Journal of Business Ethics (2009) 84:221–235
DOI 10.1007/s10551-008-9705-4
© Springer 2008

A Puzzle in SRI: The Investor and the Judge

Jos Leys
Wim Vandekerckhove
Luc Van Liedekerke

ABSTRACT. As Socially Responsible Investment (SRI) enters the mainstream of professional and institutional investment practice, some perplexities arise. Some SRI market participants are well schooled in finance but are hesitative as to how to apply non-financial criteria in the management of portfolios. Governments too are giving SRI more attention and, in some countries, are discussion whether and how to regulate the SRI market. Advocacy groups are targeting SRI projects through media campaigns using political discourse. Many of the pertinent questions that come with these perplexities are of the philosophical or ethical type and concern legitimisation, demarcation of responsibilities, interpretation of norms and policy formulation. The inclusion of non-financial criteria into investment decision-making leads to a 'puzzle in SRI' for which this article offers a solution. The puzzle arises when the day-to-day implementation of an SRI-policy coincides with the process of administering justice. Three questions make up that puzzle: (1) what should an investor do when allegations arise about a corporation, (2) what should an investor do when a corporation is brought before a court, (3) what should an investor do when a corporation is found guilty by a court. This article argues, by distinguishing between the rationality of the investor and that of the judge, that allegations, court cases or court verdicts should not be reasons to disinvest from a corporation. This article offers examples from investor practice and points out in which way allegations, court cases and court verdicts make sense for investor behaviour.

KEY WORDS: socially responsible investment, investment decision, justice, organisational malpractice, organisational policy, professionalism

Introduction

It is likely that non-financial considerations and preferences have always played a role in investment decisions. In recent years, however, the phenomenon of ''Socially Responsible Investment'' (SRI) has entered the mainstream of professional and institutional investment practice (Eurosif, 2006; Louche, 2004; Sparkes and Cowton, 2004).[1] SRI is now overtly practised by mutual funds, by sovereign investors, by pension vehicles and insurance companies. Hence, by nature of that professional context, there is a strong impetus towards formalisation, viz. policy writing. Also, advocacy groups start targeting SRI-projects and pressurising laggards to add an SRI-dimension to their investment policy. Governments too are giving it more attention and, in some countries, preparing for regulation. In general, we see a wide variety and a rich pluralism in focus, criteria, methodology and implementation (Cowton, 1999a, b; Taylor, 2000). At the same time, the SRI-phenomenon is still fairly new for many market participants that are well schooled in finance but have less affinity with ethical and political disciplines. Hence there is some perplexity and thus hesitance about how to apply non-financial criteria in the management of portfolios. This in turn hinders further progress. Many of the pertinent questions are of the philosophical or ethical type. They concern legitimisations, the demarcation of responsibilities, the interpretation of norms and the formulation of policy.

Some investors take systematically, i.e. by way of written policy and according to explicit method, non-financial criteria into account when selecting or deselecting stocks and bonds (Sullivan and Mackenzie, 2006).[2]

They are most commonly referred to as ''ethical'', ''sustainable'' or ''socially responsible investors''. The non-financial criteria often refer to discourses on sustainable development or on corporate (social)

responsibility although legitimisations are manifold. Not only do these investors systematically assess financial perspectives of corporations and the instruments they issue. They also systematically form a judgement about non-financial or indirectly financial aspects of corporate activity. Often, the subject matter will be identical with the subject matter treated by the court. Any text or initiative – whether issued by government, academics, a corporation or an NGO – on corporate responsibility or sustainable development entails reference to norms of behaviour. What courts judge is precisely whether or not these norms of behaviour have been transgressed?

The processes of origination and the status of those statements differ profoundly, though. We do not need to linger on the juridical system. We may suppose every reader-citizen to be sufficiently knowledgeable about it, so we focus on SRI instead. SRI exists by way of inserting, on a voluntary basis, non-financial criteria in investment policy of a portfolio. Indeed, mere compliancy with applicable legal and prudential regulation is a matter of investing responsibly but even when regulation does pertain to non-financial criteria mere compliancy does not constitute SRI. SRI goes beyond mere compliancy with the law and it is implemented systematically, viz. by way of policy and it is methodically rather than on an ad hoc basis.

Four technologies of SRI can be distinguished: categorical exclusion of certain activities, selection of corporations on a best-in-class basis, engagement and norms-based exclusion. Three of them come down to excluding – or to its logical complement: including – issuers of stocks or bonds from the investment universe at a certain point of time. Most obviously, this is the case for categorical exclusion, viz. the exclusion of corporations on the basis of their very social purpose and activity. Most common categorical exclusions concern tobacco, defence, nuclear energy, preservatives, porn and alcohol. It is also the case for the technique that selects the best-corporations-in-class, viz. the corporations that within their sector are ranked as the best performers on a series of non-financial indicators that somehow refer to "sustainable development" or "social responsibility". Finally, it is the case for the technique that aims at excluding corporations that allegedly breach generally accepted norms such as the Core Conventions of the International Labour Organisation. Conversely, it is not the case for the engagement technique. The engagement technique is only possible and meaningful when an investor relationship exists and is supposed to continue.

The reasoning and discourses about the application of those SRI-techniques belong to different genres. Ethical, political, technological, financial, religious and/or economic discourses are tapped in order to legitimate the choice and the application of the inclusion-exclusion techniques. However, this article will not deal with those discourses, but aims at clarifying a question or puzzle that arises when the process of administering justice coincides with the day-to-day implementation of an SRI-policy.

By definition, SRI-investors not solely assess financial perspectives of corporations but also form a judgement pertaining to non-financial dimensions of corporate activity. Intuitively most of us will acknowledge that these judgements formed by SRI-investors have a different status than judgements issued by a court of law. However, in real world practice, the activity of the investor and the judge do coincide. Allegations about corporate conduct that pertain to one's SRI-criteria are empirical facts – the allegations are empirical and normative claims but regardless of whether or not those claims hold, it is a fact that the allegations are made (Vandekerckhove et al., 2008). Obviously, formal indictments and court rulings are even more firmly established empirical facts. They are at once a source of information for the investor and an undeniable fact he has to cope with. The general public and the consumers are aware of court proceedings and will question portfolio managers and policy writers on their position. What are acceptable answers in this context? To our knowledge, this issue has not yet received formal treatment in the growing literature on SRI.

Clearly, investing and distributing justice are different functions in our society and in the economy. The investor allocates scarce resources to sustain future economic projects. Very often, his social responsibility consists in obtaining a financial goal such as the provision of pensions at a future date or to yield a specified cash flow over time. The function of the judge is installed by the body politic; its social responsibility consists in judiciously issuing authoritative verdicts on alleged breaches of norms in the

past. This very function presupposes a framework that is laid down in laws, contains intricate procedures and distributes restricted competences.

