

Capital Markets and Jewish Teachings

Mark Schwartz, PhD, Meir Tamari, PhD and Daniel Schwab, B.Comm¹

Executive Summary

Individual Jews and their communities have invested their money according to Jewish ethical principles for thousands of years. However, this practice has never been institutionalized in the form of a modern mutual fund. The goal of this paper is therefore to explore the Jewish sources with regards to ethical investing, and to investigate whether it is possible to map out an official investment policy based on the discussed Jewish legal and ethical principles. First, the paper will provide a brief overview of the history and current status of the ethical investment marketplace. Second, the paper will discuss the Jewish approach to ethics and investing based on traditional Jewish texts, i.e. the Bible, Talmud, Mishna, and responsa. This discussion will include an exploration of whether a Jew has any legal or ethical obligations with respect to his or her corporate investments and, if so which Jewish principles should guide investing activity. For the Jewish and non-Jewish investor, the business ethics academic community, and ethical mutual fund industry, a traditional Jewish framework based on the written and oral Jewish texts may provide new insights into the theoretical justification for the ethical and religious-based screens currently in use today.

Ethical investing is a division of the investment market that has grown tremendously over the past decade. Many different types of ethical funds exist, ranging from those that prohibit certain investments for moral reasons, to those that exclude companies for religious reasons. At present, Christian- and Moslem-based funds are functioning. However, a Jewish-based ethical fund is sorely lacking, and the question as to whether Judaism could provide a framework for such a fund has not been thoroughly explored.

In order to best understand the conditions under which a Jewish ethical fund could be established, it is important to first understand the history of ethical funds in general, and religious-based mutual funds in particular. In addition, a background of the Jewish perspective on general ethics is needed to formulate the basis for a contemporary Jewish investment model. Judaism is based on the collection of thousands of years' worth of written and oral tradition in which are contained numerous sources that may be applied to the topic of this paper. In this study we have mainly been guided by the following texts; *Shulchan Aruch*, the *Tur*, *Yad Hachazaka*, and the responsa literature authored by authoritative Jewish scholars over the past 2,000 years. This literature, that continues to develop even today, has covered Jewish commercial activity in every country in which Jews have lived under a great variety of economic systems.

Judaism and its ancient sources *do* provide ample basis for the principles under which a Jewish-based ethical fund could be established for operation in today's capital markets. Such a fund would maintain a unique perspective on minority-shareholders, and the general principles of this fund could be categorized under seven headings: abiding by Jewish law; abetting; justice and goodness; abiding by contracts; preserving life (*pikuach nefesh*); settlement of the world (*yishuv ha'olam*); and Sabbath, festivals and Kosher food.

General Introduction to Ethical Investing²

Social or ethical investment has been defined as "...a set of approaches which include social or ethical goals or constraints as well as more conventional financial criteria in decisions over whether to acquire, hold or dispose of a particular investment" (Cowton, 1999:60). Social investment includes a number of activities,

such as community investment (i.e., investment in local development initiatives) and shareholder activism (e.g., shareholder resolutions or active dialogue with companies), but the activity that appears to be drawing the greatest attention is that of ethical mutual funds.

The sphere of social or ethical mutual funds has grown tremendously over the past two decades. Current estimates are that over two trillion dollars (US) has been invested in the United States in social investing, making up about thirteen percent of all money under professional management (McVeigh, 2000:18). There are now over fifty distinct ethical or social mutual funds in the United States (Wells, 2000). In Canada, it is estimated that three hundred billion dollars (US) was invested by five hundred thousand investors in at least fourteen different ethical or social mutual funds (Social Investment Organization, 2000). Approximately 11 billion pounds has been invested in Europe. In Britain alone, there are fifty-four ethical funds to choose from with over three billion pounds invested (Skorecki, 2001:27). Other European countries that have established ethical or social mutual funds include: Sweden (42); Switzerland (22); France (14); Belgium (14); Germany (11); Italy (5); Norway (2); and Finland (1) (Skorecki, 2001:27). In addition to the development of ethical mutual funds, a number of social responsibility indexes have been established, including the Dow Jones Sustainability Index in the United States,³ the Jantzi Social Index in Canada,⁴ and the FTSE4Good in Britain.⁵

A religious version of social or ethical investment has been in existence for thousands of years.⁶ Documented efforts at ethical investment based on Jewish doctrine, has maintained the same ethical principles for over 3,500 years. This doctrine includes the whole gamut of economic activity, providing both legislation and spiritual education in order to promote the ethical investment of resources within the market place. Within this doctrine people were expected to devote part of their capital and income to giving charity and providing for the welfare of the poor and the weak (e.g., peah⁷, leket⁸, yovel⁹, shichacha¹⁰, ma'aser¹¹, and shmita¹², all of which abrogated part of the property rights of the owner of capital). At the same time, care had to be taken so that one's property did not injure the property, health and even aesthetic satisfaction of other people.¹³ Parallel to these obligations is the insistence on the fulfillment of contracts and fiduciary obligations that require that other

peoples' funds given to one for investment or safe guarding be subject to Judaism's moral and ethical teachings and obligations.¹⁴

Over time these ethical principles were reflected in both Christian and Moslem investment thinking. For example there is the Jewish teaching based on the biblical injunction against lending money with interest¹⁵ that precludes certain types of investment. On the other hand there is the obligation to extend interest free loans that mandates a type of investment.¹⁶ Rabbinic texts reflecting on oral tradition dating back to the biblical period made not only the lender liable but also all those involved in the transaction – the borrower, facilitators or intermediaries, the scribes and witnesses.¹⁷ Lenders were classed with robbers and were considered unfit as witnesses.¹⁸ This tradition is still operative in Jewish law and custom.

