

[SLIDES 5 and 6:

- UNGPs aren't particularly specific to financial actors, and in many ways were not written with the financial sector in mind.
- Although the OECD Guidelines don't mention the financial sector, a project was established in 2017 to develop guidance on the applicability of the OECD's DD provisions to financial institutions, including institutional investors (<https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>) with a particular focus on asset managers and asset owners and certain asset classes (public equities, corporate bonds, private equities, infrastructure and real estate).
 - Key takeaways from the Guidance on Institutional Investors which focused on DD steps to address impacts associated with investee companies. Note: RBC risks refer to risks of negative impacts on the issues covered by the Guidelines and not ESG risks to companies.
 - 1. While investors are not responsible for the behavior of their investee companies (nor are they expected to carry out DD for their investees), they are expected to use their influence and leverage over an investee to encourage them to prevent, cease, mitigate, and remediate harmful impacts.
 - 2. Given the large number of companies in some investors holdings it is appropriate for investors to prioritize undertaking DD on companies with the most severe risks.
 - 3. The amount of leverage investors may have depends on the type of investor they are and the specific asset classes. (Annex 3 details the relationship between asset classes, investment strategies, and leverage – e.g. listed equities v. private equity; passive v. active holdings.) **SHOW SLIDE 6**

SLIDE 7

- In 2020 the Investor Alliance for Human Rights developed the Investor Toolkit on Human Rights to elaborate for investors how to apply the UNGPs to their investment activities

https://investorsforhumanrights.org/sites/default/files/attachments/2022-03/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020_updated.pdf

- **Dual responsibilities for investors:** Investors should respect human rights at both the **institutional level** and at the **investment level**, throughout the investment lifecycle
- At the investment level, asset owners and managers should:
 - Communicate their commitment to **respect human rights in all investment activities**
 - **Undertake due diligence on all their investments**, i.e., Have portfolio companies committed to respecting HRs? Have they assessed and managed their risks? Is their risk management having the desired impacts?
 - Use their leverage, individually or collectively, to **engage in responsible investment stewardship (SLIDE 8)**
 - **Responsibly divest** when exercise of leverage to address harms is impossible. Note: This is very relevant for investment in CAHRAs, like Myanmar, Russia post Ukraine invasion, and occupied territories like Gaza.

SLIDE 8

- Investor leverage can take many forms in terms of what investors can do individually and collectively
 - Pre-investment screening – e.g. “sin stocks”
 - Responsible investing – e.g. ESG funds, impact investing
 - Active stewardship in various forms – e.g.
 - Direct or collective engagements with companies (or asset managers) – Such as the Investor Alliance’s Digital Rights & AI engagement, CAHRA pilot project engaging tech and renewables

- Proxy voting and escalation strategies when companies are unresponsive (filing shareholder resolutions – **SEE SLIDE 9**, no vote campaigns against board, raising issues at AGMs)
- Exercising collective leverage with other shareholders and stakeholders, e.g. working with MSIs, such as CHRB and ICoCA; collaborating with civil society allies, such as Coalition to End Uyghur Forced Labor or B4Ukraine Coalition
- Supporting relevant regulatory and standards setting efforts, e.g. recently circulated an investor statement in support of mHREDD in line with the CSDDD in Switzerland; participating in a BSI initiative to develop a HRDD management system standard

SLIDE 9

- 2024 Proxy Season <https://www.iccr.org/reports/catalyzing-corporate-change-2024/> (Statistics based on activities of ICCR members and not the entire universe of resolutions filed by shareholders in the U.S.)
- Nearly 400 resolutions filed. Top three issues: climate, human/worker rights, DEI/racial justice.
- 84 resolutions withdrawn for agreement. 299 went to vote. 109 garnered over 20% of the vote, a threshold which will usually bring management to the table to dialogue with investors.

