Banking on sustainability?
The origins, implementation, and future of the Equator Principles

Dissertation submitted in partial fulfilment of the requirements for the
MSc in Environmental Change and Management
University of Oxford
2004/2005

by

Tomás Carbonell*
Green College

[UNPUBLISHED WORK – PLEASE DO NOT CITE WITHOUT PERMISSION]

* The author is currently a student at the Yale Law School. Please direct inquiries to tomas.carbonell@yale.edu.

ABSTRACT

On 4 June 2003, ten of the world's largest commercial banks adopted the "Equator Principles," thereby committing to use common procedures for environmental and social due diligence and apply World Bank standards to their project finance activities. Two years later, the group of Equator banks has grown to thirty-three institutions representing 80% of the $170 billion project finance market, yet little investigation of the Principles or their significance has been undertaken in the academic literature. This paper attempts to redress the gap by questioning what explains the content and timing of the Principles, how they have been implemented at three leading banks, what their affect on the project finance market has been, and what future reforms are likely. The Principles are found to be principally a response to reputational risks created by advocacy campaigns of the late 1990s and early 2000s targeting leading Equator banks, although changing attitudes within banks on environmental/social risks and the intervention of the International Finance Corporation played enabling roles. The Principles have been well-integrated into credit policies and staff training at ABN AMRO, Barclays and Citigroup, but the division of responsibilities varies among the three banks as does the completeness of reporting. It seems clear that the Equator Principles have raised public expectations for project finance, and have spurred innovation and reform in some individual banks. They join an expanding mosaic of international norms and standards putting pressure on foreign direct investors to improve the development outcomes of their projects. Yet the Principles continue to exhibit structural weaknesses inherent to their status as a voluntary self-regulatory industry initiative, and cannot substitute for the development of effective laws and institutions at the national level.

CONTENTS

LIST OF TABLES

LIST OF FIGURES

Acknowledgments

This dissertation would not have been possible without the generous support and input of many individuals. Many thanks go to my supervisor, Catherine MacKenzie, who provided valuable advice throughout this project as well as much needed 'prodding' to meet deadlines. I also must thank my interviewees, all of them busy professionals, who were willing to spend long hours speaking with me about the Equator Principles with no hope of personal gain: Glen Armstrong, Matt Arnold, Chris Bray, Peter Carter, Johan Frijns, Greg Hile, Rachel Kyte, Suellen Lazarus, Shawn Miller, Gavin Murray, N, and Jon Sohn. Thanks also go to Crescencia Maurer, my former supervisor in the International Financial Flows and the Environment Project at the World Resources Institute, for helpfully dropping names of potential interviewees.

Of course, I owe a deep debt of gratitude to the Marshall Aid Commemoration Commission, and the British taxpayers who support it, for providing financial assistance during this academic year without which I would not have been able to pursue this course.

Last but not least, I owe thanks to my infinitely patient and loving partner Caitlin Boon, to my parents, and to all my friends and family, for making this all worthwhile.

1. The Equator Principles: more than words?

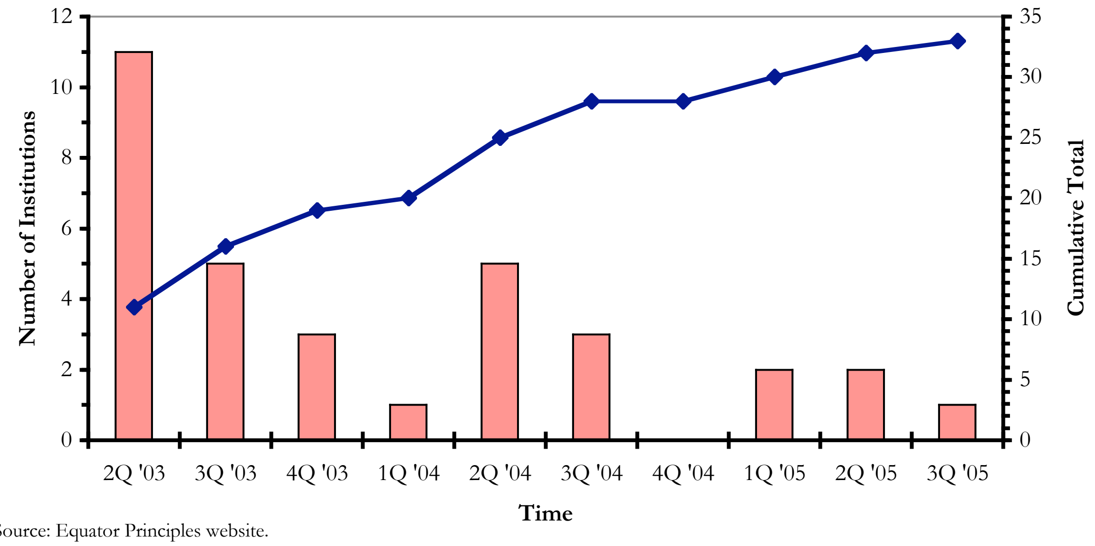
On 4 June 2003, representatives from ten of the world's largest commercial banks – including such household names as Barclays, Citigroup, ABN AMRO, and Royal Bank of Scotland – gathered in Washington, DC to unveil an agreement known as the Equator Principles ('the Principles'). The agreement established for the first time a uniform set of environmental and social standards for the banks' project finance activities,[1] modelled after those of the World Bank's private-sector lending arm, the International Finance Corporation (IFC). Banks adopting the Principles committed, *inter alia*, to categorize project proposals according to IFC criteria; prepare and publicly release environmental assessments and management plans for those proposals; evaluate those assessments against World Bank and IFC pollution guidelines and 'safeguard policies'; and condition the good standing of loans on compliance with environmental management plans. "We will not provide loans," the Principles declare, "where the borrower will not or is unable to comply with our environmental and social policies and processes" (Preamble, **Appendix A**).

Two years later, the list of Equator institutions has grown to thirty-three (see **Figure 1** and **Appendix B**), including one state-owned bank, one multilateral development bank and one official export credit agency. Whereas the original ten banks provided just 30% of global project finance in 2003, as of this writing Equator institutions now represent over 80% of this $170 billion market (Hawser 2005; Bulleid 2004). In developing countries, where the Principles in theory have the greatest practical impact (Latham & Watkins 2003), about $26 billion in new or 'greenfield' projects, ranging from power plants to oil and gas pipelines to roads and sewage systems, should have come under Equator rules in 2004. This amount is roughly equivalent to total World Bank Group lending in 2004, and has been growing at an annual rate of 20-30% since 2001 (see **Appendix C** for sources and analysis).

In a relatively short period time of time, then, a significant proportion of previously unregulated private capital flows has ostensibly become subject to IFC standards. This is a remarkable development in itself, but even more so considering that it came about through voluntary agreement among, and at the instigation of, banks that are normally fierce rivals. While not the first 'code of conduct' to be introduced with relevance to international banking (Hsia 2003) – the most notable of which is the United Nations Environment Programme Statement by Financial

[1] The term "project finance" refers to non-recourse lending for infrastructure and industrial investment. See **Appendix C** for a full explanation of project finance and an overview of the market.

Figure 1. Adoption of the Equator Principles
June 2003 - July 2005



Source: Equator Principles website.

Institutions on the Environment and Sustainable Development (1999)[2] – the Equator Principles also go far beyond these largely aspirational precedents in their detail and their strength of wording.

Though much commented on in the popular press (see Yeomans (2005)), the Principles have received scant mention in the academic literature. Many basic questions about the Principles thus remain unanswered: the reasons for their sudden emergence, the status of their implementation, their significance in the context of efforts on other fronts to 'green' private finance, and their future prospects have not been adequately explored.

This paper will attempt to shed light on the areas above by addressing the following questions:

1. **What explains the timing and content of the Equator Principles?**
2. **How have some of the leading Equator banks gone about implementing the Principles, and how does that compare to the IFC's implementation of its own standards?**
3. **Have the Principles truly changed the market for project finance, or are they just words? What reforms are feasible for the short- to medium-term (1-2 years)?**

This analysis will also reflect briefly on some of the broader questions which observers of the Equator process seem to have overlooked: whether profit-driven commercial banks are truly capable of serious self-regulation in the area of environmental and social due diligence; whether such

[2] Hsia (2003) describes a number of other voluntary initiatives, such as the Global Compact (2000) and the Business Charter for Sustainable Development (1999), which are not written specifically for financial institutions, but which some commercial banks have joined nonetheless.

standards represent the future of private project finance, or serve as a 'stopgap' measure until national and local governments develop stronger capacity to enact and enforce environmental laws; and whether the Principles 'matter' in the larger picture of international financial flows, given the small (but significant) niche that project finance occupies (see **Appendix C** for relevant data).

The Principles are a young initiative, but one with potentially profound consequences for communities and habitats affected by private investment. The need for a deeper understanding of how the Principles came about and where they are headed is therefore an urgent one, even if that understanding is by necessity tentative.

Methodology and approach

Four major sources of information were used for this analysis:

1. *Academic literature.* Little has been written directly on environmental and social due diligence at commercial banks, to say nothing of the Principles. However, useful insights on the theory and implementation record of voluntary self-regulation were gleaned from the business and legal literature.

2. *Popular press and industry journals.* Reports and interviews from the popular press and banking/finance journals proved to be useful for assessing banks' and non-governmental organisations (NGO)'s public positions on the Principles, as well as gathering information about controversial projects and notable developments in bank policies. This source was accessed through the Lexis-Nexis database and general Internet searches.

3. *Bank/NGO/consultants' documents.* This includes the environmental policies and corporate social responsibility reports of the three major banks examined in this paper (ABN AMRO, Barclays and Citigroup); policy documents and reports from IFC; reports from law firms and consultancies such as Freshfields Bruckhaus Deringer and Sullivan & Cromwell, and analyses by major NGOs such as BankTrack, all freely available on the Internet.

4. *Interviews.* Twelve open-ended interviews were conducted for this analysis (see **Table 1**). The interviewees spanned a variety of organisations, including the IFC, three NGOs, three Equator banks (ABN AMRO, Citigroup, and Barclays), a non-Equator bank (ANZ), the European Investment Bank, and an independent consultancy (Sustainable Finance) that provides environmental and social training for Equator bank staff. The interviewees also

drew upon a wealth of experiences: some of them (Bray, Armstrong, Murray) witnessed or played a key role in the development of the Principles; others (N, Miller, Bray) have firsthand knowledge of implementation at Equator institutions; others (Frijns, Kyte, Lazarus, Arnold) offered outside perspectives as intimate observers of Equator banks and project finance generally. All but one of the interviews (Bray) were conducted by telephone on the dates indicated in **Table 1,** using prepared questions. Detailed notes were taken during each interview. To maximize the likelihood of obtaining candid responses, all interviewees were offered the opportunity to take comments off the record at any point during the interview, or to make the interview anonymous. Only one interviewee (N) declined to be named, though several interviewees asked not to be quoted on particular topics.

Table 1. Interviews conducted for this analysis

Name	Title	Institution	Date
Gregory Hile	Implementation Coordinator	Rainforest Action Network	18 July 2005
Johan Frijns	Director	BankTrack	28 June 2005
Jon Sohn	Senior Associate	World Resources Institute	8 July 2005
N	--	ABN AMRO	29 June 2005
Christopher Bray	Head of Environmental Risk Policy	Barclays	6 July 2005
Shawn Miller	Director, Environmental & Social Risk Management; former official in IFC's Environmental & Social Development Department	Citigroup	7 July 2005
Peter Carter	Environment Coordinator	European Investment Bank	12 July 2005
Matthew Arnold	Independent consultant; former Vice President, World Resources Institute	Sustainable Finance	11 July 2005
Glen Armstrong	Independent consultant; former Senior Advisor: Sustainable Development at IFC	Sustainable Finance	11 July 2005
Suellen Lazarus	Senior Advisor to the Vice President of Operations; leaving to consult for ABN AMRO	IFC	7 June 2005
Rachel Kyte	Director, Environmental & Social Development Department; former official in IFC's Compliance Advisor/Ombudsman office	IFC	15 July 2005
Gavin Murray	Director, Institutional and Corporate Sustainability; former Director of Environmental & Social Development Department, IFC	Australia and New Zealand Banking Group	28 June 2005

These sources are all secondary in nature, and as such carry important limitations and caveats. Public reports, letters, and the like are obviously not purely factual records, but rather statements of what banks, NGOs, and other actors want the public to know and believe. At best, such documents record what these actors perceive as the 'truth.' Similarly, interviews cannot be assumed to reveal the 'truth' in any sense; what they do reveal is individual perceptions and perspectives on reality – inevitably skewed and filtered through the lenses of personal values, worldviews, experiences and self-interest. No interview, however carefully executed, can escape the possibility of biased or strategic answers.

This is not to say that such sources are untrustworthy or without value. They must be interpreted with caution, with full cognizance of the agendas and biases that influence each source. They must be treated as perceptions of reality at best, not reality itself. But by drawing upon a large quantity of sources, coming from a variety of divergent perspectives and interests, this analysis hopefully approaches a realistic picture of the Equator Principles and their impact. On many important questions in this paper, interviewees and documents from NGOs, the IFC, consultancies and Equator banks corroborated each other – a circumstance that augments confidence in the conclusions reached here.

Why not draw upon primary sources to answer the three central questions of the analysis? The answer is that such evidence is mostly confidential. Direct documentation of environmental and social impact assessments, of dealings between banks and sponsors, of board proceedings, of internal bank policies and procedures is almost entirely unavailable to the public. This secrecy is due in large part to competitive concerns: the gritty particulars of environmental and social due diligence go to the heart of how banks assess business risks, and thus constitute important industry secrets (ISIS 2002, p.5). Bank secrecy also arises from the desire to protect current and prospective clients by withholding information that might compromise or embarrass those clients (Arnold 2005, Armstrong 2005).

Taking into account these limitations, the following approaches were used to explore the three questions identified earlier:

1. *Timing and content of Equator.* The evidence available to answer this question is extensive. Many of the participants in the process communicated openly with the press or wrote about it independently; the news media has done some independent reporting on NGO campaigns and other pressures leading to Equator; and interviews with some of the key witnesses – many of whom have little obvious interest in promoting one point of view or another on this particular question – revealed a remarkable convergence of perspectives. Merging this evidence results in a fairly coherent narrative of how and why the Equator Principles came about.

2. *Implementation at leading Equator banks.* Few banks reveal any details about their policies and procedures, and a substantial number are too new to the Principles to have made much progress in implementation. Three private banks that took the lead in drafting the Principles

– ABN AMRO, Barclays, and Citigroup – were selected for a closer look at how the 'standard-setters' have gone about meeting their Equator commitments, understanding that this set of banks is likely to represent 'best practice' among Equator banks. 'Implementation' here was considered to include appropriate training of employees, changes in lending policies, and internal organisation that provides incentives and guarantees for consistent quality in due diligence. Evidence in these areas, while not abundant, does exist in the recent social responsibility reports of these banks. Interviewees from each of the three banks also provided helpful perspectives here. These banks' efforts were also compared with the IFC's implementation of its own policies, drawing upon IFC policy documents and a critical 2003 CAO review.

3. Significance and future prospects. This is the most speculative portion of the analysis, since little is known about how the Principles have altered the behaviour of project sponsors, and the future of the Principles is still uncertain even for its key participants. Some relevant evidence was gathered from memos and reports by consultancies and legal advisers to project sponsors, as well as the personal perspectives of interviewees from the Equator banks, NGOs, the IFC, and Sustainable Finance.

Organisation

The following section provides theoretical background on industry self-regulation, and the development of standards in international finance, that will aid in understanding the emergence of the Equator Principles and their chances of success. Section three gives a textual analysis of the Principles themselves. Sections four, five, and six consider in turn the three central questions of the paper, using the approaches outlined above.

2. Theory of industry self-regulation and financial standards

The Equator Principles represent a unique instance of 'industry self-regulation' (ISR), a phenomenon in which "…an industry level…organisation…sets and enforces standards relating to the conduct of firms in the industry" (Gupta & Lad 1983, p.417). They are also the latest major development in environmental and social due diligence for international lending, an area pioneered not by the private sector but by public agencies such as the World Bank. It is therefore necessary to review the theoretical bases for both self-regulation and financial standards, before proceeding to a discussion of the Principles themselves and the three central questions of this paper.

Industry self-regulation

Gupta & Lad (1983) offer three hypotheses for the emergence of an ISR regime. First, industries organise to self-regulate when the collective benefits of action (or costs of inaction) exceed the costs of action (or benefits of inaction). These costs and benefits can be direct (for example, excluding competitors or increasing prices) or indirect (enhancing the reputation of the industry). Second, a *collective* interest in ISR is not sufficient; mechanisms must exist to collect and disseminate information about the industry and individual firm behavior, monitor for noncompliance, and enforce penalties. Industry associations and sometimes government agencies can furnish such mechanisms. Third, Gupta & Lad suggest that intra-industry dynamics determine the regulatory outcome: that is, dominant firms enjoy the privilege of choosing standards, to which their lesser rivals have little choice but to adhere.