Similarly in the Christian tradition, many individuals refused to do business with those engaged in the practice of usury, despite the potential financial benefits involved in such business:

At the Councils of Lyons and Vienna in the thirteenth and fourteenth centuries, the usurer was declared a pariah of society, to whom no one, under pain of excommunication, might rent a house..." (Heilbroner, 1993, p.36). Islam also established a prohibition against charging interest in business transactions, although over time an exception developed allowing loans as long as there was some degree of sharing of profits (Sachedina, 1997:62-63).

There are other more recent examples of religious ethical investment. In the 18th century, Quakers refused to do business with firms involved in the slave trade, tobacco, alcohol, or gambling. In 1928, the first US religious investment screen was established by the Pioneer Fund Group, which refused to invest in companies involved in alcohol or tobacco.

After the First World War, government interventions led to legislation in all aspects of the investment industry. Since the 1970s however, the move to freer markets and deregulation has transferred the social responsibility and the onus for ethical conduct from governmental bodies onto the individual firm. As a result, concern by investors over the impact of their investments in many firms caused a general growth of ethical investment that led to the creation of different ethical funds. Many such funds focus only on so-called "sin" screens, such as tobacco, alcohol, military, firearms, or nuclear weapons. Others focus on "social issue" screens, such as child labor, animal rights, gay and lesbian rights, diversity, feminism, or "environmental" screens. Still others might be considered "general" screened funds,

and include any combination of the above screens. General screened funds typically include two types of screens: (1) exclusionary (or negative) screens; and (2) qualitative (or positive) screens. Typical examples of exclusionary screens, whereby companies are screened out of a potential pool of investments, would include: alcohol, gambling, tobacco, military contracting, and nuclear power (Kinder and Domini, 1997:13). Examples of qualitative screens, whereby companies are specifically included due to their activities, might include: community, diversity, employee relations, environment, and product quality and safety (Kinder and Domini, 1997:15).

A species of ethical mutual fund that is receiving growing interest is that of the religious-based mutual funds. A study has found that the number of religious mutual funds grew from 6 to 34 between 1993 and 1998. The amount of money under management grew from \$1.5 billion in 1989 to about \$4.5 billion by 1998. The financial returns have been relatively competitive, and it has been shown that over five years religious funds returned on average 13.5% annually while all equity mutual funds returned 14.8% (Jacobson, 1999).

One major center focusing on religious-based investment is the Interfaith Center on Corporate Responsibility (ICCR):

For nearly thirty years the Interfaith Center on Corporate Responsibility (ICCR) has been a leader of the corporate social responsibility movement. ICCR's membership is an association of 275 Protestant, Roman Catholic and Jewish institutional investors, including national denominations, religious communities, pension funds, endowments, hospital corporations, economic development funds and publishing companies. ICCR and its members press companies to be socially and environmentally responsible. Each year ICCR-member religious institutional investors sponsor over 100 shareholder resolutions on major social and environmental issues. The combined portfolio value of ICCR's member organizations is estimated to be \$110 billion.¹⁹

The Jewish Perspective on Ethics

In order to understand where a Jewish-based ethical fund would fit into the world of ethical funds, it is important to review Judaism's perspective on general ethics. Judaism provides three main views regarding an ethical lifestyle:

1. Legal

The texts and the responsa literature are replete with detailed legal obligations of parties to transactions in the market place, including investment activity. Guidance and rulings are also provided as to the methods of enforcement and types of punishment that can be imposed by the legal system of the rabbinic courts. Punishment varies according to the severity of the crime, and some examples are excommunication, monetary fines, and jail sentences.²⁰ These legal precepts apply as much to investment practices as they apply to other areas of individual and collective behavior.

2. Divine legal ethics

There are a variety of acts that, while ethically wrong, cannot be enforced in rabbinic courts through penalty or punishment for various technical reasons. Yet, with regards to these cases, the Jewish textual sources always refer to “Divine Judgement” in their explication as to the error in following such ways. Thus investment practices that are not punishable by the human courts may invite “Divine Judgement”.

3. Pursuit of a Moral Life

Unlike civil legal systems, Judaism’s legal system was not established for the main purpose of preserving an orderly society; rather it was presented to the Jewish people as a legal framework in which a society recognizing G-d’s rulership over the world can develop through implementation of the highest level of ethics. Therefore the principles of legality and ethics are closely intertwined in Judaism. In Judaism, generally acts that are legally permitted are ethical and acts that are not permitted are by definition considered unethical. This differentiation is important, since law does not always equal morality, and preachings of morality do not always translate themselves into a moral society. For example, in societies where law is not combined with ethics and morality, a legal system may develop that permits the most terrible acts such as is brought in the Ramban’s commentary to Leviticus 19:2 who explains that the injunction to be “Holy” warns of areas of behavior where the law does not command a particular form of behavior. Thus it may be possible to be a law abiding Jew but over indulge in food and other physical pleasures. Such behavior would be deemed immoral because of the Torah’s injunction to be “Holy”.²¹ Alternatively, given the nature of people and the realities of life, mere ethical and moral slogans tend to be ineffective and even sometimes pernicious unless contained and enforced within a legal framework.

