Engagement, Divestment or Both? Conflicts and Interactions: The Case of the Norwegian Pension Fund*

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I Introduction

In 2011 Monitor Group named the Norwegian Government Pension Fund the largest sovereign wealth fund in the world. The Fund merits international attention not only because of its size, but also in terms of its complex mission with regard to responsible investment and the mechanisms it employs in pursuit of this mission. The market value of the Government Pension Fund—Global at the end of 2012—was 3816 billion kroner (approximately 670 billion USD/514 billion EUR). In 2012 it yielded a total return of 13.42 per cent.[1]

The Norwegian Parliament adopted an Act relating to the Fund in 2005 as a continuation of the Petroleum Fund, which was established in 1990. On the one hand, the Fund is meant to facilitate long-term fiscal policies and help carry the future economic burdens caused by demographic changes combined with declining future oil revenues. The

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[1] Norges Bank Investment Management, NBIM, 'Annual Report of the Norwegian Government Pension Fund Global 2012', 2013, www.nbim.no/Global/Reports/2012/Annual%20report/Annual%20report%2012.pdf.

Fund must thus ensure that a reasonable portion of the country's petroleum wealth benefits future generations. It must therefore generate a sound return in the long term.

The Fund has three sources of income: the return on the Fund's assets, the cash flow from petroleum activities that is transferred from the central government budget, and net financial transactions associated with petroleum activities. The transfer of capital from the Fund to the central government budget must be approved by the Norwegian Parliament. The Ministry of Finance delegates responsibility for the operational management of the Fund's international assets to Norges Bank Investment Management (NBIM). This capital is invested in non-Norwegian financial instruments (bonds, equities, money market instruments and derivatives) in developed and emerging equity markets and in several currencies for fixed-income investments.

At the same time, the Norwegian Parliament does not want the Fund to contribute to unethical acts or omissions, such as violations of fundamental humanitarian principles, serious violations of human rights, gross corruption or severe environmental damage. It has established two main mechanisms to avoid such complicity. These mechanisms ensure that the Fund is involved in 'Socially Responsible Investing' (SRI) of two distinct kinds:[2] An *activist* approach and a *negative* approach.

The following sections explore these mechanisms and discusses tensions among them, against a historic and current background.

II Shareholder Engagement: Historical and Recent Contributions

[2] S Vallentin: 'Socially Responsible Investing: Approaches and Perspectives' in J D Rendtorff (ed), *Værdier, Etik og Socialt Ansvar i Virksomheder - Brudflader og Konvergens* (Roskilde: Center for Værdier i Virksomheder, Institut for samfundsvidenskab og erhvervsøkonomi, RoskildeUniversitetscentrum 2003), 114–21, 117.

The Fund must exercise its ownership rights by means of active shareholder engagement. The NBIM should thus reflect the UN's Global Compact and the OECD's principles of corporate governance and guidelines for multinational companies. Before turning to these recent initiatives, it is worth recalling that shareholder engagement is not new.

The term 'Socially Responsible Investing' may be new, but moral qualms about investment, and indeed divestment as a response, are old. Appeals to divest from multinational corporations go back to the seventeenth century, against one of the earliest forms of economic globalisation: the international slave trade. Such morally questionable practices have been part of corporations since they began. The first corporation ever to issue shares was the Dutch East India Company, established in 1602. One important source of its profits was slave trade across oceans. In 1696 and 1698 the Philadelphia Yearly Meetings of Friends—Quakers—warned against the slave trade as an investment venture. [3] Their protests in America and Britain served to blacklist some multinational corporations at the time. From the Quakers' point of view the corporations that maintained the slave trade should be shunned for multiple reasons: such trade was inconsistent with the will of God, against minimal standards of justice, and in violation of the golden rule. Even though many Quakers kept slaves, they objected to investment in the slave trade. They eventually came to also condemn the holding of slaves. They employed what social sanctions they could against their fellow believers. The Philadelphia Yearly Meeting in 1758 called on slave-holding Friends to change their ways. They even urged the exclusion of 'anyone who bought or sold slaves from participation in the business affairs of the church'.[4]

The challenges of this early case of socially responsible investing remain to this day: how are we to respond to practices that make us morally complicit in immoral actions?

[3] T E Drake, *Quakers and Slavery in America* (Gloucester MA, Peter Smith, 1965) 4.
[4] ibid, 61.

