

Investing to Save the World

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I. Introduction

With the rise of globalization our world has grown smaller with each year. While there are many benefits that may come with globalization, it is not without its flaws. Sadly, those flaws are creating inequity within all levels of society, and women bear the brunt of its effects. Amidst transnational corporations' quest for profit, the issues created by the displacement of local communities and increasing human rights violations are exacerbated by global crises – the Covid-19 pandemic, Russia's invasion of Ukraine, and climate change, to name a few. Now more than ever, human society must mobilize itself to seek out creative

strategies which can counteract these crises and others like them in the future. We can witness this now - we are seeing grassroots movements of young, motivated people stepping up and pleading with all who would listen to change their ways before it brings our collective doom. However, as shown by the increasingly devastating changes in our climate and escalation of conflict in regions all around the world, our window to act is closing. One answer to these issues has been growing in popularity over the last few decades - Socially Responsible Investment (hereinafter "SRI"). This paper seeks to examine the intersection of women's rights with issues of growing human rights concerns in global supply chains. Further, this paper will examine how a widespread movement reframing the mindset of both institutional and retail investors will urge corporations and other actors within the global financial system to transform their strategies into ones which create long-term value to investors and humanity by protecting the environment, keeping corporations accountable, and fostering safe communities devoid of daily human rights violations.

The second section of this paper will introduce the history of SRI. This section will briefly discuss SRI's religious origins and continue forward to modern times, looking at the current SRI climate involving major publications and blueprints for promotion of human rights in the finance community. The third section of this paper will examine the impact of globalization on women in Africa and Taiwan. This section will also introduce ideas on how SRI can be or has been applied for those women. The fourth section of this paper will introduce data which lays the foundation for the main point – that global action to implement SRI principles can begin to reduce the problems created by globalization, all while allowing investors achieve a nice return on investment (hereinafter "ROI"). This section will also introduce some of the barriers to implementing widespread SRI principles. Finally, section five reviews investor capability, both institutional

and retail¹, to influence the issues facing women and make lasting changes. By providing context on the idea of “fair trade,” distinguished from “free trade,” this section explores potential policy considerations to enable the principals which are reviewed in this paper and calls upon the everyone who reads this paper to become the change this world so desperately needs.

II. An Introduction of SRI and Environmental, Social and Governance Principles Broadly

A. The American and International Investment Climate from 1960s-2010s

SRI has gone by many names and may be confused with other, similar concepts. Some of these names include “community investing,” “values-based investing,” “green investing,” ‘environmental, social, and governance (hereinafter “ESG”)” and more.² For the purposes of this paper, I will refer to the umbrella of sustainable investment terms as “SRI.” SRI is believed to have its roots in religious organizations, such as with John Wesley and the Quakers in the 1700s who refused to participate in the slave trade.³ However, SRI as we know it in the United States grew to prominence in the 1960s amidst the Vietnam antiwar movements and other civil rights movements such as racial equality, women’s rights, consumer protection, and protection of the environment.⁴ Furthermore, the biggest proponents of the movement and those who should be credited with its success are primarily women.⁵ The movements in the 1960s and 1970s created a socio-political climate that allowed SRI principles to be brought into investment conversations, as the general consensus of the time was that restricting investments in any way was

¹ For purposes of this paper, retail investors are individuals who make investments, as opposed to institutional investors representing banks and other entities with a large amount of control over financial markets.

² Blaine Townsend, *From SRI to ESG: The Origins of Socially Responsible and Sustainable Investing*, 1 J. Impact & ESG Investing 2 (2020), <https://www.bailard.com/wp-content/uploads/2020/09/History-Socially-Responsible-Investing-and-ESG-Investing.pdf>

³ *Id.* at 3.

⁴ *Id.* at 2-3.

⁵ *Id.* at 2, 5

counterintuitive.⁶ In response to the Vietnam war, the awakening of the environmental protection movement, and increasing consumer protection laws, the 1970s saw the creation of the first, modern SRI investor funds.⁷ At the time, SRI and corporate social responsibility (hereinafter “CSR”) principles were antithesis to the contemporary schools of thought regarding the use of investments as a method to earn and grow income and carried the simple definition of companies that “show evidence in the conduct of their business, relative to other companies in the same industry or industries, of contributing to the enhancement of quality of life in America.”⁸

By the 1980s, SRI in America boiled down to a simple formula: Build a standard investment portfolio excluding “sin industries” such as “alcohol, tobacco, weapons, gambling, pornography, and nuclear energy.”⁹ This era also saw increasing corporate engagement and shareholder activism using company ownership to improve the company’s behavior and commit to the use of “avoidance screens.”¹⁰ For example, “gender lens” investing is an example of an avoidance screen that excludes companies who engage in practices harmful to women but may include companies that, for example, pay their women equally or have women on their board of directors.¹¹

From the 1990s to early 2000s, SRI saw a substantial increase in investment and investor engagement compared to previous decades¹². Indeed, as the world watched corporations obtain larger fiduciary duties,

⁶ *Id.* at 3.

⁷ *Id.* at 3-5.

⁸ *Id.* at 3.

⁹ *Id.* at 5.

¹⁰ *Id.* Avoidance screens are the exclusion of an industry based on its practices.