Following are two examples of moral principles that have obtained legal status, thus demonstrating Judaism's blending of the ethical with the legal:

- a. *The obligation to assist others when this assistance results in no loss to oneself:*²² This principle refers to the moral suggestion that one must allow others to benefit from one's capital or wealth in cases where one does not incur a monetary loss. This has been translated into legal rulings that abrogate or limit the laws of trespassing to exclude those cases where the owner of the asset suffers no loss from such an act. Likewise, a legal application of the same principle exists that grants a neighbor or fellow shareholder the right to first refusal in case of a property sale, provided the owner of the asset suffers no loss.
- b. *Acting beyond the letter of the law (lifnim mishurat hadin):*²³ The moral literature and the homiletic commentaries on the bible enjoin the Jew to act beyond the letter of the law.²⁴ However this principle is not to be a mere pious suggestion left to the individual's conscience, but in many cases is given legal backing.

The Jewish Approach to Investing

Having discussed Judaism's approach to ethics, we still remain with the question as to Judaism's attitude toward wealth creation through investing in the stock market. Although Judaism condones the acquisition of wealth through investment, it does not advocate profit maximization as a super-ordinate goal. There is a recognition that everyone, whether an employee, manager, or investor, has a legitimate desire for wealth and profits, known as one's *yetzer* (i.e., natural inclination), similar to one's need for sex, food, and clothing. Judaism recognizes however, that although such needs are legitimate, they must operate within a certain moral framework. The goal is not to deprive one of the pursuit of wealth, but to channel this *yetzer* into certain ethical parameters so that any profits will be made in a morally legitimate manner. In other words, profiting through investment in firms is acceptable, but only if the firms are acting in a manner that is in accordance with the Jewish ethical framework as discussed below.

This approach toward financial investment in Judaism has been actualized in Jewish society for more than 2,000 years. Throughout the ages and until today,

individual observant Jews and communities have predicated their economic activity, including investment policies, on the legal structure of the *Halacha* (i.e., Jewish Law), and on the positive requirements of Jewish religious ethical principles. They consult their Rabbis for guidance on investment decisions, as they do for other aspects of daily life.²⁵

A number of attempts have recently been made to relate Jewish doctrine to business activity in the modern age. Several authors have produced books that help clarify the Jewish approach to business (e.g., Tamari²⁶; Levine²⁷; Pava²⁸; Wagschal²⁹; Rakover³⁰; Spitz³¹, Bush and Dekro³²).

While these works provide an interesting general perspective on Judaism and business, they do not relate specifically to the issue of investing in capital markets. There are two main areas that Judaism has set out guidelines that would specifically apply to investment in a mutual fund: the responsibilities and obligations of a minority shareholder, and the seven principles upon which all investments must be considered.

Minority shareholders

Although it is relatively clear that a Jew is bound by Jewish legal ethical obligations with respect to selecting (or divesting) his or her investments as a partner or controlling shareholder,³³ the question of whether a Jew has any obligations as a *non-controlling* shareholder of a company has not been firmly resolved.³⁴ If a Jew does not possess such obligations, it may be that the development of a Jewish mutual fund is both superfluous and unnecessary, since most investors in the stock market today are minority shareholders. Therefore, the development of a Jewish mutual fund hinges on the question of whether or not there are legally binding ethical obligations in Judaism, even on the non-controlling shareholder.

Some academic scholars, (e.g., Bressler, 1996 and Levine, 1996) based on various rulings, have concluded that non-controlling shareholders are not obligated according to Halachah to consider the ethical implications of their investment decisions:³⁵

We are led to the conclusion that while a whole diversity of views exist concerning corporate shareholder responsibility, the consensus is that only corporate directors and executives bear ownership accountability. This would mean that according to Jewish law only such shareholders would, because of their ownership status, have the legal obligation to examine ethical questions before investing (Bressler 1996:185).

Rabbi Bressler goes on to explore whether other Jewish principles, including *lifnei iver* (abetting moral misconduct), and *mesaya* (assisting moral misconduct), could be seen as a basis for Jewish non-controlling shareholders to hold responsibility for their investments. He concludes that most Jews would not possess any moral obligation:

Shareholders who do not fall into...the above categories [of controlling shareholders] do not have to be concerned about the ethical implications of their investments. (Bressler 1996:200)

Rabbi Aaron Levine raises additional arguments against a Jew's ethical obligations as a non-controlling shareholder:

The first [argument] is that the purchase of shares typically takes place in the secondary market. In so doing, the company raises no new capital, the capital is raised through payment via an investment bank underwriting the new issue. Because all that is happening is the buying and selling of shares on the secondary market, it becomes more difficult to argue that a Jewish shareholder is violating *lifnei iver* (assisting moral misconduct). (Levine 1996:306)

It may be argued, however, that Bressler's and Levine's conclusions regarding the Jewish ethical obligation as a non-controlling shareholder are not entirely correct. Bressler's conclusion that "the consensus is that only corporate directors and executives bear ownership responsibilities...[and s]hareholders who do not fall into the above categories, do not have to be concerned about ethical implications of their investments," (1996: 184-185, 200) contains two basic inaccuracies. First, Bressler does not take into account that there are two different types of responsibility recognized by Jewish law; the first type of responsibility supports his theory of minority shareholder responsibility, however the second type goes against it. The first type of responsibility, which supports his argument, is related to the degree of control, voting rights, and management decision-making power one possesses. This type of responsibility is evident in the event that creditors' take recourse to shareholders' private assets should the corporation default on its repayment obligations. The second type of responsibility recognized by Jewish law is related to the degree of ownership, as a distinct element from control; i.e. the shareholder holds ownership regardless of whether he is a majority or minority shareholder. This view of responsibility is crucial in the issue of the usage of the individual's money in acts forbidden by Halacha irrespective of his share of involvement in the decision making process. For example this responsibility is realized should the corporation cause damage to a third party, and all shareholders, no matter the size of their share, must share in the reparations.³⁶ Second, Bressler restricts his arguments to situations involving only Shabbat

observance, interest, and Kosher food, and does not relate to cases involving inflicting damage, or allowing actions such as murder, stealing, or performing sexually forbidden acts. In all these cases there are instances where one may not participate in the funding of such operations, and one may not be a factor in leading others to such negative behavior, and these are the primary areas in which ethical investment is concerned. Levine's argument regarding the share of capital owned by the investor, or whether the investment was direct or not, may be relevant regarding interest or Shabbat; however they are not relevant regarding the above-mentioned situations.