Wotruba (1997) endorses this cost-benefit approach, but examines the *motives* of self-regulators by distinguishing between "proactive" and "reactive" ISR. In the former case, industry is 'out in front,' holding itself to stronger standards of ethical behaviour or product quality with the intent of protecting its public reputation and discouraging new entrants. In the latter case, industry regulates itself to pre-empt a perceived threat – impending legislation, for example, or a sinking public reputation that threatens the entire industry.

The dominant motive for ISR has a strong influence on its form and content. Binding and specific standards, for example, are normally resisted by industry members because they cost more to administer and reduce the autonomy of individual firms. But if the reactive motive is strong enough (i.e. a substantive threat of costly legislation or public boycott), the extra credibility that such a regime offers may prove irresistible. Wotruba thus implies that strong ISR regimes are more likely to emerge among industries in a reactive mode, as a means of self-defense; proactive industries are more likely to develop voluntary, aspirational codes of conduct that cost little to develop but have public relations value.[3] Even voluntary codes, however, may not be completely innocuous: Wotruba claims that such codes can be presented in court in some jurisdictions as examples of 'best practice,' thereby gaining "quasi-legal" significance (p.43).

Wotruba (1997) notes that *global* ISR faces immense challenges, in particular the selection of standards acceptable across divergent cultures, legal systems, and ethical norms. Not surprisingly, global ISR regimes have developed more slowly than at the national level – the first one of note being the International Chamber of Commerce's code of conduct for multinationals (1972), followed by the Code of Pharmaceutical Marketing Practice (1981) and the chemical industry's Responsible Care initiative (1987) (Hemphill 2004). Indeed, the most prominent global industry codes of conduct are not 'true' ISR, in that they have either been drafted by public bodies (i.e. the United Nations Global Compact or the OECD Guidelines for Multinational Enterprises) or by organisations with strong government ties (the ISO standards[4]). By contrast, ISR regimes at the national level are numerous and frequently spontaneous, with some of the first modern regimes appearing in the advertising and accounting industries in the mid-1930s (Gupta & Lad 1983).

Environmental and social standards in finance

Because the Equator Principles set forth uniform environmental and social standards and procedures for project finance, they directly affect what the finance industry calls *due diligence* – the auditing of transactions necessary to protect the bank and its clients. Due diligence normally refers to the screening and analysis of proposals prior to the approval of a loan. However, the term can also encompass the monitoring of existing clients and transactions,[5] which in the project finance context is performed with the objective of ensuring that the borrower respects the loan 'covenants' or agreements and uses the loan proceeds responsibly.

Some commercial banks undertook at least rudimentary environmental and social due diligence prior to the arrival of the Equator Principles (see ISIS (2002) for eight European examples). However, even five years ago the notion of extending due diligence in this way was alien to most bankers (Arnold 2005; Case 1999; Watchman 2005a). In this area, the initiative came not from the private sector but from the large multilateral development banks, in particular the World Bank, which began environmental reforms in earnest in the late 1980s under immense political pressure from advocacy groups worldwide and from the United States Senate (Wade 1997). The

---

[3] If the *direct* benefits of stimulating demand, excluding competitors or raising prices are large enough, then industries do submit to binding, specific ISR regimes. In the United States such nakedly self-interested schemes risk antitrust action by the federal government (see **Appendix D**).

[4] The International Organisation for Standardisation, though non-governmental in nature, is made up of national standards agencies belonging mostly to governments (IOS 2005).

[5] The Basel Committee on Banking Supervision, for example, includes the on-going monitoring of accounts and transactions as a component of due diligence against money laundering (Basel Committee 2001).

resulting practices – not because they were flawless, but because they were the first – have strongly influenced environmental and social due diligence at other multilateral development banks (Wright 2005), at export credit agencies ("Draft Recommendation" 2001), and even at some commercial banks prior to the advent of Equator (DiLeva 2004; Ganzi et al 1998).

Even so, the logic behind environmental and social due diligence differs fundamentally between public and private institutions. At the World Bank, 'green' reforms occurred under two dominant discourses. The first discourse was one of "safeguards and protections," reflecting the view of Bank critics that environmental and social reforms shielded communities and habitats from the inevitably malign consequences of economic development. The second and current discourse was one of "sustainability," positioning the private sector as a potential partner in sustainable development (Wright 2005[6]). Both discourses assumed that environmental and social issues were integral to development, giving them particular weight at an institution which has a mandate for development and answers (albeit indirectly) to a public increasingly preoccupied with environmental concerns.

Commercial banks, of course, have no such development mandate and answer only to shareholders. The logic for environmental and social due diligence in private lending hinges instead on a business case for sustainability – specifically one based on the *management of risks* arising from environmental and social issues.

Case (1999), in a manual for professional bankers on sustainability considerations in lending, identifies three categories of environmental and social risks:

1. *Direct risk* refers to risks borne by banks as the owners or receivers of assets with environmental liabilities. Direct risk may arise when a bank receives polluted land pledged as collateral and must pay fines and clean-up costs (Ganzi et al 1998).[7] Direct risk may also arise in certain jurisdictions (UK, India) if the bank is shown to have exercised enough control over the borrower's operations to have "knowingly permitted" pollution, thereby exposing the bank to civil liability (Case 1999, p.143; ISIS 2002; FBD 2005).

2. *Indirect risk* refers to the risk that environmental and social issues will increase costs or delay a project sufficiently to place the borrower in danger of default. As noted in a 1997 article in the industry journal *Project Finance,* and in the IFC's 1998 "Good Practice Manual,"

[6] The discussion in Wright (2005) focuses on the IFC, however, these discourses are also suggested in Wade (1997) with reference to the World Bank Group.
[7] This form of direct risk proved costly for some banks in the late 1980s and early 1990s, but has declined in importance as banks have tightened screening of real estate transactions (Case 1999, Ganzi et al 2004, ISIS 2002).

these costs can take the form of public demonstrations or sabotage triggered by environmental and social harm; unexpected fines by government authorities; or protracted negotiations with community groups (Carter 1997; IFC 1998a, p.8).

3. Reputational risk refers to the risk that environmental and social issues associated with the bank's transactions (or its clients) will tarnish the bank's name. This is not just ethical vanity: reputational risk generates real business impacts, through numerous channels.

Customers sensitive to corporate social responsibility, for example, may boycott the bank (as happened at Citigroup in 2000 (Gunther 2004)). The bank may be removed from major 'socially responsible' stock indices such as the Dow Jones Sustainability Index and the UK's FTSE 4 Good Index, both prized indicators of sound management in the banking industry (FBD 2005). Socially responsible investors (SRI), some of which control as much as $100 billion in assets (Sabatini 2004), may seek to invest elsewhere. Large mainstream investors, many of which increasingly perceive a link between sound environmental management and stock value (Turner 2004), may also abandon banks that fail to deal well with environmental and social issues. Corporate clients with their own reputations to protect may try to avoid borrowing from a bank that is a target of activists and negative press. A tarnished reputation may even affect a bank's ability to retain qualified staff (Lazarus 2004a).

In contrast to direct and indirect risks, reputational risk exhibits persistence over time: a bank may recover quickly from a bad transaction, but a bad reputation can take years of effort to restore (FBD 2005). This characteristic of reputational impacts, coupled with their variety, are probably why Case (1999) identifies them as the most serious form of risk even if their business implications are difficult to quantify (Greenfield 2004). Banks themselves clearly care about their reputations: ISIS Asset Management's 2002 survey of ten European banks found that half cited reputational risk as the first or second most important reason for adopting enhanced environmental and social due diligence (ISIS 2002, p.17). Standard Chartered's wholesale banking unit even has an independent risk committee dedicated entirely to reputational risk (BankTrack 2004).

Exposure to reputational risk varies widely among banks. Amalric (2005) hypothesises that the most vulnerable banks are large, have important retail operations, and operate in countries with an active civil society and uncensored press.

If "safeguards" and "sustainability" were the discourses of environmental and social due diligence at the multilateral development banks, then "risk management" is the dominant discourse at commercial banks. As the discussion above suggests, the risk management discourse subsumes – and goes beyond – mere public relations, implying a range of policies and procedures to control all impacts of environmental and social issues on bank business. But unlike the discourses that have driven reform at the MDBs, risk management does not link due diligence to poverty reduction, to environmental protection, or any other social aim. Risk management places the focus squarely on the bottom line, ignoring environmental and social issues with negligible financial implications. As will become clear further on, the emphasis on risk management within commercial banks does not only drive the content of their due diligence policies; it also has consequences for the effectiveness of the Principles in improving the development impacts of project finance.

3. Content of the Principles

As an example of global ISR and a guideline for environmental and social due diligence, the Principles must be reviewed critically before proceeding to the central questions of this analysis.

Preamble

The preamble lists several objectives for the Principles. The first of these is to guarantee the development quality of project finance: "we seek to ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices."[8] From there the document dives into the language of risk management, which frames almost all efforts to introduce environmental and social due diligence at commercial banks (see section two). The Principles offer "significant benefits to ourselves, our customers, and other stakeholders," state the adopting banks. "…[they] will foster our ability to document and manage our risk exposures to environmental and social matters associated with the projects we finance." Lastly, the Principles are to serve as a guide for "individual" and "internal" bank policies, thereby protecting the autonomy of the Equator banks (also a vital consideration for ISR, see section two).

As for commitments, the preamble offers a boilerplate statement that banks "undertake to review carefully all proposals for which [their] customers request project financing" (without defining the terms of reference for review or explaining what is meant by "carefully"). But the preamble also unequivocally states that Equator institutions "will not provide loans directly to projects where the borrower will not or is unable to comply with [their] environmental and social policies." The word "directly" limits the scope of this otherwise strong commitment – banks can participate in project finance as arrangers, advisors, or on-lenders, and in none of these roles do they loan "directly" to projects (Lawrence & Thomas 2004; Sullivan & Cromwell 2003).

Just as important is what the preamble omits to say. Nowhere in the preamble do the Equator banks acknowledge any *duty* to practice socially and environmentally sound lending; the opening paragraph states merely that the banks' "…role as financiers affords [them] significant opportunities to promote responsible stewardship and socially responsible development." Thus, although the Principles are clearly a "reactive" document in the classification of Wotruba (1997), the banks carefully avoid the suggestion of a normative or legal obligation to undertake enhanced due diligence.

[8] See **Appendix A,** p. **XXX.**

Substantive and procedural commitments

The second section of the Principles ("Statement of Principles") offers nine commitments both substantive (concerning what standards will be applied to project finance) and procedural (concerning how transactions are to be prepared, reviewed and monitored) (see **Appendix A**). **Table 2** gives an analytical summary of these requirements.

As the organisation of **Table 2** suggests, the Statement of Principles contains the following salient elements of environmental and social due diligence:

1. *Scope.* The Principles apply to direct project finance lending for schemes with a capital cost of $50 million or more, regardless of location or industry sector.

2. *Screening.* Equator banks must categorise project proposals in accordance with guidelines in Exhibit I to the Principles, based almost verbatim upon those of the IFC's Operational Policy 4.01 (IFC 1998c).

3. *Environmental assessment (EA).* Prepared by the borrower or a third party, the EA must address "as applicable" a number of areas (see **Appendix A**) including baseline conditions, participation of affected parties in project design and implementation, cumulative impacts of existing and proposed development, impacts on indigenous communities, and impacts on biodiversity, endangered species and sensitive ecosystems. In addition the EA must evaluate the project's overall compliance with the sector-specific World Bank *Pollution Prevention and Abatement Handbook* and IFC guidelines. These guidelines are detailed, quantitative, and in some cases stricter than US law (Lawrence & Thomas 2004). EA's for projects in low and middle income countries must also address the IFC's ten Safeguard Policies (see **Appendix A**) addressing areas such as forestry, dams, natural habitats, indigenous peoples, and involuntary resettlement. The exact scope of the EA varies and depends in part on the project categorisation.

4. *Environmental management plan (EMP).* Describes how the borrower will avoid, minimise or mitigate the impacts identified in the EA.

5. *Consultation* with project-affected communities, including local NGOs and indigenous peoples, during preparation of EA and EMP.

Table 2. Summary of the "Statement of Principles" (adapted from Amalric (2005) and FBD (2005)).

Project Category	Criteria	Environmental assessment (EA)	Environmental management plan (EMP)	Consultation	Disclosure	Applicable guidelines	Reporting
A	"Sensitive, diverse, or unprecedented" impacts including the loss of a major natural habitat or other "irreversible" damage, harm to vulnerable groups or ethnic minorities, involuntary displacement or resettlement, or damage to cultural heritage sites. Impacts may occur outside project site.	Examines impacts in specific areas (see **Appendix A**), compares with alternatives(including "no project"), and recommends measures to prevent, minimise, mitigate, or compensate for adverse impacts and improve environmental performance. "Full" Environmental Impact Assessment normally required.	Required. Must address mitigation, action plans, monitoring, management of risk and schedules. Prepared by borrower or experts.	Required. Must be "structured" and "culturally appropriate," include all "project-affected groups, including indigenous peoples and local NGOs." Results must be referenced in EA and EMP. Min. 2 consultations for low/middle income countries (IFC 1998c).	EA or "summary thereof" must be available to public "for reasonable minimum period" in local language and culturally appropriate manner.	World Bank *Pollution Prevention & Abatement Handbook*, IFC Environmental Health and Safety Guidelines[9]; for projects in low and middle income countries,[10] the IFC Safeguard	"Regular reports" required on compliance with EMP. Prepared by in-house staff or experts.
B	Impacts are site-specific, mostly reversible, or capable of more ready mitigation than Category A	Scope varies, but narrower than for "A" projects. Examines potential negative and positive impacts and recommends measures to prevent, minimise, mitigate, or compensate for adverse impacts and improve environmental performance.	"As considered appropriate." Prepared by borrower or experts.	"As considered appropriate." Results must be referenced in EA and EMP.	Same as for Category A	Same as for Category A	Same as for Category A, but only obligatory for Category B projects requiring an EMP
C	"minimal or no adverse environmental impacts."	No further action required	No	No	No	No	No

[9] IFC and World Bank sector-specific standards "dovetail," with IFC guidelines addressing sectors neglected in the *Pollution Prevention & Abatement Handbook*.

6. *Disclosure* of the EA or "a summary thereof" before bank approves loan.

7. *Covenants*. Borrower must "covenant" or commit to comply with the EMP; provide reports (by borrower or third party) on compliance; and "where applicable" follow an agreed decommissioning plan for the project. If the borrower fails to uphold those covenants, the bank will "engage" the borrower to reach compliance, or declare the loan in default.

8. *Independent expert review.* Required for EAs and EMPs for "A" projects. Lenders may appoint independent experts "as necessary" for monitoring and reporting on compliance.

Weaknesses

Both the substantive and procedural commitments described above borrow much from the World Bank Group's own practices and policies,[11] but leave critical omissions that weaken the force of the Principles.

The most significant area of weakness is transparency and disclosure. The Principles do not require the release of environmental management plans, consultation proceedings, borrower-provided reports on compliance with environmental and social covenants, or internal evaluations of environmental and social issues in projects supported by Equator banks. Nor do the Principles require any sort of reporting by banks on their own environmental and social policies and procedures, their efforts to implement the Principles, or the number and type of projects submitted to Equator review (let alone the specific projects approved or rejected due to Equator review). Indeed, the only project document which the Principles require banks to release is the EA, and even that may be released in "summary" form and at an undefined "reasonable" period before loan approval.

This stands in stark contrast to the IFC's own disclosure policies (IFC 1998b), which require the release of information about IFC's lending policies and procedures, a list and brief descriptions of all new investments in each fiscal year, and summary data on project lending by sector and region. Project-specific information must also be released, including a project summary (incorporating essentially an outline of the EA) which must be available 30 days before project approval, the full EA (to be released no later than 60 days before project approval for "A" projects, or 30 days for "B" projects), the full Environmental Action Plan (analogous to the EMP in the Principles), results of project consultations, and summaries of internal evaluations of projects. If clients object to

[10] As specified in the World Bank's Development Indicators Database, see **Appendix A.**
[11] As described in the IFC's Operational Policy 4.01 ("Environmental Assessment") and the World Bank's almost identical OP 4.01 ("Environmental Assessment").

disclosure of these documents, IFC must abandon work on the project. (IFC 1998b). Absent such specific requirements on disclosure, especially regarding project-specific data, outside parties have limited ability to judge how Equator banks are fulfilling their obligations on a project-by-project basis.