¹¹ *Id.*

¹² US SIF Foundation, *Report on US Sustainable and Impact Investing Trends 2020* (2020), <https://www.ussif.org/files/US%20SIF%20Trends%20Report%202020%20Executive%20Summary.pdf>

an accelerating climate crisis, and the fallout from lack of corporate oversight during the 2008 recession, SRI and ESG principles began to attract attention from investors.¹³ With these three catalysts in the spotlight, the United Nations worked with and supported two initiatives to formalize global commitments among corporations and investors to ensure human rights safeguards in corporate practices and the state regulators which monitor them to this day. In 2005, the United Nations supported an international group of institutional investors who created the Principles for Responsible Investment (PRI) which outline broad objectives for investors to aim for when trying to contribute to a sustainable global finance system.¹⁴ The next large development was the United Nation's creation of its "Guiding Principles on Business and Human Rights."¹⁵ This publication took the world by storm and since then it has attracted investor commitment to the ideals of SRI. Another¹⁶ of the large developments are the 2030 Sustainable Development Goals.¹⁷ These goals highlight seventeen major areas of concern for ensuring that the world is just, equitable, and environmentally healthy 2030. To have a deeper understanding of the concept of SRI and what duties and obligations corporations take on regarding human rights, it is necessary to discuss the principles established by these major programs.

B. Principles for Responsible Investment

UN backed PRI was created with a focus on corporate social responsibility by analyzing ESG factors.¹⁸ The institutional investors proposed the idea that as fiduciaries they should act in the best interest of their

¹³ Townsend, *supra* note 2.

¹⁴ PRI Association (last visited Dec. 22, 2022, 7:53 PM), [About the PRI | PRI Web Page | PRI \(unpri.org\)](#)

¹⁵ U.N. Off. High Comm'r, *Guiding Principles on Business and Human Rights*, 2011 [guidingprinciplesbusinesshr en.pdf \(ohchr.org\)](#)

¹⁶ I chose these few developments because they are the biggest developments that are globally recognized. There is a problem in the SRI community that there is a lack of universal regulation – besides these guidelines.

¹⁷ U.N., *The Sustainable Development Goals Report 2022* (Lois Jensen ed.) (2022), <https://unstats.un.org/sdgs/report/2022/The-Sustainable-Development-Goals-Report-2022.pdf>.

¹⁸ PRI Association (last visited Dec. 22, 2022 7:55 PM), [What are the Principles for Responsible Investment? | PRI Web Page | PRI \(unpri.org\)](#)

beneficiaries in the long run, and that meant incorporating ESG into their investment decision making.¹⁹

Since then, PRI have become some of the most important guidelines for corporations to address and are stated as such:²⁰

- Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.
- Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.
- Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- Principle 4: We will promote acceptance and implementation of the principles within the investment industry.
- Principle 5: We will work together to enhance our effectiveness in implementing the principles.
- Principle 6: We will each report on our activities and progress towards implementing the principles.

PRI works with institutional investors to examine their own due diligence processes and corporate oversight policies to help ensure corporations and states are working towards ethical business practices for people. Importantly, PRI's work directly impacts women by focusing human and financial resources to enable women economically and socially, and it does this by working alongside investment firms and state actors to identify their specific women's rights problem areas, and execute key sustainable development goals that specifically target those problem areas. For example, PRI highlights a leading investment firm's work, Norsad Finance Limited (Norsad), and their commitment

¹⁹ *Id.*

²⁰ *Id.*

to the principles for responsible investment and sustainable development goals.²¹ They showed that adherence to PRI standards and ingraining an explicit commitment for the promotion of women's rights into corporate culture can lead to better access to the economy for women living across the South African Region.²² Investors' dedicated commitment to integrate PRI into corporate governance practices and cooperating with the international community at large is essential for improvement of women's rights around the world.

C. The Guiding Principles

The story of the Guiding Principles begins with human rights – the fundamental idea that all humans are inherently owed a minimum level of dignity.²³ This idea was codified into law by the UN General Assembly in the 1948 Universal Declaration of Human Rights and its progeny, cementing a universal standard for respecting humans.²⁴ This universal declaration was meant to be a call to action and commitment between all the signatory parties to promote and protect human rights. However, in the decades since its inception we have seen humanitarian crises around the world showing how far society is from achieving these lofty ideals. Given the amount and urgency of humanitarian crises facing our world, the United Nations appointed Special Representative Professor John Ruggie to work with governments, institutional investors, and other stakeholders to research and establish a blueprint for uniting businesses to take more action regarding human rights protection.²⁵ The product of this research culminated in the 2011 UN

²¹PRI Association, *Case study by Norsad Finance* (last visited Dec. 22, 2022 7:55pm), [Norsad Finance | Case study | PRI \(unpri.org\)](#)

²² *Id.*

²³ U.N. Global Issues: Human Rights (last visited Dec. 22, 2022, 8:05 PM), [Human Rights | United Nations..](#)

²⁴ *Id.* There are effectively 18 different international treaties regarding human rights.

²⁵ U.N. Off. High Comm'r., *The Corporate Responsibility to Respect Human Rights*, 2012, [HR.PUB.12.2 En.pdf \(ohchr.org\)](#).