Additionally, there is the question as to whether or not one may perform an unethical or non-halachically acceptable act, even if there is no punishment or responsibility attached. Responsibility for the above transgressions is upon all participants, regardless of the level of control held. For example, a Jew may not benefit from other Jews desecrating the Shabbat within a corporate structure, irrespective of his management role, and no matter how relatively small *his or her* investment.

The above literature also refrains from relating to the responsibility of the non-Jew in Jewish law regarding ethical behaviour, and the Jew's obligation to refrain from assisting or abetting the non-Jew in committing such acts, at all levels of management or control. Both the Rambam³⁷ and the Ramban³⁸ agree that all the monetary laws regarding theft, paying workers' salaries, etc., obligate the Noachide (i.e., non-Jew) as much as it obligates the Jew³⁹. The non-Jew is also enjoined to refrain from acts such as murder, adultery, or theft and the Jew is instructed to refrain from assisting the non-Jew in these actions, whether as an investor, CEO, employer, or employee. Finally, the Jew is *always* obligated to act in ways that are kind, merciful and just⁴⁰. The Jew is guided to go beyond the letter of the law, and therefore it would seem that even when not legally obligated, the Jewish investor should seek investment targets that fulfill the criteria of being kind, merciful and just. Bressler does provide some support for this view:

Nonetheless...there appears to be significant sentiment in the relevant literature to go beyond strict requirements and to voluntarily factor ethical considerations into investment decisions even when they are not strictly mandated. This view is most cogently and passionately expressed by R. Aaron Kotler, who concludes his discussion with a plea to not necessarily be content with the letter of the law, but instead to have as a goal that no person is, even in a negligible way, an accessory to improper behaviour. (1996: 200-201)

We may conclude based on the arguments presented above that all non-controlling Jewish shareholders, regardless of the type or extent of their share of ownership, have certain halachically binding ethical obligations with respect to their investments. These obligations may be summarized as three general principles which could form the basis of a Jewish investor's obligations:

1. *One is not allowed to earn a profit from the forbidden activity of either a Jew or a Noachide.*⁴¹

For example, a corporation that earns its profits from crime - regardless of the identity of the employees and co-investors - would be forbidden to Jewish shareholders as the dividends would flow from this. While there is a legal question as to whether one holds ownership in a company through investment in a mutual fund that invests part of its money in a corporation, it is quite clear that the receipt of a share in the profits is a result of ownership, and for this reason investment in a mutual fund obligates the investor to avoid such investments.

2. *One may not allow one's assets to cause damage*⁴².

Here the halachic responsibility lies with the *owner* of the assets to ensure that they do not cause damage; not only is he responsible for the damage, he has a halachic obligation to prevent that damage. Here again the degree to which one owns the assets of a corporation if the investment is undertaken through a mutual fund does not appear to have legal or halachic consequences. For example, if ten people hold shares in a corporation that owns one ox and that ox causes damage, each shareholder, whether he owns only a small share of it, and whether he was actively involved in the guarding and protecting of the ox, is liable to pay his share if the conditions are such that the owner of the ox is liable for damages.

3. *One may not assist another in doing something that is forbidden to any person directly or through one's assets*⁴³.

This principle prevails even where there is no judicial fine or punishment. For example a Jew or non-Jew is not allowed to commit murder and therefore we are enjoined against providing him with weapons, or for that matter supplying weapons to a person who is known to be a robber, etc., since we would be helping him commit an action that is forbidden to him. This principle is found in many areas where the responsibility of the corporation selling these products for the use put to them, is only a matter of conjecture. One is not only forbidden to sell arms to a known murderer,

one is forbidden to sell arms to those who are in a category with a higher potential to become murderers. It makes little difference as far as *lifnei iver* is concerned, whether one was an active partner to the decision to whom to sell, or whether one's representative was an active party.

If it is accepted that according to Judaism a non-controlling shareholder must consider the implications of the actions of the corporation before investing, it would follow that those who observe Halacha are obligated, at the very least, to *investigate* the activities of the prospective corporation to determine whether their actions are within the legal and ethical parameters set out in Judaism.

There are those who would propose that the vast majority of shareholders are unaware, and would find it difficult to become aware, of the methods of corporations' operations. This attitude is misleading, since a number of firms now produce social and ethical reports detailing the activities of companies.⁴⁴ These ethical investment research firms are helped by the changes in corporate reporting, and many companies now provide greater disclosure of their activities in their annual reports, sometimes even providing a distinct social, ethical, or environmental audit report.⁴⁵ In addition the current media scrutiny of corporate behaviour prevalent in most free market economies ensure that irregularities become public knowledge soon after they occur. Additionally, shareholders take the time to become familiar with the financial reports, sales policies, and the financial arrangements of the companies in which they have invested, irrespective of their proportion of the share capital or of the decision-making process. Jewish shareholders may also be required to take the time to obtain information as to the halachic and ethical compatibilities of their investment portfolios.

