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Ethical Investing: Praiseworthy, or Obligatory?

Approved on April 1, 2025 by a vote of 7-1-11. Voting in favor: Rabbis Adam Baldachin, Nate Crane, Barry Leff, Amy Levin, Matthew Nover, Avram Reisner, and Robert Scheinberg. Voting Against: Rabbi Miriam T. Spitzer. Abstaining: Rabbis Pamela Barmash, Emily Barton, Chaya Bender, Suzanne Brody, Aviva Fellman, David Fine, Joshua Heller, Rachel Safman, Meir Szames, Stewart Vogel, and Raysh Weiss.[1]

שאלה (Question)

What responsibility do investors have to investigate and take into account the business practices and social impact of businesses in which they invest?

Jewish individuals and organizations have typically expressed their commitment to Jewish values in their investments in part by buying Israel Bonds, or investing in Israeli companies, or in multinational corporations with operations in Israel. Such practices are meritorious and encouraged.

But there are many important Jewish values in addition to supporting Israel.

Many companies are known to be exploiting workers, damaging the environment, engaged in business lines that are halakhically questionable such as gambling or pornography, sell products that are harmful to health such as tobacco, or behave in other socially irresponsible ways. Is it forbidden to invest in such companies? Is there a positive obligation (*mitzvat aseh*) to invest only in socially responsible businesses? Does it make a difference if the investment is indirect, such as through a mutual fund? Does it matter if the investor has a big enough stake to be able to influence corporate policy?

תשובה (Response)

To understand our ethical and halakhic obligations relating to investing in corporations, some background on the nature of corporations and the stock market is needed.

There are many different ways people can join together for business purposes. There are partnerships, where the general partners are clearly responsible for how the business is conducted, and they are jointly and severally liable for any of the partnership's debts. That is, if the partnership goes bankrupt, they can have personal liability.

The modern corporation evolved out of the joint stock companies of the 16th and 17th centuries. As commercial ventures became larger and needed more capital, new ways of financing business ventures were needed. By creating a separate business entity that was

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[1] *The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. Individual rabbis, however, are authorized to interpret and apply halakhah for their communities.*

recognized as separate from its owners, the joint stock company was able to attract large numbers of investors and raise large amounts of money.

There are many different kinds of corporations, including closely held corporations and publicly held corporations. The most important features of corporations are that they are recognized as distinct legal entities, and there is limited liability for the shareholders.

The very word "corporation" is derived from the Latin "corpus," meaning body. The corporation is a fictive body independent of its owners. As a distinct legal entity, the corporation can enter contracts, sue and be sued, hire people, own assets, and pay taxes to the government.

Limited liability means that while shareholders are entitled to their prorata share of the profits of the corporation, they are not personally liable to any of the debts of the corporation.

Even though shareholders of a corporation are called its "owners," whether or not the shareholders really function as owners depends on the corporation. If an individual owns 100 shares of Apple, they effectively have no real ownership in the corporation. They can't show up at the corporate offices and insist that the company do something, or refrain from doing something. They can't take any of the assets of the corporation home with them.

On the other hand, an individual who forms a corporation to benefit from the limited liability of a corporation and is the sole owner is clearly still the owner of the assets of the corporation and can direct how they are used and can transfer assets to themselves for their personal use.

Using a black and white approach to halakhah that would treat both situations the same could lead to highly problematic outcomes.

The Corporation Under Halakhah

There are many different approaches to understanding the nature of the corporation under halakhah. Michael J. Broyde and Steven H. Resnicoff provide a useful summary in their article, "Jewish Law and Modern Business Structures: The Corporate Paradigm."[2]

They identified five different approaches that halakhic authorities have taken toward the corporation, as follows:

1. The "Jewish law (halakhic) entity" approach. This view maintains that Jewish law deems a corporation to be an independent entity that owns its assets and conducts its business. According to this view, shareholders do not own title to the corporate assets and are not in violation of Jewish law when the corporation commits a forbidden act. R. Yitzchak Isaac HaLevi Ittinger took this approach in a discussion surrounding taking or paying interest to a corporation in a collection of responsa published in 1893. He concluded that shareholding does not constitute halakhic ownership, so there is no prohibition on paying or receiving interest from a corporation.[3]