Guiding Principles on Business and Human Rights. Although there are many principles, all of the Guiding Principles focus on the three pillars of the “Protect, Respect and Remedy” Framework stated as:²⁶

- (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

With these pillars, the United Nations calls upon all corporations and state actors to understand their important roles in the women’s rights and, more broadly, human rights discussion.²⁷ Based on international human rights law as previously discussed, the first pillar addresses a state’s duty to protect and respect human rights, including businesses’ rights.²⁸ Indeed, the duty of a state to protect its citizens is integral to a nation’s stability. Execution of this pillar includes the identification and defining of material human rights, creation of regulatory oversight systems that guide businesses and providing access to sufficient remedies for injury.²⁹ This pillar is increasingly important regarding protection of women’s rights and gender equality. World Bank Group President David Malpass put it simply, “When women participate as policymakers, entrepreneurs, workers and community leaders, societies prosper.”³⁰ However,

²⁶ U.N. Off. High Comm’r., *supra* note 15.

²⁷ *Id.* at 1. The author of the principles highlights that this document and the signatories are not committing to new international law, but they are important suggestions to follow in order to make steps to address human rights issues.

²⁸ U.N. Off. High Comm’r., *supra* note 15 at 10.

²⁹ *Id.* at 3-6, 27-35.

³⁰ The World Bank, *The Transformative Power of Gender Equality in a Time of Crisis*, (last visited Dec. 22, 2022 8:29 PM), <https://www.worldbank.org/en/news/feature/2022/11/16/the-transformative-power-of-gender-equality-in-a-time-of-crisis>.

according to the United Nations Sustainable Development Goals Report 2022, the world is not on track to meet sustainable development goals for women.³¹ In fact, since 2019, the COVID-19 pandemic and global conflict have exacerbated gender inequities and reversed years of work in this area.³²

The second pillar includes corporations' responsibility to respect human rights, especially regarding its own business practices.³³ This pillar is important for this paper and women in general because a corporation's responsibility to respect human and women's, rights is an area that must see more commitment from investors and corporations to meet UN sustainable development goals by 2030. This makes sense when one looks at the growth of political and financial power corporations increasingly earn. Corporations occupy a unique position in the world – as they become bigger, they become more powerful, and their supply chains have greater effects felt across the globe, all while being placed in the social strata somewhere between government actor and sovereign citizen. The old adage, "With great power comes great responsibility" rings loudly here, as corporations are fiduciaries to their employees and other stakeholders.³⁴ The fiduciary duties do not stop at the corporation, but also potentially extend to investors of the corporations as well,³⁵ with countries like the United States creating laws like the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA") codifying employer fiduciary duty regarding investment of employee funds.³⁶ Important considerations for the execution of this pillar include an explicit commitment to enacting socially responsible corporate policies, a corporations' due diligence

³¹ U.N., *supra* note 18 at 12, 35-36.

³² Eran Bendavid, et. al., *The Effects of Armed Conflict On the Health of Women and Children*, 397 *Women's and Children's Health in Conflict Settings* 522 (2021), [The effects of armed conflict on the health of women and children - The Lancet](#); see also U.N., *supra* note 17 at 2-4.

³³ U.N. *supra* note 17 at 16-24.

³⁴ Sara Blackwell et. al., *Investor Toolkit on Human Rights*, Investor Alliance for Human Rights (May 2020) at 4-5, 11-12, [Full Report- Investor Toolkit on Human Rights May 2020 updated.pdf \(investorsforhumanrights.org\)](#)

³⁵ Rory Sullivan et. al., *Fiduciary Duty in the 21st Century*, U.N Env't Programme Fin. Initiative (2015) at 9-18, [fiduciary duty 21st century.pdf \(unepfi.org\)](#).

³⁶ 29 C.F.R. § 2550 (2022). Signed into law November 22, 2022, the US Labor Department rule eases restrictions on pension funds' ability to invest into socially responsible assets.

practices, identification of material risks based on severity and impact, and compliance with applicable law.³⁷ An important development for corporations and investors to execute this pillar includes a shift in the traditional legal framework in the US from shareholder focused business practices³⁸ to stakeholder focused practices.³⁹

The last pillar is important because one issue with enacting SRI is keeping corporations accountable. Providing effective remedies to those that need it is vital for the success of SRI and the Guiding Principles. Both states and corporations need to provide mechanisms to receive both judicial and non-judicial relief.⁴⁰ Additionally, these mechanisms need to be accessible to women to give them a realistic hope for recourse, because a variety of conflicting issues can restrict women's ability to access justice. For example, women and children that are forcefully displaced, whether by conflict, pandemic, or otherwise, see substantially increased mortality rates,⁴¹ due in large part to their lack of access to appropriate remedies such as social services (e.g., shelter from gender-based violence).⁴² The importance of the Guiding Principles cannot be understated – they are the minimum standard for state and corporate actors to achieve satisfactory due diligence standards.

D. The Sustainable Development Goals

³⁷ U.N. *supra* note 17 at 16-24.

³⁸ *Dodge v. Ford Motor Co.*, 170 N.W. 668, 671-672 (Mich. 1919). The idea that American companies are purely focused on profits for shareholders is exemplified in *Ford Motor Co.*, where Henry Ford lost in part due to his statement that his vision for profits would be redirected into the company, thus making company inventory cheaper and providing more jobs.

³⁹ O.E.C.D., *Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises* (2017) at 7-19, [RBC-for-Institutional-Investors.pdf \(oecd.org\)](#).

⁴⁰ U.N. *Supra* note 17 at 27-35.

