The Universities Superannuation Scheme (the "Scheme")

Responsible investment – what must USS do and how far can it go?

CMS Law.Tax

1. Executive summary

1.1 Responsible investment means taking into consideration environmental, social and governance factors when making investment decisions.

1.2 USSL's role includes investing the Scheme's assets on behalf of its members and beneficiaries and it has a wide power to do so. However, when it exercises that power, it is constrained by legislation, its fiduciary duties, case law and guidance. In particular, it must invest the Scheme's assets in the best financial interests of the Scheme's members and beneficiaries (and the purpose of investing the assets is to provide members with a pension).

1.3 When considering responsible investment, the law distinguishes between financial and non-financial factors.

1.4 Financial factors are factors that impact on the financial performance of an investment. Non-financial factors are factors which might be considered for other reasons, such as ethical beliefs.

1.5 USSL must take into account financial factors when making investment decisions. Those financial factors should be considered over a time frame that reflects the length of time over which the Scheme will need to pay benefits. As the Scheme is open to future accrual and new members, this timeframe will extend decades into the future.

1.6 USSL must also consider that in some circumstances short-term financial factors may override longer term considerations.

1.7 USSL can only take non-financial factors into account where they do not create a material risk of a negative financial impact on an investment and it has good reason to believe that the Scheme's members share each other's views.

1.8 Legislation requires USSL to have policies in place in relation to how it takes into account financial and non-financial factors in its investment decisions and to publish those policies as part of its statement of investment principles. The Scheme's statement of investment principles can be found at https://www.uss.co.uk/how-we-invest/responsible-investment.

1.9 As part of its responsible investment activities, USSL must also have policies in place in relation to stewardship of its investments (i.e. its engagement with the subjects of those investments). In practice, our view is that USSL goes beyond its legal obligations in this area. These policies are also published in the Scheme's statement of investment principles (see above).

1.10 Recent legislation also requires USSL to have governance processes in place in relation to climate change and to publish an annual report in relation to those processes. Those reports are known as TCFD reports and are made available on the USS website at https://www.uss.co.uk/how-we-invest/responsible-investment.

1.11 USSL can decide to exclude investments in a sector or classes of investment from its portfolio as part of its responsible investment policies; however, it must keep those exclusions under review and must take financial and non-financial factors into account when deciding on exclusions in the same way as for other responsible investments.

1.12 USSL has more flexibility to offer ethical investment options for DC benefits as individual members are able to choose between a range of investment options.

2. Introduction

2.1 We have been asked to advise Universities Superannuation Scheme Limited ("**USSL**"), the trustee of the Scheme, on its legal obligations in relation to responsible investment. In particular, we have been asked to advise on when USSL can engage in responsible investment activities, when it must do so and when the law prevents it from doing so.

What is responsible investment?

2.2 There is confusion about what is meant by responsible investment and a number of terms are commonly used in the investment industry and in the media. One of the most commonly used is "*environmental, social and governance*" ("**ESG**") investment.

2.3 In our view, responsible investment means taking into account ESG factors when making investment decisions. However, it should not be confused with other investment terms such as "*sustainable investment*" or "*ethical investment*", although there will of course be some overlap.

2.4 From a legal perspective, for a pension scheme trustee such as USSL, this will mean taking into account ESG factors, where this is permitted by the law, while remaining within the bounds of the duties imposed on it as a trustee. We discuss these duties in more detail in section 4 below.

3. Timeline

3.1 The legal position for pension scheme trustees on responsible investment has developed over time towards the current position with clarifications and, more recently, legislation and guidance increasing its importance for trustees. We have set out a summary of the main legal developments for information purposes in the Appendix to this note.

4. USSL's Investment Duties

4.1 As the trustee of a pension scheme, USSL holds the Scheme's assets on behalf of its members and decides how those assets are invested (although note the position is slightly different for some DC assets, see section 11 below). The power to decide how to invest the Scheme's assets is given to USSL by the investment power in the Scheme Rules and this gives USSL a wide scope to decide how Scheme assets are invested.

4.2 However, although USSL holds the Scheme's assets and is responsible for deciding how they are invested, it is subject to a number of obligations and duties in relation to its investment decisions that in practice define how it can exercise its powers.