General Investment Principles

If Jews have a religious moral obligation to consider the impacts of their investments, what should the criteria be for selecting companies in which to invest? As noted above, several religious-based mutual funds set out a series of products or industries in which investment must be avoided, such as those products or industries connected with tobacco, alcohol, gambling, homosexuality, abortion, and pornography.

While Judaism does preclude the investment in certain industries that are quite clearly acting against halacha, such as the tobacco or pornography industries, there are

many industries that cannot be ruled out entirely for investment purposes, and candidate companies must be analyzed on a case by case basis. For example Judaism does not outlaw arms purchases but does obligate the protection of life, a goal for which armaments manufacture and sales are essential. However, Jews and non-Jews alike may not use their weapons for aggressive means or to deny rights to their own citizens. Therefore the sales of arms to governments or other entities that use them as means to aggressively attack another entity would be forbidden, whereas for purposes of legitimate and just defense, arms sales would be permitted, and therefore investment is allowed in companies involved in sales of this type.

Our proposed framework for developing a Jewish mutual fund is thus based on two parameters: 'screens' of specific halachically unacceptable industries; and a series of general yet critical principles that would constantly guide investment decisions and expectations of behavior in the marketplace. Care must be taken to distinguish between those actions that are forbidden but would not lead to being criminally liable, and those actions that can lead to punishment in a court of law. The emphasis here is primarily on actions that are forbidden by Jewish law rather than on those that incur legal action. Each principle is derived from a number of halachic sources. The principles include the following:

Abiding by Jewish Law: As a Jew, one may not invest in companies that transgress any part of Jewish law or teachings, for example: chometz (selling unleavened bread during the Jewish holiday of Passover), Shabbat (transgressing the Jewish Sabbath), *ribit* (i.e., charging interest), and kashrut (the participation in the manufacture and sales of non-kosher foods). These prohibitions, however, only apply when the Jewish shareholder is a significant shareholder.

In addition, where damage is caused as a result of certain corporate activities, non-Jews would also be obligated to avoid investing in such companies. Examples include monetary damage arising from fraud, oppression, deceptive advertising, competition that is not based on any economic efficiency or benefit to the wider society, or activities that cause physical harm to people including the sale of drugs or cigarettes, or spiritual harm caused through the sale of hard and soft core pornography which stimulates sexual actions that are not permitted by Jewish law. Companies

would be obligated to abide by a full disclosure policy that includes reporting defects or shortcomings in goods and services supplied, or in financial reporting.⁴⁶

Investments should also be avoided in those firms that do not ensure that their business activities are in compliance with the laws of their host country.⁴⁷ Therefore, investment should be avoided in companies that give or accept bribes, evade taxation, or facilitate money laundering.⁴⁸

Abetting: There is a principle of *lifnei iver* that refers to abetting reprehensible conduct or encouraging it. Known as *mesa'ye l'dvar avera*, this would include firms that advertise pornography, drugs, cigarettes, or engage in arms sales not intended for defensive purposes. Also included in this category is the purchase of stolen goods or goods on which taxes and duties have not been paid. By investing in companies involved in such activities, one is creating a market for these forbidden goods, thus encouraging the transgressors (i.e. the companies) to continue transgressing.

Another form of *lifnei iver* that needs to be taken into account when investing in consultancy firms, financial advisors, executive search firms, or legal and accounting services, is the need for full disclosure regarding any conflict of interest that the supplier of the service may have with its clients.⁴⁹

Justice and Goodness: There are two general principles that provide the foundation for all business activities: *tsedek* (fairness and justice), and *chesed* (goodness). Investment should be directed toward those firms whose business conduct fulfills these principles, including those that attempt to improve society through corporate philanthropy or community activities. For example, investment in firms such as those pharmaceutical companies that donate drugs to developing nations, would be encouraged. So too with firms that have a track record of good employee relationships beyond those required by the law, i.e. companies that provide social benefits, retraining, or advice to redundant workers.

Abiding by Contracts: The operation of efficient markets requires the mutual abidance of contracts. There may be situations where a firm may benefit by defaulting on its contractual agreements, a practice that Jewish law strongly forbids. Judaism places a spiritual angle on keeping agreements, since G-d is considered a witness to mutual agreements, even verbal ones. Therefore firms should be sought out that abide

by any and all commitments, verbal or written, even in those cases where the company is legally entitled to default on such agreements. This would also apply to agreements made in emerging markets where it is often considered ethical not to hold someone to a contract due to unstable economic conditions. This is the case even in those situations where there appears to be no monetary loss to the other party.⁵⁰

Preserving Life (Pikuach Nefesh): There is a general requirement to act in ways that lengthen or protect one's life and prevent disease. Investment should therefore be encouraged in companies that act in ways that lengthen human life (e.g., medical companies producing products with positive effect on life span, alternative energy sources, recycling and safe disposal methods).

Settlement of the World (Yishuv Ha Olam): Over and above the legal obligation to avoid causing damage to property or to people's health, there exist in Judaism a number of spiritual and ethical concepts that are meant to enhance the security, health, pleasure, and general well being of human beings. For example, while people are able to use natural resources for their benefit, one is not allowed to waste any such resources even if they are one's legal property.⁵¹ The majority opinion is that any resource that exists for human beings' welfare may be used, however there are minority opinions that state that great caution should be practiced in the use of natural resources even if they are to benefit human beings. According to all opinions, a balance needs to be kept between legitimate economic development and the preservation of natural resources, in accordance with Judaism's general principle that even legitimate pursuits in life have limits. This would mean that investments need to be vetted carefully on the effects on the environment, bearing in mind the rights of future generations and other societies whose environment is affected by the investment policies of the firms in which one invests.