[2] The Wayne Law Review; Fall, 1997; 43 Wayne L. Rev. 1685, available online at https://www.jlaw.com/Articles/corporations.html
[3] Shut Maharia Ha-Levi Vol. 2, 54

2. The "halakhic partnership" approach. There are three versions of this view. The first contends that Jewish law recognizes a corporation as a partnership (*shutfut*). The shareholders are regarded as partners who own a percentage interest of the corporate assets. A second version maintains that Jewish shareholders are partners only if the corporation has primarily Jewish shareholders. A third alternative describes Jewish shareholders as partners only if they own voting shares. R. Soloman Ganzfried takes the partnership approach and forbids using a bank that charges interest where Jews own shares or borrow, even if the officers are gentiles.[4]

3. The "halakhic creditor" approach. Some authorities who espouse the second or third versions of the halakhic partnership theory believe that Jewish shareholders who are not partners are, instead, creditors who have loaned money to the corporation or to the corporation's managers. As creditors, such shareholders would not be responsible under Jewish law for the corporation's conduct. R. Moshe Sternbuch has a lengthy discussion of this approach in the context of whether a Jew who owns shares in a corporation that owns hametz over Passover is violating a prohibition. He argues that according to Torah law, the concept of a limited liability corporation is unknown. If the corporation is mostly owned by Jews, it would be a partnership. If mostly owned or managed by non-Jews, Jewish shareholders would be considered creditors of the company, who have loaned it money without receiving anything in return.[5]

4. The "purchaser of entitlements" approach. R. Moshe Feinstein suggests that in many instances a Jewish shareholder is merely a purchaser of certain financial benefits vis-a-vis the corporation's future profits. He says, אין הקונה שערם רוצה להיות בעלים בהמסחר ואינו רוצה לקנות כלום בהמסחר אלא הוא רק כקונה ריוח והפסד שיהיה בהמסחר, the purchaser of shares (in a company) does not want to be a manager in the business, and he does not want to buy anything from the business, rather it is as if he purchased (a portion) of the profit and loss of the business.[6]

5. The "relationship" approach. Some authorities do not use a single label to describe the abstract relationship between Jewish shareholders, on the one hand, and corporate assets and activities, on the other. Instead, they examine diverse aspects of the relationship and ask whether, as a whole, it constitutes ownership such as to implicate particular Jewish law problems. Exponents of this approach consider, for example, the shareholders' ability and intention to control corporate conduct and to use or sell corporate assets. R. Moshe Feinstein takes this approach regarding the prohibition on interest. Normally there is no prohibition on interest to/from a corporation, but in the case of an individual Jew who owns a corporation, the prohibition on interest would still take effect.[7]

Those interested in a detailed discussion of the different approaches are encouraged to see the Broyde/Resnicoff paper referred to above, which includes 398 footnotes.

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[4] Kitzur Shulhan Arukh 65:28
[5] Moshe Sternbuch, Moadim u'Zmanim, 3:269, note 1
[6] Moshe Feinstein, Igrot Moshe, Even Haezer 1:7
[7] Moshe Feinstein, Igrot Moshe, Yoreh Deah 2:62

The relationship approach is clearly the approach that will result in the most “sensible” outcome, without getting bogged down in the minutiae of whether there is an analogous concept in the Talmud. There is not. The modern corporation has many features that distinguish it from models known to the rabbis of the Talmud.

Looking at two different scenarios, a large publicly held corporation and small privately held company, will make the rationale for the relationship model plain.

Large Public Corporation

Let us take as an example Apple Inc, the company that makes computers, iPhones, etc. The company has a market capitalization (at this writing) of over $3 trillion. A typical small investor, who at most might own a few hundred shares of the company, would have no influence over the governance of the corporation at all. Even someone who had $3 million worth of Apple stock owns but a tiny fraction of 1% of the stock of the company and would have no hope of exercising any control over the company at all.