Statutory duties

4.3 Legislation places requirements on how pension scheme trustees are allowed to invest. The key requirements are found in Section 36(1A) of the Pensions Act 1995 and Regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005 (the "**Investment Regulations**").

4.4 The most important of these requirements is that USSL must invest the Scheme's assets in the best interests of the Scheme's members and beneficiaries. We have not set out the requirements of the legislation in full, but some of the other key obligations for USSL are that it invests the Scheme's assets:

4.4.1 in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole;

4.4.2 in a manner appropriate to the nature and duration of the expected future retirement benefits payable; and

4.4.3 in a properly diversified manner.

4.5 Legislation also requires USSL to maintain a statement of investment principles ("**SIP**"), setting out various policies on the way in which it will invest. This does not require USSL to invest assets in a particular way, but does require it to consider a number of factors when making its investment policies. We have set out more information on this in section 5 below.

Fiduciary duties

4.6 Trustees are subject to fiduciary duties – these are duties that the law places upon them because of their role in investing for the benefit of their trust's beneficiaries. USSL, as the trustee of the Scheme, is therefore bound by fiduciary duties, some of which impact on its investment decisions. We have summarised the key fiduciary duties which are relevant to responsible investment below:

4.6.1 *Act in line with the purpose of the trust* – the Scheme is established as a trust for a particular purpose – to provide the benefits set out in its Rules. USSL must only exercise its investment powers for the purposes of the Scheme. Therefore, USSL needs to make sure that its investment decisions are made with the aim of supporting the payment of the Scheme's benefits.

4.6.2 *Prudence* – USSL must act prudently. As it holds the Scheme's assets for the benefit of its members, it should invest them in a prudent way i.e. carefully and without taking excessive risks.

4.6.3 *Act in the best interests of the Scheme's beneficiaries* – this duty is also set out in the legislation, but when USSL invests Scheme assets, its primary duty must always be to do it in a way that promotes the best interests of the Scheme's beneficiaries, not in ways that promote other goals (such as USSL's own political or ethical views).

Case law

4.7 USSL must also take into account previous court decisions about what its duties as a pension scheme trustee mean. In the field of responsible investment, the key question that has come before the courts is what is meant by investing in the best interests of a scheme's members and beneficiaries, as is required by the legislation and USSL's fiduciary duties.

4.8 The primary cases on this are *Cowan v Scargill* and *Bishop of Oxford v the Church Commissioners.* In both of these cases, the judges found that investing in the best interests of a scheme's members meant their best financial interests. This is therefore a key point in responsible investment considerations.

4.9 More recently, the *Butler Sloss* case has been raised by some pressure groups and the technical press as potentially allowing other factors to be taken into account when deciding on investments. However, this was a charities case and the judge referred back to *Cowan v Scargill* to flag the distinction between the way that a pension trustee can act as compared to a charity trustee. So this case does not change the position for USS and *Cowan v Scargill* and *Bishop of Oxford v the Church Commissioners* remain the key cases in this area.

Guidance

4.10 USSL also considers various sources of guidance when it makes its investment decisions. The key guidance in the area of pension scheme investments comes from the Pensions Regulator ("**TPR**"), which includes information on how trustees should invest responsibly and the considerations they can and/or should take into account. TPR's guidance supports the obligations and duties set out above and provides additional detail on how TPR believes some of them should be interpreted.

Challenges to USSL's decisions

4.11 Although USSL is subject to a wide range of duties and obligations when making investment decisions, it should be noted that as a general principle the courts will not interfere in a trustee decision that has been properly made. This also applies in the same way to investment decisions – trustees must make those decisions in the right way and take into account the right considerations. The courts will respect an appropriate breadth of discretion for a trustee exercising judgement over what are inherently uncertain matters and will not assess compliance with trustee obligations on the basis of investment outcomes.

Delegation of investment powers and professional advice

4.12 In practice pension scheme trustees will often delegate the exercise of their investment powers, particularly on a day to day level to fund managers or fiduciary managers. In USSL's case, investment decisions are delegated to USS Investment Management Limited ("**USSIM**"), an investment manager wholly owned by USSL, which then deals with all investment decisions on behalf of USSL. The investment requirements that we have set out in this section still apply to USSL and the terms of any delegation of its investment powers are in line with those requirements. These duties therefore apply equally to USSIM.