⁴¹ Eran Bendavid, et. al., *supra* note 32.

⁴² U.N. Development Programme, *Rep. on Gender-Based Violence and Covid-19* (May 2020) at 3-5 [Gender-based violence and COVID-19 | United Nations Development Programme \(undp.org\)](#).

The final contemporary blueprints for implementing human rights due diligence for investors were created by the United Nation's Division for Sustainable Development Goals (hereinafter "SDGs"). The idea behind the SDGs is to create actionable plans to address seventeen substantive development issues by contributing to policy analysis, coordination between other United Nations departments and encouragement of stakeholder engagement.⁴³ The SDGs are directly impactful on gender equality issues for a few reasons: First, the SDGs provides a guideline to achieve each goal by 2030.⁴⁴ This is helpful for nations that struggle developing their own programs, and it also serves as a template to build upon for the future. Second, the SDGs provides a reporting framework to provide clarity and accountability for corporations. This is directly in line with the Guiding Principles by allowing access to more information to provide remedies to women. Third, the SDGs emphasizes the importance of stakeholder importance throughout its entire process, demonstrating a commitment to reframe how we see corporations globally. As mentioned previously, this should be an important step going into the future of SRI for reimagining how we see corporations and their role. Finally, the fact that they compile research and policy recommendations and coordinate it with other international groups is terrific, because while research in this area is growing, much of the research overlaps with other organizations' research, and much of it is not collected in the same place. Ultimately, PRI provides a wonderful nexus of advocacy, information and networking for SRI.

III. The Quest for Equality

A. The Growing Need to Support Women

⁴³ U.N. Dep't of Eco. and Soc. Affairs, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022* at 1-3, <https://unstats.un.org/sdgs/gender-snapshot/2022/GenderSnapshot.pdf>.

⁴⁴ *Id.*

Women have fought an uphill battle for equality for what seems like millennia now. It is telling that the world found the need to come together to explicitly denounce violence against women at the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women. Unfortunately, it has only worsened over the last few years. For each of the SDGs which address apocalyptic-level crises, women bear the brunt of it. When you add them all together, things get worse. The cocktail of COVID-19, climate change, food shortages, global conflict and warfare, forced displacement, and labor and sex trafficking, to name a few crises, have reversed years of progress towards eliminating poverty as well as exacerbated each issue.⁴⁵ Most alarming is our projected progress rate for addressing gender equality – it is estimated that it may take another 286 years to eliminate discriminatory laws and provide access to justice to women and girls.⁴⁶ These inequities are felt across the global economy. Since COVID-19, 4.2 percent of women have lost their jobs compared to 3 percent for men, and the severity of this impact was felt more in nations that did not have gender-responsive job security measures.⁴⁷ These are just a few among a handful of issues women face. I highlight these issues to not only implore the world community to do something, but also highlight areas where socially responsible investing will be able to make an impact. Through SRI, private loans can be given to women, as well as finance lessons to learn how to use the capital. SRI could create global philanthropic funds to donate money to women owned businesses. SRI can lead investment firms to prioritize companies and products that follow strict due diligence regimens. These are just a few ways SRI can make a direct impact, but to demonstrate this idea it may be helpful to use examples of this in the global supply chain.

⁴⁵ U.N., *supra* note 17 at 3.

⁴⁶ *Id.* at 2, 10, 22-28

⁴⁷ Int'l Labor Org., *Building Forward Fairer: Women's rights to work and at work at the core of the COVID-19 recovery*, (July 2021) at 1-6, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_814499.pdf

B. The Dark Side of Chocolate

In Africa, one fourth of the continent's gross domestic product comes from agriculture, with the largest export crop being cacao. Côte d'Ivoire (hereinafter "Ivory Coast") along with Ghana and Indonesia are the world's largest producers of raw cacao with Ivory Coast in particular producing about 34 percent of the world's raw cacao. Despite this, they only export 3 percent of the world's processed chocolate.⁴⁸ Cocoa is a major cash crop for the Ivory Coast, and women make up 68 percent of its labor-intensive workforce, but they only own 25 percent of farms. To make things worse, women earn on average a mere 21 percent of the income compared to men.⁴⁹ Because of this inequity, the women of Ivory Coast face issues in their only money-making industry – (1) they lack the ability to acquire land and other assets in a similar capacity to men,⁵⁰ and (2) the women have many barriers to obtain financing.⁵¹ It is not like cocoa farmers make much money – men survive on roughly 1 USD per day contrasted with a woman's .20-.30 cents.⁵² Further, because women play a vital role in home life, they are saddled with a majority of unpaid labor like childcare, which takes time away from working on the farm, resulting in poor yields per season,⁵³ and creating a negative feedback loop which keeps women economically oppressed relative to their male counterparts.

SRI can help in this area in a few ways that would promote woman-led agribusiness in the area. Three areas were recommended to the African Development Bank as key areas to make investments: (1)

⁴⁸ African Development Bank, *Economic Empowerment of African Women through Equitable Participation in Agricultural Value Chains*, (2015) at 1-2, 8-11, [Economic Empowerment of African Women through Equitable Participation in Agricultural Value Chains - World | ReliefWeb](#)

⁴⁹ *Id.* at 19, 45.

⁵⁰ *Id.* at 23.