What then, is the relationship of judgements formed by SRI-investors to the process of issuing judgements by the courts? What are meaningful ways to deal with the coincidence of implementing SRI-policy and distributing justice? What are the likenesses and the differences between the investor and the judge? Those questions are particularly relevant when designing models of SRI and setting up rules for policy. This article analyses the coincidence of decisions by SRI-investors with allegations, with the submission of these allegations to a court of law and with the pronouncement of verdict by those courts. Sometimes, the roles that carry these processes are brought together and perhaps confusingly so. For instance, the Belgian federal government recently issued a draft proposal of law on SRI-investing by third pillar pension vehicles. The proposal stated that those vehicles are not allowed to finance activities in which transgressions of the legal framework have occurred and they are also forbidden to invest in activities in which breaches of the ILO core conventions or the OECD Guidelines have occurred.[3] A puzzle for SRI-practice that immediately appears is what if the breaches are evident but a verdict on the matter at hand by a competent court is not yet available? For instance, after accounting irregularities with the Dutch Ahold came to light, some SRI-models interdicted further investment in the said corporation (see below). Another puzzle is with what ethical urgency the divestment is to be implemented? Also, the Belgian Forum for SRI (BelSif) drafted a proposal of regulation according to which SRI mutual funds are not allowed to be invested in corporations that either have been found guilty of transgressing the legal framework or have been settling out of court during the past 3 years.[4] However, why 3 and not 2 or 4 years?

In general, the puzzle we take on in this article to analyse and solve is: how to conceive of these perceptions on coincidental action by the investor and the judge? We strongly feel that an analytical approach may enhance the understanding of participants and observers and thus be contributory to further development of SRI-practice.

The article is structured as follows. The next section reformulates our puzzle into three operational investor questions. Each of these relates to a particular moment in the process from allegations to verdicts. Section ''Function and rationality of investor and judge'' distinguishes the specific rationalities of investment and the administration of justice. This allows us to answer, in section ''Solving the puzzle. What should the SRI-investor do?'', our three operational investor questions. We further clarify in section ''Why the puzzle is solved contra-intuitively'' by explaining why our answers might seem contra-intuitively. Section ''Not decisive but still relevant'' tries to avoid a misunderstanding of our position. Although we have offered reasons why allegations about organisational wrongdoing and even verdicts issued by a court should not be a decisive element for investor decisions, section ''Not decisive but still relevant'' points out that allegations and verdicts are still relevant to SRI investors. Not as a sufficient condition for divestment but rather as a signal to probe further into organisational policies. In section ''Examples from investor practice'' we illustrate our position with examples from investor practice. Section ''Conclusion'' concludes this article by summarising the solutions to the puzzle obtained from our position.

The puzzle in three operational investor questions

If and when our philosophical analysis is to be relevant for SRI-practitioners we have to formalise our questions univocally within the framework of investment practice. The questions should be formulated in a way that makes them pertinent for day-to-day portfolio management. The formulation should fit the function of the investor who is continuously optimising his portfolio, taking into account all available information.

We discern three subsequent moments (t, $t + 1$, $t + 2$) in the process from allegations to verdicts (see Figure 1). In a first moment (t), allegations are voiced about the occurrence of a malpractice at ($t - 1$) and we assume the investor to be immediately aware of them.[5] Then, in a second moment ($t + 1$), allegations are treated by a court of law and we suppose the investor to be informed about that fact. Finally, in a third moment ($t + 2$), the judge issues a verdict and we assume this to be the final verdict.[6]

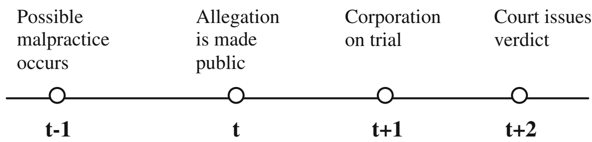

Figure 1. Moments in the process from allegations to verdicts.

Thus, the SRI-investor is successively confronted with three questions:

(1) What action, if any, should an SRI-investor take during (t, $t + 1$)? This is when corporate practices come to light that do not confirm with the non-financial criteria of the SRI-policy.
(2) What action, if any, should an SRI-investor take during ($t + 1$, $t + 2$)? This is when those practices are being brought to court.
(3) What action, if any, should an SRI-investor take from ($t + 2$) on, when the verdict by the court becomes a known fact and the corporation is found guilty?

In order to make clear that and how the questions above are salient for the three types of exclusion–inclusion SRI – we treat the relevance for engagement-SRI separately in section "Not decisive but still relevant" – although most obviously so for norms based exclusion, we provide an example for each of them:

a. Categorical exclusion: corporation A was included in the portfolio because supposedly it did not contribute to the production of arms. At *t*, however, it comes to light that 8% of its turnover during the past exercise had defence finality.
b. Best-in-class-selection: corporation B was included in the investment portfolio because it was judged to be in the top 15% in its sector according to environmental criteria. At *t*, however, it comes to light that emissions of CO_2 were much higher than had been supposed and considerably higher than the best-in-class group. On top of that, it becomes public knowledge that B did not use recycled paper for its business correspondence.
c. Norms-based-exclusion: corporation C was included in the investment portfolio because supposedly its operations were fully compliant with the ILO Core Conventions. At *t*, however, it comes to light that C recurs to child labour for the production of a key component in its main line product.[7]

Whether "what comes to light" is actually the case is often not easy to discern. Allegations abound; authoritative and timely information is hard to come by; information asymmetry is at the heart of the matter. Different parties involved (e.g. NGOs and management) will tell different stories and in many cases it is almost impossible for a third party to discern whether the allegations are true (Vandekerckhove et al., 2007). This goes for both the investor and the judge, but there are some important differences. Generally speaking, the judge has more means at his disposal to overcome this asymmetry. First, parties are obligatory present in the juridical process and obliged to provide information and arguments. Second, the juridical apparatus is equipped with more resources for research and administration than private investors generally are. Although from those points of view the position of the judge is superior to that of the investor, the relationship cannot be construed as private investors 'outsourcing' their SRI-decision to the court. Such is inconceivable because of the time lag: the judge reaches a verdict at the end of the juridical process whereas the investor takes a decision every moment from the allegation onwards, whether this is by holding, buying or selling a position in the corporation. In this, holding a position may be considered as 'continuous buying' or 'continuously deciding not to sell'.[8] Hence, if not in nature and status, the verdict of the judge and the decision of the investor differ in timing (see Figure 1). Before we can answer the three questions the SRI-investor is successively confronted with, we must take a closer look into investment rationality and the rationality of administrating justice.

Function and rationality of investor and judge

The examples given in the previous section all have in common that the investor will be disappointed about his past choices. He has been misled or mistaken when picking assets for his portfolio.

