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Social Investing

Dan M. McGill, *Editor*



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PURPOSE OF THE COUNCIL

The Pension Research Council was formed in 1952 in response to an urgent need for a better understanding of the private pension mechanism. It is composed of nationally recognized pension experts representing leadership in every phase of private pensions. It sponsors academic research into the problems and issues surrounding the private pension institution and publishes the findings in a series of books and monographs. The studies are conducted by mature scholars drawn from both the academic and business spheres.

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Preface

The assets of public and private pension plans constitute one of the largest aggregations of capital in the United States. Their market value is approaching \$1 trillion, and it is estimated that they may grow to \$3 trillion by 1995, a staggering figure. The collective cash flow of pension plans is a major source of funds for capital formation and the regeneration of the industrial infrastructure of the country. It is only natural that there should be great interest in how these funds are going to be deployed in the years ahead.

Until recent years, it was generally assumed that the sponsor of a pension plan—a business firm or a governmental entity—would determine how the assets of the plan were to be invested, the goal being to maximize the total rate of return within an acceptable level of investment risk. This was the pattern for both defined benefit and defined contribution plans, even though it was recognized—philosophically, at least—that the participants in a defined contribution plan might logically have some voice in deciding how the assets were to be invested since their benefits would be directly affected by the investment results.

As pension plan assets grew in magnitude and became a dominant factor in the financial marketplace, a realization developed in various quarters that the assets could—and perhaps should—be invested in a manner that would achieve goals beyond the maximization of return within given risk parameters, important as that objective might be. Elected officials of states and municipalities began to view the assets of their respective retirement systems as a source of funds to accomplish certain public goals, such as encouraging local economic development; facilitating home ownership; providing a market for tax-exempt governmental paper; and even staving off default on financial obligations.

Organized labor saw pension assets, especially those accumulated under collectively bargained multiemployer plans, as a device for preserving and creating jobs in unionized employment and for promoting the broad interests of organized labor in various ways. Labor officials have sought to employ pension assets to provide subsidized residential mortgages, to resuscitate

depressed industries and regions, and to provide various types of facilities that would promote the social welfare of the working population.

Some corporate managements embraced the notion that the corporation's pension plan is an extension of the corporation and can properly be used in ways to promote the general welfare of the corporation. This philosophy has led some companies to use their pension plan assets to ward off unfriendly takeover attempts, to support the market price of the company's common stock, to protect the cash flow of the corporation, and to provide estate liquidity for key corporate officials through purchase of personal stockholdings.

Finally, some groups would employ the economic power represented by pension plan asset holdings to pursue certain broad social and political goals. Through divestment, the filing of stockholder resolutions, and other such tactics, these groups would attempt to influence the policies and practices of companies that engage in questionable labor or marketing practices, produce products of doubtful social merit, manufacture products or materials supportive of nuclear warfare, disregard environmental concerns, or violate the civil rights of minorities. The most visible of these activities are the efforts to persuade institutional investors to divest their holdings in companies that do business in South Africa.

Some of the foregoing ancillary goals of investment policy would be achieved by directing or persuading the institutional managers of pension plan assets to invest them in a manner designed to stimulate certain industries; revitalize the economy of designated geographical regions; meet particular consumer needs, such as suitable housing; or favor certain social or ethnic groups. This is known as the "inclusive" approach and is potentially the most disruptive of traditional investment behavior and, hence, most inimical to the interests of plan participants and others who bear the investment risk. Some of the goals would be accomplished by having the asset managers avoid or divest themselves of the stocks and bonds of certain companies. This is the "exclusive" approach, whose impact on investment performance depends upon the scope of the excluded category and the opportunities remaining within the permissible universe of investments. Some advocates of the inclusive approach press their case even when it can be expected to result in a lower risk-

adjusted rate of return, on the premise that the social benefit outweighs the loss of investment earnings. Other advocates argue that the targeted investments will produce competitive rates of return. They would urge that approach only if investment returns are not materially affected.

