REGULATORY FRAMEWORK FOR SOCIALLY RESPONSIBLE INVESTMENT IN NIGERIA

By

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ABSTRACT

Socially responsible Investment (SRI) is an investment objective that takes into consideration the long-term impact of investment by considering the environmental, social and governance (ESG) criteria to generate long-term societal impact and competitive financial returns. In the US alone over Fourteen trillion dollars have been invested in the country according to SRI strategies. This paper analyses the important components of ESG factors, and its importance to SRI. The basic components of ESG factors such as economic factors but not profit only motives that may lead only to short-term destruction of the company, social issues which amongst other issues takes into consideration labour matters and corporate governance factors. The paper further discuss different approaches to effectually adopting internationally acceptable ESG objectives in order to attract SRI funds and drawing lessons from other jurisdictions, examines the position in Nigeria and modalities for developing a positive statutory and policy framework for creating an enabling environment for attracting SRI funds into Nigerian economy.

Key Words- Environmental Social Governance, Socially Responsible Investment, Corporate Social Responsibility,

1.1 Introduction

Socially Responsible Investment (SRI) does not only take into account economic issues, but also environmental, social, and governance issues[1]. SRI decisions are based on Environment, Social, Governance (ESG) parameters. We must therefore examine ESG as a factor underlying SRI decisions. SRI is also known as ethical investment or sustainable investment and it may be defined as an approach to investment management that takes into account a proper analysis of the Corporate Social Responsibility (CSR) of companies to society as a whole and particular stakeholder groups. In other words, SRI is the

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1 Breuer N and Nau C 2014 ESG performance and Corporate Financial Performance; An Empirical Study of the US Technology Sector .thesis. Economics; Business Administration. Lund University p. 10 available at lup.lub.lu.se/student-papers/record/4580097/file/4580100.pdf . accessed on 22/11/16.

practice of making investment decisions based on not only financial performance, but also on ethical, social and environmental criteria.[2]

The term socially responsible investing, mission-related investing, impact investing and environmental, social and governance investing are all frequently referred to as socially responsible investing.[3] There are however three main categories of responsible investing; socially responsible investing, impact investing and environmental, social and governance investing.[4] SRI was for a long time the most widely used of the three approaches. This paper examines the development and importance of SRI to Nigerian economic development, how Nigerian companies may pursue ESG objectives, as well as the statutory and regulatory intervention to develop the necessary legal framework for attracting Socially Responsible Investment into Nigeria.

1.2 Development of Socially Responsible Investment

Geopolitical forces and rising environmental and social consciousness were the major drivers in the development of SRI[5].The development of SRI could be traced to the colonial era in the United States, when some religious groups refused to invest their endowment funds in the slave trade. However, by the 20th century SRI began to take form as a specific investment philosophy. In 1921, the Pioneer Group became the first Mutual Fund to screen out tobacco, alcohol and gambling investments. In the UK, SRI can be traced back centuries to religious movements that sought to reform business practices in accordance with religious values. John Wesley asserted that the businesses of slave trade, alcohol distribution and pawnbrokers were "sinful trade" that injures our neighbor, hence, the modern term 'sin stocks' that refer to the alcohol, tobacco and gambling businesses.[6]This led to the development of screening of stocks on the basis of religious beliefs.

The struggle against apartheid in South Africa led to the creation of the first funds that screened out companies doing business in a given country, igniting a still-unresolved debates as to whether exclusionary investing helps a country by speeding the demise of unjust institutions or harms it by causing companies to leave, thereby slowing economic growth and, potentially hampering the pace of growth.[7] By the mid-1990s there were

[2]Aina K. 2016. From Corporate Social Responsibility to Sustainable Governance, being a paper presented at the 49th Annual Nigerian Association of Law Teachers (NALT) Conference available at http://www.naltng.org/wp-content/uploads/2016/06/37.pdf p. 14

[3]Caplan L et al.2013. From SRI to ESG: The Changing World of Responsible Investing .commonfund institute. P. 1 available at www.hbs.ed accessed on 23/11/16.

[4] ibid

[5]Fox MS SRI, cretaria, research and quantification 2004, University of Cambridge MBA dissertation, Cambridge Business School. Available at http://marcfox.tripod.com/sri_dissertation.pdf p 5. Accessed on 22/11/16

[6] Ibid p 7

[7]Caplan L et al From SRI to ESG: The Changing World of Responsible Investing 2013 commonfund institute pg 1 available fromwww.hbs.ed p 2 accessed on 23/11/16.

nearly 60 SRI mutual funds, and SRI assets under management totaled about 640 billion dollars.[8]

In recent years, SRI had become increasingly associated with the practice of barring or restricting investment in certain companies or industries based on ethical beliefs. Because this approach limits the range of securities available for investment, it has been argued that it can lead to lower investment performance and is thus incompatible with an institution's fiduciary duty to maximize return on investment

It is now estimated[9] that socially responsible investment (SRI) assets are over 21.4 trillion US Dollars globally and this is increasing as more institutional investors join the movement from the financial short term investing objectives to SRI objectives. SRI investors are more interested in the long term returns on their investments, and are sure that companies will perform better in the long term when they adopt ESG issues as their objectives and concerns. It is now clear that asset managers are gradually more interested in assessing stocks and equities from a long term perspectives considering issues such as human rights, climate change, employee performance and community involvement and will develop methods to analyse these issues and factor them appropriately into stock pricing models.[10]

Investment institutions are concerned with ESG and sustainability of their investments rather than reaping short term profits which in the long term is not sustainable. In 2005, the National Association of Pension Fund (NAPF) managers issued a paper which explained the underlying principle for investment of their funds in any company thus: At all times the board and management should be mindful of the wider role of the company in society, bearing in mind that maximization of short-term gain in a manner which is deemed unacceptable by society as a whole can seriously damage the longer term prospects of a company and lead to real financial losses for shareholders. Such losses may come about as a result of either changing consumer preferences or legislation putting additional cost on the company or both.[11]

1.3 Environmental Social Governance and Investment Decisions

The link between ESG factors and investment performance was formalised by the United Nations in 2006 when it adopted the Principles for Responsible Investment (PRI). This is a set of practice standards offered for voluntary adoption by investors. Rather than precluding investment in companies having poor environmental, social or governance records, PRI asks that investors take ESG factors into consideration to the extent that they are material to the investment performance of a particular portfolio. Investors are

[8] Social Investment Forum, 2005 Report on Socially Responsible Investing Trends in the United States 2006 pp iv, v, available from http://ussif.membershipsoftware.org/files/publications/05_Trends_Report.pdf.