Not only that, unless the investor participated in a public offering by Apple, none of their money directly went to the company. In essence they bought a right to a tiny percentage of the profits of Apple from someone else who owned them previously.

Additionally, in a typical investment via a brokerage firm, they do not even directly own the stock. The stock is held in the brokerage account, in the name of the brokerage.

Many investors invest in mutual funds – in such cases the owner of the mutual fund is yet a further step removed from the ownership or management of the company.

It is quite clear that for the typical individual investing in the stock market, they are investing hoping to make money either through dividends, or more commonly through an increase in the price of the stock.

In such a circumstance, it is reasonable to view the corporation as a new halakhic entity as described above. The shareholders do not in any meaningful sense have title to the corporate assets and would not be held responsible for any violation of Jewish law.

Small Privately Held Corporation

The author owns 50% of an Israeli limited liability corporation. He has one (Jewish) partner in the business. They own all the assets in the corporation, and the two owners make all the decisions regarding the corporation.

In such a circumstance, it would be absurd to view the fact that they created a corporation as a “get of jail free” card that relieves the owners of the responsibility to follow halakhah in their business dealings.

As the above examples show, the relationship model of the corporation avoids non-sensible outcomes, and is therefore the model we use in this paper and in our ruling.

Investing in the Stock Market

Most discussion around the halakhah of investing in the stock market focuses on whether an observant Jew is violating halakhah if they invest in a company that operates on Shabbat (or that owns chametz over Passover, or that does other things that are contrary to ritual laws). Most authorities rule it is permitted to buy stock in such companies, in accordance with the principle cited above in the responsum from R. Moshe Feinstein, that the purchaser of the stock does not exercise any control over the company and is a passive investor seeking profits. See, for example, an article on "Buying Shares in a Company that Operates on Shabbos" on the OU website.[8]

The CJLS has not, until now, considered the question of passively investing in public corporations that operate on Shabbat or that are engaged in other violations of halakhah. The CJLS has approved various mechanisms for a Jewish business owner to profit from a business that operates on Shabbat, however they all require some form of explicit agreement, see for example R. Elliot Dorff's concurring opinion on two teshuvot on the subject.[9]

While not an opinion of the CJLS, in a chapter on Commerce in The Observant Life, R. Jacob Blumenthal follows the "relationship" guideline. He states, "…the ethical responsibilities for an average investor are likely quite limited. Average shareholders do not have direct responsibility for the actions of a company, since their stake is too small to affect corporate policy, and those who own stock in a company through a mutual fund are even less directly responsible for that company's activities."[10]

In this paper we affirm that we follow the "relationship model" in understanding corporations and the responsibilities of investors.

Are Moral Commandments Treated Differently than Ritual Commandments?

It is widely accepted that it is halakhically permissible to invest in the stock market even though the companies being invested in will operate on Shabbat and do other ritual violations. Should companies that violate commandments *bein adam l'havero,* between people, moral commandments, be treated the same way?

Generally speaking, as a matter of law halakhah does not differentiate among mitzvot. As we learn in the Mishnah, "Rabbi [Yehudah haNasi] said: Be as scrupulous in observing a [seemingly] minor commandment as a [seemingly] major commandment, because you do not know the value of each commandment."[11]

There are both ritual commandments and moral commandments that are theoretically punishable by death under halakhah. Maimonides shares a list of 36 different infractions subject to capital punishment that includes both moral violations such as murder and kidnapping, and ritual violations such as desecrating the Sabbath or engaging in divination.[12]

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[8] https://outorah.org/p/43914/ accessed on December 20, 2023
[9] Elliot Dorff, "Jewish Businesses Open on Shabbat and Yom Tov: A Concurring Opinion," OH 243.1995c, available online at https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/dorff_business.pdf
[10] Jacob Blumenthal, in "The Observant Life," ed. Martin Cohen, pp 503-504
[11] Pirkei Avot 2:1
[12] Mishnah Torah, Hilkhot Sanhedrin 15:13

There are, however, a number of ways in which ethical commandments are considered to have primacy over ritual commandments. The Talmud teaches, "Hospitality toward guests is greater than receiving the Divine Presence, as it is written: 'And he said: Lord, if now I have found favor in Your sight, please pass not from Your servant" (Genesis 18:3).'"[13] Abraham was in the middle of a conversation with God, yet he asked God to wait while he attended to his guests.