5. The statement of investment principles and disclosure obligations

5.1 As the trustee of a large pension scheme, USSL must have a SIP. This is a document setting out the general principles USSL follows in its investment strategy, as well as its policies on what it takes into consideration in a number of areas when making investment decisions.

5.2 The Investment Regulations set out a number of requirements for the content of a pension scheme's SIP, including in relation to responsible investment. USSL therefore complies with these obligations, including but not limited to setting out its investment policies in relation to:

5.2.1 how it takes into account financially material considerations over the "*appropriate time horizon*" including ESG (see section 7 below);

5.2.2 the extent to which (if at all) it takes into account non-financial considerations (see section 9 below); and

5.2.3 engagement activities in respect of its investments.

5.3 USSL discloses its policies in these areas by publishing its SIP on a publicly available website in line with the legislative requirements and, since 1 October 2020, has also had to publish information about how it has implemented those policies.

6. Climate change governance and reporting

6.1 The Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 introduced a number of requirements for trustees of large schemes (such as USS) to put in place governance processes in relation to climate change, including adopting risk management and metrics and targets and then reporting on them annually. USSL complies with these obligations and its latest annual report on this can be found at USS' responsible investment webpage: https://www.uss.co.uk/how-we-invest/responsible-investment.

7. When making investment decisions, can USSL take into account responsible investment considerations? Should it?

7.1 As we have set out above, USSL must take into account a wide range of constraints, duties and guidance when making investment decisions. It must also publish policies on how it takes various responsible investment factors into consideration. However, the key legal point is that, in practice, there is a distinction between how USSL can consider financial and non-financial factors in responsible investment.

7.2 USSL can, and should, take into account financial factors when making investment decisions.

What are financial factors in the context of responsible investment?

7.3 Financial factors are considerations which impact investment performance. In other words, ones which USSL could expect to have a financial impact on the returns on Scheme assets.

7.4 For example, the future decommissioning costs of an oil company could be an environmental factor that would also potentially be a financially material consideration when making an investment decision. Equally, the anticipated impact of climate change on other assets held by USSL, such as property, could be a financial factor in deciding how to invest.

7.5 An example of a financial factor in an area other than the environment could be a company's poor governance. Companies with poor governance might be more likely to suffer in the future due to compliance failures or poor business practices, and that could negatively impact the return on an investment in them.

7.6 USSL's primary duty as a pension scheme trustee is to invest in the best financial interests of the Scheme's members and beneficiaries. Therefore, financial factors not only can, but must be taken into account by USSL when making investment decisions. This position is supported by TPR's investment guidance.

The appropriate time horizon

7.7 USSL is required by the Investment Regulations to have a policy about how it takes into account financially material considerations over the "*appropriate time horizon*". Similarly, TPR's investment guidance requires trustees to consider financially material risks relating to their investments over an appropriate time horizon.

7.8 The appropriate time horizon is defined in the legislation as "*the length of time… needed for the funding of future benefits by the investments of the scheme*". The appropriate time horizon for a particular scheme will, of course, vary depending on the nature of its membership and the benefits that it pays. However, in the case of the Scheme, benefits will need to be funded and paid for a considerable period of time into the future, given that it remains open to future accrual and to new members.

7.9 This means that, as part of its consideration of financial factors, USSL needs to consider the long-term financial risks and opportunities of its investments as well as their short term performance as it will need to ensure that the Scheme remains funded for decades to come. TPR's guidance makes it clear that this evaluation should consider the impact of systemic risks, such as climate change, including how engagement can be used to mitigate that risk.

Limits

7.10 While USSL must take into account financial factors relating to responsible investment when considering investment decisions, it should keep in mind that all financial factors must be taken into account, not just ones relating to responsible investment. It may be the case that short-term and/or longer-term financial factors unrelated to responsible investment will override other considerations in some circumstances and in order to comply with its duties as a pension scheme trustee USSL must be conscious of that. As for any investment, whether particular risks and opportunities can be managed better by sale of a particular asset (which will require reinvestment in another asset) or by engagement with management is a matter of judgement, based on appropriate advice.

7.11 USSL should also consider that financial factors are not limited to investment growth and can include other considerations, such as mitigation of risks through hedging, the desire to match the Scheme's liabilities and/or liquidity to meet cashflow needs.