[9] Global Sustainable Investment Review 2014, available at www.gsi-alliance.org. accessed on16/11/16

[10] Aina K . 2016. From Corporate Social Responsibility to Sustainable Governance being a paper presented at the 49th Annual Nigerian Association of Law Teachers (NALT) Conference available at http://www.naltng.org/wp-content/uploads/2016/06/37.pdf p 15

[11] Ibid

encouraged to analyse ESG issues alongside traditional indicators of risk and opportunity when making an initial investment and to become active owners once an investment is made, engaging companies and managers about potential material ESG exposures and opportunities.[12]

UNPRI states that the influence of ESG factors on an institution's investment process is dynamic, and that ESG issues 'can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time).'[13]

More specifically, the six principles[14] involves, incorporation of ESG issues into investment analysis and decision-making processes[15], incorporation of ESG issues into ownership policies and practices,[16]ensuring that appropriate disclosure on ESG issues by the entities in which the company invests[17], and to promote acceptance and implementation of the United Nations Principles of Responsible Investment within the investment industry.[18] It also entails working together to enhance the effectiveness in implementing the Principles[19] and to report on the activities and progress towards implementing the Principles.[20]

[12]Caplan L et al.2013. From SRI to ESG: The Changing World of Responsible Investing .commonfund institute p. 1 available at www.hbs.edpp 4,5

[13] UN Principles for Responsible Investing, "The Six Principles" available at http://www.unpri.org/about-pri/the-six-principles/.

[14] United Nations Principles for Responsible Investment; The Six Principles retrieved from https://www.unpri.org/about/the-six-principles on 11/16/16

[15]The possible action plan as laid down by the PRI includes, address ESG issues in investment policy standard; support development of ESG-related tools, metrics, and analyses; assess the capabilities of internal investment managers to incorporate ESG issues; assess the capabilities of external investment managers to incorporate ESG issues; ask investment service providers (such as financial analysts, consultants, brokers, research firms, or rating companies) to integrate ESG factors into evolving research and analysis; encourage academic and other research on this theme and advocate ESG training for investment professionals.

[16] The action plan for principle two include Develop and disclose an active ownership policy consistent with the Principles; exercise voting rights or monitor compliance with voting policy (if outsourced); develop an engagement capability (either directly or through outsourcing); Participate in the development of policy, regulation, and standard setting (such as promoting and protecting shareholder rights); file shareholder resolutions consistent with long-term ESG considerations; engage with companies on ESG issues; participate in collaborative engagement initiatives and ask investment managers to undertake and report on ESG-related engagement

[17]The possible action plan for principle three includeAsk for standardized reporting on ESG issues (using tools such as the Global Reporting Initiative); ask for ESG issues to be integrated within annual financial reports; ask for information from companies regarding adoption of/adherence to relevant norms, standards, codes of conduct or international initiatives (such as the UN Global Compact); and support shareholder initiatives and resolutions promoting ESG disclosure.

[18]The possible action plan for principle four Include Principles-related requirements in requests for proposals (RFPs); align investment mandates, monitoring procedures, performance indicators and incentive structures accordingly (for example, ensure investment management processes reflect long-term time horizons when appropriate); communicate ESG expectations to investment service providers; revisit relationships with service providers that fail to meet ESG expectations; Support the development of tools for benchmarking ESG integration and support regulatory or policy developments that enable implementation of the Principles.

[19]Possible action plan for principle five includes, Support/participate in networks and information platforms to share tools, pool resources, and make use of investor reporting as a source of learning; collectively address relevant emerging issues and develop or support appropriate collaborative initiatives.

[20]Possible action plan for principle six includes, Disclose how ESG issues are integrated within investment practices; disclose active ownership activities (voting, engagement, and/or policy dialogue); disclose what is required from service providers in relation to the Principles; communicate with beneficiaries about ESG issues and the Principles; report on

Today, UNPRI has about 1556 signatory institutions around the world. Most of the signatories are in northern Europe with the US being the single most represented country in terms of number of signatories.[21]

Socially responsible investing ("SRI") may therefore be explained as an investment approach that "integrates social and environmental concerns into investment decisions" through a process of identifying and investing in companies that meet certain standards of corporate social responsibility. It is a broad term used to refer to the emergence of investors who, in addition to financial performance, take non-financial factors into account when analysing firms to invest in. This includes analysing corporate citizenship, diversity initiatives, environmental management, product safety, and other company behavior, and often excludes firms in industries such as alcohol, tobacco, gambling, defense contracting and nuclear power. It is also seen as the integration of social and environmental criteria into the traditional investment decision-making process to allow large institutions and individuals make investments that are consistent with both their social and financial goals.[22]Responsible investment is an approach to investing that aims to incorporate environmental, social and governance (ESG) factors into investment decisions, to better manage risk and generate sustainable, long-term returns.[23]

The global momentum around responsible investment is driven by a number of factors such as (a) recognition in the financial community that ESG factors play a material role in determining risk and return;(b) understanding that incorporating ESG factors is part of investors' fiduciary duty to their clients and beneficiaries;(c) concern about the impact of short-termism on company performance, investment returns and market behavior;(d) legal requirements protecting the long-term interests of beneficiaries and the wider financial system;(e) pressure from competitors seeking to differentiate themselves by offering responsible investment services as a competitive advantage as well as beneficiaries becoming ever-more active and demanding transparency about where and how their money is being invested.[24]

1.4 Environmental, Social and Governance Factors (ESG)

One particular set of extra-financials has been experiencing soaring scrutiny within the last years, namely aspects related to environmental, social and governance(ESG) issues. It is sometimes known as SEE (social, economic and environment). Although the terminology is employed in various contexts – risk valuation, socially responsible investment, corporate responsibility, etc., there is no clear general definition of this

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progress and/or achievements relating to the Principles using a comply-or-explain approach; seek to determine the impact of the Principles and make use of reporting to raise awareness among a broader group of stakeholders.