Investment in the entertainment industry or in leisure goods needs to be examined as well to determine whether the entertainment products or leisure goods have inherent worth. Judaism believes that products or goods should in some way contribute to the well being of human beings and its society.⁵² As an example, although the Romans built seemingly productive infrastructure such as roads, baths, and markets, each one of these was used for negative purposes, thus prohibiting such

activities from Jewish investment. On the other hand the Rabbis saw the patriarch building of bathhouses, and establishing of markets by Jacob, as a benefit to society.⁵³

Sabbath, Festivals and Kosher Food: A series of Jewish principles prohibit working on the Sabbath, or eating or profiting from non-kosher food. These laws are so significant that they stand out as general principles that must always be considered in any investment decision. However, as stated above, these prohibitions only apply should one's investment constitute a significant proportion of the total shares of the company or a significant portion of the shareholders and/or directors are Jewish such as is often the case in Israel.

The above are only a small number of the literally hundreds of Jewish principles and they are considered to be the more significant ones in terms of being potentially related to investment activities. These principles can only be successfully applied by a competent rabbinical scholar who is deeply familiar with the intricate details of Jewish law and ethics and has a sound understanding of the particular situation that requires their application.

Conclusion

The attempt to provide a theoretical framework for a Jewish mutual fund indicates that although many challenges remain, the development of such a fund may be possible. It may seem, however, that after applying the above principles, the question remains as to whether the establishment of a Jewish mutual fund is *financially* viable. Only after further research can it be determined empirically whether the application of Judaism's relatively stringent precepts, a Jewish-based mutual fund could be established, and be found to be financially viable.

It is clear from the above that Jews have obligations as investors. Although other world religions such as Christianity and Islam have established modern-day religious-based mutual funds, the religion that provided the foundation for these religions, Judaism, has yet to do so. The time may have therefore arrived for the establishment of a Jewish-based mutual fund. The principles discussed above provide an initial framework for the development of such a fund, or at the very least, some guideposts for individual Jewish investors to consider when making investment decisions.

References

- Bressler, D.B. (1999). "Ethical Investment: The Responsibility of Ownership in Jewish Law," in *Jewish Business Ethics: The Firm and Its Stakeholders* (co-editor Moses Pava), Northvale, New Jersey: Jason Aronson, pp.303-316.
- Bush, L. and Dekro, J. (1993). *Jews, Money & Social Responsibility*, Philadelphia, PA: The Shefa Fund.
- Cowton, Christopher J. (1999). "Playing By The Rules: Ethical Criteria at an Ethical Investment Fund," *Business Ethics: A European Review*, vol. 8, no. 1.
- Dalla Costa, J. (1998). *The Ethical Imperative: Why Moral Leadership is Good Business*. Toronto, Ontario: HarperCollins Publishers.
- Heilbroner, Robert. *The Making of Economic Society* (9th Ed), Englewood Cliffs, New Jersey: Prentice Hall, 1993.
- Jacobson, Jim, August 1, 1999, Religious Mutual Funds Gaining in Popularity with Investors," *Go! Money*, [<http://www.gazetteonline.com/money/mo1372.htm>].
- Kinder, Peter D. and Domini, Amy L. "Social Screening: Paradigms Old and New," *The Journal of Investing*, Winter 1997, vol. 6, no. 4, p. 12.
- Levine, A. (1999). "Epilogue," in *Jewish Business Ethics: The Firm and Its Stakeholders* (co-editor Moses Pava), Northvale, New Jersey: Jason Aronson, pp.303-316.
- McVeigh, P. (2000, Jan-Feb.). "New Year's Feast: Social Mutual Fund Review for 2000," *Business Ethics*, 14(1), 26-28.
- Sachedina, A. (1997). "Business Ethics and Islam," in Werhane, P.H. and Freeman, R.E., eds. (1997). *Encyclopedic Dictionary of Business Ethics*, (Oxford, UK: Blackwell Publishers).
- Saler, Thomas D. "The Financial Performance of Ethical Investment Trusts: An Australian Perspective," *Mutual Funds Magazine*, January 1998, <http://www.mgmt.purdue.edu/news/entrepreneurship/article.htm>
- Schwartz, Mark and Tamari, Meir. "A Halakhic Corporate Code of Ethics," in *Eighty Exemplary Ethics Statements*, by Patrick E. Murphy, Notre Dame, Indiana: University of Notre Dame Press, 1998, pp. 99-103.
- Skorecki, Alex, "Social Awareness Pays Off In The Long Run," *Financial Times*, Feb. 28, 2001, p.27.
- Social Investment Organization*. (2000). Toronto, Ontario [<http://www.web.net/~sit/>].

Tamari, M. (1995). *The Challenge of Wealth*, Northvale, New Jersey: Jason Aronson Inc.,

Tamari, M. *The Challenge of Wealth*, Northvale, New Jersey: Jason Aronson Inc.,
Bush, Lawrence and Dekro, Jeffrey. (1993). *Jews, Money and Social Responsibility: Developing a 'Torah of Money' for Contemporary Life,* Philadelphia, PA: The Shefa Fund.

