

Cite as: 14 NYCU L. REV., March 2024, at 1

The Fiduciary Duties of Institutional Investors in the 21st Century: Harmonizing Fiduciary Duty and ESG Investing

Chin-Ru (Eric) Chang *

Abstract

As more and more capital flows into ESG-related investments, ESG investing has become mainstream in recent years. Institutional investors, being the intermediary between the investors and companies, on one hand, have the shares to influence the company management decision-making; on the other hand, they have to respond to the needs of their clients. For this reason, institutional investors play a central role in ESG investing. However, when institutional investors practice ESG investing, ESG issues may sometimes be prioritized over investment returns. In such circumstances, tensions will arise between the institutional investors' fiduciary duties and their practice of ESG investing. The relationship between fiduciary duty and ESG investing is therefore a critical issue. This issue has been a topic of

* Associate, Baker McKenzie Taipei Office; LL.M., National Taiwan University. The author wishes to thank Professor Ching-Ping Shao and two reviewers for their insightful advice. Parts two and six were partly based on the author's master's thesis. This article was first presented at the 2022 National Technology Law Conference.

great academic interest internationally, but it has rarely been discussed in Taiwan. To that end, this article aims to fill this gap in the academic literature. By discussing the contours of fiduciary duty and clarifying the relation between fiduciary duty and ESG investing, this article hopes to encourage more institutional investors to adopt ESG investing so that the goals of ESG investing can truly be achieved. This article also touches upon the potential revisions to the Taiwan Stewardship Principles in response to the issue of fiduciary duty, hoping that it can support the adoption of ESG investing among institutional investors.

Keywords: ESG Investing, Fiduciary Duty, Institutional Investor, Stewardship, Responsible Investing