Disappointment however, is a mere psychological state of mind. Psychological and emotional states of mind have no legitimate place in rational activities such as investing. We do not, of course, deny that such states of mind actually play a larger or minor part in decision making, investors being 'humans too'. However, one of the arguments put forward by the investment industry for investing through funds or mandates is precisely that funds are managed professionally, that is, without behavioural biases that may cloud the assessment by the individual investor. Professionals are considered to be more apt at distancing themselves from behavioural biases if not solely because it is not their own money they are managing and because they are disciplined by the impersonal rules of their institution. Hence, we have to assume that the SRI-investor is a rational investor.

Most professional SRI-investors legitimise the insertion of non-financial criteria by referring to minimisation of risks or maximisation of returns. Whether SRI effectively yields higher returns or lesser risks need not occupy us here. In fact, empirical results are not equivocal (Barnett and Salomon, 2006).[9] The point we are making is that the SRI-investor first and foremost is an investor and thus (should be) practicing investor rationality. This rationality is the specific functional basis of investment practice; it is constitutive in the ethics of the function – or in other words, the institutional purpose or *telos* – as is clear from its discourse when being held accountable. Thus, a basic rule and an axiom is that investment decisions, as particular instances of economic decisions, are about the future and therefore intrinsically forward looking. A portfolio manager will never justify a buying decision by referring to the *fact* that the price of a stock *has gained*. Always, he will refer to the *fact* that he *expected* the stock *to gain*. Likewise, decisions to sell or to reallocate within the portfolio are legitimised by referring to expectations about the future and not to the past performances of the assets involved. Immediately, this also entails that the reasons for action are uncertain: they are expectations not knowledge. We see no reason suggesting that the addition of an SRI-dimension to the investment policy would change that. The SRI-dimension does not cause a mutation in the essential features of investment practice precisely because it is an additional dimension of an investment process, a voluntary dimension of investment policy. If it were to corrupt the essential features of the function or be based on contrarian features, one would no longer be investing but rather doing something else.[10]

Summarising, we have argued that investment decisions are forward looking, they are about the future and they are uncertain. Looking back, the investor may be disappointed about the financial performance of his portfolio or about the financial performance of individual stocks. Likewise, he may be disappointed about the SRI-performance of the portfolio. In this, SRI does not differ from investing without any further ado.

Now, contrasting the above to the judge in a court of law, we submit that whereas the investor always looks forward, the eye of the judge is strictly focused on what may or may not have happened. Indeed, one cannot be sentenced for an act that has not yet taken place nor can one be sentenced for any other future event. The judge always rules on allegations that were the fact or were not the fact in the past. The whole point of a court case is to establish whether allegations have a factual base or not and to discern the responsibility of the accused. The backward looking perspective also determines the formal question of procedural conformity; in case of appeal by either the defence or the prosecution, the appeal is legitimised with reference to the past proceedings and not to the outcome of the appeal-procedure. Indeed, the process of the administration of justice has a heavy formal component to it in order to protect society and defendants from arbitrariness and unfairness, from sentiments, emotions and impulsivity that may or may not be present in voluntary investment policy.

That feature also points to a second basic difference with investing, whether plain or SRI-investing. In a modern state of law, the juridical apparatus is highly regulated and has been invested with a monopoly. Thereby, its conclusions, acquittals or condemnations, gain an objective status. The status of investor decisions and decisions of the court differ as to their public or private status, and hence to their being singular or plural. The references made in SRI-discourses to the notions of transparency and accountability do not change that. The investor function is private and plural whereas the function of the court is public and invested with a monopoly. We have captured the essential differences in Figure 2.

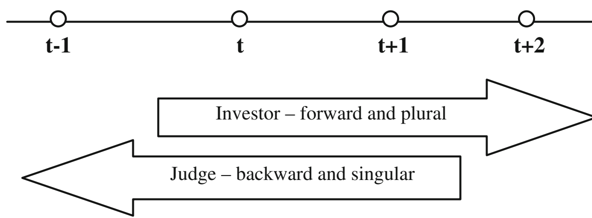

Figure 2. The investor and the judge – rationales.

Solving the puzzle. What should the SRI-investor do?

Based on our juxtaposition carried out in the previous section, we can now proceed to solve our puzzle in SRI by answering out three questions set out in section "The puzzle in three operational investor questions": what should an SRI-investor do when allegations are made (t, $t + 1$), when allegations are taken to court ($t + 1$, $t + 2$), and after verdicts have been issued by the court (from $t + 2$ on)? Their options are the following: (1) divest, (2) maintain their investment but not raise it, (3) further invest, (4) retrieve further publicly available information about the investee corporation, (5) engage in private communication with the investee corporation. Except for the two latter options, all these are investment decisions. The two latter options incur costs on the SRI-investor prior to taking an investment decision. Also, strictly speaking, the first option is not open to engagement-SRI while the two latter options are more or less trivial, which is why we treat engagement-SRI separately in section "Not decisive but still relevant" Here, we will, for the sake of clarity, formulate our answers in terms of whether or not divestment is required. We consider that to be the most important question, given public opinion (Alm, 2008) and the tone of the Belgian law proposal mentioned in the introduction. If SRI-investors are not required to divest, options 2 and 3 can be left to the discretion of the SRI-policy and options 4 and 5 come into play.

*What should the SRI-investor do during (*t, t *+ 1)?*

At t, when the investor receives the allegation, it is not yet sure that the alleged fact will actually be judged by a court of law. Even less sure is what the verdict would be.

At t, the investor will ask himself whether the allegation is true and thus will start forming a judgement before the judge does. More pertinently, the investor will ask himself whether the alleged malpractice is still going on. If he ascertains that this is indeed the case, then he will divest according to his SRI-policy. If he ascertains that the malpractice is not the case at t, there is no SRI-imperative to divest. This is true, irrespective of whether the allegation is true or not. What has occurred in the past cannot be changed by divestment and, by hypothesis, currently the SRI-criteria are met. The investor will also ask himself whether the alleged facts are likely to repeat themselves in the future. Remember that he is solely concerned with the future. Therefore, he may try to obtain additional information with the management of the corporation and with other parties involved in like cases – he will deploy some form of intelligence gathering or engagement. Also, the intelligent investor will take a close and critical look on his intelligence system in order to enhance it because he sees that his system failed to signal earlier. In order to maintain and implement his SRI-investment policy he needs a robust apparatus, as he does not like to be confronted with allegations at t but instead tries to avoid investments relating to alleged malpractice beforehand and he prefers to have knowledge of possible malpractice before allegations are made public. However, at t, the SRI-investor does not have to divest unless the alleged malpractice is still being the case at t or is expected to be the case after t.

