

Joint meeting of FMLC Insurance and Pensions and ESG Scoping Forums



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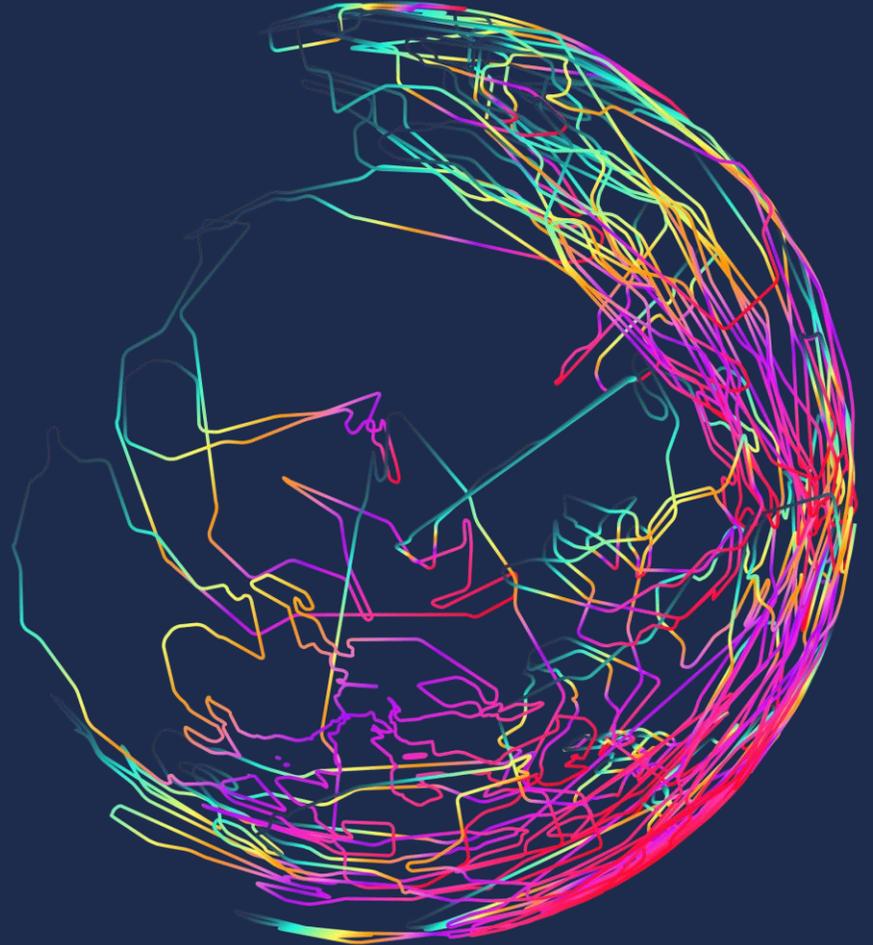
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A Legal Framework For Impact

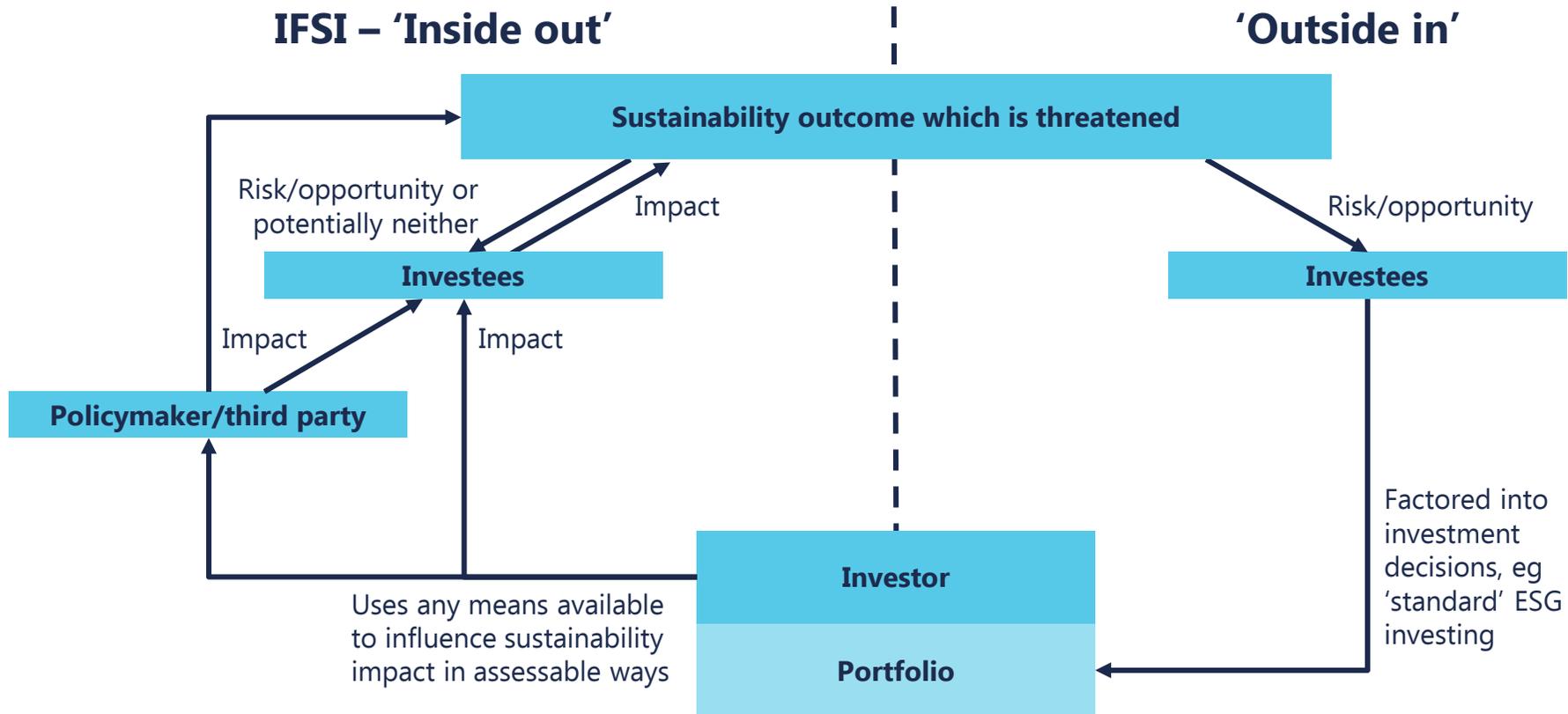
Legal uncertainty or uncertainty in practice?