The rabbis of the Talmud expanded on the primacy of commandments between people. In a passage in Tractate Makkot, there is a discussion of the 613 commandments, and a description of how various historic figures established the 613 commandments on a subset.[14] The rabbis bring examples from David, Micah, Isaiah, Amos, Habakkuk, Amos, and Ezekiel. All of the examples cited are based on ethical commandments. For example, R. Simlai says that Isaiah established the 613 mitzvot on six, as it is written:

> He who walks righteously, and speaks uprightly; he who despises the gain of oppressions, who shakes his hands from holding of bribes, who stops his ears from hearing blood, and shuts his eyes from looking upon evil.[15]

Further, the Talmud specifies that when a person is brought for judgment in the next world, the first question asked is "did you conduct your business affairs faithfully?"[16] As important as studying Torah is, the rabbis maintain that being an ethical person is of even greater concern to the Almighty.

Given the importance of ethical commandments in the Jewish tradition, it is sad that in much of the Jewish world the discussion around investing has focused on ritual issues such as the laws of Shabbat and interest, and not on ethical issues such as the treatment of workers. This disparity is what led to the creation of the Magen Tzedek Standard, which sought to certify kosher food products as being produced in accord with Jewish ethical laws and standards.[17] It is also why the author included requirements regarding the treatment of workers in the standards for certifying wineries in Israel that he helped craft for Masorti Judaism.[18]

Middat Hassidut (Meritorious Behavior)

Just because something is permitted does not mean it is also praiseworthy. Ramban (Nahmanides) famously said that it is possible be a נבל ברשות התורה, a wicked person within the boundaries of the Torah.[19] Similarly, the Torah itself charges us to "Do what is right and good in

[13] Talmud Bavli, Shabbat 127a
[14] The exact meaning of "established the (the 613 commandments) on (some smaller number)" is a bit obscure. According to Rashi, later generations were not as righteous as earlier generations, and no one could keep all of the commandments, therefore David (and later others) said if they follow just these commandments they merit. So in that sense these subsets represent what was thought to be the most primary commandments – and all of them are ethical matters.
[15] Isaiah 33:15 quoted in Talmud Bavli Makkot 24a
[16] Shabbat 31a
[17] The Magen Tzedek Standard, http://www.magentzedek.org
[18] "Israeli Wine Needs Masorti Kosher Supervision," Haaretz, Arie Hasit, October 10, 2013, https://www.haaretz.com/jewish/2013-10-10/ty-article/.premium/negev-winery-bucks-the-establishment/0000017f-e0b3-d38f-a57f-e6f359d90000
[19] Ramban on Leviticus 19:2(2)

the sight of the Lord."[20] In this area there are additional grounds to differentiate between ritual mitzvot and moral mitzvot.

Ritual commandments do not apply to non-Jews. Therefore, it is not even a matter of piety to avoid investing in companies engaged in businesses that are contrary to our ritual laws. Even though the vast majority of McDonalds restaurants in the world serve unkosher food and operate on Shabbat, those things are not prohibited to gentiles.

On the other hand, moral commandments have universal applicability. It is appropriate that an individual purchasing shares in individual companies only purchases shares in companies that share their values. As such it is appropriate to avoid investing directly in businesses that cause harm, whether to the environment as in fossil fuel companies, or to people as in tobacco companies, or in companies that are known to mistreat their workforce.

The Torah, in fact, charges us with avoiding causing harm. Someone whose animals graze in someone else's fields must make restitution. One who starts a fire, and the fire spreads is liable to make restitution for the damage.[21]

The Mishnah further elucidates four "*avot nezikim*," primary categories of damage that one is held responsible for. The different categories are not as important as the general concept: הַצַּד הַשָּׁוֶה שֶׁבָּהֶן, שֶׁדַּרְכָּן לְהַזִּיק וּשְׁמִירָתָן עָלֶיךָ , "what is common to them is that they are liable to cause damage, and you are responsible to guard against harm."[22]

Clearly, investing in companies that cause harm would be contrary to Jewish values.