*What should the SRI-investor do during (*t *+ 1,* t *+ 2)?*

The very fact that it becomes apparent that the alleged malpractice will be judged by a court of law does not constitute an SRI-imperative to divest either. This has nothing to do with the investor respecting the monopoly of the court in the sense that he should await the verdict and that it is up to the judge solely to rule on the allegation and to attribute guilt or to grant acquittal. Indeed, during ($t + 1$, $t + 2$) it is not certain that a verdict will ensue, for instance when procedural errors occur or when parties settle out of court. In other words, it might not come to a verdict at all or a verdict may be very long under way and the investor might possibly

have to wait in vain. Instead, the essential feature of the indictment and the juridical process elucidated in the previous section, namely that the administration of justice is about the past and that the past can not be changed, prompts us to submit that, for the SRI-investor, an indictment does not constitute a compelling legitimisation to divest. As above, the investor should ask himself whether the alleged malpractice is still the case or is likely to be (still) the case in the near future. He may invest or should divest according to his assessment of those questions.

The fact that the issuing of the verdict is a future event does not interfere with our line of reasoning. Of course, any rational investor will take into account that a verdict is likely to be issued. If and when that verdict is believed to have a financially material impact on the corporation, all rational investors will take that information into account when quoting the stock. In efficient markets all information, or rather all investor expectations, are immediately discounted in the stock price. This feature of investing and financial markets has nothing to do with SRI-policy and non-financial criteria. Financial impacts of future verdicts will be taken into account by all investors alike, irrespective of whether they have adopted additional non-financial criteria. Baucus and Baucus (1997) show that firms convicted of wrongdoing often experience lower returns in succeeding years. Hence, a court case constitutes an incentive for all investors to think pro-actively, irrespective of the SRI-dimension of their policy, and might even be a strong motivator for inserting SRI-screens in policy. However, it certainly does not legitimise 'automatic' exclusion at (t + 1) as a meaningful way to implement SRI-criteria.

What should the SRI-investor do from (t + 2) on?

When the court delivers its verdict, this verdict is by itself not pertinent for the SRI-investor. As has been stressed repeatedly, the verdict – whether positive, negative or something in between – is about the past and the investment decision is about the future. Again, the SRI-investor will ask himself whether this particular corporation is likely to repeat the malpractice in the future. However, the verdict by the judge remains silent with regard to future behaviour. Rather, it merely attributes guilt for past events and possibly contains sentencing in form of fines and retributions. All investors alike will price the financial consequences of the verdict immediately (Baucus and Baucus, 1997). Material financial impacts, if any, are discounted immediately in the stock price – such is the functioning of financial markets for plain and for SRI-investors alike. The presence or absence of SRI-criteria has nothing to do with this and the content of the verdict is immaterial for the SRI-investor and hence our position that judgement by the judge cannot dictate divestment.

Why the puzzle is solved contra-intuitively

Perhaps our answers to what SRI-investors should do when faced with allegations, court cases and verdicts come as a surprise. We seem to submit that court-rulings have no specific impact at all for SRI-investors. Strictly spoken, that is true. In order to drive home the points above, consider the following example. When we set out writing this article, Barclays was involved in the endeavour to buy and integrate ABN-Amro in order to become one of Europe's largest banks. At the same time Barclays was experiencing mounting pressure to pay millions of pounds in reparations. Allegations still maintained today suggest that some banks taken over by Barclays in the course of its history were founded with profits made from the slave trade. New evidence indicates that prominent slave traders, the Heywood brothers from Liverpool, founded Heywoods Bank in 1773 on profits from the slave trade (this is x at $t-1$ in Figure 1). In 1968 Heywoods Bank became through Martins Bank (that absorbed the former in 1883) a part of Barclays (The Observer, 2007). In 2006 claims are being brought forward; thus, ($t-1$, t) equals 234 years. Should SRI-investors, *qualitate qua*, be concerned with the question whether perhaps, in 1773 ($t-1$), money amassed through abject practices that without the slightest doubt are interdicted by the SRI-policy, may have been put to use as seed money for financial services? Should they await the verdict that may eventually be reached at t + 2? Or is it infinitely more important that Barclays today is being ran as a purposeful, responsible corporation that generates sustainable profits? Perhaps the answer to these questions is more than obvious. The

example serves as a rather extreme case in point. However, any other position than the ones reached in the previous section on the 'what should an SRI-investor do' questions does not know 'where and how to draw the line'.

Somewhat paradoxically, we have come to conclude that the indictment and the verdict by the court do not offer the SRI-investor compelling reasons to divest and that divesting might even go against investor rationale. The information about the upcoming verdict that is pertinent for the SRI-investor is pertinent for all investors alike. When the verdict eventually becomes a fact the financial consequences are a mere fact-in-the-market for all investors alike.

This finding might hurt intuition that SRI-investors do not invest in 'guilty corporations' or restrict their investments to the very cleanest. We submit that it is human intuition which errs here, not the positions prompted by our analysis. We see three reasons for this erring. The first one pertains to the behavioural or psychological biases that surround investment decisions. Rational investors try to be invested in assets that are expected to yield the highest returns in the future. Intuition deceives many investors into picking assets that have yielded high or highest returns in the past. Many investors buy when markets have been rising whereas they should be when markets will be rising. Likewise, unprofessional investors are occupied with the loss or gain of their initial portfolio hitherto instead of focussing on the future potential of their actual portfolio. For instance, after a crash, they hold 'their' stocks until the moment that their historical losses equal zero.[11] Likewise, people intuitively tend to look at past practices of the corporation instead of at its future practices when considering non-financial criteria. This is part of the human psyche. However, that is precisely why professional SRI-investment service adds value to SRI-practice just as professionalism adds value on the mere financial plane. Professionals are expected to distance themselves from intuitions and emotions and to uphold the rational exigencies of the practice.

The second reason for the apparently paradoxical nature of our findings is that people do not spontaneously link SRI-investment policy with proceedings before the court or with corporations being indicted. Instead SRI is commonly associated with corporations that stay clear of judges and with corporations not being contested at all. That too is an expectation about outcomes. When expectation is not met – and it is extremely unlikely that it would be met all the time – the immediate reaction is to dissociate the said corporation from the SRI-endeavour. However, as in investing *tout court*, investors do make decisions that, with hindsight, are mistakes. There is no reason to assume that he who may be mistaken about future financial profitability of corporate activity may not also be mistaken about future SRI-conformity of corporate activity. Intuition and instinct may be drivers for a decision to sell stocks that under perform compared with expectation but investor rationality dictates to take that decision solely with an eye on the future. Likewise it is with SRI-rationality. Spontaneous emotions and psychological associations provide misleading guidance when SRI-investing as they do in plain investing.