⁵¹ *Id.*

⁵² Jez Fredenburgh, *The 'invisible' women at the heart of the chocolate industry*, BBC, (last visited Dec. 22, 2022, 9:01 PM), [The 'invisible' women at the heart of the chocolate industry \(bbc.com\)](#)

⁵³ African Development Bank, *supra* note 48. at 25-26.

increasing the number of woman entrepreneurs by providing training and financing, (2) increasing productivity, and (3) increasing access to broader markets from women-led supply chains.⁵⁴ A meaningful way to improve women's equity in the cocoa industry would be increasing the number of woman-owned businesses and increasing access to financing, for example, through loans, grants, education on business and finance management, and skill development programs. Surprisingly, Nestle offers a program to help distribute seedlings for free in nurseries, demonstrating another way that an institutional investor can impact its local agricultural community.⁵⁵ Investments such as these by institutional investors can impact opportunities for women to obtain more agency in their respective industries. These types of investing strategies should be copied by other institutional investors, because Nestle has shown that loans for purchasing new equipment and providing education on more fertile methods of production improves the production efficiency of the local communities. Mars, another United States corporation which sells chocolate candy bars, gives another example; Mars provides an educational service to woman farmers, colloquially known as "cocoa doctors," allowing them to use their knowledge to offer advisory services to farms.⁵⁶ The final suggested idea for promoting women's agency in the cocoa trade is to help create cooperatives, composed and ran by women, and increase women's ability to guide decision making in their communities and provide more agency to make financial decisions.⁵⁷ The end result of these strategies is to give women the tools to become leaders in their communities and create the foundation for generational success.

All of this sounds ideal, but if investors find these strategies to be too risky of an investment, the programs will not be long for this world. Fortunately, some of these programs have seen continuing success. One

⁵⁴ *Id.* at 29-31, 43-52.

⁵⁵ *Id.* at 50.

⁵⁶ *Id.*

⁵⁷ *Id.* at 52

success story is that of the Women’s School of Leadership, which brings women together and teaches them life skills and fosters a community of inspiring leaders.⁵⁸ The investment into women’s education and providing a community for them to organize has had wonderful effects. Now some alumni, e.g., Ehui Edith Laure Kouamé, are able to support themselves, support their business with supplemental crops, and lift up their communities.⁵⁹ Finally, in July 2022 Ivory Coast and Ghana came together and raised the premium on its cocoa beans, finally breaking even on most of their sales, rather than losing money.⁶⁰ These success stories can be directly correlated to the important principles discussed by PRI, the Guiding Principles, and SDGs by seeing government regulators negotiate for the betterment of their people, corporate investment into an at-risk area for women, and providing remedy to their biggest concerns.

C. Fast Fashion Fallout

Another cause for concern is the “fast fashion” industry – quick and cheap production of clothes. In Asia, which exports roughly 60 percent of textiles, the manufacturing of textiles alone, disregarding transportation, uses 79 billion cubic meters of water and creates 6-8 percent of total global carbon emissions.⁶¹ The textile clothing industry is massive and employs about 91 million workers globally, 50 million of which are women.⁶² This introduces another issue in the fashion industry of major concern to women – corporations must hire cheap labor to compete with the rest of the industry, leading to substandard or downright terrible labor and recruitment practices. The work itself is hard and factories

⁵⁸ Jez Fredenburgh, *supra* note 52.

⁵⁹ *Id.*

⁶⁰ Ange Aboa, *Ivory Coast and Ghana to raise cocoa premium next month*, Reuters, (last visited Dec. 22, 2022, 9:10 PM), [Ivory Coast and Ghana to raise cocoa premium next month | Reuters](https://www.reuters.com/business/commodities/ivory-coast-ghana-to-raise-cocoa-premium-next-month-2022-12-22/)

⁶¹ Int’l Labor Org., *Reducing the footprint? How to assess carbon emissions in the garment sector in Asia*, (March 2021) at 11, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_781938.pdf

⁶² Int’l Labor Org., *The state of the apparel and footwear industry: Employment, automation and their gender dimensions*, (January 2022) at 4-7, [wcms_835423.pdf \(ilo.org\)](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_835423.pdf)

usually provide poor working environments.⁶³ Furthermore, the pay is low and working hours are long, and women are left open to many systemic abuses.⁶⁴ Despite these major concerns for women, it remains one of the largest sectors employing women,⁶⁵ and the opportunity to earn meager sums of money is enough to trap many women working seeking to provide for themselves and their families. Some companies use other practices to find cheap labor, such as hiring foreign migrant workers to work in factories for little to no wages, on top of being required to give their “job brokers” brokerage fees.⁶⁶ Indeed, the rise of globalization has also seen the rise of modern slavery, with around 25 million people reported to be forced into labor.⁶⁷ As addressed earlier,⁶⁸ women and girls are treated much worse than men when they are forced to move or are trafficked in any way. This was an issue disclosed by the company Patagonia, which is surprising to say, because when most people think of Patagonia, they think of a company that cares for the environment and people. However, after discovering and disclosing this issue, Patagonia immediately created a due diligence framework to do their best to mitigate the problem and they continue to improve upon this framework today.⁶⁹ Patagonia’s actions are exemplary of what companies should be doing – disclosing as much information about their supply chain as they can, making explicit disclosures of their commitment to sustainable practices, and following their due diligence plan.

IV. Dispelling Myths and Facing Challenges

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* Five percent of working women are employed in the textile industry.