Furthermore, the slave trade illustrates the coordination problems in the absence of a common authority: the Quakers realised that other traders moved into the market 'over whom we have no gospel authority'.[5]

Moving to the present practices of the NBIM, its active shareholder engagement is perhaps best understood against the background of political, legal and economic globalisation, and some of the initiatives in response: the UN Global Compact,[6] the UNEP Finance Initiative,[7] and the Principles for Responsible Investment (PRI), developed by institutional investors on the basis of the Global Compact and the UNEP Finance Initiative.[8]

What is new with 'globalisation'? Under globalisation, individuals' opportunities, life plans and choices are influenced by the political decisions of their own national governments, but also by other governments and various non-state actors. They include regional and international organisations set up by states themselves, but also powerful private actors—in particular transnational corporations—who affect the opportunity space and choices of individuals directly. Some of these actors, such as multinational corporations, also have great indirect effects. They influence the scope of decisions available to national governments, the expected results, and thus the strategies that states pursue—with major consequences for citizens. Those who are invested in these corporations thus benefit from—and are morally complicit in—some of these effects, for better and worse.

Globalisation affect the *value* of even well-functioning democracies. Many states find that they can no longer buffer their own citizens from the effects of actors outside their territorial borders—if they ever could.[9] Many are thus concerned about the 'basic global

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[5] ibid, 65.
[6] United Nations Global Compact, www.unglobalcompact.org, accessed 2 September 2013.
[7] The United Nations Environment Programme Finance Initiative, www.unepfi.org, accessed 2 September 2013.
[8] Principles for Responsible Investment, www.unpri.org, accessed 2 September 2013.
[9] JG Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36(2) *International Regimes* 379–415.

structure'[10] that frame the opportunities and choices of individuals. Such rules and practices specify the actors and the scope of decisions they may take, and influence their choices. Some actors, such as states and interstate organisations, are legally authorised to make binding decisions, at various territorial levels that often overlap, such as the European Union and UN bodies. Other actors—such as transnational organisations, corporations and/or regulatory networks—are evidence of more diffuse forms of 'governance'. They have de facto power to get things done, albeit without legal competence to command compliance.[11]

We now witness some efforts to make some such governance actors—specifically, corporations—more accountable. The UN Global Compact is a voluntary platform for private companies that are committed to sustainability and responsible business practices outlined in 10 principles covering human rights, labour, environment and anti-corruption. The Global Compact seeks to incorporate the principles among corporations, as well as to promote collective action, eg the Millennium Development Goals. Human rights, for instance, is covered in two principles:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Businesses should make sure that they are not complicit in human rights abuses

The UN Global Compact is a voluntary initiative, the world's largest in corporate sustainability. As a voluntary association, its principles and impact may be criticised as too weak; on the other hand the number of corporations and the UN backing may impact on the reputation even of non-signatories. And signatory companies are subject to an annual review to determine how they are implementing the 10 principles. A central weakness of the review

[10] A Follesdal, 'The Distributive Justice of a Global Basic Structure: A Category Mistake?' (2011) 10(1) *Politics, Philosophy and Economics* 46–65.

[11] JN Rosenau, 'Governance, Order, and Change in World Politics' in JN Rosenau and EO Czempiel (eds), *Governance without Government: Order and Change in World Politics* (Cambridge, Cambridge University Press, 1992) 1–29.

is that it is self-reporting. Again, some may say in defence of such a weak measure that such statements at least make it possible for civil society groups to criticise corporations for self-acknowledged weaknesses in their practices.

The UNEP Finance Initiative is a collaboration between the UN Environmental Programme and more than 200 financial institutions who have agreed to the UNEP Financial Initiative statements. The objective is to promote best environmental practices within financial institutions. Critics may question their definition of 'sustainable development' and the best means thereto, namely

> … development that meets the needs of the present without compromising the ability of future generations to meet their own needs …
>
> … best achieved by allowing markets to work within an appropriate framework of cost efficient regulations and economic instruments (Commitments 1.1 and 1.2).

Again, as a voluntary initiative it should not be surprising that they focus on the 'business case' for such environmental policies, and on establishing guidelines and build capacity, rather than monitoring and sanctioning non-compliance. As long as such initiatives do not prevent or hinder other activities in furtherance of environmentally sound policies, such supplements should arguably be welcomed as part of consciousness raising and standard setting.