8. Stewardship and its relationship to responsible investment

8.1 Much of the focus on responsible investment is on what trustees invest in rather than in how they oversee those investments after making them. Pensions investment legislation has, however, shown a growing focus on stewardship and this is an important part of any pension scheme trustee's responsible investment activities.

8.2 Stewardship is trustees' engagement with their investments. It can take a variety of forms such as, for example:

8.2.1 proposing and voting on shareholder resolutions;

8.2.2 discussions with companies about governance and ESG impact; and

8.2.3 monitoring of companies' activities.

8.3 This is important because it allows for greater accountability as well as promoting the good governance and success of investments. This can be both a financial and a non-financial factor for trustees. For example, good governance and accountability of that company are likely to result in better financial outcomes.

8.4 Pension scheme trustees are now required by legislation to include information on their engagement with investment managers or companies they have invested in. USSL must therefore take this into account as part of its responsible investment considerations. Additional requirements will apply over time and USS will have to comply with these as and when they arise.

8.5 There is also a range of non-statutory guidance in relation to stewardship of investments, including the Financial Reporting Council's Stewardship Code. Pension scheme trustees are under no obligation to sign up to this code. However, TPR does encourage trustees to sign up to it. We understand that USSL was a founder signatory to the Stewardship Code and also signed up to the UN's Principles for Responsible Investment. Considerable information is also provided on the USSL website about its stewardship and responsible investment activities. USSL therefore goes beyond its legal obligations in relation to stewardship and disclosure of responsible investment activity.

9. What about non-financial factors?

9.1 While USSL is required to take into account financial factors relating to responsible investment when making investment decisions, this does not cover the full spectrum of responsible investment issues. In some cases, USSL may wish to consider non-financial factors as part of its decision-making process.

9.2 Non-financial factors present a more difficult question for pension scheme trustees like USSL. The legal starting point is that trustees must invest in the best financial interests of their scheme's members and beneficiaries. It is therefore harder to justify them taking non-financial factors into account.

9.3 Non-financial factors are factors which are based not on the financial performance of an investment, but rather on some other consideration. For example, if USSL was considering investing in a tobacco manufacturer, the potential impact of lawsuits due to its health impact would be a financial factor, but a belief that investing in tobacco was immoral due to its impact on smokers' health would be a non-financial factor.

9.4 It is also worth noting that, in many cases, non-financial factors will also be linked to financial factors and this would need to be taken into account in any analysis. In the example above, a general societal belief in the immorality of smoking would be a non-financial factor in isolation, but it might have knock-on financial effects (for example, due to the likelihood of legal restrictions being imposed), which USSL would need to take into account.

9.5 That being said, while non-financial factors present a more difficult challenge, both the Law Commission and TPR suggest they can be taken into account in certain circumstances. Specifically, they say that trustees can take non-financial factors into account where:

9.5.1 taking those factors into account would not pose a risk of significant financial detriment to the Scheme, for example, where the choice is between two investments which are broadly equivalent from a financial perspective; and

9.5.2 they have good reason to think that scheme members share each other's concerns about the non-financial factors.

9.6 It should be noted that the Law Commission and TPR's views are not statements of law and the legal position has not been fully tested to date. There is still debate in the legal industry about the correctness of this test and, while it has been considered by the courts, the position has not been fully settled.

9.7 In the Supreme Court's judgment on the *Palestine* case in 2020 Lord Carnwath said that "*There appears now to be general acceptance that the criteria posed by the Law Commission are lawful and appropriate. I agree.*" This gives considerable additional weight to the Law Commission's test. However, Lord Carnwath went on to say what he thought the test was and gave a slightly different test to the Law Commission.

9.8 Lord Carnwath said that non-financial factors could be taken into account if the decision would "*not involve* ***significant risk*** *of financial detriment*"; the Law Commission's test was that such a decision must not "*involve a risk of* ***significant financial detriment***". The difference between these is important because one allows a risk of significant financial detriment as long as it is not a significant risk, while the other does not allow any material risk of significant financial detriment, but could potentially allow small financial detriment.

