that, over coming years, hold the potential to separate good from great investment opportunities.

A Closing Consideration: Alignment of Interests

While corporate practices are shifting, the role of the investor in acting to capture the potential value of managerial innovations is in many cases struggling to keep up with the market for ideas and future value creation. Within the "capital conversations," it seems apparent that institutional commitment to long-term investing and the practices of investment managers may be complicated by the possibility that the strategy of the asset owner is in conflict with the goals of fund managers. Oftentimes, there are incongruities between the long-term financial objectives of trustees and the shorter-term objectives of their fund managers.

The World Economic Forum, a leading convener of business and civil society leaders, recently released a report entitled "Mainstreaming Responsible Investment," which called for incentives that might support re-orienting fund managers toward long-term investment goals. The report also cited the need to build the competencies of fund managers and improve the quality of the information upon which they make their investments.[xv] These fund managers may have little technical understanding of sustainability issues. They may be effected by the "herd mentality" of investors and pure market efficiency theorists who deny the applicability of sustainability performance to shareholder value. Or they may have rigidly defined frameworks or investment processes that they do not want to (or cannot) modify to account for either evolved trustee priorities or altered market realities. All this results in a set of relatively short-term decision-making frameworks that in the aggregate are not in harmony with the strategy of the long-term investor—and over time could exacerbate the risk carried by any given portfolio of investments.

Finally, while we focus here mostly on public equities, typically the largest portion of an asset allocation strategy by institutional investors, portfolio creation, and management must also assess a variety of asset classes (real estate, private equity, public equity, debt, etc.) each with distinct long-term issues and implications for the relevance of sustainable, fiduciary oversight and investment practices.

What these issues of emerging risk and opportunity speak to is the need for fiduciaries to be assured that the assets they oversee are in full alignment with the institutional interests they seek to advance. And fiduciaries have not only the strategic ability to advance those interests, but the legal authority to as well.

Conclusion

Over past decades, the markets we invest in, the companies we gather into our portfolios, and the world in which both markets and companies function have all changed radically. The role of the prudent, responsible fiduciary is evolving as well. Responsible fiduciaries are those who recognize there are shifts on the horizon that may negatively affect assets under management—and then act to communicate their evolving expectations to fund managers capable of achieving the long-term performance goals established by the fiduciary.

The responsible fiduciary seeks to be strategic, setting meaningful goals for their fund managers to integrate long-term factors into performance criteria that will optimize the return on assets while generating those returns over the long haul in the context of the many changes within markets and around the world.

It is no wonder our understanding of appropriate investment strategies and the role of the fiduciary have evolved over the years—and continue to develop beyond what we have understood in the past. We are presently in what is simply the most recent period of "evolution" wherein those long-term market investors who crack the code for how best to manage their assets to generate *sustainable* returns will also be best positioned to receive financial returns that outperform mainstream, short-term investing practice. Together, the evolved "Prudent Man" and emerging, long-term investing strategies promise to maximize the value that makes those financial returns worth pursuing.

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[i] We are indebted to Prof. John H. Langbein of Yale University for the following discussion of British and American trust law. See 81 Iowa L. Rev. 641, "The Uniform Prudent Investor Act and the future of Trust Investing" (1996).
[ii] King v Talbot, 40 NY 76 (1869)
[iii] Harvard College v Amory, 26 Mass. (9 Pick.) 446 (1830)
[iv] The US Supreme Court holds that a fact is material if a reasonable investor would view it as altering the total mix of information made available. See TSC Industries v. Northway, Inc., 426 U.S. 438, 96 S. Ct. 2162 48 aL. Ed. 2d 757 (1976).
[v] The full text of his comments may be found at http://www.s-ox.com/news/detail.cfm?articleID=835
[vi] His full statement is found at http://www.abp.nl/abp/abp/images/SpeechCSR%20and%20Corporate%20GovernanceExperience%20from%20a%20Dutch%20pension%20fund_tcm6-24366.pdf
[vii] While the exact language defining the *duty of loyalty* varies from state to state and from state law to the federal law, the underlying standard applied to pensions is that fiduciaries must act solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing plan benefits. Cal. Const. Art. XVI, § 17(b); Cal. Gov't Code §§ 31595 and 53216.6; Cal. Prob. Code §§ 16002 and 16004; NY CLS Retire & SS § 177(9)(b); ERISA § 404(a)(1)(A); 29 U.S.C. § 1104(a)(1)(A); *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982).
[viii] The language defining the *duty of prudence* is similarly varied, but can be summarized as requiring fiduciaries to discharge their duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent investor acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. Cal. Const. Art. XVI, § 17(b); Cal. Gov't Code §§ 31595 and 53216.6; Cal. Prob. Code §§ 16002 and 16004; NY CLS Retire & SS § 177(9)(b); ERISA § 404(a)(1)(A); 29 U.S.C. § 1104(a)(1)(A); *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982).
[ix] *Estate of Nicholas*, 177 Cal. App. 3d 1071, 1087 (1986).
[x] Standards of Practice Handbook, Association for Investment Management Research, page 219.
[xi] http://www.trucost.com/
[xii] http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=122765
[xiii] Please see www.thecarbontrust.co.uk/trustees for copies of this report.
[xiv] See, Jonathan Litt and Gary Boston from Salomon Smith Barney quoted in *Pension Real Estate Association Quarterly* , Spring 2000. For the full report, please see: http://www.seiu.org/docUploads/Impact_of_Quality_Building_Service.pdf
[xv] "Mainstreaming Responsible Investment," World Economic Forum, 2004, www.weforum.org/corporatecitizenship