

SUMMARY

Columbia University Sustainable Finance Seminar

SFS1: The Evolution of Fiduciary Duty

February 4, 2025

OVERVIEW

This seminar explored how fiduciary duty is being reinterpreted in light of systemic sustainability risks. Featuring two keynote presentations, the session examined how legal theory, market practice, and regulatory evolution are reshaping the obligations of asset owners and investment managers. The seminar focused on a detailed analysis of emerging global legal trends, governance bottlenecks within institutional investing, and the importance of integrating long-term sustainability considerations into the legal and operational frameworks of fiduciary governance.

In-depth discussions provided a platform for sharing litigation strategies, education initiatives, consultant reform tactics, and benchmark innovation efforts aimed at aligning fiduciary duty with long-term risk management and sustainability objectives.

PART I – KEYNOTE PRESENTATIONS

Fiduciary Duty and Investment Governance

The keynote speaker began by distinguishing between asset owners and investment managers, arguing that while the fiduciary debate is often driven by managers, it is asset owners who hold the foundational fiduciary responsibility. He described how asset owners shape governance frameworks, establish oversight structures, and set investment principles that define fiduciary practice across asset classes. By recentring fiduciary duty around asset owners, the speaker

proposed a shift in power and responsibility, aimed at reinforcing long-term value alignment and systemic risk consideration.

He then emphasized several fiduciary principles that are often neglected. One is the duty of impartiality, which requires trustees to balance the needs of current and future beneficiaries. This is particularly important in pension contexts where younger and older cohorts have different investment time horizons. Ignoring intergenerational equity, he warned, constitutes a breach of fiduciary duty.

A second is the duty to investigate. Fiduciaries must explore all material facts that could impact financial performance. Climate change, biodiversity loss, and growing inequality all meet the legal threshold for materiality. Finally, the speaker addressed the concept of prudence, urging that it be seen as dynamic and forward-looking. Fiduciaries can no longer rely on outdated interpretations of prudence that ignore emergent systemic risks supported by credible scientific and financial evidence.

The speaker also critiqued institutional governance practices, explaining that many investment committees struggle with internal dysfunction and unexamined bias. Groupthink and homogeneity in board composition discourage critical thinking and risk innovation. Cognitive biases among trustees and consultants also often impair objective evaluation of sustainability risks. These structural limitations, he argued, make boards vulnerable to legal and financial oversights and mistakes. To address these challenges, he recommended building more diverse boards, introducing structured deliberation processes, and educating trustees in behavioral finance to better identify and mitigate bias.

He discussed emerging legal threats such as the *Spence v. American Airlines* case, in which the court questioned whether fiduciaries could consider ESG factors without breaching their obligations. [Note: Later comment focused on the ruling, which showed a breach of loyalty with regard to *shareholder voting* because the trustee was conflicted, but not a breach of prudence of the *investments* themselves.] This has been interpreted as a legal backlash against ESG considerations. The speaker advocated for a legal counterstrategy that includes defending a broader definition of prudence and establishing compliance-based arguments for integrating ESG risks.

The speaker concluded by encouraging:

- large-scale trustee education programs,
- reframing ESG risks in terms that align with regulatory compliance,
- and drafting updated fiduciary conduct guidelines to bring governance practices in line with modern sustainability imperatives.

Global Trends in Fiduciary Law

The second keynote speaker argued that the foundational understanding of fiduciary duty is undergoing transformation as courts and regulators increasingly recognize that systemic risks—particularly climate-related risks—are also financial risks. In many jurisdictions, fiduciaries are not only permitted but expected to consider these risks when they materially affect long-term returns. He pointed to examples from the UK and Australia, where courts have found that failing to act on climate-related risks can amount to a breach of duty.

The speaker distinguished between ESG integration and impact-oriented investing. ESG integration involves assessing sustainability factors only insofar as they may affect financial returns. In contrast, impact-oriented investing entails actively influencing sustainability outcomes with the understanding that those outcomes will, in turn, affect the financial landscape. He made the distinction between “instrumental” and “ultimate ends” attitudes toward the pursuit of sustainability. This distinction is critical for interpreting fiduciary law across different legal systems. While U.S. law remains closely tied to integration models, countries like France and Germany are increasingly embracing impact-based standards.

He also addressed the evolving legal interpretation of uncertainty. Courts are moving away from requiring perfect foresight. Instead, fiduciaries are being asked to demonstrate that their decisions are based on a reasonable, evidence-based process. The UK Financial Markets Law Committee has explicitly supported the use of qualitative analysis, narrative scenarios, and forward-looking models in fiduciary decision-making, legitimizing these approaches in legal contexts.