One example of such longer-term effects of the Global Compact and the UNEP Finance Initiative is the 'PRI Initiative', which the Norwegian Pension Fund Global has signed. The PRI Initiative[12] is investor led, in partnership with the UNEP Finance Initiative and UN Global Compact. It includes six principles concerning environmental, social and corporate governance (ESC) issues, each of which mentions several possible actions. The central principles are:

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[12] ibid.

(1) We will incorporate ESG issues into investment analysis and decision-making processes

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

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

Note that the principles and suggested actions do not include divestment, nor is there mention of other responses to corporations that fail to comply with the requests of investors.

These initiatives, which the NBIM has supported, help shape the mandate and objectives of the management of the Fund. It is helpful to consider parts of these texts extensively.

III Exercise of Ownership Rights: Shareholder Engagement

The Management mandate laid down by the Ministry of Finance 2010 states inter alia:[13]

Chapter 2. Responsible investment

Section 2-1 The Bank's work with responsible management

(1) The management of the investment portfolio shall be based on the goal of achieving the highest possible return, cf. section 1-2, third paragraph. A good return in the long term is regarded as being dependent upon sustainable development in economic, environmental and social terms, as well as well-functioning, legitimate and effective markets.

(2) The Bank shall have internal guidelines for integrating considerations of good corporate governance and environmental and social issues in investment activities, in line with internationally recognised principles for responsible investment. …

Section 2-2 Active ownership

[13] Norges Bank Investment Managment, Management mandate for the Government Pension Fund Global, www.nbim.no/en/About-us/governance-model/management-mandate/, accessed 2 September 2013.

> (1) The Bank's primary goal in its active ownership is to safeguard the financial interests stipulated for the investment portfolio, cf. section 1-2, third paragraph.
> (2) Active ownership shall be based on the UN Global Compact, the OECD's Principles of Corporate Governance and the OECD's Guidelines for Multinational Enterprises. The Bank shall have internal guidelines for its exercise of ownership rights that state how these principles are integrated

In the NBIM Policy concerning responsible investment, the NBIM defines central terms and lays out its policies thus:

> **Corporate Governance** is the system by which companies are directed and controlled
>
> **Environmental and social factors** are concerns which may affect portfolio performance in the long term …
>
> Ownership activities shall promote the fund's interests and take into consideration internationally recognised principles such as the UN Global Compact, the OECD Principles for Corporate Governance, the OECD Guidelines for Multinational Enterprises and the UN PRI …
>
> Through investment analysis, company contact and voting at the company's general meeting, NBIM will work to maximize the long term value of the portfolio.[14]

These citations suggest at least two central topics that may create tensions. First, the definitions of environmental and social aspects are specified in ways that may seem to limit them to those that reduce the long-term value of the portfolio. Other environmental or social aspects may thus not register as such with the NBIM investors. Secondly, precisely *how* the NBIM shall 'take into consideration' the various principles remains open ended. One way NBIM specifies this is as quoted, that NBIM will always work as an active investor to 'maximize the long term value of the portfolio'. Again, there is a risk that initiatives to respect

[14] Norges Bank Investment Managment, NBIM Policy – Responsible investor, www.nbim.no/Global/Documents/Governance/Policies/NBIM%20Policy%20RI.pdf, accessed 2 September 2013.

or promote environmental and social factors will not be pursued insofar as such initiatives will be negative for the long-term value. For instance, the policy document states that NBIM will vote in favour of:

> 27. Proposals that request the company to perform and disclose a social or environmental impact assessment of specific project or operations when the current information publicly available is insufficient *and such disclosure will benefit shareholders*,
> 28. Proposals that request adoption or implementation of a code of conduct based on human rights and international labour standards covering a company's operations and supply chain when the actions suggested in the proposals are considered to be reasonable with regard to what the company can be held accountable for *and will benefit shareholders* (my emphasis).

How NBIM addresses some of these tensions becomes evident in relation to the other main mechanisms of ethical investment of the Norwegian Pension Fund Global.