Investing in mutual funds that invest in a portfolio of stocks, or in index funds whose goal is to track stock market performance would seem to be an "ethically neutral" way to invest. It is not directly investing in individual companies that do harm, which would be a bad thing, but it is also not as meritorious as investing only in companies that are positive forces for the world.

The ideal is not to invest in an ethically neutral way, or to simply avoid causing harm. Proper behavior is to invest in companies that are a positive force, that are doing things that help make the world a better place. Ethical investing is a *middat h̲assidut*, a pious act, that represents living up to the ideals of the Jewish tradition, something to which we should all aspire.

Jewish Values and Investing

Beyond avoiding causing damage, there are many positive values in Judaism that can be expressed in how one invests one's money. A few examples follow:

- Preserving lives: saving lives is a central Jewish value. The Mishnah famously teaches, וכל המקיים נפש אחת, מעלים עליו כאילו קיים עולם מלא , all who save one soul are credited as if they saved a complete world.[23] Therefore, investing in companies that save

[20] Deuteronomy 6:18
[21] Exodus 22:4-5
[22] Mishnah Bava Kama 1:1
[23] Mishnah Sanhedrin 4:5. Some manuscripts read "saves a soul from Israel," some manuscripts leave out "from Israel." Rambam's manuscript leaves it out.

lives – whether pharmaceutical companies, hospitals, or businesses focused on safety improvements, would be in keeping with this value.

- Providing jobs. Maimonides teaches that providing someone with a job so that they do not need charity is the highest level of charity.[24] Businesses that explicitly work to provide more jobs, that treat their workers well, and especially ones that hire people other companies might not want such as the disabled, are being a force for good.
- Protecting the environment. The Torah tells us that God created man and placed him in the garden of Eden "to work it and to protect it."[25] The principle of *bal tashit*, do not destroy, based on Deuteronomy 20:19-20, has become the foundation for not engaging in wasteful consumption or harming the world. Investing in green energy, for example, would support this important value. In a 2019 paper unanimously approved by the CJLS, Rabbis Nina Beth Cardin and Avram Israel Reisner emphasize that we are in a global emergency "that is already irrevocably jeopardizing the future of humankind and thousands of other life forms…" They charge all of us with responding urgently and that we "make all our decisions align with the goals of sustainability" – which, or course, would include our investing decisions.[26]
- Supporting Israel. Investing in Israeli companies and in multinationals that support Israel or that have Israeli subsidiaries is a way to show your support for Israel while participating in one of the most dynamic economies in the world. Avoiding investing in companies that support the BDS movement is helping to avoid harm to the Israeli economy.

Different values resonate with different people. Someone concerned with animal welfare might not want to invest in industrial slaughterhouses. Whichever values are most important to you, it makes sense to have your investments be an expression of your values.

How to Invest Ethically

In this section we will explore several different ways to be an ethical investor, including ESG (Environmental, Social, and Governance) scores and ESG funds, benefit corporations, and venture philanthropy.

Socially Responsible Investing (SRI) and ESG

Socially responsible investing and ESG are sometimes treated as if they are synonyms, however, they are not the same thing.

According to Investopedia, SRI is

> an investment that is considered socially responsible due to the nature of the business the company conducts. A common theme for socially responsible investments is socially

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[24] Mishneh Torah, Gifts to the Poor 10:7.
[25] Genesis 2:15
[26] Nina Beth Cardin and Avram Israel Reisner, "Ma'asei Yadai L'hitpa-er: On the Mitzvah of Sustainability," Hoshen Mishpat 175:26.2019, available online at https://www.rabbinicalassembly.org/sites/default/files/teshuvot/1705435780.pdf?id=54578%20

conscious investing. Socially responsible investments can be made into individual companies with good social value, or through a socially conscious mutual fund or exchange-traded fund (ETF).[27]

The article continues, and says,

Socially responsible investments—known as conscious capitalism—include eschewing investments in companies that produce or sell addictive substances or activities (like alcohol, gambling, and tobacco) in favor of seeking out companies that are engaged in social justice, environmental sustainability, and alternative energy/clean technology efforts.