⁶⁶ Patagonia, *Our Footprint: Migrant Workers*, (last visited Dec. 22, 2022 9:20 PM), <https://www.patagonia.com/our-footprint/migrant-workers.html>.

⁶⁷ Andy Shen, *Bridging the Gap: Financial Sector Action to Prevent Trafficking in Persons*, Liechtenstein Initiative: Finance Against Slavery and Trafficking (November 2021), [Bridging the Gap: Financial Sector Action to Prevent Trafficking in Persons \(unu.edu\)](https://www.unu.edu/publications/bridging-the-gap-financial-sector-action-to-prevent-trafficking-in-persons)

⁶⁸ Eran Bendavid, et. al., *supra* note 32.

⁶⁹ Patagonia, *Our Footprint: Supply Chain Environmental Responsibility Program*, (last visited Dec. 22, 2022 9:30 PM), <https://www.patagonia.com/our-footprint/supply-chain-environmental-responsibility-program.html>

A. SRI Makes for Good Investments

As previously mentioned, SRI initially was not popular with investors because it would exclude whole industries from investment. There was this idea that SRI would not be able to perform as well as other funds. The last few decades show both a positive relationship with investments in SRI funds and increasing investor support for the practice as a whole.⁷⁰ Collaborating with Rockefeller Asset Management, New York University Stern College of Business examined at least one-thousand studies regarding the relationship between SRI and traditional investment practices. The study yielded six major findings: (1) positive financial performance for SRI is more apparent over longer periods of time, (2) SRI integration performs better than negative screen approaches,⁷¹ (3) SRI tends to do well during a social or economic crisis, (4) Sustainability initiatives drive positive financial performance because of managing risk better and being more creative, (5) investing for a low carbon future improves financial performance, and (6) SRI disclosures on their own do not improve financial performance.⁷² These findings are huge for SRI, and for the prospect of using it to improve women's lives. While the gains are not massive over traditional investing, it is enough to ask why someone would not be interested in the idea of SRI. One caveat to this is that the "sin stocks", the neglected stocks not invested into by the SRI firms, might eventually outperform SRI stocks.⁷³ That said, the impact is negligible, as the difference in performance was only about 1-1.5 percent.⁷⁴ Furthermore, it is arguable that the one percent difference in the short term will not outperform the long-term benefits of SRI – like potentially saving our planet from the increasingly devastating effects of climate change.

⁷⁰ Tensie Whelan et. al., *ESG AND FINANCIAL PERFORMANCE: Uncovering the Relationship by Aggregating Evidence from 1,000 Plus Studies Published between 2015 – 2020*, (August 2021) at 2, [ESG Paper Aug 2021.pdf \(nyu.edu\)](#)

⁷¹ "Negative screen approaches" meaning that company scored poorly for SRI and ESG disclosures generally.

⁷² Tensie Whelan et. al. *supra* note 70 at 3.

⁷³ London Business School, ESG Investing: The Academic Perspective | London Business School, YouTube (last visited Dec. 22, 2022, 9:40 PM) <https://www.youtube.com/watch?v=qCVoDAR8AEA&t=1723s>

⁷⁴ *Id.*

B. Current Challenges

This does however bring up one of the current issues with the idea of SRI, the idea that not every investment firm or corporation views its fiduciary duties the same.⁷⁵ Fiduciaries in this space have an opportunity to educate their clients correctly by providing them the tools to analyze the investment space by making proper disclosures on SRI practices and clarifying any confusion that may arise from confusing terminology and overlapping research from multiple sources.⁷⁶ Another opportunity to improve upon this issue comes with state actors. State actors should have their regulators create schemes which mandate a minimum standard for disclosures on SRI.

Involving state regulators could help address two issues seen in corporations abroad and in the United States: (1) holding corporations legally accountable, and (2) “Greenwashing.”⁷⁷ The difficulty in holding corporations accountable is shown in the overall framework of the US legal system, e.g., the business judgement rule. The business judgement rule presumes boards of directors make decisions in the best interests of the corporation and its shareholders, thus immediately providing a large barrier to holding corporations and their decision-makers accountable. Of course, there are times where you can “pierce the corporate veil” and hold directors or officers personally accountable, but it seems to be the exception more than the rule in American case law. An example of the difficulty in finding a way to hold a corporation accountable is seen in a lawsuit against Nestle and Cargill, US-based confectionaries.⁷⁸ In *Nestle*, six child-

⁷⁵ Rory Sullivan et. al, *supra* 35 at 18. This example highlights some fiduciaries still pushing profit first investments despite data that says otherwise.

⁷⁶ *Id.* at 21.

⁷⁷ Greenwashing is where an investment firm or companies’ disclosures on SRI do not line up with their business practices.

⁷⁸ *Nestle USA, Inc. v. Doe*, 141 U.S. 1931 (2021).

slave survivors brought suit against the US companies under the Alien Tort Statute (ATS) for their contributions to the child slavery in Ivory Coast – specifically, their sourcing of cocoa from Ivorian farms and providing the farms advanced technology and financial capital in exchange for the exclusive right to purchase cocoa from the area.⁷⁹ The Supreme Court granted certiorari and reversed the decision.⁸⁰ The Court reasoned that ATS requires a showing of more domestic conduct than general corporate activity.⁸¹ The Court also implied ATS does not apply extraterritorially, so this will be very difficult for people outside the US to use when prosecuting corporations if they cannot prove the corporation did something beyond “general corporate activity.” My inclination is that even if they could find a cause of action under ATS, they will have to comply with the business judgement rule.