The Principles have other important weaknesses. Principle 3 says that the EA must only address "to [the bank's] satisfaction" compliance with World Bank/IFC guidelines and the Safeguard Policies (Lawrence & Thomas 2004), and even allows "justified deviations" from those policies without clarifying the standard of justification. Critical documents – including the EA and the EMP, and reports on compliance with the EMP – may be prepared by the borrower in-house, introducing a clear conflict of interest. Independent expert review is only required for EA's and EMP's prepared for Category A projects; the Principles do not require independent review of monitoring and reporting after project approval. The Principles do not give project-affected communities any rights to challenge project categorisations, EA's, or EMP's, as U.S. law does (Kass & McCarroll (2004)). Nor do the Principles provide any channels for communities to air grievances, as the World Bank Group does through its Inspection Panel and Compliance Advisor/ Ombudsman.

From a structural point of view, the Principles have still more flaws. The Principles do not establish a secretariat or other form of administrative body, an important factor identified in Gupta & Lad (1983) and Amalric (2005) for the success of industry self-regulation. In fact, the only central source of information on the Principles is the website, which is hosted by one of the signatory banks (Wright 2005) and only lists the participating institutions and recent news articles and press releases concerning the Principles. Moreover, there are no 'membership criteria' or even controls on the use of the Equator name and logo, as there are for the UNEP Financial Institutions Initiative and the UN Global Compact; any institution that claims to uphold the Principles can call itself an Equator bank and appear on the website as such.

4. Origins of the Principles

What explains the timing and content of the Equator Principles?

Of the three central questions of this paper, this is the one about which the most evidence is available. Interviews with key individuals involved in the process, documentation by industry journals and the popular press, and public statements by IFC and bank officials together give a reasonably coherent explanation for why the Principles came about in June 2003, and why they included some of the strengths and weaknesses discussed in section three.

Negotiating the content

The 'official' chronology of the Equator Principles begins in late 2002, when Herman Mulder – then senior executive vice president for group risk management at ABN AMRO – contacted IFC President Peter Woicke to discuss the handling of environmental and social issues in project lending, and in particular how to answer NGO criticisms of projects in which ABN AMRO was cooperating with IFC (Murray 2005). In response, Woicke sent IFC's head of environmental and social review, Glen Armstrong, to Amsterdam to discuss IFC's experience with its Safeguard Policies and "sustainability initiative" (see section two). This led to further discussions between Mulder and Woicke, who agreed to invite prominent commercial banks for a meeting they would co-chair in London in October 2002. Attended by nine banks, the purpose of the meeting was ostensibly to share 'horror stories' of problematic projects, discuss the implications of environmental and social risks for lenders, and debate the proper management of those risks (Armstrong 2005; Bray 2005; Lazarus 2004b; Lazarus 2005).

There was no agreement prior to the October 2002 meeting that common due diligence standards would emerge, although Lazarus (2004b) and Arnold (2005) suggest that ABN AMRO came with that intention. Nevertheless, the nine banks quickly agreed that collective action was required on the handling of environmental and social issues in project lending, principally to avoid a competitive 'race to the bottom' in due diligence. They also designated a "working group" composed of ABN AMRO, Citigroup, Barclays, and WestLB to draft an agreement (Armstrong 2005).

This working group – whose most active members were Chris Bray (head of environmental and social risk policy at Barclays), Chris Beale (global head of project and structured trade finance at Citigroup), and Richard Burrett (head of the sustainable development business unit at ABN AMRO) -- met in London several times over the following months, with IFC's Glen Armstrong serving as a technical advisor (Armstrong 2005; FBD 2005).

During this process the working group confronted broad questions about the scope of the agreement, including the types of finance and industrial sectors it would cover. Project finance was an obvious target for a number of practical reasons: it is the type of finance that most frequently draws the attention of NGO campaigners and the press, gives banks the most leverage over borrowers (see **Appendix C**), and is administratively straightforward to reform since it is usually handled by discrete bank departments (FBD 2005). As for industrial sectors, the working group originally set out to develop standards focused on oil and gas projects. However, the banks quickly scrapped this narrow approach in favour of a more universal agreement that would include other sectors with important indirect and reputational risks (Lazarus 2005).

The working group also had to choose among substantive standards, a key challenge for global ISR regimes (Wotruba 1997). Suellen Lazarus of the IFC, who convened some of the initial Equator meetings, insists that the IFC did not press for Equator banks to adopt its own standards (Lazarus 2005). She and Gavin Murray (2005)[12] both claim that the banks first attempted to formulate their own standards, but found the task too long and technical. According to Murray (2005), Citigroup officials at this time took a keen interest in the IFC's own policies, meeting several times in Washington with IFC representatives to familiarize themselves with the Safeguard Policies and learn how IFC applied them in practice. Armstrong, Lazarus, and Rachel Kyte (then at the Compliance Advisor/Ombudsman's office) also took part in discussions with the working group on IFC's disclosure policy, its application of its own standards, and its recourse mechanisms (Armstrong 2005, Kyte 2005). Ultimately the working group adopted IFC and World Bank categorisations and standards 'off the shelf,' not just because of these discussions but because these policies combined a number of desirable qualities: they were designed for the private sector (Lazarus 2004b), had international recognition among NGOs and project sponsors, and provided detailed guidance for a number of industry sectors (Armstrong 2005).

However, the banks did not, as noted, adopt the IFC's disclosure policy. Freshfields Bruckhaus Deringer's (2005) and ISIS Asset Management's (2002) surveys of commercial banks found a number of reasons for this resistance to transparency, including political/strategic considerations (disclosures might be quoted selectively or used as ammunition by NGOs), concerns that competitors might learn about internal bank practices (a reason also cited by Arnold (2005)), and fears that clients would balk at this perceived breach of confidentiality (also cited by Armstrong (2005)).

Other technical issues arose as well. According to Lazarus (2005), an important consideration for banks was the division of responsibilities between lender and borrower. While the

---

[12] Then head of the Environmental and Social Development Department at IFC.

IFC undertakes much of its environmental and social assessment, consultations and monitoring in-house, the Equator banks (lacking the IFC's expertise or resources) sought to push as much responsibility as possible to borrowers. Thus the Principles charge borrowers with the task of carrying out consultations and preparing EA's, EMP's, and compliance reports. Lenders retain responsibility for project categorisations and engagement with noncompliant borrowers. Another dilemma was the "formality" of the Principles, that is, whether they were to be a binding agreement or a purely voluntary and loose declaration. American banks involved in drafting the Principles feared that a formal agreement might violate US antitrust law (see **Appendix D** for discussion), a factor that Armstrong (2005) mentioned as an explanation for the voluntary and open nature of the Principles.

The working group finished its deliberations in February 2003, and a different group of nine banks met in London that month to draft a document called the "Greenwich Principles" (Lazarus 2004b). The Greenwich Principles became the basis of ABN AMRO/Citigroup consultations with European and North American NGOs later that spring (including World Wide Fund for Nature (WWF), Friends of the Earth, Environmental Defense, and the World Resources Institute) (Arnold 2005).

At a final bank meeting in May 2003, the Principles were revised to apply to all project finance worldwide, rather than just in emerging markets (Lazarus 2004b). The word "directly" was also inserted in the preamble to limit the scope of the commitment (Missbach 2004; see section three). And the Principles were given the name "Equator" to reflect their global nature (Lazarus 2004b). Protracted deliberations among corporate boards and legal departments commenced, many of them lasting until just hours before the deadline of 4 June. On that day ten banks representing 30% of the project finance market agreed to adopt the Principles (Armstrong 2005; Hawser 2005). The announcement was made at an annual bankers' conference in Washington by Woicke, Mulder, and Beale of Citigroup (Armstrong 2005; Arnold 2005; Lazarus 2004b).

The Equator Principles were thus conceived, drafted, and adopted in about nine months, a remarkable achievement considering the complexity of due diligence and the absence of a pre-existing framework for coordination among the banks. Several factors explain why this process occurred at the time that it did and why it proceeded at such a rapid pace.

NGO campaigns and associated reputational risks

The Principles came after nearly a decade of increasingly coordinated and vigorous campaigns by development and environment advocates who sought to draw attention to the impacts of projects financed by commercial banks. Like the campaigns that brought the World Bank to its knees in the late 1980s, NGO efforts on private sector finance garnered popular support by focusing on specific projects and employing a variety of creative publicity techniques (Wade 1997). Indeed, many of the most active NGOs on this new front (such as Friends of the Earth) were veterans of earlier campaigns to reform the Bank and government-supported export credit agencies.

One of the earliest NGO campaigns encountered in this study targeted ABN AMRO, incidentally the bank that initiated the Equator process, for its involvement in a Freeport/Rio Tinto-sponsored gold and copper mine in Irian Jaya that contaminated local water supplies. In 1997, angry indigenous communities coordinated with the Dutch NGO Milieudefensie to stage widely publicised protests, which forced the bank to pressure the mine consortium to resolve the problem. N, an official knowledgeable about environmental policy at ABN AMRO, described the incident as a "wake up call" for the bank (N 2005); ABN AMRO's Richard Burrett told the industry journal *LatinFinance* "that experience caused us to look carefully at that particular transaction and question how we undertook such business" (Ibars 2004).

NGOs mounted other prominent campaigns in the late 1990s around the Oleoducto de Crudo Pesado (OCP) project in Ecuador and the Three Gorges Dam project in China (Monahan 2005). By the end of the 1990s, fourteen major advocacy groups – including Rainforest Action Network (RAN), WWF-UK, and Friends of the Earth – were working together on common messages and strategies for private sector financial reform (Frijns 2005). The campaigns escalated in the early part of this decade, with the premier example being RAN's campaign against Citigroup. Beginning in 2000, RAN activists staged protests at bank branches and chained themselves to the doors; launched an Internet campaign that convinced 20,000 Citigroup customers to cut up their credit cards; rappelled down a building across from Citigroup's New York headquarters and unfurled a 60-foot banner reading, "FOREST DESTRUCTION & GLOBAL WARMING? WE'RE BANKING ON IT!"; protested at speeches by Citigroup's CEO Sandy Weill; ran full-page ads in the *International Herald Tribune* portraying Weill as an environmental villain; and enlisted celebrities including Susan Sarandon and Daryl Hannah for TV ads attacking Citigroup (Gunther 2004).

Several of the interviewees for this analysis suggested that the reputational risks, and occasional project delays, that these NGO campaigns created were the principal driver for enhanced due diligence at leading Equator banks. Arnold (2005), for example, stated that one reason for the emergence of the Principles was that "every bank that does project finance has had something blow up on them, whether it be Chad-Cameroon, OCP, BTC, or Camisea" and that the Principles were seen as a way to alleviate the pressure. Kyte (2005) said that the Equator process was initially about "stopping the reputational hits" that banks were taking from NGOs.

Once some leading banks began to examine their lending policies, they began looking for ways to rope their competitors into the same set of standards. Arnold (2005) opined that one of the reasons ABN AMRO approached IFC in 2002 was that it had just adopted an unprecedented forestry policy in response to NGO pressure, and "wanted company." One banker interviewed by the journal *Project Finance* noted the same for Citigroup, "At the end of the day this is just Citibank's way of spreading risk around. It's become a policy issue for them" (Madha 2004). Miller (2005) confirmed that in the negotiation of the Principles, Citigroup needed to quell the NGOs – but also wanted to level the playing field by committing its competitors to the same standards. Meanwhile, Chris Bray (2005) commented that Barclays took interest in the Equator process in part because the bank's project finance division was beginning to protest the perceived competitive disadvantage of its increasingly stringent environmental and social risk policies, and wanted to "erase the differential."

Changing business attitudes

While there is strong evidence that the reputational risks generated by NGO campaigns were the prime mover for the emergence of the Principles, it is also true that the attitudes of bankers toward environmental and social issues had been gradually changing in a way that favoured increasing due diligence. Bankers have come to acknowledge over the last ten years that attention to environmental and social issues can be good business: it avoids civil liability (Smith & Pitt 2003) of the kind that Equator banks such as Barclays and Standard Chartered risked for doing business with South Africa's apartheid regime (Maitland 2004); it assures institutional investors who increasingly perceive a link between financial performance and environmental performance, and invites investment from SRI funds (Sabatini 2004; Turner 2004); and it helps banks select projects that, in the words of Citigroup senior vice president Pam Flaherty, "are well received, that don't have delays, that don't have problems" (Gunther 2004).

There is also a business case for *common* approaches to environmental due diligence among banks. ABN AMRO's Richard Burrett argued at an environmental finance conference in June 2005 that the Equator Principles reduce transaction costs and create more certainty in closing financing, because all financiers are using the same vocabulary and have roughly the same expectations for project performance (Burrett 2005). In the same vein, Anastassiades & Cochard (2004) of Calyon (formerly Credit Lyonnais) argue that the "common language" and consistency of the Principles allow banks and sponsors to save time by "doing [due diligence] right the first time." Peter Carter of the European Investment Bank also made this argument in his interview for this paper (Carter 2005).

Perhaps the best evidence for changing business attitudes as an enabler for the Principles is that the principal supporters of the Principles within the leading banks were not in public relations or even environmental units, but individuals within project finance units (Arnold 2005; Turner 2004; N 2005). Yet this shift in thinking among mainstream bankers does not explain why the Principles came about in 2002, or why they proceeded so quickly; it must also be acknowledged that NGOs have created some of the environmental and social risks at the heart of the "business case" for enhanced due diligence.

IFC's coordinating role

IFC claims no formal ownership or responsibility for the Principles. Asked to describe IFC's role in the drafting of the Principles, Lazarus (2005) characterised IFC as a source of advice and support. However, as Wright (2005) contends, IFC's influence in the Equator process arguably goes far beyond this. First, IFC was ideally positioned in 2002 to serve as what Wright calls a "norm entrepreneur" – it had just launched a highly public "sustainability initiative" to tout business opportunities associated with sustainable development, it had promoted itself as a leading institution in the area of finance and sustainability (Wright 2005), it had cooperated with many of the world's largest commercial banks in previous project financings, and it could serve as a credible and neutral third party to help rival banks broker an agreement. Because of this, the IFC had what Glen Armstrong described as "significant convening power," especially when it came to calling the first bank meeting in October 2002: as Armstrong said, "if they [IFC] call a meeting and say they want to talk with banks about sustainability, it'll happen." And as noted earlier, IFC officials met often with the future Equator banks in the spring 2003 to discuss the application of Safeguard Policies, IFC's disclosure policy, and other environmental and social procedures. IFC also offered training in environmental and social due diligence to Equator banks' staff (Lazarus 2005).

Thus, IFC served as an approximation to the coordinating or administrative body that Gupta & Lad (1983) point to as a prerequisite for successful industry self-regulation. It seems unlikely that the Equator banks would have organised as quickly as they did, or agreed to adopt IFC policies to the extent they did, without the intervention of the IFC. Not for nothing did the IFC express "pride" in its role in the negotiation of the Principles and declare that the document exhibits the "potential for [IFC's] leadership on issues of sustainability" (IFC 2003, p.3), or did IFC President Woicke tell NGOs that the Principles were "our biggest achievement" (BankTrack 2004).

Key change agents

The leadership of key individuals, highly placed in the corporate hierarchies of the initial Equator banks, also appears to have been crucial for the Principles' quick development. Within Citigroup, corporate and investment banking head Chuck Prince was a vocal advocate of the emerging standards, and placed strong pressure on the project finance division to "get this done, now." (Arnold 2005). Gavin Murray confirmed that Citigroup officials visiting IFC seemed to be "under pressure internally to deliver something quickly" (Murray 2005). Citigroup's project finance head Chris Beale, in addition to building consensus within the bank on Equator, also played a key role in recruiting other Equator banks (Arnold 2005). And at ABN AMRO, senior executive vice president Herman Mulder and his environment risk head Maureen Gilbert led the charge for Equator, together with Richard Burrett of the sustainable business unit (Armstrong 2005). Mulder also played a key role externally, by instigating the Equator process and helping co-chair the initial meetings. Watchman (2005a) notes that such "top down" leadership has occurred at many of the Equator banks, often at the level of CEOs and project finance heads.

While NGO pressures and the mounting business case for enhanced due diligence no doubt motivated these individuals, some of them also clearly viewed environmental and social standards as a moral imperative. Chris Bray of Barclays said in his interview that the initial Equator banks all agreed that this was "not an area where we should be competing" (2005), a sentiment expressed in identical terms by ABN AMRO's Richard Burrett (FBD 2005, p.60). This may go some way towards explaining why banks have been unusually cooperative in this area (FBD 2005, Kyte 2005), alone among almost all other areas of financial practice. Indeed, new Equator banks such as Scotiabank have even received support from existing Equator banks in "[getting] up to speed quickly" (FBD 2005, p.60).

Synthesis

Effective NGO campaigns on 'disaster projects' – and the reputational risks they created – served as the key driver for 'protagonist banks' (ABN AMRO, Citigroup, Barclays, and WestLB) to begin revising their environmental and social lending standards. Competitive pressures led these banks to push for *uniform* standards in the form of the Principles. And the gravity of the reputational risk involved, not to mention the technical complexity of due diligence, prompted the authors of the Principles to seek out a credible, international and well-known 'off-the-shelf' set of standards and procedures appropriate for the private sector, which only the IFC could provide.