In other words, SRI is primarily about the nature of the business.

ESG, on the other hand, is a related concept, but instead of being about the nature of the business, it is about how the business is managed. Does the company make an effort to protect the environment? Do they have a sustainability program? Do they follow best practices in governance?

Figuring out which companies do well on ESG can be a daunting task. There are more than 600 agencies that issue ESG scores. There is no standardization in scoring, every provider decides for themselves what criteria to use, the formulas used for ranking companies, and how publicly they share the results.[28]

Clearly if someone wants to use ESG scores as a way of evaluating investment opportunities, the first step is to select a rating agency whose scores you believe represent the important factors.

Public Benefit Corporations (or Benefit Corporations)

One of the challenges facing businesses that want to serve stakeholders beyond shareholders – such as employees, or the public – is the rule of "shareholder primacy." According to the principle of shareholder primacy, the board of directors of a corporation has a fiduciary responsibility to maximize the return for investors, even if that comes at the expense of other stakeholders, such as employees, customers, or the broader community.[29]

Fortunately, shareholder primacy is not the law in every jurisdiction, and it is very hard to win a lawsuit on the basis of neglect of shareholder primacy. Boards can say, for example, that treating their employees well, or taking care of the environment is good business as it will either reduce costs or win more customers in the long term.

Public benefit corporations (called benefit corporations in some states) are a different way of incorporating a business where the mission can explicitly include things other than

[27] Guide to Socially Responsible Investments (SRI), James Chen, updated November 1, 2022, accessed at https://www.investopedia.com/terms/s/sri.asp

[28] "ESG scores and ratings: What they are, why they matter," Kezia Farnham, November 28, 2023, accessed at https://www.diligent.com/resources/blog/esg-risk-scores accessed on August 22, 2024.

[29] "Becoming a Public Benefit Corporation," Michael Dorff, Stanford Business Books, 2023, p.9.

maximizing shareholder value. Nonetheless, benefit corporations are not nonprofits. They exist to make money, but they may have additional goals. Some examples of benefit corporations:

- Ben and Jerry's. One of the most famous, even though the company is now a subsidiary of Unilever, the company's website celebrates progressive values: "Leading with progressive values across our business we seek to meet human needs and eliminate injustices in our local, national, and international communities."[30]
- Kickstarter. The company's charter says, "Kickstarter's mission is to help bring creative projects to life. We measure our success as a company by how well we achieve that mission, not by the size of our profits."[31]
- Patagonia. In 2018 the company's purpose was changed to: "We're in business to save the planet." Patagonia's founder, Yvon Chouinard, has gone a step further. After operating as benefit corporation for a number of years, they transferred all the voting stock to the Patagonia Purpose Trust, created to protect the company's values, and all the nonvoting stock was transferred to Holdfast Collective, an environmental nonprofit.[32]
- New Belgium Brewing Company. The Fort Collins, Colorado company explicitly puts employees first. Their CEO, Shaun Belongie, said, "What if we were bold enough to invest more in our people, and allow our business performance to be the outcome of that investment rather than the other way around?"[33]

Even with public benefit corporations, however, the buyer must beware. Knowing that socially responsible investing is popular with many investors, there is a concern about "purpose washing." Some companies might form as a benefit corporation, put some uplifting verbiage on their website, camouflaging their true business purpose of maximizing profits. As Michael Dorff describes it, "Because the statutes are so permissive in permitting companies to declare how they will be better than traditional corporations, there is a real risk that at least some BCs and PBCs will choose not to be."[34]

Venture Philanthropy and Impact Investing

There is a lot of interest and activity in venture philanthropy and impact investing. Unfortunately, the discussion can get somewhat confusing because the terms are used for wildly different things.