[21] Caplan L et al From SRI to ESG: The Changing World of Responsible Investing 2013 commonfund institute p 1 available at www.hbs.ed p 5

[22] Business for Social Responsibility (BSR) Report ; Environmental, Social, Governance; Moving to Mainstream Investment? http://uksif.org/wp-content/uploads/2012/12/BSR-2008.-Environmental-Social-and-Governance-Moving-to-Mainstream-Investing.pdfpg 1

[23] UNPRI; What is Responsible Investment available at https://www.unpri.org/about/what-is-responsible-investment

[24] ibid

concept. The term appears in the United Nations Principles of Responsible Investment and is also employed by major business consulting firms.[25]

The concept of ESG refers to extra financial material information about the challenges and performance of a company on these matters. It thus delivers additional relevant information, allowing more differentiated investment judgments by enabling investors to better assess risks and opportunities.[26] It is a term that has emerged globally to describe the environmental, social and corporate governance issues that investors are considering in the context of corporate behavior. No definitive list of ESG issues exists, but they typically display one or more of the following characteristics: (a) issues that have traditionally been considered non-financial or not material. (b) A medium or long-term horizon. (c) Qualitative objects that are readily quantifiable in monetary terms (d) Externalities (costs borne by other firms or by society at large) not well captured by market mechanisms. (e) A changing regulatory or policy framework. (f) Patterns arising throughout a company's supply chain (and therefore susceptible to unknown risks). (g) A public-concern focus.[27]

Environmental factors will include issues like climate change, greenhouse gas emissions, resource depletion, waste, pollution and deforestation while social factors will include working conditions, including slavery and child labour; local communities, including indigenous communities; conflict; health and safety; employee relations and diversity. Governance factors on the other hand include executive pay; bribery and corruption; political lobbying and donations; board diversity and structure; tax strategy.[28] This list is not at all comprehensive nor is it universally accepted as the standard, it does however reflect some underlying issues under these individual factors. These ESG issues differ across regions and sectors. Examples of issues with a broad range of impacts on companies include:

Environmental issues: Climate change and related risks, the need to reduce toxic releases and waste, new regulation expanding the boundaries of environmental liability with regard to products and services, increasing pressure by civil society to improve performance, transparency and accountability, leading to reputational risks if not managed properly, emerging markets for environmental services and environment-friendly products.

Social issues includes; workplace health and safety, community relations, Human rights issues at company and suppliers' and contractors' premises, Government and community relations in the context of operations in developing countries, increasing pressure by civil society to improve performance, transparency and accountability, leading to reputational risks if Corporate governance issues includes; Board structure and accountability

[25]Bassen& Kovacs, 2008, p 184 as cited by Breuer N and Nau C. 2014. ESG performance and corporate financial performance; An empirical study of the US technology sector. Thesis. Economics, Business Administration. Lund University. Available at lup.lup.lu.se/student-papers/record/4580097/file/4580100.pdf p. 6

[26] Ibid.

[27]Ibid.

[28] UNPRI; What is Responsible Investment . Available at https://www unpri org/about/what-is-responsible-investment

Accounting and disclosure practices, Audit committee structure and independence of auditors, executive compensation, management of corruption and bribery issues.[29]

According to The European Federation of Financial Analysts Societies (EFFAS)[30], there are two variants of ESG factors; the general ESGs that include issues or topical areas that all industries should report about and sector-specific ESGs which specific industries should report .Social and environmental policies are more difficult to define because they vary from industry and community to another. Nevertheless, in order to ensure a balanced sustainable policy every company must take into consideration its impact on the company's employees, the employees of major suppliers to the company, local communities or the concerns of wider society. Particularly in respect of labour relations, they must take into consideration the human rights of its employees, training and development, health issues, and employee welfare generally; this will only improve profits as it improves individual employee productivity. Environmental objectives relates to issues such as reducing pollution levels, reducing waste and reducing consumption of non-renewable natural resources. It also includes sound environmental management such as managing water, waste and energy, which has been shown to improve costs and for companies to be able to maintain margins despite slumps in revenue.[31]

1.5 Environmental and Social Factors

It is no gain saying that there are no definitive or as it were, universally acceptable list of ESG factors. However, various prominent international and national organizations have suggested several pocket lists of ESG indices. Environmental and social policies are more or less the more difficult to define seeing that they apply to industries and communities differently.

For example, when drawing up environmental key performance indicators for the oil sector, factors such as greenhouse gas emission, pollution and resource depletion will be most prominent but this will not be the case for the transportation sector, as climate change resulting from fumes discharged from vehicles or other means of transportation may as well be at the top of their environmental priority list. On the other hand, the technology sector will probably need to be concerned more with waste (specifically electronic waste)[32] more than it would deforestation or climate change. Furthermore, sectors or industries that use trees a lot as their raw material will be concerned about deforestation and the likes.

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[29] The Global Compact; Who Cares Wins; Connecting Financial Markets to a Changing world. Available at https://www.unglobalcompact.org/docs/issues_doc/Financial_markets/who_cares_who_wins.pdf

[30] The European Federation of Financial Analysts Societies (EFFAS); Key Performance Indicators; A Guideline for the Integration of ESG into Financial Analysis and Corporate Valuation. Available at ec.europa.eu>renditions>pdf p 19.Accessed on 11/11/16.

[31] Post E and Preston a and Sachs B. 2002. *Redefining the corporation: stakeholder management and organizational wealth.*Standard University Press.