David Rouch



Freshfields Bruckhaus Deringer

Investors' goals: what is IFSI?



Connecting investment goals and sustainability



Biodiversity loss



Climate change



Anti-microbial resistance



Resource depletion



Topsoil erosion and degradation



Water stress



Energy insecurity



Migration



Social and political instability



Inequality



Ocean pollution and acidification



Air pollution

'If it was ever possible to approach the goal of earning a financial return in isolation from society's broader valued goals, that time is not now. The interdependence between financial and economic activity and the systems on which it relies – and on which achieving broader goals depend – is ever clearer.'

(LFI, 2021)

Investing for sustainability impact

The investor's investment purpose



Collective action



Voting in Hackney by Alex Lee. CC BY 2.0 via [Wikimedia Commons](#).

Thank you.

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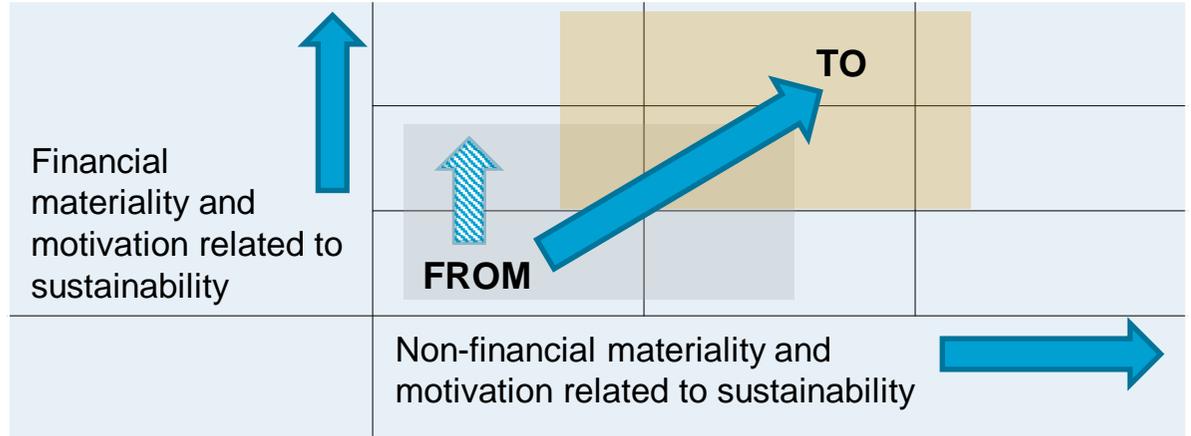


Pension trustees' fiduciary duty and sustainable investing

The “fiduciary window”

The set of investment policies acceptable given current interpretations of fiduciary duty

- The key test of the “fiduciary window” is whether trustees can visualise themselves continuing to support the adopted policies, irrespective of intermediate results
- A pension fund’s size and other context, including beliefs, affect which strategies fit into the “fiduciary window”
- Public policy and legal cases are key factors in the shape and shift of this “window”
- Freshfields’ legal framing encourages a more impact-friendly interpretation of existing fiduciary laws, thus stretching the “fiduciary window” sideways and shifting it to the right



Source: *With great power comes great responsibility* | Thinking Ahead Institute | February 2021

Financial vs. non-financial factors in climate

Dilemma examples

- Green gilts
- Net zero commitments
- Climate change scenario analysis
- Time horizons

Universal ownership

- Universal owners are investors who recognise that through their portfolios they own a slice of the whole market so they aim to achieve real world impact on the environmental/societal system and better outcomes for their beneficiaries
- Four-category universal ownership (UO) framework across all asset owners (AOs) and asset managers (AMs) by geography, size and segment:

Full UOs	UO strategies	UO-by-delegation	Non-UOs
<ul style="list-style-type: none"> • Very large, long-term and leadership-minded AOs • Deliberate in their commitment for impact ('intentionality') • Ability to produce positive system effects ('additionality') • AUM \$200B+ • 10 AOs with \$6T in assets 	<ul style="list-style-type: none"> • Large and impact-minded AOs but not so large as full UOs • Only effective in some impacts and mandates and in collaboration with other asset pools • Not AUM size but influencing financial and political capital • About 100 AOs with \$6T 	<ul style="list-style-type: none"> • Impact-minded AMs • Motivated by mission, values and beliefs • Require the AO mandates for full conviction • Effective in their impacts through their larger asset pools 	<ul style="list-style-type: none"> • The vast majority of all other investors • Deliberate in recognising and reporting on direct impacts • Without intentionality in acting to impact the system • 'Free riders' that benefit from UO actions