The third reason may be more obnoxious. It concerns confusing investing with politics or with the administration of justice. Ethical and political notions feature in SRI-discourses and there is no problem with that. However, the investors should be well aware that the very activity of investing is not to be confounded with the activity of the judge or with sentencing additionally to the sentencing by the courts. These social functions are different from investing. The management of investment portfolios is about the building of wealth and certainly this does not equal the administering of justice or the execution of additional punishments.

Not decisive but still relevant

Thus, so far we have developed an argument why verdicts issued by a court of law are not decisive to SRI-investors and we have given further reasons to maintain this contra-intuitive position. From that same position, it is also clear that stipulating a period in which the SRI-investor should not invest in corporations that have been found guilty by the court or that have been violating a particular norm makes no sense because of the future-orientation of the investor. The same line of reasoning shows that the insertion of criteria about verdicts in the SRI-policy or the development of government regulation

forbidding investors to hold stocks or bonds issued by corporations that have been condemned by court, are not legitimate. Rather, this would amount to some kind of additional punishment. Moreover, it is not clear who would actually bear the burden of the punishment – the management, the employees, the investors, the beneficiaries of the portfolios, competing investors? The answer to that question might differ according to particular circumstances. Moreover, the punishment could only be effectuated by investors that are within the jurisdiction of that government. As there is no SRI – nor a general investment rationale for disinvesting corporations that have been condemned by court, such legislation would put local investors at a serious disadvantage by limiting investor options and thereby unnecessary hurt their financial viability (see also section "Conclusion").[12]

Perhaps a more difficult case would be whether an investor should consider the settlement out of court as an admission of guilt on the part of a corporation. We maintain that the investor should not conceive of settlements in this way. Irrespective of guilt, the corporation may opt for settlement for economic and reputation reasons that are in the best financial interests of the corporation, its shareholders and the claimants themselves. The SRI-investor and the plain investor alike should ask themselves whether the settlement is effective and how these settlements will impact future corporate results. More fundamentally, (SRI-) investing is not about attributing guilt but about taking good financial decisions (within an SRI-framework).

However, we would like to emphasise that our position does not imply that the activities of the judge ($t + 1$, $t + 2$ and from $t + 2$ on) are completely irrelevant for the SRI-investor! Nor are allegations about malpractice (t, $t + 1$). Allegations may be spurious but the very fact that they are being uttered – perhaps not completely credible but still echoing in the market place – is problematic for the SRI-investor. Likewise, Vandekerckhove et al. (2008) have argued that allegations of which it is impossible for the SRI-investor to discern whether they are true or not can be considered as meta-facts. The allegation is a claim about facts. Hence, the fact that the allegation is being made is a fact 'about a claim about facts' – meta-fact. Vandekerckhove et al. (2008) show that meta-facts do not weigh heavy enough to make divestment decisions, but they are enough ground to question corporate policies about the claimed malpractices. Thus, although it would be irrational to promote the mere presence of allegations or verdicts as a straightforward SRI-criterion for exclusion or inclusion, the frequency of occurrence and the manner in which corporations deal with allegations most certainly is an eligible criterion for SRI-policies in all four technologies.

Formal indictments and condemnations by a court of law should also be treated as meta-facts. As such, they are in a way more heavy than allegations. Court verdicts shift the advantage of the doubt and prompt the SRI-investor to take action because previous transgressions may give an indicator for future conduct. The rational SRI-investor will take a close look at how future allegations and indictments are prevented by newly adapted corporate policy and practice. Here, preventive corporate action is the key because they are forward looking and they have to be implemented, irrespective of whether the corporation has been or will be found guilty. There is a firm investor rationale for this: while being occupied by juridical procedures, management certainly loses energy that could be devoted to expanding business or to building a best-in-class corporation. A management that is not able to effectively prevent litigations and allegations causes additional financial risk or misses opportunities compared to a management that is able to do so. Hence, various lines of reasoning lead to conclude that the rational SRI-investor will take a close look at allegations and verdicts, in order to learn (or to put pressure on management to learn) and eventually to exclude if corporate response is deemed insufficient. Also, the SRI-investor will try to learn in order to better predict future occurrences. Therefore, he will take a close look at his intelligence gathering and at his processes of building the information into intelligence and investment decisions.

We can now treat engagement-SRI. An often noted attitude towards this form of SRI is that it is indecisive, makes no difference, or is 'too easy'. Hence the question: Is engagement-SRI inferior from an ethical perspective? By hypothesis, in engagement-SRI, one is invested in corporations that are less than perfect and so the investment portfolio is less than perfectly 'clean'. Hence, the need for engagement; perfect corporations do not

need to be engaged. Engagement is always forward looking. Engagement is not concerned with finding out unsavoury details of past events but with future corporate. Unlike the other SRI-techniques, it is directly focused on bringing about change in corporate practice. Engagement is fully within investor logic precisely because it is forward looking. It sheds off the emotional and psychological clouding and goes ahead without spending energy on establishing guilt. Since, irrespective of guilt, the SRI-investor will try to better his chances that mere allegations, (hypothetical) facts, indictments and negative verdicts will not occur in the future. The technique differs from inclusion and exclusion qua genre and the question about its ethical superiority or inferiority seems rather pointless. Rather than competitors they may be conceived of as complementary. Norms based inclusion and best-in-class selection might be mistaken at times. In such instances, engagement for improvement is an alternative to governance with one's feet.

As SRI enters the mainstream and becomes professionalised it gains in ethical maturity. Thus, investors more firmly adopt a forward looking perspective. When allegations do occur, they have a critical assessment of their SRI-apparatus. They address the corporation in order to prevent future allegations, indictments and sentencing. They run ahead of the judge and thereby, if all goes well, put him out of work. However, never do they aim at taking his place. Ideally, they look forward and pass him by. The next section gives some examples of SRI-investor practice.

Examples from investor practice

In this section we mention some examples from investor practice relating to our position that SRI-investors – as investors – should always take a forward-looking perspective. Our first example is from the norms based exclusion as practised by the Norwegian Government Pension Fund (NGPF).[13] The SRI-policy of the NGPF excludes corporations that are found to be involved in gross breaches of basic norms. The reasoning of the *Council on Ethics*, its independent body of experts, is clearly forward looking:

> The Guidelines are principally concerned with *existing* and *future* violations, although previous transgressions may give an indication of future conduct. At the core of the issue is the existence of an unacceptable *risk* that breaches *will take place in the future*. (NGPF, 2007, p. 41, our emphasis)

first case pertaining to serious environmental damage, Freeport McMoRan Copper & Gold Inc.: The advice on Freeport McMoRan Copper & Gold Inc. to exclude was formulated accordingly:

> Considering the plans presented by the company with regard to production increase and new prospecting there is reason to *believe* that the company's unacceptable practice *will continue in the future*. (NGPF, 2007, p. 55, our emphasis)

The Council has been very coherent in this approach. A second case concerns KerrMcGee that had been excluded from the fund on May 12th 2005, because its transgression of international law in operating a project in Western Sahara. Afterwards, the company ended its operations in Western Sahara. Accordingly, on May 24th 2006, the council advised to reopen the possibility for investing in KerrMcGee as the reason for divesting had ended.