IV Avoiding Moral Complicity in Certain Unethical Investments

In addition to shareholder engagement, Parliament established a Council on Ethics ('the Council'). It assists the Ministry of Finance and the Fund, to avoid running the risk of moral complicity in particularly problematic cases. By the end of 2011, 55 companies had been excluded on such grounds.[15]

It is relevant for the later discussion in this chapter to consider how the Council implements these filters. The mandate of the Council specifies two central tasks. It shall first screen companies that produce certain products, namely weapons that violate fundamental humanitarian principles, and companies that produce tobacco. The weapons of concern are

[15] Etikkrådet. 2011. 'Årsrapport 2011', 9, www.regjeringen.no/pages/1957930/Arsmelding2011.pdf, accessed 2 September 2013.

those that ‘through normal use may violate fundamental humanitarian principles’. The relevant principles as the Council sees it are ‘the principle of distinction’—between civilians and military targets—and ‘the principle of proportionality’ —to avoid unnecessary suffering or injury. Among such weapons are weapons of mass destruction, anti-personnel mines and cluster weapons. All companies involved in the production of such weapons are excluded from the Fund. To illustrate: Parliament made clear that cluster weapons are to be excluded One reason may be that these weapons do not distinguish sufficiently between military and civilian goals during—and especially after—an attack, in violation of fundamental humanitarian principles. The Council recommended the exclusion of companies that produce key components, such as the canisters and guide mechanisms, and the ‘bomblets’ themselves. Similar arguments lie behind exclusion of companies involved in production of some other weapons, such as anti-personnel mines.

The Council can also recommend that the Minister of Finance exclude certain corporations from the portfolio of the Fund. The Council should recommend exclusion of companies that entail an unacceptable risk, through acts or omissions, that the Fund contributes to certain unethical acts:

- serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation
- serious violations of individuals’ rights in situations of war or conflict
- severe environmental damages
- gross corruption
- other particularly serious violations of fundamental ethical norms

The Council shall act on its own initiative or as requested by the Ministry of Finance.

How does the process of excluding specific companies work? The Council, assisted by a Secretariat, gathers information to document claims concerning the corporation in question. Sources in the past have included a wide range of voices: the companies' own websites, the Norwegian People's Aid landmine division, Human Rights Watch's Arms Division, Jane's Information Group, the International Campaign to Ban Landmines (ICBL) and the Norwegian Ministry of Foreign Affairs.

There is also an adversarial element, in that companies seriously considered for exclusion are invited to comment and correct the proposed recommendation before the Council's final recommendation.

The Council submits its recommendations to exclude a company to the Ministry of Finance. If it chooses to heed the advice, the Ministry will instruct the Norwegian Central Bank to sell the company, typically within a window of two months. To analyse the impact of such exclusions, note that the Ministry then makes its decision public. The mandate, the recommendations and their grounds are publicly available—in Norwegian and English—at the Council website (www.etikkradet.no).

Every month the Secretariat's in-house and subcontracted searches reveal approximately 30 companies as possible violators. Of these, typically five to eight are considered with greater care by the Council. Often the process is stopped. Thus, during 2011, five companies were recommended for exclusion.

V Remarks on Moral Complicity

Among important and complex issues to be resolved is the relevant kind of *moral complicity* in human rights violations. Relevant sources include international case law on companies' complicity in war crimes, including the Nuremberg tribunal that sentenced senior executives of Zyklon B gas producers that supplied the gas to the Nazi regime. Note that such assessments are complex. John Ruggie, UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, briefly addressed this issue. He noted that

> 'Moral support' can establish individual liability under international law, and the tribunals have extended it to include silent presence coupled with authority. But a company trying in good faith to avoid involvement in human rights abuses might have difficulty knowing what counts as moral support for legal purposes. Mere presence in a country and paying taxes are unlikely to create liability. But deriving indirect economic benefit from the wrongful conduct of others may do so, depending on such facts as the closeness of the company's association with those actors. Greater clarity currently does not exist. However, it is established that even where a corporation does not intend for the crime to occur, and regrets its commission, it will not be absolved of liability if it knew, or should have known, that it was providing assistance, and that the assistance would contribute to the commission of a crime.[16]

How should one operationalise such complex theoretical concepts? The Council has laid out several conditions that must be satisfied for a company to be held morally complicit in present human rights violations:

- There must be a linkage between the company's activities and the relevant human rights violations.
- The violations must be perpetrated in order to secure the company's interests.
- The company must have contributed to the violations, or be aware of the violations yet refrain from attempts to prevent them.
- The violations must be ongoing, or there must be an unacceptable risk that they will occur in the future, as for instance established by past conduct.

[16] JG Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and human rights: mapping international standards of responsibility and accountability for corporate acts, A/HRC/4/35, 19 February 2007, para 42.