Internal pressure at the executive level, not to mention increasing awareness among mainstream bankers of the business case for enhanced due diligence, smoothed the way for the speedy initial adoption of Equator. IFC's coordinating role in the process also appears to have helped overcome collective action problems, and influenced the final content of the document.

5. From principles to practice at three leading banks

How have some of the leading Equator banks gone about implementing the Principles, and how does that compare to the IFC's implementation of its own standards?

"Implementation" in this context has a comprehensive meaning, incorporating not just the integration of the Principles into lending policies, but also the establishment of supportive managerial infrastructure: staff training and incentives, environmental risk units, information sharing among credit and risk staff, monitoring and reporting requirements, independence requirements for consultants, etc. These are recognised elements of Equator implementation among both NGOs (BankTrack 2005, p.3) and private investors (CIS 2004). These are also areas about which little is known for many banks, a fact underscored in a recent report on Equator implementation by the NGO 'umbrella' organisation BankTrack, based on reviews of annual reports and websites. BankTrack found only ten Equator banks reported new tools and policies adopted in response to the adoption of the Principles (Chan-Fishel 2005, p. 9).

This section presents evidence on Equator implementation at three members of the initial working group -- ABN AMRO, Barclays, and Citigroup – drawn from interviews with environmental officials at these banks, and reviews of social responsibility reports and company websites. This selection of banks is not intended as a representative sample, but rather provides an informative look at the variety of implementation practices in place at Equator banks. As three of the leading Equator banks and some of the most transparent, these institutions are likely to represent 'best practice' for the group (FBD 2005).

ABN AMRO

Even though environmental and social due diligence at ABN AMRO traces its roots to the "wake up call" of 1997 (N 2005), the bank's recent environmental and sustainability reports suggest that little formal infrastructure was in place until the adoption of forestry and mining policies in 2001 (ABN AMRO 2003). By 2002, a Sustainable Development Department had been created within the bank's Group Risk Management unit (ABN AMRO 2004). Within that department, ABN AMRO also established a Sustainable Business Advisory (SBA) unit charged with developing the bank's environmental and social due diligence policies and serving as the "ultimate gatekeeper" for sensitive project proposals (N 2005). Both SBA and Sustainable Development operate independently of the bank's commercial activities (ABN AMRO 2005; N 2005).

Although project finance specialists at ABN AMRO deal directly with clients regarding compliance with the Equator Principles, much responsibility for compliance rests with SBA. The bank has developed an "Equator Principles tool" for project finance specialists to guide them in categorising project proposals and mitigating major sources of risk. This overlaps with the existing "Client Diagnostic Tool" and "Environmental, Social and Ethical Risk Filter" for all new business. SBA reviews the results of these analyses for quality control (ABN AMRO 2005), and must approve the project categorisation, EA design, EA results, and the EMP for a project proposal to go forward (Burrett 2005). SBA's final approval is also required for all Category A and B projects (N 2005). The results of this pre-approval due diligence affect the client's risk rating and the pricing of finance for the project (Burrett 2005). SBA's decisions are occasionally audited externally as a further control on quality (N 2005).

Due to lack of resources and in-house expertise, ABN AMRO depends on external consultants to carry out much of the work on the ground when it comes to environmental assessment and monitoring. These consultants may be chosen by the bank or the client, according to N (2005), and it is not clear (beyond SBA review) what mechanisms are in place to ensure the competence or independence of these consultants.

All existing projects are reviewed on an annual basis using the client tool and risk filter above. Annual monitoring is usually part of the loan covenant (Burrett 2005), the responsibility for which lies with a group-wide monitoring team that coordinates with SBA (although monitoring itself is usually done by consultants). Compliance with all aspects of the covenant, including Equator requirements, is verified simultaneously. The consultants that carry out monitoring for ABN AMRO rate instances of non-compliance on a three-tiered scale according to the nature and degree of non-compliance. Level 1 incidents (the most serious) and persistent Level 2 problems require the engagement of the bank with the project sponsor (N 2005). N (2005) claims that the bank has encountered a number of minor incidences of non-compliance with the EMP, but has yet to declare a loan in default for Equator Principles reasons. N describes these sorts of incidents as inevitable: "Real life occasionally gets in the way" of elaborate EMPs, he explained.

In actual practice, N (2005) says that ABN AMRO treats the Principles as a useful process for identifying problems and bringing the bank and its clients together to find solutions. Noting that the Principles require only that compliance be addressed to the bank's "satisfaction," N says that the bank's approach is to perform due diligence until it "comes to a level of comfort" with the risks and especially the client's capacity to deal with those risks. N emphasises that "there is a measure of subjectivity" built into the Principles, particularly with regards to social issues such as resettlement and consultations, and that "it's difficult to be prescriptive" even within the confines of the IFC Safeguard Policies.

ABN AMRO views the Equator Principles as a "single-product" initiative relevant only to project finance, and which works in conjunction with the bank's sector-specific "multi-product" policies in forestry (2001), mining (2001/revised 2004), and oil and gas (2004) (N 2005). Indeed, the bank's mining policy was revised in consultation with NGOs in 2004 to eliminate inconsistencies with Equator requirements (Chan-Fishel 2005).

As for staff, ABN AMRO claims to have trained 445 members in "policy skills" associated with the Equator Principles since 2003, although not all of those employees appear to be involved in project finance (ABN AMRO 2005). Importantly, the bank's sustainability goals (presumably including the Principles) form part of performance contracts for the bank's senior and middle management positions. In addition, the bank has a "whistleblower policy" that protects staff who report violations of corporate policies, including Equator, and obligates employees to report such violations (ABN AMRO 2005).

ABN AMRO reports on its Equator Principles activities in its annual sustainability report. The bank's 2004 report listed the number of project finance transactions (by risk category) reviewed by SBA for Equator compliance, the number denied funding, the number approved outright and the number approved with conditions. In addition, the report gives anonymous anecdotes of "dilemma" projects describing how the bank applied the Principles in each case, and defends the bank's involvement in controversial projects such as the Baku-Tbilisi-Ceyhan pipeline (ABN AMRO 2005). However, these anecdotes do not illustrate any consistent application of ABN AMRO's policies, and there is no guarantee that they represent standard procedure at the bank.

Barclays

Like ABN AMRO, Barclays has a central environmental unit known as the Environmental and Social Risk Policy Team (ESRP) charged with developing due diligence policies and procedures and giving advice to front-line credit and risk officers. However, ESRP has far fewer formal powers than ABN AMRO's SBA – according to ESRP head Chris Bray it is drawn into projects "by exception," principally to offer "handholding" and advice to project teams dealing with unfamiliar issues. ESRP's approval is not required for projects to go forward (Bray 2005). This represents a deliberate devolution of responsibility to Barclays' front-line officers, in particular the risk management staff who are expected to cooperate with business development officers to ensure the bank is properly managing environmental and social risks. Bray said that this devolution took place to defuse tensions between the ESRP and business development officers over compliance requirements (Bray 2005). Barclays reports that ESRP received 158 referrals for advice in 2004, almost 80% of which pertained to projects in Europe and the Americas, and 74% of which pertained to transactions greater than $500 million (Barclays 2005a).

Barclays' Environmental and Social Impact Assessment Policy (ESIA), first introduced in 1997, is the bank's avowed mechanism for implementing the Principles and has been adjusted to reflect Equator requirements (Barclays 2005a). Bray describes the Principles as an "incremental" rather than revolutionary step in its due diligence, because by 2003 Barclays was already requiring World Bank-designated "A" projects to undergo full EIAs with terms and scope similar to that required in World Bank/IFC operational policies (Bray 2005). The most recent ESIA actually goes beyond Equator requirements by applying to all project proposals, not just those with capital costs greater than $50 million (Barclays 2005a), and by applying not just to project finance but to *any* financial instrument (including bonds and corporate loans) where the use of the proceeds is known (Barclays 2005b).

The ESIA also stands out in its explicit requirements for the independence of consultants: the bank maintains a list of 19 "preferred" consulting firms, reviewed regularly, which must conduct all environmental assessments for proposed projects. If the EA has been completed by the time funds are requested from Barclays, then a second opinion meeting Barclays' minimum requirements must be commissioned from a preferred consultant. The same consultant that undertakes EA is expected to recommend actions for compliance with the Equator Principles, and incorporate those into the EMP (Barclays 2005a). Preferred consultants must also be used to carry out project monitoring, which can take place on a biannual or even quarterly basis if the consultant deems it necessary (Bray 2005).

Bray claims that Barclays has faced very few instances of non-compliance with Equator requirements since 2003, and believes that Barclays clients are "very honest" with both consultants and the bank ("[clients] don't want to perjure themselves."). Barclays claims to take a strong line when it encounters serious breaches of loan covenants; said Bray, "we don't make the environmental conditions and then forget about them." As an example, Bray described one mining project whose tailings dam was filled beyond capacity and based on a flawed geological analysis. Barclays ordered the mine to cease operations, lower the fluid level, and reinforce the dam. Bray says this is how Barclays typically interprets the Equator requirement that lenders "engage" with non-compliant borrowers. Barclays has yet to declare a loan in default for Equator violations (Bray regards this as an empty threat as it would harm the bank as well as the client), but it does enjoy leverage in that it can order clients to repay loans on an accelerated schedule or impose other penalties (Bray 2005).

As at ABN AMRO, the ESIA is fully fleshed out in documents intended to guide project-level staff, including a policy statement, process document, a categorisation tool, ESIA scoping documents and the topical record of preferred consultants. In addition the bank has developed 32 sector-specific guides to relevant environmental and social impacts, key risks, regulations and international best practice for sensitive industries such as airports, mining, pipelines, and waste management (Barclays 2005a). Bray says that the adoption of the Principles did not trigger training en masse as it has at some other Equator banks, since much of Barclays due diligence infrastructure remained unchanged. However, consultants were brought in for a 1-day training course for the legal, business, and risk officers immediately after adoption (Bray 2005).

Also as at ABN AMRO, the implementation of IFC policies on social issues has been most challenging at Barclays. Bray says that the bank's objectives and standards on environmental quality are straightforward, and offer a degree of legal and scientific certainty: "regardless of what culture, what religion, what legal system you have, cadmium beyond a certain level in the water will kill people." Proving the adequacy of consultation or compensation, however, is much more difficult ("what's 'culturally appropriate' consultation?") and the objectives less clear ("we often don't know why we're employing social consultants") (Bray 2005).

Barclays' reporting of its Equator activities is much less complete than at ABN AMRO, although its documentation of its policies and procedures is relatively detailed. Unlike the Dutch bank, Barclays does not disclose even aggregate information about the projects it submits to Equator review, nor does it provide case studies of its application of the Principles in practice.

Citigroup

Of the three banks studied here, Citigroup is the one with the youngest formal infrastructure for environmental and social due diligence. Citigroup had no policy in this area until 2003, when it adopted the Equator Principles and debuted its Environmental and Social Risk Management (ESRM) Policy (Miller 2005), although it the late 1990s it did have an Environmental Affairs unit to serve as a corporate resource. In 2004, the bank appointed an ESRM Director within the corporate and investment bank's Independent Credit Risk Management Group, who in turn oversees 20 senior credit officers. The ESRM unit conducts training and awareness programs on the Principles and environmental/social risk generally, supports credit officers tasked with implementing the Principles, and advises the bank's Global Commitment Committee on "sensitive" bond transactions where use of the proceeds is known (Citigroup 2005).

In terms of responsibility for due diligence, Citigroup has created a hybrid between ABN AMRO's relatively empowered SBA and Barclays' relatively decentralised approach. While Citigroup's credit teams are responsible for the screening and categorization of proposals, tracking and approval of Equator documentation including the EA and EMP, and liaison with the project sponsors (Citigroup 2005), the ESRM unit exerts influence through two staff channels. First, credit teams dealing with Category A projects are assigned a senior credit officer "supported by the ESRM Director" who must give approval for the transaction to proceed (Miller 2005). These officers are independent, and do not report to the management of Citigroup's corporate and investment banking division (which houses project finance). Second, all credit teams involved in project finance have embedded staff specifically charged with implementing the ESRM Policy (about 70 individuals total), although they do not report to the ESRM Director (Citigroup 2005).

As required by the Principles, an independent environmental consultant must review the EA and EMP for all Category A projects and as appropriate for Category B projects. Independent consultants also customarily carry out monitoring on at least an annual basis for Category A and B projects (Miller 2005). Like Barclays, Citigroup maintains a list of "preferred" consultants which the ESRM Director and project teams review to screen out conflicts of interest. Notably, the ESRM goes beyond Equator requirements by essentially applying the Principles to corporate loans, debt securities and export credits where the use of the proceeds is known (Citigroup 2005, Miller 2005), as well as by addressing the forestry sector and carbon emissions (BankTrack 2004).

Shawn Miller, current ESRM Director at Citigroup, stated that he "doesn't think" the bank has had serious cases of non-compliance with the Principles though "if you ask an NGO, I'm sure they'll find projects where certain aspects of the EMP may not have been followed to the letter" (Miller 2005). Citigroup's response to minor cases of non-compliance with the EMP thus far has been to negotiate with the borrower to bring the project back into compliance. As far as Miller is aware, the bank has yet to call a loan for non-compliance with Equator requirements.

As Citigroup's enhanced due diligence did not begin until the adoption of the Equator Principles, much of its efforts in the first two years of implementation have been directed at training, capacity building, and the preparation of guidance notes and other ESRM documentation for credit and risk officers (Miller 2005). In 2004 Miller held 1-day training seminars in conjunction with Glen Armstrong of Sustainable Finance for staff in project finance, legal, communications and risk management units, giving detailed guidance on how to identify and categorise environmental and social risks, and how to incorporate EMP's into loan covenants. These training seminars are scheduled to continue in 2005 with staff in other corporate divisions (Citigroup 2005; Miller 2005).

Despite these efforts, the bank by its own admission has much improvement to make; Citigroup's most recent sustainability report suggests that internal auditing of implementation will soon take place (Citigroup 2005, p.34):

> "…we have not yet perfected internal tracking of Equator Principles implementation…in the absence of an ESRM Director in early 2004 we did not yet have a robust tracking mechanism in place…we now believe that we will need to clarify some of our credit and risk policies to help transactors and risk officers determine when a project must comply with our ESRM Policy and/or the Equator Principles."

The report does give some rudimentary performance data on the bank's Equator reviews, including the number of Category A transactions undertaken (three in 2004), confirmations that consultation, disclosure, and independent review were undertaken in each case, and three anonymous case studies of Citigroup's application of the Principles (including one case in which the bank suggests it declined funding for a project smaller than the Principles' $50 million threshold, because of its harmful social impacts) (Citigroup 2005).

Repeating IFC's mistakes?

In light of well-publicised criticisms of IFC's implementation of its own environmental and social standards, most notably in a 2003 report by the Compliance Advisor/Ombudsman (CAO 2003), it is worth asking whether the three banks examined here are positioned to avoid IFC's mistakes.

The CAO report was based on an in-depth review of 25 IFC projects. While acknowledging that the Safeguard Policies had brought about important improvements in the design of these projects, the CAO highlighted some fundamental problems with both the substantive and procedural elements of IFC's due diligence.

With regards to substantive elements, the CAO identified numerous points on which the Safeguard Policies were either vague or silent. Operational Policy 4.01 ("Environmental Assessment"), for example, gives insufficient guidance on public consultations; as a result, five of the eight Category A projects reviewed conducted "clearly inadequate" public consultation, and most of the Category B projects did not even collect sufficient information to judge the adequacy of consultation (CAO 2003, p.30). The involuntary resettlement policy (OP 4.30) led to instances in which sponsors failed to leave enough time to carry out adequate resettlement studies and action plans (p.33). IFC's pest management policy (OP 4.09) and cultural property policy (OPN 11.03) are so vague that they are rarely applied even in projects where they clearly should have been (p.32, 35). The CAO also found that the Safeguard Policies fail to address important social issues such as gender, vulnerable ethnic minorities, and community health (p.36); environmental issues such as climate change, contaminated site cleanup, and mine closures (p.37); or relevant international norms and conventions (p.37). These deficiencies had practical consequences for implementation:

"sponsors that lacked commitment to the environmental and social goals of IFC sometimes used confusion about the Safeguard Policies as an excuse not to pursue thorough implementation" (p.38).