Any investment posture that introduces into the investment decision a consideration other than maximization of return consistent with risk is referred to as *social investing* in this volume, although the term is not descriptive of some of the motivations involved. The term is used herein and for the title of this volume because it is simple, widely used, and generally understood.

For the most part, this volume is made up of papers presented at the 1982 symposium for institutional members of the Pension Research Council. Two papers were solicited after the symposium and another was picked up, with permission, from an unrelated conference.

The first chapter of the book deals with the ethical and philosophical considerations involved in the social investing issue. The author, Dr. Clarence Walton, former president of Catholic University, expounds on several relevant philosophical concepts and attempts to draw guidance from those classical concepts in resolving contemporary, pragmatic issues surrounding the control and management of pension plan assets.

The second chapter, written by two Washington attorneys, James D. Hutchinson and Paul Ondrasik, Jr., describes the legal framework within which social investing issues must be resolved. As might be expected, they emphasize the constraints imposed by ERISA and the numerous regulations that have been promulgated in interpretation of ERISA. Under present law, the trustees of a qualified pension plan owe a duty of sole and undivided loyalty to the plan's participants and their beneficiaries. In the discharge of this fiduciary obligation, they must invest the plan's assets in the exclusive interest of the participants and their beneficiaries. Social considerations can enter the equation only if the investment in question meets all the requirements of the federal prudent man rule.

The next three chapters present the views of three representatives of organized labor. Jack Sheinkman, secretary-treasurer of the Amalgamated Clothing Workers and Textile Union of America, recounts how his union has pursued certain social investing goals. John Lyons, general president of Iron Workers Interna-

tional and chairman of the AFL-CIO Economic Policy Committee, outlines the policy positions adopted by the AFL-CIO. Howard Young, director of the Social Security Department of the United Automobile Workers, makes a reasoned argument in favor of certain types of social investments and counsels against making ultimate judgments in terms of existing law. He points out that the strictures of ERISA could be suitably relaxed by Congress if a consensus should develop that certain kinds of social investing would be in the public interest.

The practical problems encountered in implementing a policy of social investing are described in Chapter 6. This chapter was prepared by Madelon De Voe Talley, at that time director of investments and cash management for the Comptroller of New York State. In that capacity, Ms. Talley had responsibility for investing all the assets of the New York State retirement systems. In her paper, she describes the various proposals for "nontraditional" investing that come to the Comptroller's Office and the manner in which that agency responded to such pressures during her tenure there.

In Chapter 7, Professor Randolph Westerfield of the Wharton School evaluates the social investing concept within the framework of the capital asset pricing model (CAPM). The two concepts are inherently contradictory. Thus, if social investing concerns were to be given priority over traditional investment criteria, the return on the pension plan portfolio would inevitably be adversely affected. However, Professor Westerfield demonstrates that modest social and political objectives can be pursued via the *exclusionary* approach with only minimal effect on the portfolio's risk-adjusted return. He does not deal with the *inclusionary* approach, a much more controversial and difficult policy issue.

The final chapter of the book addresses the process by which decisions concerning social investing can be responsibly made. Written by Tamar Frankel, professor of law at Boston University, the chapter identifies the concerns of the various parties that may be affected, for good or ill, by social investing and delineates a decision process that would recognize and safeguard their interests.

The inclusion of three papers on labor's point of view might suggest to some that the overall presentation is biased in favor of social investing. It was not the intent of the editor or the Pension

Research Council to publish a polemic for or against social investing. There is a general presumption within the corporate community and among plan administrators that pension plan assets should be invested to provide a maximum rate of return, consistent with preservation of principal. Indeed, this presumption has been given statutory expression in ERISA. Both ERISA and interpretive regulations make it abundantly clear that pension plan assets are to be invested in accordance with traditional investment criteria and applicable fiduciary standards. As a practical matter, those who advocate social investing in any form have the burden of proving that, on balance, social investing of pension plan assets is sound public policy. Since, by and large, the advocates are found among the ranks of organized labor, it seemed desirable that the most articulate of these proponents should be given a forum in which to state their views. It is hoped that the collection of papers as a whole will make a constructive and meaningful contribution to the national dialogue on the subject.