HUMAN RIGHTS/WORKER RIGHTS AGREEMENTS

Analog Devices: Agreed to update human rights policy and undergo a third-party audit. (United Church Funds)

Comcast, Disney: Agreed to enhance disclosure on artificial intelligence. (AFL-CIO Equity Index Funds)

Thermo Fisher Scientific: Agreed to halt sales of DNA test kits to Chinese police in Tibet. (Azzad Asset Management)

TJX: Agreed to publicly disclose paid sick leave policy. (Figure 8 Investment Strategies)

Union Pacific: Agreed to disclose its policy prohibiting penalization of any employee for taking paid sick leave in its sustainability report. (Trillium Asset Management)

UnitedHealth Group: Agreed to disclose use of AI in business operations including oversight and ethical guidelines. (SHARE)

Verisk Analytics: Agreed to disclose use and governance of AI in products and services. (Parnassus Investments)

PERCENT OF PROPOSALS GOING TO A VOTE THAT ACHIEVED OVER 20% OF THE VOTE



Report on Gender and Racial Pay Gap
(12 proposals)



AI Transparency Report
(3 proposals)



Climate Transition Plans and GHG Reduction Goals
(6 proposals)



Lobbying Expenditures Disclosure
(30 proposals)*



Respect for Freedom of Association
(4 proposals)



Political Contributions Disclosure
(13 proposals)

- BUT filing of resolutions just one tool, and has its limitations – e.g. has to be put in language highlighting financial interests of shareholders, have to own particular amount of shares for certain time periods, barriers to re-filing,

voluntary if companies implement the requests, companies can challenge them with the SEC in form of no-action requests

- Also support for ESG resolutions has been falling for the last three years, according to [PRI](#): “Average levels of support for shareholder resolutions have continued to trend downwards, from 28.3% in 2023 to 21.6% this year.” (29.3% in 2022) This is attributable in part to the ESG backlash, and large U.S. asset managers’ drop in support for such resolutions (e.g. Vanguard did not support a single ESG resolution), a growth in the number of anti-ESG resolutions, which muddied the waters, increased specificity of resolutions filed, and numerous withdrawals for consensus.

SLIDE 10

- See BHRRRC blog series – Bridging the Human Rights Gap in ESG https://www.business-humanrights.org/en/blog/?opinion_series=25 See also blog by Paloma and Dunstan <https://www.bsr.org/en/blog/human-rights-are-not-just-an-esg-factor>
- **ESG investing on the rise** with 10% of worldwide fund assets currently invested in ESG-labelled funds. **ESG assets on track to exceed US\$50 trillion by 2025.**
- Shortcomings of ESG investing:
 - **Inconsistency** in terms of how elements of ESG are **defined and measured**
 - **HRs treated as just another S factor** rather than as a global standard of conduct for companies that cuts across all three pillars of the E, S and G
 - **Lack of transparency of the methodology** for collecting data and of the sources of data – Data often relies on company self-reporting and public information.
 - Companies often given **one combined ESG score**, which allows for **offsetting of poor performance** in one category by good performance in another

- **Investor case can have its limitations** – financial value creation and responsible investment practices can, but need not always, go hand in hand; **investors should never be complicit in HRs abuses, even if profitable**
- **ESG Ecosystem (SLIDE 11)**
 - E.g. see recent Inclusive Development International report on Myanmar (<https://www.inclusivedevelopment.net/MyanmarESGFiles/>): “Our research team analyzed the shareholdings of companies known to have equipped, funded and enabled the Myanmar military, which the UN has accused of genocide and crimes against humanity. What we found was shocking: more than **\$13 billion of “responsible investment” has flowed to 33 of these companies through 344 funds benchmarked to the leading ESG indexes.** The companies include arms makers such as Bharat Electronics, which has supplied weapons to the Myanmar military, and Elbit Systems, which has sold them military-grade surveillance drones; technology companies such as Facebook, which the head of a UN fact-finding mission said played a “determining role” in fomenting hate speech that fuelled the Rohingya genocide, and oil giants TotalEnergies and Chevron, which have generated billions of dollars in revenue for the military.”
 - **Show video You Tube video IDI Stop ESG Greenwashing**
https://www.youtube.com/watch?v=WW1lstmE6_I&t=57s

THEN RETURN TO SLIDE 10

- ESG scores more often than not are about how ESG factors affect a company’s financial performance (**financial materiality**) and does not capture companies’ impacts on ESG factors
- **VERSUS:** The notion of **double materiality** which features in the EU Corporate Sustainability Reporting Directive and makes clear that business is accountable in two different ways—1) to investors, for the creation of

enterprise value, and thus a company needs to consider ESG impacts on the company (outside-in) and 2) to society at large, for the company's impacts on people and the environment (inside-out). The two dimensions of double materiality are connected because impacts on people and the environment increasingly interact with the creation of enterprise value over time which has become known as dynamic materiality.