The other issue that regulators can help with is the phenomenon known as “Greenwashing.” While all of the world’s issues right now, e.g. climate change and the war in Russia, will make any advancement in human rights difficult, regulators can take action against corporations that are liable for “Greenwashing,” by create regulations to require strict adherence to due diligence plans. An additional method of fighting “Greenwashing” could be investor-activists spurring their legislators to create new laws addressing the issue. An example of holding corporate boards accountable for greenwashing can be found in the successful suit of Shell by Client Earth in a Netherlands court.⁸² Shell claimed its plans for transitioning would reduce emissions by 45% by 2030, but Client Earth found it would only be reduced by 4 percent.⁸³ In the US, there have not been any successful lawsuits based on greenwashing, but the Securities and

⁷⁹ *Id.* at 1935.

⁸⁰ *Id.*

⁸¹ *Id.* at 1934

⁸² Henry Engler et. al., *Special report; ESG under strain*, at 5 (Alexander Robson & Randall Mikkelsen eds. 2022), https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/09/SPECIAL-REPORT-ESG-Under-Strain_2022-UK.pdf

⁸³ *Id.*

Exchange Commission (hereinafter “SEC”) fined Bank of New York Mellon for lying about some of their mutual funds going under ESG quality reviews. Despite the lack of successful suits, active and socially responsible investors can look toward the future, as there are lawsuits in progress.⁸⁴ These recent developments are indicative of the global efforts being made to keep powerful transnational corporations accountable.

V. Voting With Your Wallet

A. The Evidence Shows Change is Possible

The dynamic relationship that women have with the globalized community presents a myriad of issues that need to be handled with care. In determining any policy meant to mitigate these problems, the response must be gender responsive and inclusive. Current regulations and conduct are not focused enough on addressing the Guiding Principles, such as providing proper access to remedy. This is evident from the US cases discussed previously. While survivors can be hopeful to find recourse in holding corporations liable for lying in their disclosures, there are no clear options to address corporate complicity in human rights abuses without a clear showing of intentional misconduct. Maybe the remedy exists with suing American corporations in other countries, like Client Earth did to Shell, but an obvious answer is not apparent in American law. Perhaps the best thing now is to utilize grassroots, social mobilization to urge legislators to clarify corporate responsibility in these situations. This could look like signing sections of PRI, the Guiding Principles, or SDGs into law. Ultimately, change needs to come from activists, whether they are everyday people speaking to politicians or their pension fund managers, lawyers advising their clients, or institutional investors introducing real policy changes into their corporate practice.

⁸⁴ *Id.* at 6.

The one thing that should be apparent by this point are large corporations' focus on growing wealth. For many corporations and directors still, their main fiduciary duty is to create profits for shareholders. Perhaps the most effective way to ensure compliance with strict due diligence blueprints is to simply vote with our wallets. To do so would need a global movement to enact this change, because corporate focus on growing wealth has been ingrained in our economic system for hundreds of years. As stated previously, the time to act was long ago and lasting change needs to begin as soon as possible. To further illustrate this point, it may be helpful to discuss the concepts of "free trade," and the more modern movement of "fair trade" to pinpoint how it got to this point.

B. Free Trade and Fair Trade's Influence on Modern Economic Systems

When it comes to economies like the United States, many of its citizens can tell you that the United States is a capitalist nation. Capitalism as an economic system promotes making money as a primary motivation and allows for the private ownership of corporate assets; in its most pure form it is what one might describe as the American dream, the ability to "pick yourself up by the bootstraps," and make and grow income by and for yourself. Adam Smith, arguably the "father" of modern capitalism, put it aptly two centuries ago, the idea that free trade is the "obvious and simple system of natural liberty."⁸⁵ By examining Smith's teachings "division of labor,"⁸⁶ and his contemporary classical economist David Ricardo's theory of "comparative advantage,"⁸⁷ we can see the foundations of capitalism and the globalized economy,

⁸⁵ Douglas A. Irwin, *Free Trade Under Fire* 32 (4th Ed. 2002).

⁸⁶ *Id.* at 33. "The division of labor [is] the degree to which individuals specialize in certain tasks [which] enhances productivity."

⁸⁷ *Id.* at 34. "Comparative advantage implies that a country could find it advantageous to *import* some goods even if it could produce them more efficiently than other countries. Conversely, a country is able to *export* some goods even if other countries could produce them more efficiently. In either case, countries stand to benefit from trade."

where both promote perpetual growth of a business, and income, by improving productivity and viewing the global markets holistically to find the most efficient method of earning income.

At the core of both theories is the idea that the market itself and those who live by its rules create supply and demand. These classic ideas of free trade and its progeny have been taught in classrooms in the United States for centuries now, so it is not surprising to see that these ideas continue to influence our economy and corporate practices. That said, we have long since deviated from the classical ideas of a *laissez-faire* economy which rejects any disruption to the market and its processes. In fact, disrupting the market is a key component of how a country cooperates with other countries. This is simply shown in tariffs, fees a country charges on imports or exports of products. To take this idea further, it is also a key method of influencing countries to comport with international laws and norms. Two examples on opposite ends of a sliding scale may be seen in sanctions against countries and free trade agreements between countries.