[32] E-waste are electronically generated waste typically from computers, mobile phones, televisions, and other electronic gadgets and they contain hazardous materials like lead, mercury, beryllium, cadmium and brominated flame -retardants that pose both human and environmental health threat. E-Waste Assessment Nigeria; Interim Report gotten from www.basel.org.ng

This disparity will typically make it difficult to draw up correlating environmental key performance indicators for all and every industry or sector.That notwithstanding, Environmental factors will usually include issues like climate change, greenhouse gas emissions, resource depletion, waste, pollution and deforestation. The UK government provided some guidance on the term "Environmental matters" to include environmental impacts, both of the company on the environment (e.g. a depleting natural resource base, how a company is operating in a carbon constrained world); company policies-how a company is managing, or intending to manage, these impacts; and company performance, in managing their impacts and against their policies.[33]

The UK Department for Environment, Food and Rural Affairs (DEFRA) published a set of voluntary guidelines on how to report on environmental performance using KPIs[34]. This guideline set out 22 suggested environmental KPIs which are significant to UK businesses and describe which KPIs are most significant to which business sectors. The environmental KPIs relevant to a company will depend on the area of business that company operates (e.g. mining, construction, electricity, finance or chemicals manufacturing).[35]

In Nigeria, there are however laws on environmental protection ranging from those regulating the oil sector[36], waste management and pollution[37], flora and fauna[38], to mention but a few. Nigeria is also signatory to a number of international agreements and convention, some of which have been ratified by the Nigerian government. Prominent among these is the Kyoto protocol which is an international agreement linked to the United Nations Framework Convention on Climate Change that commits its parties by setting internationally binding emission reduction targets. This is based on the recognition that developed countries are principally responsible for the current high levels of GHG emission in the atmosphere as a result of more than 150 years of industrial activity and the protocol places a heavier burden on developed nations under the principle of "common but differentiated responsibilities". The Kyoto Protocol was adopted in Kyoto, Japan, on 11 December 1997 and entered into force on 16 February 2005. The detailed rules for the implementation of the Protocol were adopted at COP 7 in Marrakesh, Morocco, in 2001, and are referred to as the "Marrakesh Accords." Its first

[33]Environmental Key Performance Indicators; Reporting Guidelines for UK Business. 2006. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69281/pb11321-envkpi-guidelines-060121.pdf retrieved on 15/11/16.

[34]Key Performance Indicator.

[35]Raine A. 2006. Environmental Reporting; Regulatory Development and Implications for your Business. Available at http://www.legal500.com/c/nigeria/developments/814#sthash.itGXEbd3.dpuf.

[36] Examples are Oil in Navigable Waters Act, Environmental Impact Assessment Act, Associated Gas Re-Injection Act, Minerals and Minining Act etc

[37] Examples like the Harmful Waste (Special Provision)Act 1988, National Environmental Protection (Management of Solid and Harzadous Waste) Regulations 1991, Nuclear Safety and Radiation Protection Law 1995, The National Environmental Standards Regulation and Enforcement Agency (Establishment) Act 2007 to mention but a few

[38]Like the Endangered Species Act, National Resources Conservation Act, Sea Fisheries Act e.t.c.

commitment period started in 2008 and ended in 2012.[39] Nigeria became a signatory on the 10th of December, 2004.[40]

With regards to social factors, they will typically include items like working conditions, including slavery and child labour; local communities, including indigenous communities; conflict; health and safety; employee relations and diversity. There exist in Nigeria laws on labour, trade and relationship between employer and employee. On the international scene, the International Labour Organization is probably the most active and influential labour organization world over. They set labour standards, develop policies and devise programmes promoting decent work for all women and men. [41]

1.6 Governance Factor

Corporate governance was defined by Sir Adrian Cadbury Report on Financial Aspects of Corporate Governance1 as "the system by which companies are directed and controlled". The definition used the word "system" which is simply an acknowledgement of the structural make-up of the company- these will include the board of directors, the number and type of executive and non-executive directors and the board committees. The "process" will include provision of information, internal controls financial reporting, terms of agreements etc. This is quite distinct from values or other behavioral matters or the societal or economic obligations of companies. While Corporate Governance concentrate on efficient management of the company, the other issues of values and proper behaviour of companies that impacts on the community and all stakeholders is an aspect of Corporate Governance known as the company's Corporate Social Responsibility(CSR).[42]

The common components of effective corporate governance are fairness, transparency, accountability and responsibility.[43]

Governance KPI is aimed at realising good governance practices in a company or business. As stated earlier, again, there are not comprehensively generalized list. None the less, Governance factors will include executive pay; bribery and corruption; political lobbying and donations; board diversity and structure; tax strategy.[44]This is not a comprehensive list, nor is it universally accepted as the standard, it does however reflect

[39]United Nations Framework on Climate Change from http://unfccc.int/kyoto_protocol/items/2830.php

[40]Other conventions (international, continental and regional) are Bamako convention of 1991, Basel Convention on Transboundary waste, Framework Convention on Climate Change e.t.c

[41]The eight fundamental ILO conventions are; Right to organize and collective Bargaining Convention 1949, Equal Remuneration Convention 1951, Abolition of Forced Labour Convention 1957, Discrimination (Employment and Occupation) Convention 1958, Freedom of Association and Protection of the Right to Organise Convention 1948, Forced Labour convention 1930, Mininum Age Convention 1973 and the Worst Forms of Child Labour Convention 1999. To these conventions, there are over 1,357 ratifications, including Nigeria which represents 91.7% of all possible ratifications.

[42]Aina K . 2016. From Corporate Social Responsibility to Sustainable Governance being a paper presented at the 49th Annual Nigerian Association of Law Teachers (NALT) Conference available at http://www.naltng.org/wp-content/uploads/2016/06/37.pdf

[43]Opara L.C and Alade A.J 2014. Legal Regime of Corporate Governance in Nigeria; A Critical Analysis ;Jornal of Law, Policy and Globalization . 26 .38 . Available at www.iiste.org/Journals/index.php/JLPG/article/download/13785/14157

[44] UNPRI; What is Responsible Investment gotten from https://www.unpri.org/about/what-is-responsible-investment

some underlying issues under these individual factors. Some authors have listed board structure, accountability, accounting and disclosure practices, audit committee structure as well as executive compensation and management of corruption and bribery issues as the fundamental KPIs of Governance factor.[45]

1.7 Social Responsible Investment and Corporate Social Responsibility

Four factors have been responsible for the rise of interest in socially responsible investment:[46]

1. The concern over the ability of public policy (national governments and international organisations) to address issues such as environmental degradation and human rights abuses, especially in developing countries, coupled with an acknowledgement that (international) business has the responsibility and financial resources to address these issues.
2. Empirical research showing that investors can increase their portfolio risk-adjusted rates of returns by considering ESG issues.
3. The perception in some countries that fiduciary responsibility may and should include wider concerns than financial returns.
4. Public opinion favouring SRI, largely as a result of intense advocacy by lobbying groups.