A third case is concerned with the operations by Total S.A. in Myanmar. The Council was asked to look into the allegation that Total is complicit in the breaching of the ILO Core Conventions on forced labour by the regime. The Council stated:

> […] the question is to which degree Total's previous patterns of conduct can be expected to continue at present and in future. Several factors indicate that Total's own focus on the human rights situation for those affected by the work along the pipeline route has changed since the construction period. The company *now* has a visible public profile focusing on human rights and social responsibility. […] It is difficult to make any certain statement about future patterns of conduct. In the case at hand the Council nonetheless presumes that in future construction projects Total is hardly likely to put itself in a situation in which it is associated with the use of forced labour. […] The Council considers it unlikely that Total will go ahead with projects in the future without ensuring that the company does not find itself in a situation akin to the one that arose in the period 1995–1998. Hence the Council is of the view that there is not an unacceptable risk that Total will repeat its previous pattern of action in the future. (NGPF, 2006, pp. 51–52)

These ample quotations make clear that the NGPF-project consistently only takes (current and) future corporate activity into account when deciding whether or not to strike a corporation from the investment universe and that there is no strict relationship with juridical verdicts. Freeport is found likely to continue its damaging way of operating the mine – in the case of Freeport there is no $t + 1$. Total is deemed likely to have mismanaged the human rights issues in the construction phase of the pipeline but the Council does not spend energy in going to the bottom of this – it is wisely left for the judge to judge upon. Instead, the Council asserts that it seems that Total has learned from its unhappy experience and is therefore likely to (effectively) prevent finding itself in a like situation again. In the case of Total, the judgment of the Council is post $t + 1$ (Unocal having been tried before an American court) and pre $t + 1$ at once (Total perhaps to be tried before court). Hence, the juridical situation is not that clear. From an ethical point of view, however, there are no other options than to take an SRI-investor decision here and now. Rationally forward looking, there are no grounds to exclude Total, even if (or because of) it is deemed likely that there has been some involvement with norms transgression and a future condemnation by the court is not to be excluded.[14]

Our second example pertains to best-in-class SRI and illustrates what happens when investing gets confused with justice. The Belgian Ethibel is an advocacy NGO (with some commercial activities) that is not involved in the management of investment portfolios as such. Instead, it provides 'from outside' a prescriptive best-in-class-universe to portfolio owners or managers. Compliancy with the Ethibel-universe is a necessary condition to obtain the Ethibel-label and in its turn the Ethibel-label grants the investor the status of "ethical investor".[15] Ethibel publishes its best-in-class universe. Early 2003, the Dutch retailer Ahold featured in that universe. When in 2003 accounting irregularities within Ahold came to light and the failure of the corporate governance process in accounting became apparent, Ethibel immediately ejected the company from their investment universe. According to the argument developed in this article, this decision is an illegitimate SRI-statement. Ethibel no longer allowed investors to hold a position in Ahold after the information about the accounting irregularities had hit the market and the press (t); it was, according to Ethibel, no longer ethical to do so and Ethibel foreclosed the possibility of maintaining a forward looking investor perspective by striking Ahold from the investment universe. At (t), the accounting-damage was done although it was not yet clear how much damage was caused and how Ahold would go about restoring good governance. A forward looking investor might await more information about those questions. He might even take a bet on markets overreacting on receiving the first news. After all, the stock had lost 77% of its value at t. In these circumstances, would it be per se un-ethical or irresponsible to postpone liquidation or even to buy more of the stock? Perhaps not; a forward looking investor might be convinced that, given the overall soundness of the corporation (on the basis of which it was present in the best-in-class universes in the first place), Ahold could take matters very firmly in hand. Instead, Ethibel closed off all forward looking perspectives by forbidding all adherent ethical investors to hold positions in Ahold. It obliged them to sell off at market prices that were formed during the period of uncertainty about the extent of the actual damage and about the future management approach to the problems. By thus overruling the investor perspective, the Ethibel model might have actually hurt financial values.

Our third example also relates to best-in-class but is an illustration of good practice. Fortis Asset Management entered the market for best-in-class mutual funds in 2006. Fortis too stresses the portfolio-aspects of the selection rather than the ethical status of the investor (De Tijd, 2007). The president of its Advisory Council, Karel-Henrik Robèrt, asserts that the financial potential of this type of funds is greater than the potential of its traditional counterparts. When asked whether the best approach is to include the best companies or to exclude the worst, his answer is clearly future-oriented:

> Neither of those. The companies that are preparing themselves to *become* the best are the most interesting for an investor. They are to have a strong vision and to be on a development path … You have to select companies that are evolving. (De Tijd, 2007, p. 19, our translation)

When asked about his prime SRI-criterion Robèrt's answer is equally forward looking:

> A company should be careful not to be ahead too far and to avoid trying to implement all at once. Because then investments would be too high within too short a time span and it would take ages to see some return. (De Tijd, 2007, p. 19, our translation)

Instead of focussing merely on identifying corporations that already are best-in-class, the Fortis endeavour tries to stock pick corporations that are presumed the fastest to enhance practices with good results in the not so distant future.

The maturing and mainstreaming of the best-in-class paradigm seems to entail that the asset managers no longer focus solely on what has happened or on current rankings of indicators. They try to identify corporations that will (be) move(d) and break away from the pack, that promise to show superior rankings tomorrow. The asset managers look forward instead of backward, presumably because they are more concerned with future portfolio performance than with servicing the investor's morality by offering the portfolio of the 'clean(est)' corporations.

Conclusion

Although their discourses have some resemblance and their subject matters are often identical, the administration of justice and the management of an investment portfolio within the framework of an SRI-policy are two activities that differ profoundly. Investor rationality yields decisions that pertain to the future. Constructing a verdict on guilt is about the past. It may be that some SRI-discourses are at the basis of some confusion. That confusion may be fed by inbuilt psychological tendencies to look backward rather than forward. If, however, SRI is to develop further on a sustainable path of development, confusion of roles and the blurring of perspectives are not likely to contribute. Our conclusions may benefit policy writers and portfolio managers.

- Allegations, court proceedings and verdicts by the judge should trigger critical assessment and action by SRI-investors. By themselves, however, they provide no imperative for divesting.
- The formulation of rules that link the outcome of court proceedings with divestment imperatives misses the point of what investing is all about. At no time, verdicts are specifically pertinent as to inclusion or exclusion in the SRI-portfolios.
- Investment decisions are about the future and so are SRI-decisions to include or to exclude. They are based on expectations and therefore uncertain. Thus, a plurality of SRI-decisions is in the nature of things. The judge is invested with a monopoly and his decisions are about the past. This precludes investors to outsource their voluntary SRI-decision to the court and to wait passively for a verdict.
- If and when government would regulate on the coincidence of investor decisions with decisions by the court (cf. the law proposals in Belgium mentioned in the introduction), it should do this within a forward looking framework. If government would make imperative the judgement of individual cases by investors or bodies thereof, it should avoid the appearance of pluralistic 'justice' taking place.