Meanwhile, the CAO found IFC's managerial infrastructure on environmental and social issues to be simply dysfunctional. The IFC places the bulk of the responsibility for evaluation and monitoring with a centralised Environmental and Social Development Department (ESDD). This had perverse effects in practice: the CAO found a "pervasive attitude" among investment staff that environmental and social issues were not their 'territory,' and as a result frequently ignored or devalued the input of ESDD specialists (p.39-40). ESDD staff accused investment officers of hiding new projects for as long as possible to restrict the scope for costly environmental and social improvements (p.28). Most troubling, the CAO found cases "where the political importance of the deal meant that due diligence was rushed, corners cut, sponsors hurried, and effectiveness and impact [of the Safeguard Policies] compromised" (p.25). The CAO also determined that IFC was more "flexible" in compliance and procedure when dealing with large clients with whom it hoped to do business in the future (p.26).

What does this mean for Equator banks? For one, the Safeguard Policies "off the shelf" do not provide sufficient guidance to achieve good development outcomes. In light of the CAO report, it is not surprising that two of the banks examined here (ABN AMRO and Barclays) expressed difficulty implementing the Principles with regards to social issues, or that all three banks have chosen to deploy the Principles alongside sector-specific policies and procedures that furnish additional direction on sensitive projects. Barclays' Chris Bray said that the elaboration of clearer guidance on social issues is a priority for future reviews of the bank's ESIA Policy (Bray 2005). Absent such measures, Equator banks must inherit the weaknesses of the Safeguard Policies and sector-specific guidelines that form the core of the Equator Principles.

From a procedural perspective, it is notable that Barclays and Citigroup have both opted to 'embed' environmental and social expertise and responsibility within project teams, supported by a central sustainability unit. Barclays apparently moved to this approach after experiencing confrontation between project teams and environmental staff reminiscent of what happened at IFC (Bray 2005). This decentralised approach may help these banks sidestep the internal tensions that plagued IFC, but may also make project teams vulnerable to 'cutting corners' in due diligence (Citigroup seems to have insured against this somewhat by guaranteeing the independence of its senior credit officers from business management). Pressure to overlook minor points of environmental and social due diligence is likely to be considerable, especially considering that project finance staff are often rewarded for concluding major deals quickly (Case 1999; Missbach 2004).

Rachel Kyte, current director of IFC's ESDD, confirmed that commercial banks' tighter integration of environmental and social staff with business operations may help them avoid the "bunker mentality" of IFC's environmental and social specialists. Armstrong (2005) agrees that the diffusion of environmental expertise and responsibility to the front lines is the best way to avoid "pigeonholing" of sustainability issues. Interestingly, Kyte also feels that the *lack* of transparency at Equator banks is an advantage for implementation – while IFC's public categorisation process is often subject to political pressure from sponsors and from partner governments, commercial banks' relative opaqueness shields them from pressure to 'downgrade' project categories and due diligence requirements (Kyte 2005). Of course, this argument works in reverse as well: a secretive categorisation process gives project finance staff the freedom to reduce costs and delays associated with due diligence by downgrading projects. The law firm Freshfields Bruckhaus Deringer notes that at many Equator banks, categorisation is a contentious and heated process and – just as at IFC – there is a "natural" temptation to give projects the "least onerous" categorisation, although Freshfields found no evidence of systematic downgrading of projects (FBD 90).

Synthesis

ABN AMRO, Barclays, and Citigroup have employed a variety of strategies in implementing the Equator Principles. All three banks have made efforts to familiarise their staff with the Principles, usually with outside assistance, and all three have by now integrated the Principles into their standard credit and risk analysis, backed up with documentation to guide loan officers. However, the distribution of responsibilities and reporting practices differ greatly among these three leading banks. ABN AMRO has a relatively centralised environmental bureaucracy, whereas Barclays (and to a lesser extent Citigroup) devolves responsibility to front-line project finance staff. ABN AMRO and Citigroup tend to provide more performance data (i.e. number of projects reviewed and "case studies") whereas Barclays' documentation of its procedures is the most complete of the three. In some cases, the banks have imposed requirements more stringent than required by the Principles, or applied the Principles in areas outside of project finance.

With so much of the actual due diligence performed by external consultants (even at the IFC, which has far greater in-house capacity than any of the commercial banks studied here (Miller 2005)), mechanisms to ensure the competence and independence of consultants are critical to the credibility of Equator implementation. Yet at ABN AMRO, there is no public assurance to this effect, and even at Barclays and Citigroup the list of "preferred consultants" is no guarantee against independence (Watchman (2005b) notes that the desire for repeat business can distort the analyses of such entrenched consultants).

6. Strategic assessment and future prospects

Have the Principles truly changed the market for project finance, or are they just words? What reforms are feasible and desirable for the short- to medium-term (1-2 years)?

Significance of Equator

Looking first at the supply side of the project finance market, the Equator Principles appear – at least on paper -- to have become the prevailing standard of due diligence for project finance lenders, in a field where no standards previously existed. In just two years, the share of Equator bank loans in the project finance market has risen to over 80% (Bulleid 2004). True, a few major project financiers (Lloyds TSB, Société Générale, BNP Paribas) have yet to join (see **Appendix C**), and industry observers such as Freshfields Bruckhaus Deringer note that a "small minority" of Equator banks appear to be 'free riders' in terms of implementation (FBD 2005, p. 78). But these gaps in market coverage have limited significance, mainly because virtually all project finance deals are backed by large banking syndicates that frequently include Equator institutions. In principle, such syndicates must ensure that their projects respect the Principles (Kyte 2005; Nelthorpe 2003); thus, Freshfields Bruckhaus Deringer judges that there is very limited scope for project sponsors to seek purely non-Equator financing (FBD, p. 68, 75). Moreover, some non-Equator banks (Kyte estimates as many as 20-30) appear to be waiting for the outcome of an ongoing IFC review of the Safeguard Policies (discussed below) before publicly adopting the Principles (Arnold 2005; FBD 2005; Kyte 2005; N 2005), so the market penetration of the Principles should only increase in the future.

While NGOs initially feared that the Principles would become the 'endpoint' of reform for Equator banks (Arnold 2005), the three NGO representatives interviewed for this paper believe that the opposite has occurred: Sohn of WRI describe the Principles as a "clear baseline," Greg Hile of RAN said that "the whole field [of due diligence] has shifted," and Frijns of BankTrack called the Principles the "floor" for what a "decent bank" must achieve. This is not merely strategic rhetoric: Frijns notes that a number of large Equator banks have unexpectedly implemented standards that are stronger and more comprehensive than the Principles (also noted in section five and in FBD (2005, p.39, 119)), and calls the Principles "a catalyst for broad change" in the banking sector. Sohn believes that the adoption of the Principles has served as an "accelerator" for reform at some banks (2005).

Most encouraging, the introduction of common due diligence standards in project finance has led some banks (such as Citigroup) to begin applying such standards to corporate loans, bond issues, and other financial vehicles that form the bulk of international capital flows (Kyte 2005). Armstrong (2005) sees this as an inevitable process, as banks will find it increasingly difficult to justify the imposition of international standards in one area of bank operations and not in others. The bank officials attending Armstrong's training seminars come from a broad spectrum of operational divisions, which he sees as evidence that banks plan to apply stronger standards beyond project finance (Armstrong 2005).

Despite the Principles' lack of formal enforcement mechanisms, Lazarus (2005) and Kyte (2005) of IFC suggest that the Principles have triggered a kind of virtuous cycle among banks; Lazarus has observed Equator banks "prodding" each other to improve certain aspects of practice such as reporting, and Kyte points out unprecedented collaboration in standard-setting among Equator institutions, as occurred in spring 2005 when HSBC circulated its new freshwater infrastructure policy to its Equator peers. Murray (2005) concurs that the Principles "have triggered development and activity" in the area of enhanced due diligence. Within banks, Murray adds, "people sympathetic to Equator have used [the Principles] to advance their agenda" (also noted in Ganzi et al (2004)). Something like this seems to have occurred at JPMorgan Chase, whose management resisted such reform until a consortium of institutional shareholders, citing the Equator Principles as precedent, submitted a proposal at JPMorgan's 2004 shareholders meeting. JPMorgan's management responded by creating an office of environmental affairs in 2004 and adopting the Principles in spring 2005 ("JP Morgan Chase" 2004).

As for the demand side of project finance, there is circumstantial evidence that project sponsors are adjusting their project planning to accommodate the Principles. One piece of evidence in support of this point is that major international law firms advising project sponsors, namely Latham & Watkins (2003), Sullivan & Cromwell (2003), and Cameron McKenna (Bainbridge 2004), have issued guidance memoranda recommending that clients begin understanding the Principles and applying them to their projects. According to Latham & Watkins (2003):

> …the Equator Principles underscore the fact that the World Bank/IFC environmental and social guidelines reflect the core of what now appear to be the internationally accepted standards of environmental and social responsibility. Borrowers who are contemplating a project financing, whether or not involving the World Bank or IFC, therefore would be well advised to account for the World Bank/IFC standards in the design and siting of their projects.

Other evidence comes from banking officials who come into contact with project sponsors. IFC's Rachel Kyte claims to receive frequent calls from project sponsors seeking advice from IFC on how to satisfy the demands of Equator banks (Kyte 2005). Gavin Murray, now head of environment at ANZ Banking Group, says he has encountered smaller project sponsors complaining about the stringency of the Principles and sees it as a "good sign" that changes are pervading the marketplace (Murray 2005). Lastly, industry insiders have commented on the importance of the Equator Principles in their sectors: Metcalf & Rose (2004), for example, write in the journal *Power Economics* that hydroelectric project developers "are looking carefully" at the Equator Principles and recognise it "will impose additional burdens" in the areas of environmental assessment and public consultation.

On the other hand, industry observers report troubling signs that in some cases project sponsors have only half-heartedly fulfilled the Principles' requirements for environmental assessment and consultation. For example, Edda Ivan-Smith of the consultancy Scott Wilson reports incidents involving Equator banks where the project sponsors invited consultants to assess a project only a few weeks before financial closure, and where Scott Wilson was asked to prepare a resettlement plan without time for a household survey. In another case, Scott Wilson participated in a road project where the sponsors considered meetings with community leaders to be "adequate" consultation. According to Ivan-Smith, monitoring of projects is often done by teams with a poor understanding of the Principles' requirements, and are frequently an "afterthought" (Ivan-Smith 2005). Freshfields Bruckhaus Deringer has found that too many sponsors are being allowed to appoint their own consultants without the oversight of banks, and that frequently engineering consultancies are appointed to do work more properly done by environmental or social consultants (FBD 2005, p.84-86).

Moreover, powerful clients are likely to hold at least as much sway with commercial banks as with IFC; as one banker told the industry journal *Project Finance*, "will [Equator banks] take on ExxonMobil over QatarGas 2? I doubt it" (Nelthorpe 2003). Indeed, with a few exceptions – including Citigroup's disengagement from the controversial Camisea gas pipeline, and RBC's denial of funding for the Rosia Montana gold mine (BankTrack 2004) – Equator banks have maintained involvement in many of the 'mega-projects' that draw protests from NGOs (Frijns 2005), although the banks have defended those projects' compliance with the Principles and claim to have made those projects 'better' than they otherwise would have been (Hawser 2005).

Therein lies one of the central disappointments of the Principles, at least from the perspective of the banks. Murray (2005) said that the initial Equator banks hoped the Principles would furnish them with a set of unassailable, objective rules that would reveal "the right thing to do" in any project and thereby defuse NGO criticisms. But in implementing the Principles many Equator banks found this goal elusive, and continue to conflict with NGOs over specific projects (Murray 2005).

Although Murray (2005) suggests that environmental and social standards inevitably involve subjective judgment, continuing bank/NGO conflicts probably stem in large part from the clashing imperatives of commercial banks and NGOs. As noted in section two, commercial banks view the Principles – indeed, all environmental and social due diligence – as not about sustainability *per se*, but rather risk management. To the extent that environmentally and socially destructive projects generate direct, indirect and reputational risks, banks can be expected to act vigorously to protect their interests through enhanced due diligence. Absent such business risks, especially for obscure projects in countries lacking a free press or active civil society (Amalric 2005), where safeguards such as those in the Principles are arguably most needed, banks have a *disincentive* to carry out costly and time-consuming due diligence.

For all the positive effects that the Principles have had in the project finance market, then, the risk management discourse that motivates them (and their voluntary nature) mean that they cannot substitute for effective government regulation and institutions, especially in emerging markets. This is especially true in light of the weaknesses of the Principles identified in sections three and five, specifically the lack of transparency surrounding their implementation and the absence of a secretariat charged with auditing and enforcing compliance. Were local communities, NGOs, the media and other stakeholders able to access the full range of project documentation that IFC makes available for its projects, or were there a central organisation capable of reviewing bank practices and admonishing the 'free riders,' there would at least be an external impetus for banks to reach and maintain high standards even when there is no substantial business risk. But as will soon be discussed, such mechanisms are not likely to materialise. Indeed, there is no business incentive for banks to create them, even setting aside the culture of secrecy that already militates against transparency and external auditing.

Even in the unlikely event that banks did agree to such procedural 'quality controls,' there is good reason to believe they would resist the introduction of stronger substantive standards. With reference to the IFC's imminent overhaul of its Safeguard Policies, Chris Bray said that Equator banks would have to consider "alternative" standards if the IFC were to come out with policies that are too "ideological" or development-oriented (Bray 2005). Furthermore, banks have little appetite to take on development mandates, or serve as surrogate regulators in emerging markets. Anastassiades & Cochard (2004) of Calyon write that "banks have no legitimacy to define industrial policies and we certainly have no intention to supersede Governments, citizens or NGOs." Barclays' Chris Bray said that commercial banks have a "different brief" from development institutions (Bray 2005) and remarked flatly, "we are not environmental regulators" (Hawser 2005).

These realities of commercial banking may frustrate the ambitions of the IFC and World Bank to serve as a "*de facto* regulator of last resort" (Wasserstrom & Reider 2003) or "regulatory proxy" (Latham & Watkins 2003) by developing standards that then diffuse to the private sector. But they should not detract from the real – and significant – contributions that the Principles have made. They have raised public expectations for lending practices; averted an absolute 'race to the bottom' in project finance standards; and helped drive innovative and apparently genuine reforms in environmental and social due diligence at many banks, some of which are beginning to affect larger categories of international finance. The balance of evidence suggests that, even with all the weaknesses of the Principles and the numerous technical challenges of their implementation, "average practice" among project sponsors has improved over the last several years. This is not so hard to believe when one looks at the larger, evolving mosaic of international norms and standards that surround and support the Principles; as Danielson (2004) puts it:

> …international public- and private-sector organizations are increasingly observing their own expectations, independent of national law…Whether we look to the Equator Principles, the Citigroup Guidelines, the IFC Safeguard Policies, the International Council on Mining and Minerals Charter, the ICMM Declaration on exploration and mining in protected areas, the Forest Stewardship Council, the Global Reporting Initiative, or statements by [the International Petroleum Industry Environmental Conservation Association], there is a growing and increasingly consistent body of rules. There is an expanding set of consequences for those who do not know or do not follow these rules.

As an instrument of 'soft law,' then, the Equator Principles have greater force than their text might suggest. The Equator banks have made a simple, clear, and public commitment to apply international standards to their lending. In doing so they have set a benchmark to which consumers, NGOs, and local communities can hold them accountable, and which raises expectations even for non-Equator banks. Because of this, some of the loopholes that the Equator Principles would leave open if tested in a court of law, are effectively closed in the court of public opinion. The Principles cannot match effective national laws and institutions, either in issue coverage or in coercive force; neither can they effectively protect communities and habitats that lack the support of NGOs or face subtle environmental and social impacts. But they have created a quasi-legal, quasi-binding set of norms from which banks will be hard-pressed to retreat, especially in large and controversial projects.

Potential future developments

As Lazarus (2005) notes, "there's no going back" with the Equator Principles. "But will it go further?"

The only major change to the Principles that will occur with any certainty is the incorporation of the IFC's revised Safeguard Policies, probably to take place in the latter half of 2005. The process of overhauling the Safeguards has proven contentious, with NGOs and banks alike expressing concern that IFC's revised policies are too vague and discretionary (Hawser 2004). This has led to delays in their release; the final draft of the Safeguard Policies – now known as the Policy on Environmental Sustainability and Performance Standards (PPS) – was due in July 2005 (Frijns 2005), but as of this writing has yet to emerge.

Any analysis of the new PPS must be highly speculative, since the current "indicative draft" merely summarises stakeholder comments on a year-old draft and gives no indication of how the IFC will respond to its critics (IFC 2005a). But if the current draft and IFC's supporting documentation are any guide, the PPS will replace the ten Safeguard Policies with nine comprehensive performance standards, including new topics such as "labour and working conditions" and "community health and safety" (IFC 2005a) The PPS will also require "free, prior, and informed consultation," participation and disclosure throughout the life of the project; demand greater attention to sponsor capacity to manage environmental and social risks; cover all four core labour standards of the ILO; and mandate more comprehensive environmental and social impact assessments (Herz 2004; IFC 2005b). Thus, the PPS may close some of the gaps identified in the landmark CAO review of 2003. However, Herz (2004) identifies other substantive areas in which the PPS are apparently weaker than the Safeguard Policies. And NGOs have attacked the IFC for its declared intention to make the PPS "less prescriptive" and more "flexible" than the Safeguard Policies (IFC 2005b; Frijns 2005).