9.9 It is unclear whether the Supreme Court intended to introduce a different test to the Law Commission (Lord Carnwath's wording suggests not), but it does introduce an element of doubt about what the correct test is for what non-financial factors may be taken into account. Neither formulation, nor any comments in the *Butler Sloss* judgment suggest that such non-financial factors <u>must</u> be taken into account. It should also be noted that the case was dealing with local government pension schemes and so is arguably not directly applicable to a private sector occupational pension scheme like USS.

9.10 Therefore, while our view is that the Law Commission's test is a reasonable position to take, there is some risk in taking non-financial factors into account where there is any risk of financial detriment (not just a significant risk or a risk of significant financial detriment) given the lack of any definitive court judgments or legislation in the area.

9.11 As such, when making investment decisions, the key consideration for USSL should be that it is managing Scheme members' assets on their behalf and so it cannot impose its own ethical views on them. In other words, non-financial factors should only be taken into account where financial factors have been considered and can only be treated as a secondary concern.

9.12 While USSL can assess whether there is a risk of financial detriment as part of its normal investment decision-making process, the question of whether it has good reason to think members agree with its decision is clearly more difficult.

9.13 Although on the surface it would seem to be very difficult to establish members' views on a particular issue, in practice USSL can take some comfort from the Law Commission's view. While this is not legally binding, it is persuasive.

9.14 The Law Commission uses the example of manufacturing cluster bombs to show circumstances where there would be no need to consult with members. In that case, trustees would have reason to think that members would share each other's views against investing in the manufacture of cluster bombs on the basis that it contravenes international conventions. Combined with letters from members agreeing and no letters disagreeing, the Law Commission took the view that in that case trustees would have good reason to think members shared their concerns. We agree with this analysis and think it would be open, in some non-controversial cases, for USSL to take the view that it had good reason to think members agreed with a particular view without conducting a consultation or survey where there was a some objective basis for taking that view (e.g. in international treaties or similar types of source to those referenced in the Law Commission guidance and if letters had been received from members supporting a position and no letters disagreeing). USSL would, of course, still have to look at the risk of financial detriment.

9.15 Where no robust objective basis for believing members share a particular viewpoint is available, USSL would need to consult with members before taking a non-financial factor into account. The more difficult the question, the greater the need would be for consultation and the stronger the member response would need to be to act on it. This is an area where USSL would need to exercise careful judgement and could only proceed cautiously. USSL would also need to be aware of the risk that any views expressed might be from a vocal minority of members who strongly hold a particular view, and that the silence of other members would not necessarily mean they agreed with that view. Any communications from USSL canvassing members' opinions would need to be carefully worded to ensure that members understood the potential consequences on their pension of the questions they were being asked.

9.16 In any case where taking a non-financial factor into account would be controversial among the Scheme's membership, it would be impossible for USSL to justify doing so.

9.17 In summary, USSL should not be imposing its own moral views on members when it chooses how to invest assets on their behalf, but where it is comfortable with the position on financial detriment and it has good reason to think members share each other's views, it can take into account non-financial factors.

9.18 In any case, taking into account non-financial factors is clearly more difficult than financial factors and more open to challenge – and USSL will only do so having received advice on a case by case basis supporting the considerations set out above.

Can USSL ignore non-financial factors?

9.19 When making its investment decisions, USSL must keep in mind that non-financial factors must always be subordinate to financial factors. When making decisions, USSL is required to consider all relevant factors and to ignore all irrelevant factors. Its considerations must therefore include any relevant non-financial factors, but considering them does not mean that they must change the decision. As explained above, financial factors must take priority and it will often be the case that the conditions for taking a non-financial factor into account are simply not met and so it cannot be allowed to influence the investment decision.

10. Investment exclusions

10.1 In addition to actively considering investing in ESG investments, USSL may also want to restrict or exclude investment in sectors which do not fit with its responsible investment policies.

When can trustees operate investment exclusions?

10.2 As with choosing to invest in something, if USSL wishes to restrict or exclude investment in a sector or a class of investments, it will need to consider financial and non-financial factors. Where there are financial reasons for doing so – for example the long-term prospects of polluting industries due to increasing regulation and expected moves away from them and clean-up costs – then these should be taken into account in the normal way and if it makes financial sense then it is open to USSL to avoid those categories of investment. However, it should as part of exercising its power of investment consider, on proper advice, whether members' financial interests are best served by such an exclusion or by engaging with the entities in the particular class to address concerns.