These findings do not offer a comfortable position for investors. They fully confront them with their future oriented responsibility in assessing and influencing corporate practice. Even less comfortable is that this may not fit well with spontaneous common sense. In the minds of the lay men, (successful) SRI-policy is not likely to be linked with being invested in corporations that suffer reputation loss due to past practices and that are being on trial before a court of law.

Hence, two perceptions should be carefully managed by SRI-investors: the first is that investing does not equal judging or sentencing about the past and the second is that investing decisions are about the future and the future only. This is not evident because it is contrary to behavioural biases and impulse. Therefore, investors and especially SRI-investors should first explain what investing is all about, what the specifics of their social responsibility consist in. A famous corporate ethicist once said,

> the first social responsibility of the manager today is to make understandable to the layman – the educated people who are outside of business and necessarily

ignorant of it – what it is that business does, can do and should do, and what it is the manager is doing (Drucker, 1964, pp. 226–227)

Notes

[1] The phenomenon takes hold on a very wide scale: since its inception in 2006, 277 signatories from over 31 countries have signed up to the *Principles for Responsible Investment*-initiative by the United Nations and the total amount of adherent portfolios surpasses 11 trillion USD. The PRI contain no instructions on SRI-techniques, nor do they prescribe political, ethical, technological criteria. They solely contain the intention to insert non-financial information in the investment process and the obligation to report on that endeavour (see www.unpri.org).

[2] Much has been written on definitions of SRI. In their introduction to an impressive and wide ranging set of contributions to SRI-knowledge, Sullivan and Mackenzie answer "What is responsible investment?" with the understatement that there is a lack of agreement on how responsible investment could be defined. They then quote a definition by Mansley as an 'initial one': "Investment where social, ethical or environmental (SEE) factors are taken into account in the selection, retention and realisation of investment, and the responsible use of rights (such as voting rights) that are attached to such investments" (Sullivan and Mackenzie, 2006, p. 14). The statutory definition of SRI by BelSif: "(SRI is) to have in place a policy that in its formulation and its implementation takes into account economic, social, environmental or cultural effects of the investment process on the short and long term and to have a dialogue with the societal parties that have a stake in that policy." (www.belsif.be). The definition by the Belgian Federal Government: "SRI combines traditional financial values with social, ethical and environmental criteria by inserting them voluntarily, transparently and structurally in the management of the portfolio and in the exercising of social rights that go with asset ownership. Dialogue with the stakeholders is part of the process." (ICDO, 2006). The definitions seem to concur in the subject matter of extra-financial aspects. The Mansley-definition explicitly mentions investor-actions but does not refer to a system or policy. Either implicitly (the first) or explicitly (the second), the Belgian definitions contain reference to the voluntary aspect of SRI. Mere compliancy with specific laws do not constitute SRI. Thus, the prohibition to invest in corporations that produce landmines or cluster munitions do no longer constitute SRI in Belgium. In other countries, where such investment is not (yet) forbidden by law, the exclusion of those corporations by way of policy (still) is to be counted as SRI.

[3] "Ontwerp van wet betreffende MVI pensioensparen in derde pijler", MIV – Wetsontwerp JUR 01, 2007/03/05, Art.6, § 1, 1°. This draft proposal of law has not been published, i.e. it is not a law yet, but was submitted for discussion with other competent authorities and with the professional community.

[4] Again, this proposal, discussed by the BelSif Board (04/19/2007), has not been published at the moment of writing. BelSif purports to be an entirely transparent organisation and the document can be obtained be obtained by contacting BelSif (www.belsif.be).

[5] This assumption is in line with general assumptions about financial markets, yet it may be contrafactual in some instance. The assumption does not invalidate our reasoning. If he the investor is not aware of the allegation at *t*, he will become aware of them at a later point in time. If he remains ignorant, no decision on a course of action has to be taken. Yet clearly, by hypothesis his SRI-information apparatus is suboptimal and he will become confronted with the matter at hand in a later stadium. The supposition is thus merely for the sake of brevity within the aim of exhaustiveness and has no bearing on the argument.

[6] This means that we skip any intermediary verdicts for the sake of brevity. It has no bearing on the argument.

[7] At this point, it may be remarked upon that solely C can be brought before a judge. It is not forbidden to sell 8% of one's output to the defence industry (A) and there is no legal obligation to use recycled paper or to have the lowest CO_2 emissions (B). However, all three cases are pertinent to all three SRI-techniques. Consider that it is not a feature of best-in-class corporations to be brought before court for any activity whatsoever, let alone to be found guilty. Also, the Belgian categorical exclusion of landmines and cluster munitions provides an example of corporate purpose that is contrary to local law. Thus, the examples above illustrate all three inclusion/exclusion techniques and they all leave open the possibility of being coincidental with juridical procedures.

[8] "Investment" refers to a transaction (a buy) and to a state (carrying a position). Carrying a position might be considered as continuously buying because at any time the investor may also decide to sell. If not so, there would be no SRI-decision to take, e.g. if the investor would be legally obliged to hold his position in a corporation for a fixed period of time, whatever may happen during that period. Thus, for our purposes, to continue being invested and to buy an new or additional position are not to be distinguished; only a situation in which the investor is able to choose, is pertinent for SRI-analysis.

[9] From a philosophical stance, that is only to be expected. Investing activity takes its course in economic history and not in some abstract mathematical universe. Therefore, it can never be 'proven' that some technologies of SRI are always superior (or inferior). All that can be positively stated is: it is not necessarily so that adopting one or other SRI-policy necessarily yields inferior financial results – because instances to the contrary have happened. The joint report by UNEPFI and Mercer (2007) offers an interesting overview of academic and professional studies on the topic of SRI-returns. Its very existence may be considered an indication of mainstreaming (cf. Introduction).

[10] Christine Farnish formulated this most aptly at the UK SIF event (April 2005): "Caring is what I do as a private individual. Pension funds, on the other hand, have clear legal duties to discharge on behalf of their members. Political preferences, sentiment and a desire to change the world do not sit easily with these duties."

[11] This failure of investment ethics has its counterpart in business management. Corporate decision makers tend to take into account sunk costs when deciding upon the future of a project that is in difficulties whereas financial orthodoxy prescribes them to solely take into account incremental future cash flows.