In one form, venture philanthropy is when a nonprofit foundation acts as a venture capitalist, funding a for-profit business that is working in its target field. One of the most successful examples is the Cystic Fibrosis Foundation which invested $150 million in drug development, which led to the first drug for cystic fibrosis, and a return to the foundation of over

[30] https://www.benjerry.com/values/our-progressive-values
[31] https://www.kickstarter.com/charter?ref=global-footer
[32] https://www.patagonia.com/ownership/
[33] https://www.newbelgium.com/company/mission/
[34] Dorff, op.cit., p. 95

$3 billion dollars. An amazing win for all concerned, especially the patients who have access to a drug that otherwise might never have been developed.[35]

In other circumstances, venture philanthropy can mean simply applying the principles of venture capital to nonprofit grant giving – which typically includes providing additional support such as mentoring and advising to nonprofits. Some say this is simply another name for good grant making procedures.[36]

All of the above, however, is not really relevant to individual investors. Impact investing, on the other hand, is something individuals can do.

Impact investing is investing in businesses that have intentional social impact (whether or not they are organized as public benefit companies), especially investing at an early high-risk stage when many typical investors might not yet be interested. Such an investment can be disproportionately useful in advancing the cause. For example, the author is a small impact investor in Gigawatt Global, an Israel-based, Dutch-registered company bringing renewable energy to Africa.[37] The company has already completed a solar energy project that provides more than 10% of the electricity in Burundi.[38]

ESG Mutual Funds

Jews are not the only people concerned with investing ethically, and as such there are many mutual funds and exchange traded funds (ETFs) that only engage in Socially Responsible Investing (SRI). According to Investopedia,

> ESG – Environmental, Social, and Governance – is another term used for socially responsible investing. As reported by NerdWallet, the best performing ESG funds as of December 2023 all had annual rates of return over a five-year period of better than 15%, beating the performance of the market overall (13.5%). Investing responsibly does not have to come with a financial penalty.[39]

Of course, it is easy to invest ethically when the investments outperform the market. That is having your cake and eating it too. But one should go *lifnim meshurat hadin*, beyond the letter of the law, and continue to apply Jewish and personal values to investments even when it means accepting a lower rate of return than would otherwise be available.

Someone who wants to invest ethically via one of these SRI or ESG funds is cautioned to do due diligence on the particular fund(s). There are no standards for what qualifies a particular fund as socially responsible; it can very much be in the eye of the beholder. Some SRI funds, for example, may avoid investing in businesses that make armaments for the military. But Jewish

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[35] "Venture Philanthropy Done Right," p. 4, Harvard Business School white paper, Kathy Giusti and Richard Hamermesh, https://www.hbs.edu/kraft-accelerator/assets/pdf/Aug_Venture%20Philanthropy%20Done%20Right_v3.pdf
[36] "Venture Philanthropy: Panacea or Snake Oil?" Inter-American Development Bank web story, Lee David and Nicole Etchart, December 26, 2007. https://www.iadb.org/en/news/venture-philanthropy-panacea-or-snake-oil
[37] https://realizeimpact.org/gigawatt-global/
[38] https://gigawattglobal.com/2023/05/16/burundis-solar-capacity-to-double-announces-president-ndayishimiye-at-ribbon-cutting-for-first-solar-field/
[39] "7 Best-Performing ESG Funds and 7 Cheapest ESG ETFs for December 2023," December 1, 2023, Alana Benson, accessed at https://www.nerdwallet.com/article/investing/best-esg-funds on December 21, 2023.

values support a right to self-defense, and Israel in particular is heavily dependent on a strong military.

Being a Force for Good

Taking care to spend and invest our money in ways that align with our values can have an impact for good in the world.

Negative publicity and consumer pressure forced Nike to stop using lowest bidder subcontractors who abused workers and paid them very poorly.[40]

The CEO of pasta maker Barilla made anti-gay statements, and public outcry and pressure resulted in Barilla making a remarkable turnaround, including providing health benefits for trans workers, donating money to gay causes, and featuring a lesbian couple in a promotion.[41]

Gray Areas of Investing

Needless to say, there is an entire continuum between a giant public corporation such as Apple and a tiny two-person business that happens to be incorporated. How much control does a person have to have before they are considered an owner, and therefore obligated to act within the bounds of halakhah in the company? One seat on the board of directors gives a person influence, but not control. Is that enough to move investing ethically from a *middat chasidut*, pious behavior, to an obligation?