A very important example of economic sanctions and their impact has unfortunately occurred mere months before the writing of this paper. Since the beginning of Russia's invasion of Ukraine in February, 2022, economic sanctions enforced by the United States among others have, "immobilized about \$300 billion worth of Russian Central Bank assets, limiting the central bank's ability to aid the war effort and mitigate sanctions impacts."⁸⁸ This highlights the importance that countries place on their economies and the use thereof as a tool for influencing other countries. On the other end of the spectrum exists free

⁸⁸ Press Release, U.S. Dep't. of State, *The Impact of Sanctions and Export Controls on the Russian Federation*, (October 2022) (last visited Dec. 22, 2022 10:02 PM), <https://www.state.gov/the-impact-of-sanctions-and-export-controls-on-the-russian-federation/#:~:text=Specifically%2C%20sanctions%20implemented%20by%20the,effort%20and%20mitigate%20sanctions%20impacts.>

trade agreements. The North American Free Trade Agreement (hereinafter “NAFTA”), for example, removed tariffs on goods exported from the United States to Mexico and Canada, artificially creating the economic system promoted by Adam Smith and his contemporaries, and allowing each country to enjoy cheaper transactional costs to produce their goods. Clearly there is merit to these ideas given how long they have been taught in schools and used by countries in their interactions with one another. However, as shown throughout this paper, these are the very ideas enabling human crises around the world, because they do not account for people; they do not account for how people will be impacted because they are objective economic models.⁸⁹ While this paints a grim picture of how we arrived upon these issues of globalization, there is light in the darkness. The Fair Trade movement, “...based on the simple idea that the products bought and sold every day are connected to the livelihoods of others...”⁹⁰ is a global movement which actively seeks to counteract the typical ideas of our capitalistic society.

In the United States, the Fair Trade movement began after World War II.⁹¹ This movement, like other social rights movements discussed earlier, was pioneered in part by influential women such as Edna Ruth Byler.⁹² The Fair Trade movement is one which is directly in-line with the equitable principles discussed throughout this paper and it embodies the idea of voting with your wallet. It is a method of supporting businesses based on their commitment to providing safe workplaces and providing livable wages. For

⁸⁹ One of the “Founding Fathers” of behavioral economics, Richard H. Thaler, has spent decades directly addressing this vital issue in modern economics by promoting the idea that “... the problem is with the model being used by economists, a model that replaces homo sapiens with a fictional creature called homo economicus, which I like to call an Econ for short.” (Richard H. Thaler *Misbehaving* 4 (2015)). Importantly, his work addresses the absence of how humans think and act in modern economic theories, “It is time to stop making excuses. We need an enriched approach to doing economic research, one that acknowledges the existence and relevance of Humans.” *Id.* at 7.

⁹⁰ Fair Trade Certified, *Why Fair Trade*, (last visited Dec. 2022, 2022 10:05 PM), <https://www.fairtradecertified.org/why-fair-trade/>

⁹¹ Fair Trade Certified, *About Us: Our History*, (last visited Dec. 22, 2022, 10:12 PM), <https://www.fairtradecertified.org/about-us/our-history/>

⁹² *Id.* “An American businesswoman, Byler was moved by the women artisans she encountered along her travels and began selling their handmade textiles to her friends and neighbors to help them earn a living. Out of this grew Ten Thousand Villages and a global fair trade movement.”

example, the Fair Trade movement supports women by educating them on their rights to earn livable wages, freedom from sexual harassment and other human rights abuses in the workplace and giving women agency to be economically independent and have a voice to make change.⁹³ Furthermore, the Fair Trade movement is a great example of how we can influence good change throughout the world while still engaging with the globalized economy, which is an extra benefit for the more profit focused people among us. This is the exact type of movement we have needed for so long, and it grows still today, but there needs to be even more engagement from people and professionals in all industries across the globe.

VI. Conclusion

The foregoing conversations have finally brought the point of this paper full circle – investors can and should wield the authority they have over the people and institutions entrust their money to promote equality for women. Investors must recognize their roles in the global economy and avoid being complicit in global human rights abuses. Investors must engage in meaningful conversations with one another, focused on the promotion of women’s rights, and demand products and services that are in-line with these ideas. Investors can do this in many ways. Other than holding corporations accountable to their own due diligence blueprints, investors can benefit women more directly by providing loans and establishing financing agreements, paired with technical education, to women that need access to the economy and their local market system. Investors can also take preemptive measures by creating a dialogue with their money managers about what their SRI analysis and due diligence framework looks like before trusting them with money. Further, there are other ways to invest in a community besides giving money. A lesson

⁹³ Women on the Border, *Women and Globalization: Fair Trade*, (last visited Dec. 22, 2022, 10:15 PM), <https://womenontheborder.org/women-and-globalization/fair-trade/>

one might hear in church follows this idea closely, that anyone can give their time, talent, or treasures to make investments in others.

The world stands at the intersection of global catastrophes and women bear the brunt of it. To alleviate these issues, and potentially cure them in some cases, the global community must come together to redirect the trillions of dollars held under management towards causes that are focused on making a difference for women. By committing to these ideas of Socially Responsible Investment we can be the change this world needs by creating a society in which everyone can participate.

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