10.3 Where there are non-financial factors, this is once again more difficult, but the same analysis as previously will apply.

What would be an appropriate review period if exclusions are introduced?

10.4 Although USSL has scope to put in place investment exclusions, trustees cannot fetter their discretion. USSL could not, therefore operate a permanent investment exclusion as it would mean limiting its ability to exercise its investment powers in the future (potentially to the detriment of returns for future investments). Rather it would have to review any exclusions at regular intervals.

10.5 The length of those intervals would depend on the nature of the exclusion and the type of investment. If the example of investing in the manufacture of cluster bombs is used, an exclusion of this kind would in our view only need to be reviewed if there was a meaningful change in circumstances. Examples of this might be a number of members writing to USSL in support of investing in cluster bomb manufacturing (unlikely as that might seem), or international conventions changing to permit their manufacture. On the other hand, a decision not to invest in oil extraction might require more regular review to ensure that the reasons behind that exclusion remained valid and circumstances had not changed. For example, many oil companies are now major investors in renewable energy.

10.6 The length of time before it is reviewed will be a matter of judgement for USSL if it implements an exclusion. However, where USSL had reason to think an exclusion might start to have a material negative financial impact on the Scheme then it would need to review it promptly, regardless of any future scheduled review.

11. Is the position different for DC investments?

11.1 Most of the Scheme's assets are part of its defined benefit fund, where members have no control over investments and it is USSL's responsibility to manage those assets on behalf of members. However, the Scheme does also contain a significant amount of DC assets.

11.2 In USS's DC arrangement, members have a choice between various investment funds and so can provide input on how they wish their money to be invested by choosing between funds. Those individual choices do not affect the financial outcome for any other DC member. USSL's role here is to provide a suitable range of fund choices, including a default fund (the fund into which members' investments are placed if they do not make a choice about which fund to pay into).

11.3 We would expect the normal considerations on responsible investment to apply to the provision of most of these funds. In particular, as members might not have chosen to be placed in the default fund, USSL would need to ensure that it is invested in the best financial interests of members and beneficiaries in the same way as DB assets. However, in our view, members' choice of funds means that there is scope for USSL to provide members with the option to invest their DC contributions into one or more ethical funds where sufficient information is provided to members on the investments held. However, even here, the purpose of the investments is to help a member have an adequate pot for retirement and so USSL must be satisfied that the funds provide appropriate value for members.

CMS Cameron McKenna Nabarro Olswang LLP
23 August 2023

Appendix[1]

[1] Note that this timeline is correct as at the time of writing.

THE DEVELOPMENT OF RESPONSIBLE INVESTMENT IN PENSIONS

Cowan v Scargill – 1985

High Court decides that trustees of pension schemes are required to act in the best financial interests of beneficiaries on investment and can only take into account non-financial factors in limited circumstances

Introduction of SIPs – 1997

The Pensions Act 1995 introduces a requirement for UK occupational pension schemes to have a statement of investment principles

Investment Regulations — 2005

Trustees required to include a statement in the scheme's SIP regarding the extent to which ESG factors are taken into account

Kay Review - 2012

Recommended that the l aw Commission investigate how the concept of fiduciary duty related to investment

Law Commission Report — June 2017

Confirmed importance of ESG considerations and recommended greater member engagement where ESG factors are concerned

Pensions Regulator (TPR) Investment Guidance - March 2017

New guidance for trustees on DB investment restated the Law Commission's guidance on distinction between financial and non-financial factors

DWP consultation and amended Investment and Disclosure Regulations – 2018-19

Reflected increasing prominence of ESG factors and included new legal obligations on trustees when making investment decisions and a requirement for them to report on various ESG policies including how they take into account financially material considerations (including ESG) and non-financial matters along with information on voting, shareholder engagement and monitoring of the SIP.

Climate Change Regulations – 2021

Introduced new governance and reporting requirements in relation to climate change for the largest pension schemes, requiring them to have governance processes in place, engage in scenario analysis and establish metrics and targets. These were amended in 2022 to introduce an additional metric of portfolio alignment with the Paris Agreement climate change goals.

Upcoming Developments

Task force on nature related disclosures – proposed new risk management and disclosure framework for nature-related risks.

UK green taxonomy – proposed new classification system to identify environmentally sustainable economic activities.