SRI is to some extent a response to the broader corporate social responsibility movement that has been the focus of various international policy initiatives. The OECD Guidelines for Multinational Enterprises represents one of the first international initiatives to taking concerted effort on social responsibility in international business. According to the OECD, the Guidelines are "the foremost international corporate responsibility instrument'. The Guidelines set high standards for responsible business conduct in all major areas, including: employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

They have a unique, government-backed implementation procedure. The 39 OECD and non-member governments that have adhered to the Guidelines have National Contact Points (NCP) charged with promoting observance of the Guidelines among companies operating in or from their territories. NCPs maintain a mediation facility (called "specific instances") contributing to reducing tensions and building trust between international business and host societies. Ninety-six specific instances have considered by NCPs since the June 2000 Review. Corporate managers use the Guidelines. In the area of human

[45] The Global Compact; Who Cares Wins; Connecting Financial Markets to a Changing world gotten from https://www.unglobalcompact.org/docs/issues_doc/Financial_markets/who_cares_who_wins.pdf A financial Sector Initiative (FSI) Publications

[46] OECD Roundtable on Corporate (supra) p. 13

rights for instance, forty-one per cent of the respondents to a 2006 survey of the Fortune Global 500 companies indicated that their companies use the Guidelines as a reference."[47]

The United Nation's Global Compact provides the main direction for the organisation's work on corporate social responsibility, aiming to "bring companies together with UN agencies, labour and civil society to support universal environmental and social principles."[48] Issue 5 --dealing with financial markets – particularly pertains to pension fund managers; and has been basis of various UN campaigns. The UNEP Principles for Responsible Investment approved in 2006 represent one of the most concrete expressions of work on Issue 5. These Principles – which have roughly 120 signatories -- encourage asset owners, investment managers and professional services' providers to consider ESG issues when making investments. They also promote corporate engagement (through shareholder advocacy) instead of rigid screening.[49]

In order to make assessment and comparisons of compliance with ESG concerns, a number of private companies and not-for-profit organisations offer reporting guidelines and frameworks. The Global Reporting Initiative (GRI) Framework represents an example of such an attempt to identify important ESG issues and standardize the reporting. The GRI Reporting Framework assists companies to engage in triple bottom line reporting by disclosing the social and environmental impacts (as well as the financial impacts) of their activity. The Enhanced Analytics Initiative addresses ESG issues as Extra-Financial Issues. Also a membership organisation, the EAI represents members who would like to see more extended reporting of extra-financial issues in financial statements and in the financial media (and pledge 5% of their brokerage commissions for funding such research).[50]

Interest in SRI has led to the growth of a social investment research industry dedicated to the evaluation of companies' environmental and social risks. Such research aims at helping investors identify those companies with better management of and lower ESG risks. Such SRI-related research has heightened interest in techniques such as triple bottom line reporting (whereby a company will report in its annual statement its social and environmental operation results as well as its financial ones). Indeed, many EU governments have already started to require such reporting (with France currently imposing the most stringent requirements in the EU). In the UK where such reporting is still voluntary, 70 of the top 100 companies produce such reports (the UK government

[47] See www.oecd.org/daf/investment/guidelines

[48] http://www.unglobalcompact.org/AboutTheGC/index.html .

[49] Other international organisations have also promulgated recommendations in the field of social responsibility such as the International Labour Organisation's Tripartite Declaration of Principles Concerning MultinationalEnterprises and Social Policy or the Corporate Citizenship Principles of the World Economic Forum (through its Global Corporate Citizenship Initiative). See http://www.weforum.org/pdf/ppp_summary.pdffor a list of their recommendations.

[50] OECD Roundtable on Corporate (supra) p. 14

also considered making reporting on environmental impact obligatory for listed companies but withdrew the proposal in 2005).[51]

These international initiatives have undoubtedly raised awareness about socially responsible behaviour, among both companies and investors. Yet, they are not without critics. First, some detractors argue that their vague language and lack of enforcement mechanisms prevent international conventions and guidelines from providing clear guidance to institutional investors. In particular, the UNEP Principles for Responsible Investment provide "possible actions" to accompany each principle, but the actions themselves can be somewhat ambiguous.[52]

1.8 Pursuing a Socially Responsible Investment strategy

i. Portfolio Screening

The first and simplest method of SRI is portfolio screening. The investor who practices portfolio screening refuses to invest in an enterprise that engages in activities that are antithetical to his or her moral beliefs.[53] Portfolio screening was most prominently practiced at the height of the South Africa divestment movement, when many investments were shunned because of their ties to that country. Portfolio screening, also referred to as investor boycott,[54] requires that the would-be investor identify those social, ethical, or political issues that concern him or her and then research the activities of potential investments to determine which investments are incompatible with his or her views. At the institutional investor level, objectionable corporate practices are detected by the use of detailed questionnaires, or "screens," that examine a wide range of issues.[55]

In general, the portfolio screening approach is intended "less to draw attention to something than to refuse to profit by it.'"[56] It is a method of investment marked by an emphasis on separation and avoidance of ethically questionable corporate behaviors.[57] Not all portfolio screening, however, takes the form of separation or avoidance, which are negative screening mechanisms. Positive choice screens have also been developed to identify attractive investments in much the same way that negative screens are used to eliminate undesirable ones.[58] For example, some mutual funds now actively market

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[51]OECD Roundtable on Corporate (supra) p. 14

[52] Ibid p. 14-15

[53]Domini A and Kinder.P 1984. Ethical Investing. Reading, MA, Addison;Wesley (defining "avoidance approach" to portfolio screening as refusal to invest in companies whose business activities are offensive to investor).