When the final PPS does emerge, Equator banks will face a choice. They could ignore the new standards and keep the Safeguard Policies, an outcome Lazarus (2005) considers unlikely; they could adapt the Performance Standards for their own use; or they could adopt them wholesale. Watchman (2005a) and FBD (2005, p.74) even suggest that the PPS could create a 'schism' among Equator banks, with some institutions embracing the new standards and others dropping out of the program or opting for different standards. Lazarus (2005), Miller (2005), Kyte (2005) and Bray (2005) think such a divide is improbable; the IFC, after all, has a strong interest in developing a standard that it is confident Equator banks will adopt. The most likely outcome, then, is that the Equator banks will revise the Principles to incorporate the PPS by reference, perhaps while tempering the PPS' discretionary approach with supplemental bank-specific policies.

Of the other potential areas of reform, the most likely to be addressed when the Principles are next opened for revision is that of reporting. While banks are reluctant to divulge information about their projects and their practices, banks such as Citigroup and ABN AMRO have led the way in this area by giving anonymized "case studies" in their annual citizenship/sustainability reports, and summary data such as the number of category A projects approved each year. These two banks and Barclays also give fairly detailed information about how the Equator Principles have been integrated into their project cycle and management practices. Rachel Kyte of IFC believes that such reporting practices will have to become standard protocol among Equator banks, especially as lack of transparency has become a key line of criticism for NGOs such as BankTrack (see Chan-Fishel (2005)).

There is a slim possibility that Equator banks will attempt to guard against 'free riders' by developing 'membership criteria' in the next iteration of the Principles, perhaps a simple reporting requirement with accompanying restrictions on the use of the Equator name and logo. This is a key goal for NGOs that monitor Equator (Frijns 2005), and one that happens to be shared by some non-US banks, according to WRI's Jon Sohn (2005). However, certainly not all banks are enthusiastic about the costs and complexity of formalising the Equator 'club'; Barclays' Chris Bray said "that implies a mechanism or secretariat, which requires funding, and that requires accountants and lawyers" and is thus undesirable, even though Barclays is concerned about the erosion of the Equator 'brand' by 'free riders' (Bray 2005). Moreover the spectre of US antitrust law continues to scare many banks, especially those based in the US, away from any agreement that appears to exert formal control over the project finance market (see **Appendix D** for analysis) (Armstrong 2005; Frijns 2005; Sohn 2005). Also as noted in section four, the idea of formalised membership in the Principles was taken up (and dropped) in the initial negotiations, and nothing in the interim has changed that would mitigate banks' objections.

Reforms that would really give the Equator Principles teeth – namely, the creation of a secretariat to audit banks' policies and procedures, exclude 'free riders' from the Equator 'club,' and hear complaints from project-affected communities – appear to be a step too far for the Equator banks in the near term. None of the individuals interviewed for this report thought it was a possibility, and banks have little incentive to take such a step. This seems to be the natural limit for a voluntary ISR regime operating without the threat of legal coercion, as theory suggests.

Appendix A. The Equator Principles

THE "EQUATOR PRINCIPLES":[13]
AN INDUSTRY APPROACH FOR FINANCIAL INSTITUTIONS IN
DETERMINING, ASSESSING AND MANAGING
ENVIRONMENTAL & SOCIAL RISK
IN PROJECT FINANCING

Preamble

Project financing plays an important role in financing development throughout the world. In providing financing, particularly in emerging markets, project financiers often encounter environmental and social policy issues. We recognize that our role as financiers affords us significant opportunities to promote responsible environmental stewardship and socially responsible development.

In adopting these principles, we seek to ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices.

We believe that adoption of and adherence to these principles offers significant benefits to ourselves, our customers and other stakeholders. These principles will foster our ability to document and manage our risk exposures to environmental and social matters associated with the projects we finance, thereby allowing us to engage proactively with our stakeholders on environmental and social policy issues. Adherence to these principles will allow us to work with our customers in their management of environmental and social policy issues relating to their investments in the emerging markets.

These principles are intended to serve as a common baseline and framework for the implementation of our individual, internal environmental and social procedures and standards for our project financing activities across all industry sectors globally.

In adopting these principles, we undertake to review carefully all proposals for which our customers request project financing. We will not provide loans directly to projects where the borrower will not or is unable to comply with our environmental and social policies and processes.

---

[13] Text as posted on the Equator Principles website (25 July 2005).

Statement of Principles

We will only provide loans directly to projects in the following circumstances:

1. We have categorised the risk of a project in accordance with internal guidelines based upon the environmental and social screening criteria of the IFC as described in the attachment to these Principles (Exhibit I).
2. For all Category A and Category B projects, the borrower has completed an Environmental Assessment (EA), the preparation of which is consistent with the outcome of our categorisation process and addresses to our satisfaction key environmental and social issues identified during the categorisation process.
3. In the context of the business of the project, as applicable, the EA report has addressed:

   a) assessment of the baseline environmental and social conditions
   b) requirements under host country laws and regulations, applicable international treaties and agreements
   c) sustainable development and use of renewable natural resources
   d) protection of human health, cultural properties, and biodiversity, including endangered species and sensitive ecosystems
   e) use of dangerous substances
   f) major hazards
   g) occupational health and safety
   h) fire prevention and life safety
   i) socioeconomic impacts
   j) land acquisition and land use
   k) involuntary resettlement
   l) impacts on indigenous peoples and communities
   m) cumulative impacts of existing projects, the proposed project, and anticipated future projects
   n) participation of affected parties in the design, review and implementation of the project
   o) consideration of feasible environmentally and socially preferable alternatives
   p) efficient production, delivery and use of energy

q) pollution prevention and waste minimization, pollution controls (liquid effluents and air emissions) and solid and chemical waste management

Note: In each case, the EA will have addressed compliance with applicable host country laws, regulations and permits required by the project. Also, reference will have been made to the minimum standards applicable under the World Bank and IFC Pollution Prevention and Abatement Guidelines (Exhibit III) and, for projects located in low and middle income countries as defined by the World Bank Development Indicators Database[14], the EA will have further taken into account the then applicable IFC Safeguard Policies (Exhibit II). In each case, the EA will have addressed, to our satisfaction, the project's overall compliance with (or justified deviations from) the respective above-referenced Guidelines and Safeguard Policies.

4. For all Category A projects, and as considered appropriate for Category B projects, the borrower or third party expert has prepared an Environmental Management Plan (EMP) which draws on the conclusions of the EA. The EMP has addressed mitigation, action plans, monitoring, management of risk and schedules.

5. For all Category A projects and, as considered appropriate for Category B projects, we are satisfied that the borrower or third party expert has consulted, in a structured and culturally appropriate way, with project affected groups, including indigenous peoples and local NGOs. The EA, or a summary thereof, has been made available to the public for a reasonable minimum period in local language and in a culturally appropriate manner. The EA and the EMP will take account of such consultations, and for Category A Projects, will be subject to independent expert review.

6. The borrower has covenanted to:

a) comply with the EMP in the construction and operation of the project
b) provide regular reports, prepared by in-house staff or third party experts, on compliance with the EMP and
c) where applicable, decommission the facilities in accordance with an agreed Decommissioning Plan.

[14] http://www.worldbank.org/data/countryclass/classgroups.htm

7. As necessary, lenders have appointed an independent environmental expert to provide additional monitoring and reporting services.

8. In circumstances where a borrower is not in compliance with its environmental and social covenants, such that any debt financing would be in default, we will engage the borrower in its efforts to seek solutions to bring it back into compliance with its covenants.

9. These principles apply to projects with a total capital cost of $50 million or more.

The adopting institutions view these principles as a framework for developing individual, internal practices and policies. As with all internal policies, these principles do not create any rights in, or liability to, any person, public or private. Banks are adopting and implementing these principles voluntarily and independently, without reliance on or recourse to IFC or the World Bank.

EXHIBIT I: ENVIRONMENTAL AND SOCIAL SCREENING PROCESS

Environmental screening of each proposed project shall be undertaken to determine the appropriate extent and type of EA. Proposed projects will be classified into one of three categories, depending on the type, location, sensitivity, and scale of the project and the nature and magnitude of its potential environmental and social impacts.

Category A: A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. A potential impact is considered “sensitive” if it may be irreversible (e.g., lead to loss of a major natural habitat) or affect vulnerable groups or ethnic minorities, involve involuntary displacement or resettlement, or affect significant cultural heritage sites. These impacts may affect an area broader than the sites or facilities subject to physical works. EA for a Category A project examines the project's potential negative and positive environmental impacts, compares them with those of feasible alternatives (including, the “without project” situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance. A full environmental assessment is required which is normally an Environmental Impact Assessment (EIA).

Category B: A proposed project is classified as Category B if its potential adverse environmental impacts on human populations or environmentally important areas—including wetlands, forests, grasslands, and other natural habitats—are less adverse than those of Category A projects. These impacts are site-specific; few if any of them are irreversible; and in most cases mitigatory measures can be designed more readily than for Category A projects. The scope of EA for a Category B project may vary from project to project, but it is narrower than that of Category A EA. Like Category A EA, it examines the project's potential negative and positive environmental impacts and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance.

Category C: A proposed project is classified as Category C if it is likely to have minimal or no adverse environmental impacts. Beyond screening, no further EA action is required for a Category C project.

EXHIBIT II: IFC SAFEGUARD POLICIES

As of 4 June 2003, the following is a list of IFC Safeguard Policies:

1.	Environmental Assessment	OP4.01 (October 1998)
2.	Natural Habitats	OP4.04 (November 1998)
3.	Pest Management	OP4.09 (November 1998)
4.	Forestry	OP4.36 (November 1998)
5.	Safety of Dams	OP4.37 (September 1996)
6.	Indigenous Peoples	OD4.20 (September 1991)
7.	Involuntary Resettlement	OP4.30 (June 1990)
8.	Cultural Property	OPN11.03 (September 1986)
9.	Child and Forced Labor Policy Statement	(March 1998)
10.	International Waterways	OP7.50 (November 1998)*

EXHIBIT III: WORLD BANK AND IFC SPECIFIC GUIDELINES

As of 4 June 2003, IFC is using two sets of guidelines for its projects.

1. IFC is using all the environmental guidelines contained in the World Bank *Pollution Prevention and Abatement Handbook* (*PPAH*). This Handbook went into official use on July 1, 1998.

2. IFC is also using a series of environmental, health and safety guidelines that were written by IFC staff in 1991-1993 and for which there are no parallel guidelines in the *Pollution Prevention and Abatement Handbook*. Ultimately new guidelines, incorporating the concepts of cleaner production and environmental management systems, will be written to replace this series of IFC guidelines. When completed these new guidelines will also be included in the *Pollution Prevention and Abatement Handbook*.

Where no sector specific guideline exists for a particular project then the World Bank General Environmental Guidelines and the IFC General Health and Safety Guideline will be applied, with modifications as necessary to suit the project.*

The table below lists both the World Bank Guidelines and the IFC Guidelines.

World Bank Guidelines (PPAH)

1. Aluminum Manufacturing
2. Base Metal and Iron Ore Mining
3. Breweries
4. Cement Manufacturing
5. Chlor-Alkali Plants
6. Coal Mining and Production
7. Coke Manufacturing
8. Copper Smelting
9. Dairy Industry
10. Dye Manufacturing
11. Electronics Manufacturing

22. Mixed Fertilizer Plants
23. Monitoring
24. Nickel Smelting and Refining
25. Nitrogenous Fertilizer Plants
26. Oil and Gas Development (Onshore)
27. Pesticides Formulation
28. Pesticides Manufacturing
29. Petrochemicals Manufacturing
30. Petroleum Refining
31. Pharmaceutical Manufacturing
32. Phosphate Fertilizer Plants

12. Electroplating Industry
13. Foundries
14. Fruit and Vegetable Processing
15. General Environmental Guidelines
16. Glass Manufacturing
17. Industrial Estates
18. Iron and Steel Manufacturing
19. Lead and Zinc Smelting
20. Meat Processing and Rendering
21. Mini Steel Mills
33. Printing Industry
34. Pulp and Paper Mills
35. Sugar Manufacturing
36. Tanning and Leather Finishing
37. Textiles Industry
38. Thermal Power Guidelines for New Plants
39. Thermal Power Rehabilitation of Existing Plants
40. Vegetable Oil Processing
41. Wood Preserving Industry

IFC Guidelines

1. Airports
2. Ceramic Tile Manufacturing
3. Construction Materials Plants
4. Electric Power Transmission and Distribution
5. Fish Processing
6. Food and Beverage Processing
7. Forestry Operations: Logging
8. Gas Terminal Systems
9. General Health and Safety
10. Health Care
11. Geothermal Projects
12. Hazardous Materials Management
13. Hospitals
14. Office Buildings
15. Offshore Oil & Gas
16. Polychlorinated Biphenyls (PCBs)
17. Pesticide Handling and Application
18. Plantations
19. Port and Harbor Facilities
20. Rail Transit Systems
21. Roads and Highways
22. Telecommunications
23. Tourism and Hospitality Development
24. Wildland Manage
25. Wind Energy Conversion Systems
26. Wood Products Industries
27. Waste Management Facilities
28. Wastewater Reuse

* Exceptions (the following are World Bank Guidelines not contained in the *PPAH* and currently in use):

Mining and Milling - Underground

Mining and Milling - Open Pit

Appendix B. Adopting institutions

Table 3. Institutions adopting the Equator Principles as of 25 July 2005.

Name[15]	Type	Country	Date Announced[16]	Project Finance (millions US$)[17]
1. ABN AMRO	Commercial bank	Netherlands	4/6/2003	--
2. Barclays	Commercial bank	United Kingdom	4/6/2003	1320.62
3. Citigroup	Commercial bank	United States	4/6/2003	931.09
4. Crédit Lyonnais (Calyon)	Corporate/investment bank	France	4/6/2003	1662.19
5. Credit Suisse First Boston	Commercial bank	Germany	4/6/2003	--
6. HVB Group	Commercial bank	Germany	4/6/2003	864.99
7. Rabobank Group	Commercial bank	Netherlands	4/6/2003	--
8. Royal Bank of Scotland	Commercial bank	United Kingdom	4/6/2003	1973.53
9. WestLB	State-owned bank[18]	Germany	4/6/2003	1290.47
10. Westpac Banking Corp.	Commercial bank	Australia	4/6/2003	1160.79
11. ING Group	Commercial bank	Netherlands	23/6/2003	1083.29
12. Royal Bank of Canada	Commercial bank	Canada	21/7/2003	--
13. MCC	Investment bank	Italy	29/7/2003	--
14. Dresdner Bank	Commercial bank	Germany	18/8/2003	--
15. HSBC Group	Commercial bank	United Kingdom	4/9/2003	1016.74
16. Dexia Group	Commercial bank	Belgium	18/9/2003	1080.70
17. Standard Chartered	Commercial bank	United Kingdom	8/10/2003	--
18. Mizuho Corporate Bank	Commercial bank	Japan	27/10/2003	--
19. CIBC	Commercial bank	Canada	3/12/2003	--
20. KBC Bank & Insurance Group	Commercial bank	Belgium	27/1/2004	--
21. Bank of America	Commercial bank	United States	15/4/2004	--

[15] As posted on Equator Principles website (25 July 2005).
[16] As posted on Equator Principles website (25 July 2005).
[17] Figures refer to provision of project finance between 1 July 2003 and 30 June 2004, as reported in the *Project Finance Yearbook 2004/2005*, p.68
[18] WestLB is gradually losing its traditional state support. On 19 July 2005, WestLB (along with the other German *landesbank*) lost the government guarantees that backed many of its loans. Recent news reports also suggest that the state of North Rhine-Westphalia may soon sell its 25% stake in WestLB (see "German public-sector banks lose state backing," *Agence France Presse* 17 July 2005; "WestLB, German state banks seek partners as guarantees expire," *Bloomberg.com* 19 July 2005).

22. Eksport Kredit Fonden	Official export credit agency	Denmark	14/5/2004	--
23. BBVA	Commercial bank	Spain	18/5/2004	1061.94
24. European Investment Bank	Multilateral development bank[19]	N/A	28/5/2004	--
25. Unibanco	Commercial bank	Brazil	1/6/2004	--
26. Banco Itaú	Retail bank	Brazil	12/8/2004	--
27. Banco Itaú BBA[20]	Corporate/investment bank	Brazil	12/8/2004	--
28. Banco Bradesco	Commercial bank	Brazil	8/9/2004	--
29. Scotiabank	Commercial bank	Canada	18/1/2005	--
30. Banco do Brasil	State-owned bank	Brazil	3/3/2005	--
31. JPMorgan Chase	Commercial bank	United States	25/4/2005	--
32. Manulife Financial	Insurance/asset management[21]	Canada	3/5/2005	--
33. Wells Fargo	Commercial bank	United States	12/7/2005	--

[19] EIB did not formally adopt the Principles, but issued an Environmental Statement stating that it considers the Principles an example of "international good practice" which it "subscribes to" when operating outside the European Union (EIB 2004).