The editor expresses his deep appreciation to the authors of the various papers in this volume. It goes without saying that the views expressed herein are those of the authors and should not necessarily be attributable to the Pension Research Council or its individual members.

Dan M. McGill

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Contents

1. Pension Funds and Social Investments: A Tale of Two Cities

Clarence C. Walton	1
The City of Finance	2
The City of Morals	4
Definitions and Purpose	7
Toward an Ethical Geometry	9
Omissions	11
Axioms and Theorems: Fulfillments and Frustrations	13
Relevant Theorems	17
Applications of Selected Theorems to Social Investments	18
Theorems: Conjunctions and Conclusions	29
Possible Criteria for Social Investments	30
General Criteria	32
Specific Criteria	35
Conclusion	37

2. Legal Restrictions on Social Investing

James D. Hutchinson and Paul J. Ondrasik, Jr.	39
Introduction	39
General Obligation of ERISA Fiduciaries	41
Prudence of Investment Decisions	42
Diversification of Portfolio	44
Undivided Loyalty to Plan Participants and Beneficiaries	46
Prohibited Transactions	48
Grumman Corporation Case	50
Factual Background	50
Analysis of the Judicial Decision	51
Relevance to Social Investing	54
Guidelines for Social Investing	56

3. Evolving Role of Labor in Pension Fund Investment

Jack Sheinkman	59
Awakening Concern over Investment Policy	59
Opposition of Traditionalists	61
Fiduciary Issues	63
Recent Developments	66
A Proposal	68

4. Investment of Pension Funds—The Concerns of Organized Labor

John H. Lyons	71
Committee on Investment of Pension Funds	72
Industrial Union Development	73
Mortgage Investment Trust	74
Computer Tracking Project	76

5. Pension Fund Investments: Union Goals

Howard Young	79
Introduction	79
Public Policy	81
Housing and Other Community-Oriented Facilities	83
Economic Revitalization	86
Investment Prohibitions	88
Ownership Rights	90
Conclusion	91

**6. Implementation of a Social Investment Policy—as Exemplified
by a State Retirement System**

Madelon DeVoe Talley	95
Consideration of Shareholders Resolutions	96
Corporate Giving	96
Directors and Annual Meetings	97
Shareholder Prerogatives	97
Policy Statements	98
Management Incentive Programs	98
South African Proposals	99
Nuclear Energy and Nuclear Weapons Proposals	100
Corporate Political Activity	100
Legislature and Commerce Commissioner	101

7. Capital Market Theory Perspectives

Randolph Westerfield	107
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Introduction	107
The CAPM	109
The Portfolio Problem: Idealized Case	109
Rate of Return	110
Portfolio Choice with a Riskless Asset: The Capital Market Line	113
Social Investing and the CAPM	115
Passive versus Active Portfolios	117
Caveat	119
Social Investing May Not Reduce Diversification in Pension Funds	119
Plan Beneficiaries Are Not Affected by Social Investing	121
The Cost of Social Investing Falls on the Stockholders of the Plan Sponsor	121
Conclusions	122
Appendix: The Case of Pax World Fund (PWF)	123
8. Decision Making for Social Investing	
Tamar Frankel	131
Introduction	131
Issues and Definitions	132
Issues	132
Definition: What Is Social Investing?	133
What Is the Current Legal Status of Social Investing?	134
The Problem which Pension Investment Poses	135
ERISA	135
Should the Law Be Amended to Permit Social Investing beyond the Current Limits?	139
The Arguments for Authorizing Social Investing	139
Arguments against Social Investing	145
Allocating Decision Power	150
Who Should Participate in the Choice of Social Goals?	151
The Current Power Structure of Pension Funds	151
What Are the Reasons for Changing the Status Quo with Respect to Social Investing?	152
Those Who Bear the Investment Risk	154
Proposed Model	158
Enforcement	160
Concluding Statement	161

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