[54]Simpson A. 1991. The greening of global investment: how the environment, ethics, and politics are reshaping strategies . Indiana University:Economist Publication.(describing practice of portfolio screening as avoiding or boycotting investments in certain disfavored companies).

[55]Lowry. P 1991.Good money: a guide to profitable social investing in the '90sW.W. Norton and Company. Socially responsible funds use diverse combinations of screens to determine whether business practices of company are consistent with social and ethical goals of fund. The individual investor can fashion his or her own screens based on personal, ethical, and moral criteria.

[56]Domini & Kinder,*supra*.

[57]ibid

[58]*ibid* ("The positive approach complements the avoidance approach. Those adopting it seek investments in companies that enhance the quality of life...)

"companies thought to be socially benign," such as companies that focus on becoming environmentally sound[59]

ii. Shareholder Activism

Another method of pursuing SRI is the activist shareholder approach, made famous by Ralph Nader in his campaigns to improve General Motors' safety record.[60] This technique is exemplified by the investor's desire to change company behavior by exercising rights that flow from ownership of shares in the company and exercising rights of a member. The activist shareholder invests in a particular firm because the firm engages in objectionable behaviour, and the shareholder hopes to change that behaviour by convincing the firm that it has ethical obligations to the wider community in which it operates.[61] Unlike the boycott technique outlined above, the activist believes that the best way to effect change is to maintain a relationship, albeit a combative one, with the offending organisation.

Shareholder activism involves the use of ownership power by institutional investors and/or individual shareholders to influence corporate policy and practice.[62] Agency theory postulates the existence of agency problem in companies that creates divergence of interests between the corporate managers and shareholders triggering shareholder activism.[63] Corporate governance attempts to ameliorate this agency problem in various ways viz: (i) constituting independent board of directors to monitor management compliance with company philosophy; (ii) existence of institutional investors that watch over the activities of the management; and (iii) strong market for corporate control.

It does not seem that shareholders activism forms a significant feature of Nigeria corporate culture. However, there exists Nigerian Association of Shareholders for safeguarding the interest of investors. It is arguable if shareholders can rely on minority provisions to bring action for improved social and environmental performance of companies.[64] However, it seems that action for relief can be maintained under section 311 of CAMA on the ground that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to a member or members, in a total disregard of

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[59] *See,* Quinn B. 1990. *'Affinity' Plans Can Help Favorite Causer; Socially Conscious Investing Gets Rolling.*St. Paul Pioneer Press, at p. 7.

[60] *See* Domini &Kinder, *supra.* at 192 ("In the early 1970s Ralph Nader and other social reformers, and churches such as the Church of Christ began using shareholder resolutions as instruments of social change, and today remain its most consistent exponents.")

[61] *See, e.g.,* Domini & Kinder, supra.at 8 ("Some ethical investors want to do more than avoid bad companies and invest in good ones. They want to change the bad into the good. For these investors there is the activist approach.").

[62] Sjostrom, E 2008.Shareholder Activism for Corporate Social Responsibility: What Do We Know?',*Sustainable Development,* 16.3.141 at 142; Huimin C and Talaulicar T. 2010. Forms and Effects of Shreholders Activism.*Corporate Governance: an International Review,* 18.4 at 253.

[63] Jensen M and Meckling W.1976.Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure*Journal of Financial Economics,* 3.4.at 305; Easterbrook F and Fischel D 1986. Close Corporations and Agency Costs.*Standford Law Review,* 38.2 at 272.

[64] David Drake *et al.* 2011.*Minority Shareholders - Law, Practice, and Procedure.*4th edn.; Oxford: Oxford University Press, at 13.

the interest of a member or members.[65] The pertinent question likely to be asked is, to what extent would shareholders' activism achieve the intended objective?[66] Indeed, the outcomes of such activism would depend on amalgam of factors. As noted, the success or otherwise of shareholders activism depends on a number of factors chiefly, the shareholders' power and influence; the firm's culture and the degree of compliance to that by the shareholders demand; and the political milieu characterising the shareholders' activities.[67]

Sceptics argue that the non-binding nature of shareholders resolution and other process constraints make shareholders activism an ineffective tool for improved social and environmental performance outcome from corporations.[68] The most such an activism can achieve, sceptics argue, is to engender awareness and sensitisation both within and outside the corporation, and consequently flag off debates on the corporation social and environmental performance. In other words, shareholders activism cannot engender systemic changes to corporations social and environmental performance; and where positive changes eventually filter out, it would be piecemeal, unlikely to be sustained in the long term.[69] The foregoing scepticism does not however divest shareholders activism of total utility. In fact, it can still constitute a veritable tool for improved social and environmental performance outcomes from companies.[70] More so when it has been established that embedding CSR factors in investment decisions positively correlates to better investment returns, given the reputational leverage compared to other firms not embedding CSR matters in investment decision.[71]

iii. Stakeholders Pressure

Closely aligned to shareholders activism is stakeholders' pressure on corporate management to reflect sound social and environmental business practice. The word 'stakeholders' presuppose a wide spectrum of groups. Mostly, it entails both non-shareholders and shareholders since the latter have financial stakes in the company. However, in this discourse it refers to individuals or entities that do not have a shareholding interest in the company, and therefore do not constitute residual owners of the company, but are affected either directly or indirectly by the operation of