Wells, Maureen. "Socially Responsible Funds Flex Muscle," August 2, 2000
[(http://www.worldfinancenet.com/content/mutualfunds/articles/080200_socially_responsible_funds_flex_muscle.phtml)]

¹ Biographical sketches of the authors:

Dr. Mark Schwartz is lecturer of business ethics at The Wharton School, University of Pennsylvania. Previously he was co-director of the joint M.B.A./LL.B. program, associate director of business ethics, and lecturer of business ethics and business law at the Schulich School of Business, York University, in Toronto Canada. In 1999 he completed Post-Doctoral research as part of a Post-Doctoral Fellowship at the Jerusalem School of Business Administration at the Hebrew University of Jerusalem in Israel. His research focused on the state of business ethics in Israel. He is a research fellow for the Center for Business Ethics at Bentley College. He obtained his Ph.D. from the Schulich School of Business, York University in 1998. His Ph.D. was the first in Canada to focus exclusively on the subject of business ethics. He is a lawyer from Toronto, Canada, and graduated from the Joint M.B.A./LL.B. Program in 1991 at Osgoode Hall Law School and the Schulich School of Business, York University.

He is a co-author of the textbook *Business Ethics: Readings and Cases in Corporate Morality* (McGraw Hill). He has also published several monographs, including *Business Ethics: A Primer* (Center of Business Ethics, Bentley College, 1996) and *Corporate Codes of Ethics: Everything You Wanted to Know But Were Afraid to Ask* (Center of Business Ethics, Bentley College, 1996) as well as several journal articles. He has appeared on Canadian television, radio, magazines, and newspapers providing commentary on business ethics-related topics, and has consulted to a number of companies on corporate compliance and business ethics matters since 1993.

Dr. Meir Tamari is the founder and was the first Director of the Center for Business Ethics and Social Responsibility. Despite retiring in 1999, he continues to actively serve as its senior consultant. Dr. Tamari served in the Bank of Israel for 30 years, eventually rising to the position of Chief Economist in the office of the Governor. He also served as a specialist consultant in the fields of risk evaluation, small firms and entrepreneurship for the British, Japanese, French and US governments as well as the World Bank. Dr. Tamari was a lecturer in corporate finance at Bar Ilan University, where he developed the first academic course in Jewish Business Ethics. He has lectured at universities around the world on the topic of Business Ethics and is a consultant for the Jewish Association for Business Ethics in the United Kingdom. Dr. Tamari authored the article on Jewish Business Ethics in the *Encyclopedia Judaica* and the *Encyclopedic Dictionary of Business Ethics*, and is the author of several definitive books and papers on the topic. Dr. Tamari is recognized as a world authority in the field and has published 5 books in English and one in Hebrew. A native South African, Dr. Tamari moved to Israel in 1950 and lives with his wife Devorah in a suburb of Jerusalem.

Daniel Schwab is currently a business executive at an Israeli Hi Tech firm that provides image recognition solutions for the logistics and commercial photography industries. Prior to his current position, Mr. Schwab gained considerable business experience in business development and market research through positions at the world's leading executive search firm, Heidrick & Struggles' Technology Practice, and at Nicholson International, a Global People Management Consulting Firm. Mr. Schwab was the Assistant Director at the Business Ethics and Social Responsibility Center in Jerusalem, where he wrote educational modules on Jewish business ethics and conducted commercial research for Liberty Group Limited's Ethics training program. Mr. Schwab conducted contract research for the National Center of Mediation and Conflict Resolution at the Justice Ministry of the State of Israel. Mr. Schwab holds a Bachelors degree in Business Management and Industrial Psychology from the University of South Africa and studied for four and a half years at the Shilo Institute for Traditional Jewish Studies.

² All comments may be addressed to: Daniel Schwab danielschwab@hotmail.com

³ See: <http://www.sustainability-index.com/> .

⁴ See: http://www.mjra-jsi.com/jsi/about.asp?section=1&level_2=0&level_3=0.

⁵ See: <http://society.guardian.co.uk/businessandociety/story/0,10617,518349,00.html>.

⁶ Pentateuch Exodus Chapter 21 Sentence 28

⁷ Pentateuch Leviticus Chapter 19 Sentence 11

⁸ Pentateuch Leviticus Chapter 19 Sentence 10

⁹ Pentateuch Leviticus Chapter 19 Sentence 9

10

¹¹ Pentateuch Leviticus Chapter 27 Sentence 32

12

¹³ Pentateuch Exodus Chapter 21 Sentence 28

¹⁴ For example, shomrim, lo tonu, gneivat da'at.

¹⁵ Maimonides Mishnah Torah Hilchot Malve Ve Loveh Chap. 1 Halachah 1.

¹⁶ Ex. 22:24

¹⁷ Leviticus 19:14

¹⁸ Rambam Hilch. Eidut.

¹⁹ See: <http://www.iccr.org>

²⁰ Harav Moshe Feinshtein, Harav Yitzchak Weiss, Harav Shternbuch etc.

²¹ Ramban, Parshat Kedoshim Vayikrah 19:2

²² Din of Bar Metzra

²³ Lifnim Mishurat Hadin

²⁴ Teshuva Tzemach Tzedek.

²⁵ Menashe Klein, Mishne Halakhot, Moshe Sternbuch, Moadim Uzmanim, Moshe Feinstein, Iggerot Moshe etc.

²⁶ For example, *With All Your Possessions – Jewish Ethics and Economic Life*, Northvale, New Jersey: Jason Aronson, 1998, *The Challenge of Wealth*, Northvale, New Jersey: Jason Aronson, 1995; *Sins in the Marketplace*, Northvale, New Jersey: Jason Aronson, 1996; *In the Marketplace*, Southfield, Michigan: Targum Press, 1991.