SLIDE 12

- There are tensions within the ESG space.
 - On the one hand:
 - CSOs like IDI are combatting ESG funds tied to HRs and environmental harms
 - Regulations – such as the EU Sustainable Finance Disclosure Regulation – are trying to end what's been called “greenwashing”, i.e. labelling of funds as sustainable without adequate consideration of their impacts
 - Yet at the same time:
 - In the U.S., there is a conservative backlash against “woke capitalism” which among other things has targeted ESG investing
 - Companies and policymakers are increasingly challenging shareholder rights.
- The backlash is manifesting itself in various ways:
 - State attorneys general have accused large asset managers of violating their fiduciary duties towards their pension fund clients by pursuing alleged net zero political agendas in investing – they claim that participation in collective action platforms, like CA 100+, might be indicative of efforts to coordinate votes or investment decisions. A number of large investors have dropped out of CA 100+.
 - In some states, like Texas, the comptroller put certain banks and AMs on a blacklist of companies that state public investment funds should divest from because they are allegedly boycotting energy companies.
 - The State Financial Officers Foundation has actively been pushing anti-ESG legislation and at the time lobbied the SEC against any climate disclosure regulations. There have been multiple lawsuits

- against the disclosure regulation since its release. Those have been consolidated and meanwhile, the regulation has been staid.
- ALEC is developing anti-ESG model policies – for example to stop public pensions from “politically motivated” investing and to prohibit business with firms deemed to be boycotting fossil fuels.
 - Conservative groups are filing shareholder resolutions masquerading as having ESG asks.
 - Exxon Mobil has filed a lawsuit against two shareholders who filed a resolution relating to greenhouse gas emissions claiming they were abusing the system and micromanaging. Although the investors withdrew the resolution, Exxon Mobil is moving forward with the suit. ICCR has described this as a SLAPP suit.
- These efforts are having a “chilling effect” on investor commitments and stewardship activities related to sustainability, e.g.:
 - Investor Alliance members are for more reticent to sign investor statements/letters, everything is being run through legal and compliance
 - BlackRock CEO Larry Fink’s 2023 annual letter to clients, investors, and stakeholders made no reference to ESG and only one reference to sustainability – in 2021 Fink has said sustainability was the “new standard for investing” and referred to stakeholder capitalism – BlackRock voting in favor of ESG resolutions is down

SLIDE 13

- Taking Stock of Investor Implementation of the UNGPs
<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>
- Enabling environments
 - Standards-setting and policy-making bodies are contributing to an enabling environment by creating clear and consistent expectations built on SDGs, OECD Guidelines, and UNGPs – this is particularly true in the EU with regards to sustainable finance and corporate governance legislation – although that said **standards and legislation**

have been inconsistent in terms of UNGPs uptake and relative to each other

- Growing body of research linking human rights risks, corporate performance, and risks to investments (e.g. dynamic materiality approach)
- Growth of investor collective action platforms (like the Investor Alliance for Human Rights and PRI Advance)
- Examples of progress and gaps
 - Responsible investment activities have grown BUT not always aligned with international frameworks like UNGPs and OECD guidance
 - More investors have HRs policy commitments and their efforts to implement those are supported by reporting frameworks and rankings and benchmarks. More investors are engaging in stewardship activities related to HRs implementation with their portfolio companies. BUT human rights are still not considered in a systemic fashion across the larger investment community and investors face capacity challenges when it comes to addressing their human rights responsibilities. Investors struggle with prioritizing which HRs risks to address in their investment activities. This is in part because meaningful corporate HRs disclosures are still missing and tend to be process rather than impact focused.
 - Efforts to address long term, systemic issues around racial equity and just transition are increasing BUT still too much focus on short term financial performance and directors' pay is not tied to sustainability performance.
- Roadmap (<https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>)
 - Aligning the S in ESG with UNGPs, see pp. 38-40
 - Provides examples of what progress towards this goal looks like, e.g.

- *for states*, supporting application of mHRDD to financial actors; battling ESG greenwashing; scrutinizing the HRs performance of private capital market actors;
- *for investors*, integrate HRDD into investment decision-making and engage with investees on their DD processes; publicly disclose how salient HRs risks are being addressed;
- *for investor associations*, call for alignment of ESG benchmarks, data providers, and reporting frameworks with the UNGPs; elaborate what HRDD looks like across a range of investment activities and asset classes; hold members accountable to those standards.

SLIDE 14

UN Working Group on Business and Human Rights, 2024, [Investors, ESG and Human Rights](#) ([Executive Summary](#) available)