

PRESENTED AT

34<sup>th</sup> Annual Nonprofit Organizations Institute

January 12-13, 2017

Austin, Texas

## **Impact Investing in Principle and in Practice: Purpose, Accountability, and Assessment**

**John E. Tyler III**

**Impact Investing in Principle and in Practice:  
Purpose, Accountability, and Assessment  
John E. Tyler III\***

<b>I. Introduction .....</b>	<b>1</b>
<b>II. Purposes and Priority Thereof .....</b>	<b>3</b>
A. Owner Value .....	3
B. Charitability Under 501(c)(3) .....	3
C. "Social" Good .....	4
D. Flexibility .....	5
<b>III. To What Degree: Commitment to Purpose? .....</b>	<b>5</b>
<b>IV. Accountability .....</b>	<b>6</b>
A. Owner Accountability .....	7
B. Public/Social Accountability .....	7
C. Legal Accountability: Contract and Fiduciary .....	7
<b>V. Assessing Social Impact .....</b>	<b>8</b>
A. At What Level and How Approached? .....	9
1. Entity or Portfolio Level .....	9
2. Subject Matter or Industry Level .....	11
3. Awareness .....	12
B. Harm and Opportunity Cost .....	13

**I. Introduction**

Certainly a hot topic in the investment world, impact investing is anything but a unilateral, one-sided activity, nor does it have only investment considerations. At a minimum, there are the people and enterprises in which such investments are made. There may be those that the joint endeavors of investors and enterprise intend as beneficiaries of the impact being sought to whatever the intended degree: economic improvement and opportunity, standards of living, quality of life, environment, community, etc. There may be policy implications and possibilities to be enabled, overseen, or perhaps regulated, which can run the gamut from a specific activity or decision to facilitating a broader, change-oriented movement.

Across or throughout this array of interests are an almost unlimited variety of perspectives and approaches: investor vis a vis entrepreneur vis a vis employee vis a vis environment/community/etc. vis a vis regulator. Moreover, within each group may be

\*John Tyler is the General Counsel, Secretary and Chief Ethics Officer for the Ewing Marion Kauffman Foundation, a multi-billion dollar foundation focused on entrepreneurship and urban education. Many of his articles, including those on social entrepreneurship, business forms, impact, and philanthropy are available through SSRN at <https://ssrn.com/author+723109>.

nested interests that complement or perhaps compete with each other. For instance, not all sources of financial capital will have identical or even similar objectives, and they might even be or come into conflict.

Whether across or within these groups is likely to be different relevant purposes. And even shared purposes may not be prioritized the same, and there may be varying – possibly incompatible -- degrees of commitment to those purposes or priorities. All of which contribute to shaping expectations about risk tolerance, financial returns and social impact, decision-making, assessment, allocation of resources, and otherwise.

Various stakeholder groups and interests also may have views about the impact they hope to see from their engagement, including how to assess that impact and degrees of connection between the underlying effort and the impact ultimately generated. For instance, some who are interested in replication and scale may be most interested in proving causation as a precursor to further, greater investment of time, talent, or funding. The resources required to meet that standard may be viewed as waste by others prepared to accept social outcomes as a merely acceptable byproduct of efforts. Similarly, degrees of commitment to mitigating related harms and the corresponding expenditure of resources towards doing so might be of divergent levels of importance.

Finally, it may be important to understand and manage expectations about accountability and respective degrees of leverage or influence, including whether to results or to decision-making processes and through legal recourse or relying on majority ownership interests or social/public engagement. After all, believing that an impact investor can hold the enterprise or its directors or managers accountable as a matter of law when the only recourse is otherwise can be disconcerting to say the least.

None of this is to suggest that impact investing or its corollaries only work when there is alignment within and across groups. On the contrary, it is often the discrepancies that are the defining quality of these efforts, both of discrete enterprises and a movement more widely. Thus, it is these “interdisciplinary” perspectives that are intended to improve the likelihood of constructive change in people’s lives, communities, and societies.

Even so, those results are more probable and the expectations more manageable if the differences are acknowledged, understood, and perhaps even accounted for to some degree in advance. Assuredly, divergence will be manifest at some point(s) and probably when it is least convenient, and time, talent, money, attention, and other resources will be diverted to trying to address those matters instead of more productive uses. If principals, fiduciaries, and their advisors (e.g., lawyers and accountants) make investments on the front end in understanding their own purposes, priorities, commitment, etc. and those of others in the endeavor, such diversions and their effects can be minimized and, hopefully, the financial and social outcomes maximized.

Also available as part of the eCourse

[2017 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the  
34<sup>th</sup> Annual Nonprofit Organizations Institute session

"Commerciality, Charitability, and Confusion in the Charitable Sector: Exploring What's  
Charitable, What's Not and Why There is a Difference"