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[65]See other strategies discussed in Aina, A.A.2014.Strategies for enforcing shareholder rights in corporate governance in Nigeria.Journal of corporate governance .6. 2. at 1129-1149.
[66] See Mcateer E and Pulver S. 2009. The Corporate Boomerang: Shareholder Transnational Advocacy Networks Targeting Oil Companies in the Ecuadorian Amazon. *Massachusetts Institute of Technology Press* 17-18.
[67] Hoffman A 1996. A Strategic Response to Investor Activism, *Sloan Management Review,* 37 . 63.
[68]Engel E 2006.What You Dont Know Can Hurt You: Human Rights, Shareholder Activism and SEC Reporting Requirements', *Syracuse Law Review,* 57.3; Bloom M.et al. 2007.Investor Activism, Managerial Responsiveness, and Corporate Social Performance', *Strategic Mnagement Journal,* 28. 97.
[69]Haigh W and Hazelton J. 2004. Financial Markets: A Tool for Social Responsibility', *Journal of Business Ethics,* 52. 67.
[70] MillerA*et al*, 2004. Shareholder Activism on Environmental Issues: A Study of Proposal at Large US Corporations (2000-2003). *Natural Resources Forum,* 28. 317-30.
[71]Frank Jan De Graaf and Slager A. 2009.Guidelines for Integrating Socially Responsible Investment in the Investment Process.at 4;Uadiale O and Fagbemi. T 2012.Corporate Social Responsibility and Financial Performance in Developing Economies: The Nigerian Experience', *Journal of Economics and Sustainable Development,* 3. 48.But see contrary position giving mixed results in Thomas Ainscough*et al*. 2007. Corporate Social Responsibility and Socially Responsible Investing: A Global Perspective*Journal of Business Ethics,* 70.167-72.

corporations. In this perspective, it encompasses employees, creditors/contractors, and community hosting the corporation, including the NGOs.

Stakeholders equally lack homogeneity of identity (unlike shareholders bound by residual ownership of the corporation), and commonality of interests. Consequently, they may suffer from competing or conflicting demands from the members. For instance, an employee who has concerns relating to social performance may fear dismissal, especially in a jurisdiction where union protection and employment laws are not strong. A creditor may be more interested in debt servicing in contrast to social performance benchmarks, since they do not constitute part owners of the company. Thus, lack of a harmonious and unified identity and interest may hamper corporate attention and recognition of stakeholders' case for responsible business practices.[72]

The role of community as stakeholder might be relevant; however, the disparate geographical location of Niger-Delta communities makes them amenable to collective action problem,[73]thereby undermining their cause for responsible foreign investment. In the past, they resorted to violence to drive home their agitation for responsible foreign investment, leading to fatalities and excessive militarisation of the community, not least the killing of the prominent Ogoni activists. Youth restiveness equally sprang up (coupled with sporadic civil action and complaints) to pressure the IOCs to be more responsible in their investment policies, but to no avail. The lack of successful outcome of community-inspired responsible investment lends credence to the fact that the Niger-Delta community alone (as stakeholders) cannot, in itself, engender responsible foreign investment outcome in the petroleum sector in Nigeria.

The role of NGOs and community groups as stakeholders becomes relevant in this regard. A coalition of both national and international NGOs can work in collaboration. Although NGOs lack the power to employ coercive means to bring about responsible investment, they can engage in their usual tool of 'whistle-blowing' or 'name and shame' to bring attention to their cause. Amnesty International and Friends of the Earth have been particularly effective in the use of these approaches in the Niger-Delta. Similarly, there exist innumerable NGOs in Nigeria that can engage in collaborative efforts with international NGOs (or even work on stand-alone basis). For instance, the Environmental Rights Action (national NGO) - committed to sustainable development in Niger-Delta - merged with Friends of the Earth for greater efficacy and improved outcome in Niger-Delta.[74]

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[72] Bakker F and Hond F. 2008. Introducing the Politics of Stakeholder Influence: A Review of Essay.*Business Society,* 47.8-20.

[73]Feiock R. 2013. The Institutional Collective Action Framework.*Policy Study Journal* 1-4; Centola, D 2013 Homophily, Networks, and Critical Mass: Solving the Start-up Problem in Large Group Collective Action', *Rationality and Society,* 25. 3-6.

[74]Friends of the Earth, 'Environmental Rights Action/Friends of the Earth Nigeria', available: http://www.foei org/en/who-we-are/member-directory/groups-by-region/africa/nigeria.html, accessed on 15/03/2013

1.9 Socially Responsible Investment in Nigeria

Most countries have enacted laws, regulations and policies towards ensuring that companies operating within their countries adopt ESG objectives which must be clearly stated in their annual reports and reporting requirements for the Stock Exchange. This has helped to attract SRI funds and DFI into the country. In the UK. Pension funds are specifically required by law[75] to state their policy towards social, ethical and environmental objectives in their statement of investment principles. In response to this directive the National Association of Pension Funds (NAPF) in its Corporate Governance and Voting Guidelines[76] in the 2007 guidelines states that, 'it recognises the importance of incorporating ESG considerations into investment decisions by its members' and that 'long-term shareholders should benefit from the application of ESG principles'. Developing this principle further in the 2015/16 Corporate Governance Policy and Voting Guidelines[77] relied on the UK 2014 Corporate Governance Code[78], which provides that one of the duties of the board of directors of the company is to be collectively responsible for the long-term success of the company. 'The Board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met'.[79]

The NAPF guidelines also relies on the Companies Act 2006 on the duties of directors in assessing the corporate governance compliance level of the companies. Section 170 of the Companies Act 2006 (UK) provides that directors should promote the success of the company, while having regard to, amongst other things, the likely consequences of any decision in the long-term; the interests of its employees; its need to foster the business relationships with customers and suppliers; the impact of its operations on the communities and environment and its desire to maintain reputation for high standards of business conduct. As such, a proactive and effective board should provide the framework for discussing, managing and driving the long-term sustainability of the company. Building a sustainable business model should be central to the business strategy of the company. Every company that wants to attract and benefit from the funds of the NPPF should ensure that it applies ESG principles in terms of its long-term financial performance, closer alignment between the interests of institutional investors and society at large and the management of their reputational risk.

The South African Code of Corporate Governance (King Code III)[80] provides for the inclusion of ESG objectives in the policy and objectives of every company operating in South Africa. In the introduction to the Code, it was observed, that it is expected that the company will be and will be seen to be a responsible citizen. This involves social, environmental and economic issues – the triple context in which companies in fact

[75]SRI Pensions Disclosure Regulations 2000.

[76] The 2007 guidelines available at http//www.plsa.co.uk/policyandResearch/Cora. Accessed on 21/11/16.