²⁷ *Economic Public Policy and Jewish Law*, Hoboken, New Jersey, Ktav Publishing, 1993; *Case Studies in Jewish Business Ethics*, Hoboken, New Jersey: Ktav Publishing, 2000; *Jewish Business Ethics: The Firm and Its Stakeholders* (co-editor Moses Pava), Northvale, New Jersey: Jason Aronson, 1999.

²⁸ *Business Ethics: A Jewish Perspective*, New York: Ktav Publishing House, 1997; *Jewish Business Ethics: The Firm and Its Stakeholders* (co-editor Aaron Levine), Northvale, New Jersey: Jason Aronson, 1999.

²⁹ *Torah Guide for the Businessman*, Jerusalem, Israel: Feldheim Publishers, 1991; *Torah Guide to Money Matters*, Gateshead, England, 1996.

³² *Ethics in the Market Place: A Jewish Perspective*, Jerusalem, Israel: The Library of Jewish Law, 2000.

³¹ *Cases in Monetary Halachah*, Brooklyn, New York: Mesorah Publications, 2001.

³² Note that this text is based on the more liberal view of Judaism, as opposed to the more traditional Orthodox view.

³³ See Yitzhak Yaakov Weiss, Minhat Yitzhak 7:26, 3:1. , See Moshe Feinstein, Iggerot Moshe, Hoshen Mishpat 2:15; Orach Hachayim 1:90, 4:54. Menashe Klein, Mishnah Halakhot 6:277 See Soloman Ganzfried, Kitzur Shulhan Arukh 65:28; Menashe Klein, Mishnah Halakhot 6:277; see also Moshe Sternbuch, Moadim Uzmanim 3:269

³⁴ Saul Weingart, Corporations and Hametz, in *Yad Shaul* 35-49 (1954), See *Piskei Din Rabanayin*, supra note 17, 10:273, 7. see also Shemaya Eliezer Dekhovsky, *Naot Desha* 40-56; Moshe Ameil, *Responsa Darkei Moshe- Derekh HaKodesh* 1:5 (10-11); Yitzhak Bari, *Ha-Torah V'hamedina* 11-13:461; Menachem Zemba, *Zera Avraham* 4:21-24; Hayyim David Regensberg, *Mishmeret Hayyim* 134-37 (1966).

³⁵ *Id.*

³⁶ Choshen Mishpat; Dinei Nizikin Section 1. Part 1.

³⁷ Hilchot Melachim Perek 9 Halacha 14.

³⁸ Torah Temima Vayishlach Perek 34 Pasuk 13.

³⁹ For the Rambam, these particular obligations flow from the Noachide obligation to establish a proper and just legal system with the injunction against theft as a separate commandment. The Ramban explains that these particular obligations are included in the obligation of the injunction against theft with the setting up of a legal system as a separate commandment.

⁴⁰ Deuteronomy 28:9

⁴¹ Tractate Avodah Zara Chapter 1 Mishna 5-8

⁴² Choshen Mishpat; Dinei Nizikin Section 1. Part 1.

⁴³ Leviticus 19:14

⁴⁴ For examples in the United States see: Business for Social Responsibility [www.bsr.org]; Coalition for Environmentally Responsible Economies [www.ceres.org]; Council on Economic Priorities [www.cepnyc.org]; CEPAA (SA8000) [www.cepaa.org]; Global Reporting Initiative [www.globalreporting.org]; Investor Responsibility Research Center [www.irrc.org]; Social Investment Forum [www.socialinvest.org]; Social Venture Network [www.svn.org]; and Kinder, Lydenberg, Domini [<http://www.kld.com/>], in Australia: the Business Ethics Research Centre [See: <http://www.berc.com.au>]; and in Canada: EthicScan Canada [<http://www.ethicscan.on.ca/>].

⁴⁵ See for example: Ben & Jerry's [www.benjerry.com/fin/1998ar]; Body Shop International [www.uk.the-body-shop.com/aboutus/values97.pdf]; Nike [www.nikebiz.com/labor/studentreport.doc]; Bristol-Myers Squibb [www.bms.com/ehs/]; Procter & Gamble [www.pg.com/99sr]; Shell International [www.shell.com/shellreport-en/]; or Bank of America [www.bankofamerica.com/environment/images/eppbro.pdf].

⁴⁶ Gneivat Da'at and Mekach Ta'ut

⁴⁷ Bavli Baba Kamma 113b. See Tamari, M., *The Challenge of Wealth*, p.270.

⁴⁸ Ve'asita Hatov V'hayashar.

⁴⁹ See Rashi on the pasuk. Rambam in hilchot shemirat hanefesh.

⁵⁰ "Let your yes be yes and your no be no." Sifra, VaYikra, 19:36; see also Talmud Bavli, Baba Metzia I 49b in *The Challenge of Wealth*, p.33. Mi Sheparah Shulchan Aruch.

⁵¹ Avot D Rabbi Natan Perek 11 comment on Breishet B 15 and see Torah Temima there and other meforshim Ta'al Tashchit

⁵² Rabbi Shimon Ben Yochai (find gemorah).

⁵³ Parshat Vayishlach. Vayichan Al Pnei Ha'ir Bereishit 33 18 re Yaakov entering Shechem. i.e. Shabbos 33 A Rav Amar Matbeya Tiken Lahem Shmuel Amar Shvakim Tikken Lahem.