[20] Itaú and Itaú BBA are the retail and corporate/investment arms, respectively, of the Brazilian firm Banco Itaú Holding Financeira SA (Banco Itaú 2004).

[21] Manulife does operate a Project Finance Group whose activities are so small as to not even merit mention in the Annual Report or website (Sutherland 2004).

Appendix C. The global project finance market

In lending circles, the seemingly generic term "project finance" in fact refers to a specialty financial vehicle also known as *non-* or *limited-recourse finance.* Often used to support large infrastructure and industry investments (including power plants, oil and gas pipelines, roads and railroads, airports, mines, incinerators, and chemical installations) project finance usually involves the creation of an independent project entity responsible for repaying the project's creditors. Unlike other forms of finance such as corporate loans and bonds, lenders to such entities have little or no access to the assets of the project sponsors in the event of a default. The loans that finance the project can only be repaid using revenues from the project itself, or the sale of the project assets (Esty & Megginson 2003).

For borrowers, the obvious advantage of this arrangement is that it transfers risk to the lenders, and allows much larger debts than would normally be warranted on the strength of the borrowers' balance sheets (Ahmed & Fang 1999). Indeed, it is typical for 70% of capital costs to be financed with debt in limited-recourse transactions, as opposed to 30-35% in a publicly traded company (Esty & Megginson 2003). As a result, lenders engaging in project finance closely scrutinize the soundness of the underlying proposal, rather than the creditworthiness of the sponsors; this gives them an unusual degree of influence over the governance and sometimes the design of the project. Lenders also attempt to "spread risk," usually by financing the deal through syndicated loans consisting of multiple commercial banks. Another common risk-spreading strategy is to seek government guarantees both explicit (as through an export credit agency) and implicit (as through the involvement of a "prime" multilateral lender such as the World Bank or Asian Development Bank) (Ahmed & Fang 1999; Bestani 2005; Case 1999, p.157-8; Esty & Megginson 2003; Missbach 2004;).

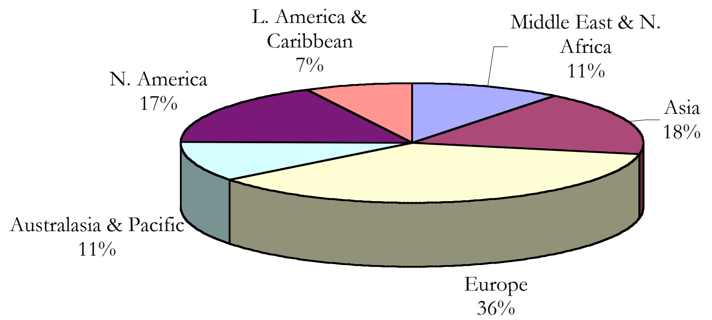
Even with such mechanisms, lenders tend to regard project finance as a risky endeavour requiring a high level of technical and financial expertise. As evidence of this, 95% of project finance debt is not even rated by investment agencies, and the default rate among those "premier" projects that are rated is close to 10% (Rigby 2005). Not surprisingly, project finance flows – particularly in developing countries – have proven highly volatile in the last decade, mirroring movements in the global economy. Project finance worldwide plunged by over 50% in the wake of the 1997 Asian financial crisis (Bestani 2005; Ahmed & Fang 1999), and after a strong resurgence dropped by almost 45% following the terrorist attacks and global recession of 2001 (Dealogic 2005c).

Size and distribution of the project finance market

Published figures concerning the size and distribution of the project finance market, and the activities of the major players within it, warrant caution. Even aggregate amounts, such as the total value of projects in a given year, can vary widely between sources and even for the same source published at different times (see for example the wide discrepancies between Ahmed & Fang (1999) and Dealogic (2005a, p.84)). Thus the data presented here, while the most reliable available, must be treated as estimates.

According to Dealogic (2005c), about $170 billion in project finance was arranged in 2004. Crucially, this sum includes refinancings and acquisitions of existing projects – new or 'greenfield' deals represented only $89.6 billion that year. Of that amount, roughly 60-70% was financed with loans from both public and private sources, around 10% (especially in developing countries) was financed with bonds, and project sponsors supplied the remainder as equity. While there are no official tallies of the public/private distribution of loans for greenfield projects, the Dealogic (2005a) table of the top 20 providers of project finance loans suggests that the bulk of the money is private. The only public institutions on the list are two large Chinese state-owned banks, which together supplied $2.4 billion in project finance loans from July 2003 – June 2004.

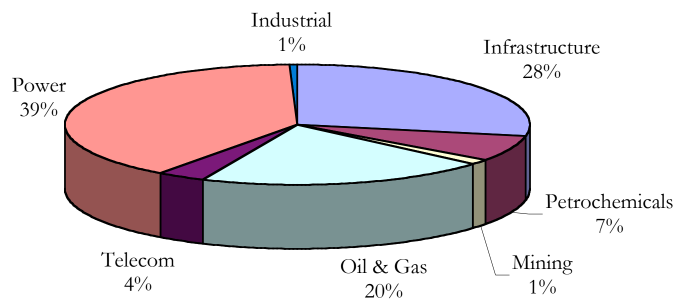
Figure 2. Regional Composition of Project Finance Deals
1 July 2003 - 30 June 2004
(US$ billions)



Source: Dealogic (2005a)

Where does all this money go? In 2003/2004, over half (53%) of total global project finance flowed to the industrialized economies of North America and Europe; 36% was destined for projects in Asia, Latin America and the Caribbean, and the Middle East and North Africa (see **Figure 2**). The power sector received by far the largest share (39%) of project finance in 2004, trailed by "infrastructure" (including everything from cellular phone towers to water treatment systems to roads) and oil and gas, receiving 28% and 20% of the finance respectively (see **Figure 3**).

Figure 3. Sectoral Composition of Project Finance Deals
1 July 2003 - 30 June 2004
(US$ billions)



Source: Dealogic (2005a)

Considering the geographic breakdown of project finance, and the proportion of that finance typically consisting of private loans, it seems reasonable to estimate that about $23 billion in private loans supported project finance transactions in developing countries in 2004. Strictly speaking, this is the component of global capital flows that would be subject to the Equator Principles were all commercial banks to join. But since the intent of the Principles is to influence *projects*, and not just their loan components, the total amount of Equator-relevant finance to developing countries in 2004 would have been about $32 billion.

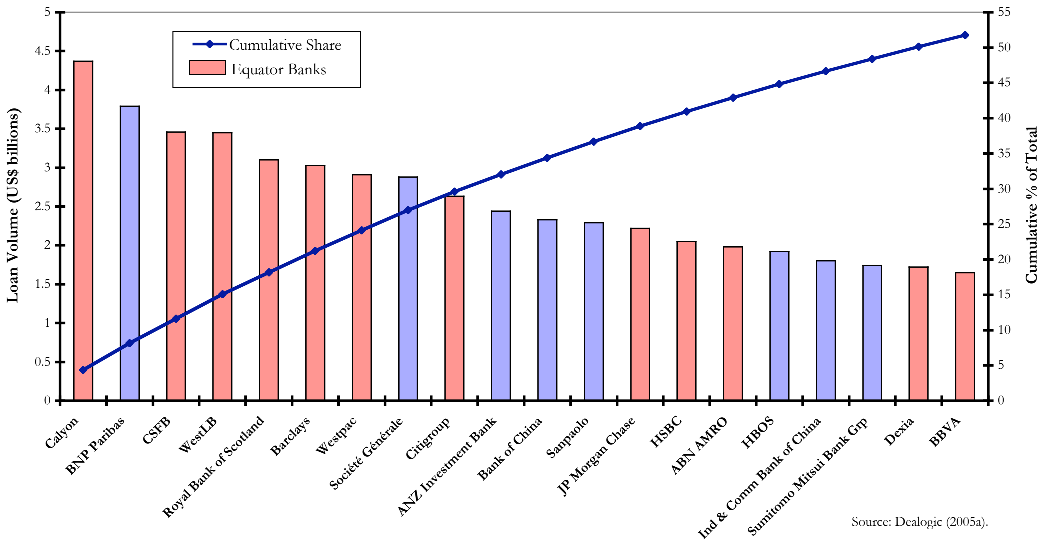
To put these last figures in perspective, gross private capital flows to developing countries reached $200 billion in 2004 (divided roughly evenly between bond issues and bank loans); loans and guarantees from the World Bank Group[22] totalled about $25.9 billion; and bilateral overseas development assistance amounted to roughly $50 billion (World Bank 2005).[23] So, the amount of bank lending (plus project equity) subject to the Principles represents a significant (albeit minority) proportion of overall private flows, and compares favourably to the global quantity of development assistance. Moreover, project finance in developing countries will probably continue to grow: since 2001, total global project finance has grown at a 20-30% annual rate (Dealogic 2005c), and has yet to reach its 2000 peak of $214 billion (Batchelor 2005). In 1997 alone the volume of project finance in developing countries reached $123.2 billion (Ahmed & Fang 1999), suggesting there is much room for further expansion of this category of international financial flows.

[22] Includes the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation and the Multilateral Investment Guarantee Agency.
[23] However, all but $13.7 billion of this bilateral ODA consists of "special purpose" grants for technical cooperation, debt forgiveness, disaster relief, and administrative costs – and thus does not fund the health, sanitation, environment, education, and anti-poverty programmes usually associated with foreign aid.

Major players in the project finance market

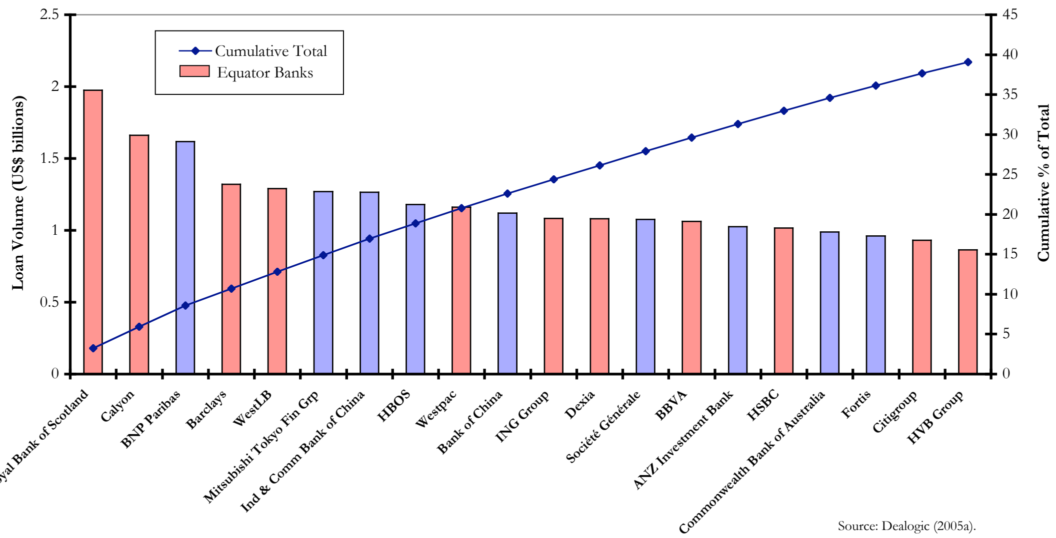
There is no one measure of participation in the project finance market; banks can serve as financial advisers, as loan providers, as bond bookrunners, or as mandated arrangers, or play multiple roles. That said, the roles of *mandated arranger* – the banks which deal directly with the borrower and organize loan syndicates – and *providers* – the banks which actually supply the funds – are the most significant levels of involvement in project finance. To give some indication of which banks are most active in these two areas, **Figures 4** and **5** show the loan volume and market share of the top twenty mandated arrangers and providers of project finance in 2003/2004.

Figure 4. Top 20 Global Mandated Arrangers of Project Finance
Loan Volume and Cumulative % of Total
1 July 2003 - 30 June 2004



Source: Dealogic (2005a).

Figure 5. Top 20 Global Providers of Project Finance
Loan Volume and Cumulative % of Total
1 July 2003 - 30 June 2004



Source: Dealogic (2005a).

Appendix D. Antitrust implications of the Equator Principles

Do the Equator Principles violate United States antitrust laws?

Three separate interviewees for this analysis – including two from the NGO community and one independent consultant – cited antitrust concerns as one reason why some of the largest North American banks only belatedly adopted the Equator Principles, and from the beginning resisted attempts by their European peers to make the Principles a formal community with a binding set of standards (Armstrong 2005; Frijns 2005; Sohn 2005). The recent accession of JPMorgan Chase, the United States' largest bank in terms of total assets (FDIC 2005), suggests that in their *current* form the Equator Principles are consistent with US antitrust laws. However, the answer to the antitrust question may imply constraints on how far US banks will take the Principles in the short to medium term, and thus may strongly influence the Principles' future content. A proper legal analysis lies beyond the scope of this paper, but a brief exploration is attempted here.

Relevant statutes and case law

Antitrust laws present an "omnipresent" concern for industries in the United States who attempt to self-regulate (Hemphill 2004). The principal US antitrust laws are the 1890 Sherman Act and the 1914 Federal Trade Commission Act (Hemphill 1992), and in practice it falls to the US Federal Trade Commission (FTC) Bureau of Competition to determine the acceptability of industry self-regulation schemes, and bring enforcement action where it deems necessary.

Since the early twentieth century the FTC's stance towards self-regulation has evolved from one of hostile suspicion to "watchful encouragement," in the words of the FTC's former general counsel (Valentine 1998), as regulators have grown increasingly convinced of the value of self-regulation in informing consumers and introducing desirable ethical or technological standards (Strenio et al 2004). However, many professional and industry associations have discovered to their detriment that not all self-regulatory schemes meet the approval of the FTC. While there are no hard and fast rules in this area, case law and statements from regulators suggest that the courts will reject a scheme if they make one of the following two legal findings:

- The scheme serves a narrow economic interest by unjustifiably:
    - barring competitors from the marketplace;
    - stifling innovation;
    - or raising prices to generate windfall profits
- The scheme prevents consumers from receiving information relevant to their

purchasing decisions, or otherwise restricts consumer choice.

In addition, schemes exhibiting the following 'risk factors' invite particular scrutiny from the courts (Pitofsky 1998, Valentine 1998):

- The participants have converging economic interests;
- The participants wield disproportionate market power;
- The scheme is mandatory;
- The scheme includes enforcement and penalties;
- The scheme is developed and governed in a closed, secretive, or unfair manner.

The first three risk factors were explicitly laid down in the 1986 Supreme Court ruling in *FTC v. Indiana Federation of Dentists.* However, that same decision left open the possibility that self-regulation with important social benefits could still be constitutional, *even if it is found to be anticompetitive* (Valentine 1998). Robert Pitofsky, former chairman of the FTC, agrees that an industry may legitimately self-regulate "to enhance its reputation…by establishing ethical standards and disciplining those who do not abide by the standards," adding that "self-regulation often may deter conduct that would be universally considered undesirable, but that the civil or criminal law does not prohibit" (Pitofsky 1998).

A review of major cases involving antitrust and self-regulation yields a sharper picture of the sorts of self-regulatory schemes that compel the courts and the FTC to act. Two salient cases are the Supreme Court rulings in *Indiana Federation of Dentists* and *Allied Tube & Conduit Corp. v. Indian Head, Inc.* (1988). *Indiana Federation of Dentists* involved a dentists' association that prevented its members from releasing patient x-rays to insurance companies, even at the request of patients. The Supreme Court found that the dentists "improperly substituted their view of what was best for consumers for the preferences of the consumers themselves" (restricted consumer choice) and, though well intentioned, involved professional issues (privacy) beyond the dentists' realm of expertise. This, together with the dentists' power deriving from the first three 'risk factors' above, led the Supreme Court to invalidate the x-ray rule (Valentine 1998).

The case of *Allied Tube* involved manufacturers of steel electrical conduits who rigged a vote by the industry's Fire Protection Association on whether to certify the safety of competing plastic conduits. The Supreme Court found the FPA's action to be anticompetitive and invalid, but in doing so it established two significant legal precepts. First, a "rule of reason" should guide antitrust decisions, according to which the FTC must prove that the competitive injury from self-regulation exceeds its social benefits. Second, self-regulatory schemes are more likely to withstand legal challenge if they are administered by open and fair procedures (the fifth 'risk factor' above).

