



# Robin Solomon Quoted on Socially Responsible Investing

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Robin Solomon was quoted at length in the May 23, 2017 article called "When Does Socially Responsible Investing Violate Fiduciary Duty" by Christopher Carosa.

It's always been considered appropriate for a client to dictate specifically how his assets should be managed. This situation gets dicey when the grantor of the trust (like a retirement plan sponsor) is not the same person as the beneficiary of the trust (like the retirement plan participant). In cases like this, trust law is quite definitive: trustees have a sole fiduciary duty to the beneficiary, not the grantor.

To avoid this fiduciary liability, "socially responsible" investing is now couched in terms that do not admit to accepting suboptimal performance. "Socially responsible investing is an investment strategy that focuses on both financial return for the investor and social good for the public," Robin Solomon, an attorney in the Employee Benefits and Executive Compensation practice of Ivins, Phillips & Barker, in Washington DC, says. "Instead of focusing solely on maximizing financial return, socially responsible funds would weigh the social costs of the investments in terms of environmental impact, human rights, fair trade, corporate governance, and other public policy goals."

In 2015, in an attempt to remove some of the legal obstacles with using retirement funds to promote public policy advocacy, the DOL redefined how plan sponsors so motivated by popular issues can use their employees' money for political purposes. "Companies (or individuals) engage in socially responsible investing when they feel strongly about a particular public policy goal," says Solomon. "In a sense, it is putting your money where your mouth is.' Under ERISA, plan fiduciaries are required to evaluate socially responsible investing



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as they would any other investment. In the past, the DOL has stated that fiduciaries could not sacrifice the financial interests of participants in order to promote social, environmental, or other public policy causes fiduciaries could only consider these collateral goals as tiebreakers' when all else is equal. In Interpretive Bulletin 2015-01, the DOL acknowledged that its past view had the unintended effect of discouraging socially responsible investing. The DOL now clarifies that environmental, social and governance factors may have a direct relationship to the economic value of investments, and that fiduciaries can consider these factors as part of its economic analysis (i.e., not just as a tiebreaker)."