Despite legal progress, the speaker acknowledged persistent barriers to effective implementation. He cited the role of investment consultants, who often promote conservative interpretations of fiduciary duty, and the fragmentation of legal standards across jurisdictions as key obstacles. He also warned about the chilling effects of EU deregulation trends, such as those seen in the Omnibus Review, which threaten to undermine harmonized ESG frameworks.

In closing, the speaker advocated for an expanded fiduciary education infrastructure, strategic litigation to challenge outdated practices, and the creation of legal guidance that clarifies fiduciary responsibilities in an era of systemic financial risk. He also recommended reforming stewardship and consultant incentives to better align with long-term sustainability objectives.

Redefining the Narrative Around Fiduciary Duty

The open discussion began with a critique of how fiduciary duty has been used as a rhetorical tool to block ESG integration. Participants observed that anti-ESG actors frequently invoke fiduciary language as a defense against change, leveraging its ambiguity to stall progress. The group agreed that sustainability advocates must take an active role in reshaping the narrative around fiduciary duty, grounding it in both legal precedent and economic rationale for long-term value preservation.

Legal Strategies and the Precautionary Principle

The conversation moved toward legal strategy:

- Participants emphasized the potential of the precautionary principle as a tool to justify action in the face of scientific uncertainty.
- They discussed the opportunity to update the Uniform Prudent Investor Act to include language that explicitly references systemic risks.
- There was strong support for developing litigation aimed at fiduciaries who ignore sustainability risks, drawing inspiration from successful lawsuits in jurisdictions like Australia. Such strategic cases could help shift jurisprudence and provide concrete examples for reform.

Reforming the Role of Investment Consultants

Another theme was the central role of investment consultants as gatekeepers in the fiduciary ecosystem. Attendees highlighted that many boards of trustees rely heavily on consultant advice, which can delay or derail sustainability efforts if the consultants themselves hold narrow or outdated views. Participants proposed several reforms, including:

- creating a public registry of sustainability-aware consultants,
- pressuring consulting firms to modernize their fiduciary frameworks,
- and empowering trustees through training programs designed to reduce overreliance on external advisors.

Benchmarking Practices and Financial Incentives

Attention then turned to the structural incentives embedded in benchmarking practices. Participants noted that most benchmarks emphasize short-term performance and fail to account for climate-related volatility or long-term externalities. This creates disincentives for sustainable investment. There were calls to

- revise benchmark construction,
- incorporate scenario analysis,
- and expand the availability of ESG-aligned indices.

Some advocated for regulatory reform that would encourage asset managers to disclose how their benchmarks capture—or fail to capture—systemic risks.

Capacity Building Through Legal and Trustee Education

Educational and institutional capacity building also emerged as a priority.

- Participants underscored the need to train lawyers, consultants, and asset owners on the evolving fiduciary landscape.
- Law schools should offer dedicated modules on sustainability and fiduciary responsibility.
- Continuing education requirements for trustees should include content on systemic risk, climate science, and ESG integration.
- Participants also suggested creating cross-sector working groups that could produce practical tools, case studies, and guidance documents for institutional use.

Communication Strategies and Broader Engagement

The discussion acknowledged the importance of strategic communication. Participants emphasized that fiduciary advocacy must be tailored to broader audiences, particularly conservative or centrist stakeholders who may resist ESG framing. Terms like “resilience,” “value preservation,” and “stability” were identified as more effective than politicized acronyms. Framing sustainability as a means of managing risk and fulfilling fiduciary obligations could, in many contexts, depoliticize the conversation and win over skeptics.

Promoting Global and Cross-Jurisdictional Alignment

In the final phase of the discussion, attention turned to opportunities for cross-jurisdictional collaboration. Given the fragmented nature of fiduciary regulation, participants proposed supporting voluntary alignment with international standards such as the OECD Guidelines for Multinational Enterprises and the UN Principles for Responsible Investment. There was also interest in forming coalitions of public pension funds and asset owners to drive harmonized practices across states and borders.

PART III – CONCLUSION AND ACTION-ORIENTED PRIORITIES

The session concluded with a consensus that redefining fiduciary duty is both an urgent legal necessity and a strategic opportunity. Moving forward, participants highlighted the need to prioritize four areas of action:

- advancing legal strategies to embed sustainability into fiduciary interpretation;
- building institutional coalitions led by asset owners;
- reforming consultant and benchmarking practices;
- and scaling education efforts across law, finance, and policymaking.

In an era marked by accelerating environmental and social disruption, fiduciary duty must evolve to protect both beneficiaries and the long-term stability of financial systems.