[77] The 2016 Guidelines , available at https//www.plsa.co.uk/PolicyandResearch/Document accessed on 26/11/16

[78] UK Corporate Governance Code 2014 available at http/www.frc.org.uk/our-work-publications/co.accessed on 26/11/16

[79] Ibid.

[80] Ibid.

operate. (Boards should no longer make decisions based only on the needs of the present because this may compromise the ability of future generations to meet their own needs[81].

International focus and standard is to formulate policies, regulatory directives and laws from the statutory and other regulatory frameworks to compel companies to adopt proper ESG objectives not only because it is the best option for sustainable growth and development of the companies in the long run, but also for the benefit of the companies and all its shareholders, most importantly attraction of socially responsible investments worldwide. As we noted above, the funds available in SRI funds is growing worldwide, as more and more investors choose SRI, the target is to invest in SRI compliant companies and economies and starve others of funds.

Nigeria, must improve in its laws and regulations with a deliberate focus on ensuring that the Code of Corporate Governance and the other regulations including the listing rules of the Stock Exchange are amended in line with international best practices and standards. The Government through regulatory reforms should demand for a better management of the companies in the country by the board of directors. There is always a link between good governance and compliance with the law. Good governance is not something that exists separately from the laws and it is entirely inappropriate to unhinge governance from the law[82]. The Companies and Allied Matters Act 2004 must be urgently amended to statutorily enforce inclusion of ESG objectives in company policy. The Nigeria law is yet to take seriously the growing trends worldwide, for instance, directors are to act at all times in what he believes to be in the best interests of company in order to preserve its assets, further its business, and promote the purposes for which it was formed.[83] The director is also enjoined to, in the performance of his functions include the interest of the 'company's employees in general, as well as the interests of its member'[84]. The summary of the current position of the duties of director to the company is to manage the company for the purpose of making profits, and promote the purposes for which it was formed. The consideration of the interests of the employees in general and that of the members should be seen from this perspective.

Contrast the position under English law. Section 172 of the Companies Act 2006 provides that, while the directors must promote the success of the company for the benefit of the members, they must also have regard to (a) consequences of any decision in the long-term (b) The interests of the company's employees, (c) need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a reputation for high standards of business conduct and (f) the need to act fairly as between members of the company.[85]It is clear that in England, sustainability issues is integrated in the statutory duty of directors, it follows that, not

[81] King Code III
[82] Ibid
[83] King Code II. Introduction projects.
[84] Section 279(3) CAMA 2004.
[85] Section 279(4), Ibid.

only the short-term profits is the determining factor for success of a director but the ability to adopt ESG objectives that will ensure the long-term survival of the company which will build a good reputation as a sustainable company and thereby attract Socially Responsible Investments locally and internationally.

The Code of Corporate Governance of Nigeria[86] in its Section 32.1 provides that companies should pay adequate attention to the interest of their stakeholders such as employees, creditors, consumers, suppliers, trade unions, host community, government, the general public and future generations". Companies are also to disclose the company's ;policies, plans and strategy for, disease control for its staff[87] and members, diversity of staff,[88] physically challenged persons and disadvantaged individuals[89] and social investment policy[90]. We submit that the provisions of the Code are incoherent, vague and lacks focus and does not give any proper directives as to the particularity of its observance and compliance.

There is no reference to any international instruments or standards that may enable international investors to assess independently the index status of Nigerian companies. The Code must not only adopt an international indexing standard, it must also encourage the development of an internally acceptable index for Nigerian companies which will form the basis for assessment and compliance. In South Africa, the Johannesburg Stock Exchange introduced the Socially Responsible Index, JSE SRI index in May 2004 with the following objectives[91];(a) identify those companies listed on the JSE that integrate the principles of the triple bottom line and good governance into their business activities; (b) provide a tool for a broad logistic assessment of company policies and practices against globally aligned and locally relevant corporate responsibility standards; (c) serve as facilitation vehicle for responsible investment for investors looking for non-financial risk variables to include investment decisions...(d) contribute to the development of responsible business practice in South Africa and beyond. The philosophy of the index is founded on the principles of the three pillars of the triple bottom line, namely environmental, social and economic sustainability with good corporate governance. The index indicators are structured along the categories of environment, society and governance and related sustainability concerns (ESG) with company response to climate change being assessed as a focus area,[92]

1.10 Conclusion

Socially Responsible Investment has existed for a very long time and it is being practised by a broad set of investors all over the world. The ever growing rate of investment along

[86] Section 172(1) Companies Act 2006 (UK).
[87] FRC Nigeria Code of Corporate Governance 2016.
[88] FRC Nigeria Code of Corporate Governance, Section 32.1.
[89] Ibid. Section 32.1.f.
[90] Ibid. Section 32.1.g.
[91] JSE SRI INDEX 2014, available at https//www.jse.coza/content/JSERules policies and Regulationitems/Background accessed on 26/11/16.
[92] Triple Bottom Line Reporting

SRI concerns and objectives attests to the increasing awareness of the impact and benefits of adopting sound ESG policies not onlyfor the growth and development of the companies but also bears a direct impact on the National economy. International focus and attention which is now being directed towards sustainability and protection of the environment , human rights and social development has helped in inculcating a long-term profit motives and sustainable practice to short –term profit motives with negative results on labour and the environment. The statutory and policy direction towards the development of positive attitude on ESG objectives is largely non-existent and this is the reason for almost zero SRI funds and investment in Nigeria. In order to attract SRI in Nigeria there must be a serious move by the regulators to amend the laws and formulate policies that will give direction to Nigerian companies to adopt ESG objectives with a plan to attract SRI into the country. In amending the laws, or formulating policies, the regulatorsshould ensure that they adopt or develop a reasonable internationally measurable standard that can be objectively measured.TheNigerian Code of Corporate Governance not only should be amended urgently to provide for and give the required standards for Nigerian Companies on sustainability matters and the ESG objectives. There must be a locally developed standard index evaluation that will be of internationally acceptable standard which will enhance the status of Nigerian companies, give an objective basis for their assessment and thereby ultimately attract Foreign Direct Investments and SRI funds and investments into the country.