Going back to the above cited responsum from R. Moshe Feinstein,[42] the appropriate criteria are whether the person is investing in a passive way, or in a way that they plan to be involved in the business and influence the direction of the business. In the latter case, the investor would be obligated to invest only in companies that are ethically appropriate.

Jewish Communal Funds

Managers of Jewish communal funds are strongly encouraged to place community funds in investments that are consistent with Jewish values. This is for three reasons:

1) It is the right thing to do
2) *Marit ayin*, or appearances
3) The importance of being a role model for the community

The rabbis in the Talmud established the importance of avoiding an appearance of wrongdoing, so they prohibited activities that are technically permitted but that would give a casual observer the impression that the person had done something wrong. They give an example of someone whose clothes fell into water on Shabbat. They are not supposed to spread them out to dry in the sun, lest people think the person laundered the clothes on Shabbat, which is

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40 "A History of Nike's Changing Attitude to Sweatshops," Glass Clothing, July 2, 2018. https://glassclothing.com/a-history-of-nikes-changing-attitude-to-sweatshops/ barilla pa

41 "Human Rights Campaign says Barilla has turned around its policies on LGBT," Sandhya Somashekhar, Washington Post, November 19, 2014

42 Feinstein, Even Haezer, op.cit.

prohibited. The rabbis debate whether such activities are only prohibited if other people can see them, or it they are prohibited even in private.[43]

The application of *marit ayin* is clearly dependent on circumstances and cultural norms and cannot all be delineated in a rule book.

If people know that someone invests in a company that engages in harmful activities, they may assume the investor approves of those activities, or intentionally supports those activities, which would be forbidden.

Professor Aaron Levine writes that anyone who owns more than 5% of a public corporation, regardless of whether they exercise any control, should take care to invest in accordance with Jewish values. According to SEC guidelines, above the 5% threshold, companies must disclose ownership, and *marit ayin* becomes a concern.[44]

Even if a particular organization does not disclose its investments, it is always possible that the investments will become public knowledge, so it is best to avoid any appearance of support for companies that operate contrary to Jewish values.

In addition to appearances, it is important that Jewish communal institutions serve as a role model for our communities.

We learn more from the examples we see than just from academic learning. The Talmud relates that Rabbi Akiva learned three things from observing the behavior of his teacher, Rabbi Yehoshua, in the bathroom.[45]

If the administrators of Jewish communal funds make it publicly known that they are investing the funds in keeping with Jewish values, it will encourage members of the community to do the same thing.

It is important that boards of directors of Jewish communal institutions provide clear guidance to the finance or investment committees that any investments are to be made in accord with Jewish values, even if it means accepting a lower rate of overall financial return. Otherwise, members of the committee may assume their responsibility is to simply maximize profits while not breaking any secular laws.

Conclusion

Even though individual investors in large public corporations own shares of companies, they in no way act as actual owners, and as such are not obligated to invest only in companies that follow halakhah, either ritually or ethically.

It is, however, meritorious to invest only in companies that follow socially responsible guidelines and that are in lines of business that do not cause harm and that are responsible towards the environment and their employees.

[43] Talmud Bavli, Shabbat 65a
[44] Aaron Levine, Case Studies in Jewish Business Ethics, KTAV, 1999, p. 370
[45] Talmud Bavli, Brachot 62a

פסקי דין/Rulings:

1. The responsibilities of an investor toward a corporation are based on the "relationship model" of the corporation. Therefore, ethical investing is a requirement if the investor has a sufficient stake in the company that they act as an owner and can exert some element of control.
2. Individual investors in large public companies who have no element of control are not obligated to invest only in socially responsible companies. It is, however, meritorious to do so.
3. Managers of Jewish communal funds are encouraged to invest communal funds in socially responsible ways, both as an expression of Jewish values and to set an example for the community.