[12] It is clear that empirical evidence about past performances of SRI-portfolios is completely irrelevant as a rationale for regulation and that good performance can in no circumstances warrant such legislation. First of all because the past is the past and the said regulation did not apply to those portfolios and competing portfolios. Secondly because non of those portfolios implemented the criterion and so there is no empirical basis at all.

[13] For the NGPF-project, see http://www.regjeringen.no/en/ministries/fin.html?id=216

[14] Usually, the Belgian advocacy groups that pressurise the financial industry to insert SRI-dimensions refer to the project of the NGPF and quote many examples of exclusion but at the same time they keep silent about the Council's report on Total. See for instance the reports by Netwerk Vlaanderen (www.netwerkvlaanderen.be). Rather exceptionally, another pressure group, the RFA, mentions the NGPF-position but it does not refer to the legitimisation as quoted above; instead the RFA says that the Council was not able to find sufficient proof of wrongdoing whereas all other Nordic investors would be participating in a boycott of the regime: "Parmi les pays nordiques, seul le fonds de pension norvégien a conserve ses avoirs dans Total, estimant que les preuves accablant le groupe pétrolier n'étaient pas suffisantes." (RFA, 2007, p. 3). Surely, political SRI (boycotting to overthrow a regime) and norms based SRI (excluding norms transgression) differ in logic and application – the juxtaposition is philosophically mistaken. For political SRI you do not need "proof". The fact that what happened in the '90 for the NGPF "remains disputed and unclear" (NGPF, 2006, p. 51–52) is not material for its decision as is shown by the ample quotations. The Council assesses the current and future situation and sees 'proof' ("indications") that point to the benefit of Total. So, these advocacy discourses first intermingle political with ethical SRI and when rendering ethical positions, they project the function of the backward looking judge rather than that of the forward looking investor. These tactical blurring of the questions by advocacy groups that receives much attention in popular media, is likely to hinder progress with investors who are not allowed to or do not want to play in the political discourses or do not want to be perceived as assuming the function of the judge, sc. issuing pseudo-verdicts about the past.

[15] Compared with activities and roles of the traditional rating agencies, the *cas-de-figure* is as follows: while S&P or Moody's rate every issuer of bonds, Ethibel offers a closed list of issuers of stocks that it rates highly, say AAA. Then, Ethibel prescribes that investors should restrict themselves to this list as would a traditional agency be prescribing which credit rating you are allowed to invest in, e.g. only AA and better. Then, Ethibel acts as an external auditor and certifies whether the investor has been compliant with its own dynamic list as would S&P come and go through your books. Such a combination of functions is exceptional and would perhaps not be accepted in traditional finance and it is therefore very unlikely that it would enter the mainstream after its local flourishing in the late nineties. However, the *cas-de-figure* allows us to bring home our point with more poignancy because the Ethibel-model has the SRI-decisions institutionalised *outside* the actual investment process.

Acknowledgements

The authors thank S. Rottiers, G. Herinckx, L. Colle, W. Vermeir, J. Guerber, D. Van Braeckel, A.-J. Naïm, J. Bogaerts, F. Van Assche, M. Somers, the members of the Portfolio21 Technical Committee and two anonymous reviewers for their helpful suggestions and comments on an earlier draft of this article.

References

Alm, K.: 2008, 'Challenges to Investment Ethics in the Norwegian Petroleum Fund: A Newspaper Debate', *Philosophica* 79 (forthcoming).

Barnett, M. and R. Salomon: 2006, 'Beyond Dichotomy: The Curvilinear Relationship Between Social Responsibility and Financial Performance', *Management Journal* **27**, 1101–1122.

Baucus, M. S. and D. A. Baucus: 1997, 'Paying the Piper: An Empirical Examination of Longer-Term Financial Consequences of Illegal Corporate Behaviour', *Academy of Management Journal* **41**(1), 129–151.

Cowton, C. J.: 1999a, 'Playing by the Rules: Ethical Criteria at an Ethical Investment Fund', *Business Ethics: A European Review* **8**(1), 60–69.

Cowton, C. J.: 1999b, 'Accounting and Financial Ethics: From Margin to Mainstream?', *Business Ethics: A European Review* **8**(2), 99–107.

De Tijd: 2007, 'Beleggers in duurzame activa zijn geen onrealistische dromers', *De Tijd* (January 19), 19.

Drucker, P. F.: 1964/1986, *Managing for Results* (Perennial Library, New York).

Eurosif: 2006, *European SRI Study 2006* (Eurosif, Brussels).

ICDO: 2006, *MVO-Referentiekader* (Interdepartementale Commissie Duurzame Ontwikkeling, Brussels).

Louche, C.: 2004, *Ethical Investment: Processes and Mechanisms of Institutionalisation in the Netherlands 1990–2002* (Optima, Rotterdam).

NGPF: 2006, *Annual Report, Council on Ethics for the Government Pension Fund – Global 2005* (Norwegian Government Pension Fund, Oslo).

NGPF: 2007, *Annual Report, Council on Ethics for the Government Pension Fund – Global 2006* (Norwegian Government Pension Fund, Oslo).

RFA: 2007, 'Boycotter ou non la Birmanie?', *Financité* **8**, 3.

Sparkes, R. and C. J. Cowton: 2004, 'The Maturing of Socially Responsible Investment: A Review of the Developing Link with Corporate Social Responsibility', *Journal of Business Ethics* **52**(1), 45–57.

Sullivan, R. and C. Mackenzie (eds.): 2006, *Responsible Investment* (Greenleaf Publishing, Sheffield).

Taylor, R.: 2000, 'How New Is Socially Responsible Investment?', *Business Ethics: A European Review* **9**(3), 174–179.

The Observer: 2007, 'Barclays Admits Possible Link to Slavery After Reparation Call', *The Observer* (April 1).

UNEPFI/Mercer: 2007, *Demystifying Responsible Investment Performance. A Review of Key Academic and Broker Research on ESG Factors. A Joint Report by the Asset Management Working Group of the United Nations Environment Programme Finance Initiative and Mercer* (United Nations, Geneva).

Vandekerckhove, W., J. Leys and D. Van Braeckel: 2007, 'That's not What Happened and It's not Our Fault Anyway!', *Business Ethics: A European Review* **16**(4), 403–418.

Vandekerckhove, W., J. Leys and D. Van Braeckel: 2008, 'A Speech-Act Model for Talking to Management. Building a Framework for Evaluating Communication Within the SRI Engagement Process', *Journal of Business Ethics* (forthcoming).

Jos Leys
Sustainable Development Officer,
Dexia, Brussels, Belgium

Wim Vandekerckhove
Center for Ethics and Value Inquiry,
Ghent University, Blandijnberg 2,
Ghent B-9000, Belgium
E-mail: wim.vandekerckhove@ugent.be

Luc Van Liedekerke
Department of Philosophy,
Antwerp University,
Antwerp, Belgium