Other notable cases involving self-regulating industries include a 1982 Department of Justice victory over the National Association of Broadcaster's rule against featuring multiple products in one television advertisement (a rule that illegally increased the demand for and price of television time); a 1989 FTC action against the Detroit Auto Dealers association rules on opening hours; and the Supreme Court decision in *National Society of Professional Engineers v. United States* (1978) in which the professional engineers argued unsuccessfully that their rule against competitive bidding protected engineers from the temptation of performing inferior work for low bids (the Supreme Court found the rule to be an inappropriate way of ensuring safe construction, and a thinly veiled attempt at curtailing price competition) (Pitofsky 1998; Strenio et al 2004).

Application to the Equator Principles

The Equator Principles are a unique instance of industry self-regulation, in that they can be characterized as an attempt by the banking industry to regulate the behaviour of its clients (project sponsors) (Arnold 2005), ostensibly for the benefit of bankers, clients, and third parties affected by project finance. They are also unique in that they appropriate for the use of private industry, lending standards in place at a multilateral agency. Nevertheless, these facts should not obscure the essential characteristics of the Principles: they are a purely voluntary set of transparent standards with no monitoring or enforcement mechanisms.

Even so, there is an argument to be made that the Principles violate antitrust law. The group of adopting institutions arguably satisfies the first two 'risk factors' identified above (in that the Equator banks control 80% of the project finance market, and share economic interests). In addition, the Equator banks include the majority of the world's leading arrangers of project finance (see **Figures 4 and 5**) – meaning that their lending standards become the *de facto* standards for many transactions involving non-Equator banks. These facts could lead one to conclude that the Principles restrict borrowers' (consumers') choices over which standards, if any, to apply to their projects, and are thus anticompetitive in nature.

This case seems unlikely to prevail. First, the Principles could hardly be construed as a regime to *exclude* competing banks; if anything, many banks view adopting the Principles as an action more likely to drive them out of the marketplace than guarantee their access to it. After all, non-Equator banks are still free to participate in syndications with Equator banks – as long as the project satisfies the Principles. Second, the Principles are purely voluntary and permit "justified deviations" from IFC standards, and as such are not a strictly one-size-fits-all yardstick for project sponsors.

Third, as **Figure 4** shows, there are enough leading mandated arrangers outside the Equator regime that a truly determined project sponsor could probably find a non-Equator bank willing to finance. Fourth, it is now considered sound banking practice to perform some kind of environmental and social due diligence before financing large projects. The adoption of one uniform set of policies and procedures, therefore, has potential economic benefits. And the selection of IFC standards was both neutral (not benefiting any one bank) and justified: those standards have been honed through years of consultation with clients and NGOs, and have gained recognition from export credit agencies, regional development banks, and NGOs as one benchmark of good practice. Last, but certainly not least, the social benefits that accrue from curtailing competition in environmental and social standards for project finance arguably exceed any "competitive injuries" that might result (and are as yet impossible to discern in recent financial data).

As four of the US's five largest banks have evidently concluded, then, the Equator Principles as now formulated have minimal antitrust implications. But does US antitrust law constrain the *future* evolution of the Principles?

At present there are no concrete proposals for revisions to the Principles, although all participants in the process expect further negotiations at the end of 2005 following the release of the IFC's new Policy and Performance Standards (see section 6). However, it is conceivable that in the next two to three years the Equator banks will seek to extend and deepen the Principles' procedural commitments, as well as formalize participation in the process. As discussed in the text, new procedural commitments might include the establishment of agreed reporting requirements for Equator banks; more extensive public disclosure of project documentation; or even the creation of an Equator secretariat to hear grievances and monitor compliance. Banks might also seek to prevent the erosion of the Equator 'brand' by setting minimum criteria (such as reporting, or attending meetings) for a bank to call itself an Equator institution.

Even if all these reforms become reality, it seems unlikely that the Equator Principles would trigger antitrust action. Turning to the 'risk factors' first, the Equator Principles would continue to remain a purely voluntary initiative which banks can enter and exit at will; 'enforcement actions' such as removing a bank's Equator status would likely be too mild to be considered a threat to competition; and the creation of an independent secretariat and common reporting requirements would, if anything, strengthen the openness and credibility of Equator governance. As for the two legal criteria for antitrust violations, none of the reforms in the offing (including the new IFC Policy and Performance Standards) would give the Principles such force as to exclude or marginalize non-Equator banks from project finance (recall that non-Equator banks always have been able to participate in syndicates with Equator banks, even as mandated arrangers).

References

ABN AMRO (2003). *Environmental report 2002.* http://www.abnamro.com/environmentreport/2002/index_en_html_folder_45_envelope_47_page_66.htm (last visited 21 August 2005).

----- (2004). *Sustainability report 2003.* Amsterdam: ABN AMRO, 2004.

----- (2005). *Sustainability report 2004.* Amsterdam: ABN AMRO, 2005.

Ahmed, P. A. and X. Fang (1999). *Project Finance in Developing Countries.* Ch.1. Washington, DC: International Finance Corporation, 1999.

Amalric, Franck (2005). "The Equator Principles: a step towards sustainability?" University of Zurich CCRS Working Paper No. 01/05, January 2005.

Anastassiades, M. and E. Cochard (2004). "Principle finance." *Project Finance* 1 October 2004, p.23.

Armstrong, Glen (2005). Telephone interview, 11 July 2005.

Arnold, Matthew (2005). Telephone interview, 11 July 2005.

Bainbridge, T. (2004). "The Equator Principles: environment and social issues in project financing." *CMS Cameron McKenna Environment Law Bulletin* January 2004, p.4.

Banco Itaú (2004). "Itaú and Itaú BBA subscribe to the Equator Principles." Press release. 12 August 2004.

BankTrack (2004). *Principles, profits, or just PR? Triple P investments under the Equator Principles, an anniversary assessment.* Amsterdam: BankTrack, June 2004.

Barclays (2005a). "Environmental and social risk assessment in lending." http://www.personal.barclays.co.uk/PFS/A/Content/Files/Enviroment_and_Social_Risk.pdf (last visited 21 August 2005).

----- (2005b). *Corporate responsibility report 2004.* London: Barclays, 2005.

Basel Committee on Banking Supervision (2001). "Customer due diligence for banks." Basel, Switzerland: Bank for International Settlements, October 2001.

Batchelor, C. (2005). "Project finance deals hit $170bn." *Financial Times* 11 January 2005, p.43.

Bestani, R. (2005). "The new key to Asian financing today." *Project Finance Yearbook 2004/2005.* ed. Michaela Crisell. p.1-4.

Bray, Christopher (2005). Telephone interview, 6 July 2005.

Bulleid, R. (2004). "Putting principles into practice." *Environmental Finance* June 2004.

Burrett, R. (2005). "Implementing the Equator Principles to assess environmental risk in project finance deals." Presentation given at *Environmental Finance*'s "Conference on climate change & investment: asset allocation in a carbon-constrained world." London, 7 June 2005.

Carter, P. (1997). "The environment strikes back." *Project Finance* 11 (November 1997).

Carter, P. (2005). Telephone interview, l2 July 2005.

Case, P. V. M. (1999). *Environmental risk management and corporate lending: a global perspective.* New York: CRC Press, 1999.

Chan-Fishel, M. (2005). *Unproven principles: the Equator Principles at year two.* Amsterdam: BankTrack, June 2005.

Citigroup (2005). *Citizenship report 2004.* New York: Citigroup, 2005.

Compliance Advisor/Ombudsman (2003). *A review of IFC's Safeguard Policies.* Washington, DC: World Bank, January 2003.

Cooperative Insurance Service (2004). "Scope and content of Equator Principles reporting: an investor perspective." December 2004. http://www.banktrack.org/fileadmin/user_upload/documents/J_Equator_Principles/Equator_principles/Final_Version_of_CIS_reporting_recommendations.doc (last visited 20 August 2005).

Danielson (2004). "Sustainable development, natural resources and research." *19-FALL Nat. Resources & Env't* 39.

Dealogic (2005a). "League tables for the project finance market." *Project Finance Yearbook 2004/2005.* ed. Michaela Crisell. p. 64-83.

Dealogic (2005b). "Dealogic regional project finance league tables by sector 2004." *Project Finance* 258, p.68.

Dealogic (2005c). "Dealogic global and regional sources of project financing 1999-2004." *Project Finance* 258, p.76.

DiLeva, C.E. (2004). "Sustainable development and the World Bank's Millennium Development Goals." 19-*FALL Nat. Resources & Env't* 13.

"Draft recommendation on common approaches on environment and officially supported export credits: revision 6." (2001). Organisation for Economic Cooperation and Develompent Trade Committee, TD/ECG(2000)11/REV6.

Equator Principles website. www.equator-principles.com. Last visited 25 July 2005.

Esty, B.C. and W. L. Megginson (2003). "Creditor rights, enforcement, and debt ownership structure: evidence from the global syndicated loan market." *Journal of Financial and Quantitative Analysis* 38:1, p.37-59.

European Investment Bank (2004). "Environmental Statement 2004." p.1-3.

Federal Deposit Insurance Corporation (2005). "Top 100 banks and thrifts, nationally by asset size." 31 March 2005. From FDIC's online Statistics on Depository Institutions, at http://www2.fdic.gov/sdi/ (last visited 27 July 2005).

Freshfields Bruckhaus Deringer (2005). "Banking on responsibility: part I of Freshfields Bruckhaus Deringer Equator Principles Survey 2005." London: FBD, July 2005.

Frijns, J. (2005). Telephone interview, 28 June 2005.

Ganzi, J., F. Seymour, S. Buffett and N. K. Dubash (1998). *Leverage for the environment: a guide to the private financial services industry*. Washington, DC: World Resources Institute, 1998.

Ganzi, J., R. Huppman, and C. A. Marcoaldi. (2004). Banking industry integrating environmental and social issues: how much and how fast?" Environmental Resources Management, 2004.

Greenfield, Z. (2004). "The Equator Principles: a new industry framework for environmental and social standards in global project finance lending." http://www2.gsb.columbia.edu/socialenterprise/careers/internships/csrspapers.html (last visited 10 August 2005).

Gunther, M. (2004). "The mosquito in the tent." *Fortune* 31 May 2004. p.158

Gupta, A. K. and L. J. Lad (1983). "Industry self-regulation: an economic, organizational, and political analysis." *Academy of Management Review* 8:3, p.416-25.

Hawser, A. (2005). "A matter of principles." *Global Finance Magazine* 23 January 2005.

Hemphill, T. A. (1992). "Self-regulating industry behavior: antitrust limitations and trade association codes of conduct." *Journal of Business Ethics* 11:12, p. 915-920.

----- (2004). "Monitoring global corporate citizenship: industry self-regulation at a crossroads." *Journal of Corporate Citizenship* 14, p.81

Herz, S. (2004). "Standards at stake: exploring common ground between Equator banks and civil society on IFC's proposed Performance Standards." Amsterdam: BankTrack, December 2004.

Hile, G. (2005). Telephone interview, 18 July 2005.

Hsia, S. (2003). "Foreign direct investment and the environment: are voluntary codes of conduct and self-imposed standards enough?" 9 *Envtl Law* 673.

Ibars, M. (2004). "Keeping lenders clean." *LatinFinance* June 2004, No.157.

International Finance Corporation (1998a). *Doing better business through effective public consultation and disclosure: a good practice manual.* Washington, DC: IFC, 1998.

----- (1998b). "Policy on disclosure of information." September 1998.

----- (1998c). "Operational Policy 4.01, environmental assessment." October 1998.

----- (2003). *Sustainability review 2003*. Washington, DC: IFC, 2003.

----- (2005a). "Policy on social and environmental sustainability and performance standards: comprehensive indicative draft." Washington, DC: IFC, 20 May 2005

----- (2005b). "IFC's Performance Standards – what's new and different." http://www.ifc.org/

ifcext/policyreview.nsf/AttachmentsByTitle/Performance+Standards+What%27s+New+and+Different/$FILE/PScomparison.pdf (last visited 24 August 2005).

International Organisation for Standardisation (2005). "Overview of the ISO system." http://www.iso.org/iso/en/aboutiso/introduction/index.html (last visited 8 August 2005)

ISIS Asset Management (2002). *A benchmarking study: environmental credit risk factors in the pan-European banking sector.* London: ISIS, September 2002. http://www.fandc.com/uploadfiles/co_gsri_banking_report_sep_2002.pdf (last visited 3 August 2005)

Ivan-Smith, E. (2005). "To know is not enough: challenges in implementing the Equator Principles, a consultant's perspective." Presentation given at Freshfields Bruckhaus Deringer seminar on the Equator Principles, London, 5 July 2005.

"JP Morgan Chase announces agreement with shareholder groups on environmental risk management proposal." *Business Wire* 27 April 2004.

Kass, S. L. and J. M. McCarroll (2004). "The Equator Principles: lending with an environmental string." *New York Law Journal* 23 April 2004.

Latham & Watkins LLP (2003). "Private lenders commit to apply 'Equator Principles' as environmental and social benchmarks for project financing." Bulletin No. 317, 5 August 2003. available from www.equator-principles.com (last visited 22 August 2005)

Lawrence, R. F. and W. L. Thomas (2004). "The Equator Principles and project finance: sustainability in practice?" 19-*FALL Nat. Resources & Env't* 20.

Lazarus, S. (2004a). "A matter of principal." *Project Finance* 3 March 2004.

----- (2004b). "The Equator Principles: a milestone or just good PR?" *Global Agenda* 26 January 2004.

----- (2005). Telephone interview, 6 July 2005.

Madha, T. (2004). "Blank checks?" *Project Finance* 1 October 2004, p.19.

Maitland, A. (2004). "The value of an investment in human rights." *Financial Times* 28 October 2004, p.11.

Metcalf, R. and N. Rose (2004). "Hydro project finance; breaking the waves." *Power Economics* 29 February 2004, p.20.

Miller, S. (2005). Telephone interview,

Missbach, A. (2004). "The Equator Principles: drawing the line for socially responsible banks? An interim review from an NGO perspective." *Development* 47:3, p.78-84.

Monahan, J. (2005). "Principles in question." *The Banker* 7 March 2005, p.60.

Murray, G. (2005). Telephone interview, 28 June 2005.

N (2005). Telephone interview, 29 June 2005.

Nelthorpe, T. (2003). "Principled finance?" *Project Finance* June 2003, p.1.

Pitofsky, R. (1998). "Self-regulation and antitrust." Prepared remarks for the DC Bar Association Symposium, Washington, DC. 18 February 1998.

Rigby, P. (2005). "When projects fail: 10 years of rated project finance debt." *Project Finance Yearbook 2004/2005.* ed. Michaela Crisell. p.38-43.

Sabatini, J. (2004). "Banks begin to evaluate impact of project financing." *Investment News* 7 June 2004, p.17.

Smith, J. and L. Pitt (2003). "Financiers must meet criteria." *Business Day (South Africa)* 14 July 2003. p.4

Sullivan & Cromwell LLP (2003). "Re: Equator Principles – new environmental and social guidelines for project finance transactions." Memorandum. 18 June 2003. available at www.equator-principles.com (last visited 22 August 2005)

Sohn, J. (2005). Telephone interview, 8 July 2005.

Strenio, A., A. Levine, A. Ugurlayan, and M. Zwerling (2004). "Self-regulatory techniques for threading the antitrust needle." 18 *Antitrust* 57.

Sutherland, W. R. (2004). "Direct testimony of William R. Sutherland on behalf of U.S. Geothermal, Inc." Before the Idaho Public Utilities Commission in Cases No. IPC-E-04-08 and IPC-E-04-10, 9 June 2004. lines 7-21.

Turner, M. (2004). "Appealing to money men." *Financial Times* 24 June 2004, p.3.

Valentine, D. A. (1998). "Industry self-regulation and antitrust enforcement: an evolving relationship." Prepared remarks for the Seminar on New Developments in Antitrust Policy, IDC Campus, Herzlia, Israel. 24 May 1998.

Wade, R. (1997). "Greening the Bank: the struggle over the environment, 1970-1995." D. Kapur, J. Lewis and R. Webb, eds. *The World Bank: its first half-century.* vol. II. Washington, DC: Brookings Institution, 1997. p.611-734.

Wasserstrom, R. and S. Reider (2003). "Oil project lending faces new environmental litmus test." *Oil & Gas Journal* 101:39, p.35-6.

Watchman, P. (2005a). "Beyond the Equator." *Environmental Finance* 6:8, p.16-17.

----- (2005b). Remarks given at at Freshfields Bruckhaus Deringer seminar on the Equator Principles, London, 5 July 2005.

World Bank (2005). *Global development finance 2005: analysis and summary tables.* Ch.1 Washington, DC: World Bank, 2005.

Wotruba, T.R. (1997). "Industry self-regulation: a review and extension to a global setting." *Journal of Public Policy & Marketing* 16:1, p.38-54.

Wright, C. (2005). "International organizations and regime formation – the case of IFC and the Equator Principles." Paper presented at workshop "Research Bank on the World Bank," Central European University, Budapest, 1-2 April 2005.

Yeomans, M. (2005). "Banks go for green." *Time* 22 May 2005.