To illustrate: in 2005 the Council recommended that the Fund divested from Kerr-McGee Corporation, due to its contract with the Moroccan government oil company ONAREP to explore for oil offshore Western Sahara.[17] The concern was whether investment in the company would put the Fund at risk: would it contribute to future acts or omissions that would violate fundamental ethical norms?

I submit that these assessments may be guided by a general approach to moral complicity in human rights violations along the following lines.[18]

The normative perspective is based on what we may think of as a principle of respect for vital interests: each agent must respect others' vital interests at least in the 'mild' sense that their own actions and projects do not impose threats to the vital interests of others. The guiding idea is that corporations' profit-seeking projects should not violate the vital interests of those who contribute to the project or those of third parties. When corporations rely on subcontractors to increase their profits, the actions of the subcontractors become part of the project.

Corporations are more morally complicit when the violations of vital interests are part of the project. That is, when these violations

- are integral and foreseeable parts of the corporation's strategy to maximise returns, rather than unintended or unforeseen consequences;
- could be prevented by requiring subcontractors to respect vital interests of workers and third parties, and monitoring such promises.

A central test question to determine whether moral complicity of corporations—and of investors—is at stake is to ask: Would this risk be taken if it did not benefit the bottom line?

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[17] Details are in the 2005 Annual Report, at www.regjeringen.no/pages/1957930/Årsmelding%202005%20eng.pdf, accessed 2 September 2013.

[18] For a more elaborate account, from which I draw, cf C Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge, Cambridge University Press, 2001).

A final note concerning assessment of moral complicity in this context. In the judicial system it is better to err in favour of the guilty. However, for exclusions by the Norwegian Pension Fund, arguments may be stronger for a risk assessment that is as accurate as possible: moral obligations are in favour both of maximising yield and avoiding complicity in wrongdoing. And for such decisions regarding exclusion it may be more important to avoid 'false positives' than to avoid 'false negatives'. That is, it might be better to exclude too many corporations rather than too few—from the moral if not from the financial point of view. We now turn to some of the dilemmas that arise from conflicts between these two perspectives.

VI Three Normatively Valuable Objectives and Standards for Investors

This sketch of the Norwegian case illustrates how socially responsible investment practices must handle three distinct normative objectives in defensible ways. In no particular order—and not in order of moral priority!—these three are:

(1) to secure returns, even arguably to *maximise* returns for shareholders, within limits, eg those set by the two other normative objectives.

The two other objectives express respect for the fundamental interests of all parties affected by the investment, in two distinct ways:

(2) Improve on the wrongs that there are in the world. In particular, it does not seem unreasonable that investors should consider to some extent those wrongs perpetrated within the global economy by corporations in which they invest. One central means for this objective is by *active shareholder engagement*. The NBIM engages in such practices. Such actions may aim at preventing wrongs from occurring, or seek to change unacceptable practices in each

corporation, or seek to overcome collective action problems—such as those that give rise to environmental problems. Which corporations should be targeted for such engagement? Presumably those that would maximise the expected marginal impact of this particular shareholder's involvement. On this line of argument shareholder engagement can *not* just be limited to issues that maximise return in the long run.

(3) Avoid moral complicity in the wrong acts that still do occur. The main mechanism of concern here is to *divest*, especially where gross violations of certain fundamental norms are likely to continue. This will typically be when the violations are part of the business strategy and essential to the comparative advantage of the corporation. The irony which is sometimes pointed out is that where moral investors divest, other investors rush in. We should also keep in mind that other investors may well continue to urge change from within. And those investors who divest are free to pursue *other* means to influence those businesses.

VII Potential Conflicts

There are some ways that engagement and divestment may come into *conflict*.

One problem arises if engagement is limited to addressing those normative objectives that are also instrumental to maximise long-term return, such as corporate governance issues. Secondly, alas, some normative violations, such as the worst forms of child labour or violations of labour rights, may be *sustainable* by some corporations—and even crucial if the company is to secure maximal return over time. In these cases, we might expect that prudent shareholder engagement will not be pursued, since the company will have strong objections to change its procedures towards normative standards that will reduce returns. Thirdly, bodies in charge of *engagement* but generally set to maximise long-term profit alone may want to prevent divestment since divestment from the presumably most profitable companies will tend to reduce profits, however slightly.

Another kind of tension arises if involvement is focused not on those changes in certain corporations that are most likely to reduce evil in the world, but instead mainly to *prevent divestment*. This creates a risk that the investor remains morally complicit in wrongdoing, and that ills in the world remain which would otherwise have been addressed by active engagement.

A further tension occurs if the mere possibility of divestment *reduces* the impact of engagement. Consider two alternative scenarios. The management of such ‘problematic’ corporations may decide to ignore the engagement attempts, knowing full well that sooner or later the noisy, morally concerned investors will pull out. Alternatively, if the criteria for disinvestment are too vague, even managers of ‘good will’ will not know what to do and perhaps ignore engagement attempts since they risk divestment anyway.

VIII Opportunities for Better Interaction

There are several ways that divestment and engagement may benefit from such a two-fold strategy.

First, a credible divestment policy can strengthen the objective and impact of shareholder engagement. The real, predictable threat of divestment can increase the influence of attempts at dialogue engagement. This may be even more the case when there is a division of responsibilities so that decisions about divestment are taken by another body than the body involved in the dialogues with management. Such a division of responsibility, as in the Norwegian case, can have the following effects: (a) it can boost the credibility of those engaged in dialogues when they warn of divestment, since this is out of their hands; (b) the quality of information from management may increase, and the risk of ‘capture’ of the engaged agent by the corporation may be reduced, since an independent body will monitor the information and the process as part of the risk assessment; (c) the division of responsibility may help reduce public suspicion of moral corruption: that the investor has sacrificed moral principles for the sake of maximal yield. Such suspicion is not unreasonable, particularly when the sacrifice has entailed moral complicity in order to do good: to achieve some marginal changes in the corporation—or in order to not reduce profits.

Such opportunities for better interaction might best arise under certain conditions:

When divestment imposes reputational costs

This is not always the case: some funds, such as the Vice Fund (VICEX), may regard exclusion as a 'buy' signal. Reputational costs may also vary across sectors, and depend crucially on whether the normative triggers are broadly shared This is a reason to use divestment only for certain violations that are likely to command broad agreement.

Publicity of reasoned divestment

Publicity and argued decisions are necessary to maximise shaming effects, to facilitate copying by other investors, to strengthen NGOs and other concerned parties, and to facilitate the corporation's strategies for improvement.

Trustworthy: predictable threats

The divestment threat must be credible. This requires publicity, including about failed attempts at shareholder involvement.

Procedures for re-inclusion in the investment universe

Once excluded, there should be real, predictable prospects of lifting a divestment decision, to increase the corporation's willingness to engage in dialogues with 'future shareholders'—without conveying a stamp of 'high ethics'.

Procedures for dialogue with excluded companies

There should be ways to engage with the corporation to prompt its speedy re-inclusion into the investment universe. I submit that such dialogues might be best handled by the body in charge of shareholder engagement, if that body is more likely to have the requisite competence and knowledge about the situation on the ground.

The second way that interaction between these two mechanisms may be beneficial is that shareholder engagement itself may boost the objectives of divestment. Recall that the objective of divestment mechanisms—such as the Council —is to avoid moral complicity in violations of certain norms. The aim is *not* to maximise the number of divested companies. Rather, if corporations can credibly commit to internal changes to avoid risks of future complicity, this is excellent. Shareholder engagement may contribute to such changes.

However, there is sometimes a risk that such changes will reduce the profitability and the comparative advantages of the corporation, with the result that the fund nevertheless moves its investments elsewhere, but for financial reasons alone.

Several conditions make such contributions more likely:

- Visible changes. The changes must be visible for those deciding on divestment. However, it is not necessary that these changes are seen as resulting from the engagement process itself; that may be too difficult to discern.
- The corporation's changes must be credible.
- The corporation's changes must be done with all due speed. Otherwise, the morally best strategy may be to divest, and let other investors be involved. Investments may again be permitted if the risks have been reduced

IX Implications and Further Research

In conclusion, I first summarise some of the central implications for the Norwegian system of two bodies authorised to pursue engagement and divestment, respectively, and then indicate some topics for further research.

A Implications

i The Role of Transparency

I have argued that there is in general a strong case that many of the processes should be as transparent as possible. This case is even stronger since the Fund manages *public* funds. This feature strengthens the argument of democratic accountability for these mechanisms. It will also be important in the dialogues that corporations *know* that certain of their responses will be made public if they are excluded from the investment universe.

ii Clearer Standards and Indicators

What seems urgent is to develop clearer standards and indicators, to measure the shareholder impact, to determine when exclusion should occur, and—not least—standards for re-inclusion. The standards must be such that they are reasonably robust against abuse—be it by companies avoiding taking on costly burdens, or by attention-seeking NGOs eager to criticise companies for high media impact.

iii Routines for Re-inclusion into the Investment Universe

I have suggested that there are good reasons to establish procedures for re-including corporations that so desire into the investment universe. We have seen that some excluded corporations are eager to have such well-publicised divestment decisions reversed The procedures and the competence to deliberate with management might be best placed with the body in charge of engagement, rather than with the body in charge of divestment.

B Topics for Future Research

i The Impact of Transparency on Effective Engagement

It is striking that different stakeholders make conflicting claims about the need for and impact of secrecy or transparency at various stages of the engagement process: in advance of dialogues, during engagement, and afterwards. Some claims might emerge from NGOs that have other reasons to seek publicity, others from investors who have other reasons to keep a low profile. *These are empirical issues that I recommend should be subject to careful, comparative research*.

ii The Extent of Confluence and of Conflict between Investment Performance and Broader Environmental and Social Objectives.

Some actors in the field of socially responsible investing hold that there is a positive correlation—and perhaps even complete congruence—between the fiduciary obligations of institutional investors to promote the best long-term economic interests of their beneficiaries, and the other normative societal concerns such as environmental sustainability, respect for human rights etc. Thus the Investors' initiative 'Principles for Responsible Investment' rests on the belief that:

> There is a growing view among investment professionals that environmental, social and corporate governance (ESG) issues can affect the performance of investment portfolios. Investors fulfilling their fiduciary (or equivalent) duty *therefore* need to give appropriate consideration to these issues (UNEP Finance Initiative 2006, my emphasis).

They hold:

> [W]e believe that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time). We also recognise that applying these Principles may better

> align investors with broader objectives of society. Therefore, *where consistent with our fiduciary responsibilities*, we commit to the following …[19] (my emphasis).

Two important research topics seem obvious in this regard. First, in which sectors, regions and asset classes are such arguments of convergence between profit maximisation and normative concerns correct? How can these objectives best be strengthened? Secondly, in which areas must we expect conflicts to remain—and how can we best prevent investors from violating ethical constraints in such cases?. The challenge may be particularly difficult if the efforts of the investor community lead to the public perception that those concerns that are not in the long-term fiduciary interest of the funds are not 'properly' regarded as ethical.

iii The Longer-term Impact of Engagement and Exclusion Mechanisms on 'Hard' and 'Soft' Regimes for Multinational Corporations

If ethical standards for engagement and exclusion are carefully expressed and employed, they may contribute to securing that corporations respect these standards. Even such efforts that are neither legally binding nor tied to costly sanctions may help move corporations to comply with higher standards concerning respect for human rights and the environment. John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations, has explored some such paths.[20] Further research should seek to determine the conditions for such efforts to contribute to these longer-term effects.

X Conclusions

[19] UNEP Finance Initiative 2006. Principles for Responsible Investment (PRI), www.unpri.org, accessed 2 September 2013.

[20] JG Ruggie, 'Business and Human Rights: The Evolving International Agenda' (2007) *KSG Faculty Resaerch Working Paper Series 07/029*.

What are the opportunities for constructive interaction between two relatively independent mechanisms for socially responsible investment, aimed at engagement and divestment, respectively?

In this chapter I provided a sketch of the procedures of the Norwegian Government Pension Fund Global, drawn against a background ranging from the Quakers to the United Nations initiatives. I then offered some comments on the three moral objectives of the Fund. By sketching some possibilities for conflict between engagement and divestment and turning to the opportunities and conditions for better interaction between these two mechanisms, I pointed finally to three important areas that require further research: the impact of transparency on effective engagement; the extent of confluence and conflict between investment performance and broader environmental and social objectives; and the longer-term impact of engagement and exclusion mechanisms on 'hard' and 'soft' regimes for multinational corporations. The practices of the Norwegian Government Pension Fund Global may be read as a response to the historic challenges of the Quakers' efforts to avoid complicity in slavery: how to respond to practices that make us morally complicit in immoral actions. The slave trade illustrated some of the coordination problems in the absence of a common authority; the Norwegian case illustrates that sometimes such coordination problems do not arise. The long fight to outlaw the slave trade may also suggest that divestment by single actors is not irrelevant to help end condemnable practices—through standard setting, active ownership and monitoring.