

# THE CHARITABLE DEDUCTION GAMES: MIMICKING IMPACT INVESTING

Khrista Johnson\*

The article addresses an issue that could result in profound changes in the ability of the United States to resolve the most pressing humanitarian and global problems of our times. It provides an analysis of the tools required to enable US donors to do more good. In an efficient market, capital ends up in its most productive use. In charitable giving, donations are not always allocated to their most effective use due to an absence of information regarding what is accomplished with collective charitable investment. The article sets forth the concept of an “efficient charitable market,” which is predicated upon the ability of donors to make informed decisions about where to invest. The article proposes that a newly developed U.S. business sector at the intersection of the for-profit and nonprofit worlds holds valuable tools for providing donors with the ability to engage in more efficient giving.

## INTRODUCTION

The UN has stated, “Millions still live in extreme poverty, yet the world has enough money, resources, and technology to end poverty.”<sup>1</sup> If the charitable market could perform with the efficiencies intrinsic to the financial markets, it could have profound impacts on the betterment of humankind. Unfortunately, the charitable market is not remotely as efficient as the private sector. This is due to many reasons. One reason is the problem with our current U.S. cross-border giving laws. This problem was evaluated in the first two articles of this series.<sup>2</sup> However, even if we

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\* Associate Professor of Law, Pepperdine University School of Law; J.D. *cum laude*, Harvard Law School, 2003; A.B. Harvard College, *magna cum laude*.

1. *Get Involved*, UNITED NATIONS MILLENNIUM DEV. GOALS, <https://www.un.org/millenniumgoals/getinvolved.shtml> (last visited Mar. 5, 2014).

2. Khrista Johnson, *The Charitable Deduction Games: Are the Laws in Your Favor?*, 5 COLUM. J. TAX L. 41 (2013); Khrista Johnson, *The Charitable Deduction Games:*

fix this problem, an efficient flow of funds is still impeded unless we equip donors with the information they need to receive the best return, or what is termed social impact, on their investment. In this article, I outline how we may provide donors with the information they need to direct funding to those charities that will put it to the most productive use.<sup>3</sup> This end goal of achieving an efficient charitable market would allow us to address some of the most pressing problems confronting our global society today.

*The “Efficient Market” and Why The Charitable Market Falls Short*

In an efficient market, private sector investors rarely receive returns that exceed average market returns given the amount of information (and fluidity of funds) available at the time of the investment. With the financial market, the quality of an investor’s return on his or her investment is obvious and easily measured: it is money received. However, in the charitable market, measuring return or social impact is not well defined. Social impact may be thought of as what the charity has accomplished with a donation. It presupposes that charities would be able to report information on such accomplishments.

In the efficient charitable market, donors receive largely varying returns because often they do not have access to the information necessary to make an informed investment decision. Donors currently cannot differentiate between effective and ineffective charities because there is not a standardized method for measuring social impact and relaying that information to them in a way that is relevant.<sup>4</sup> We have failed to request this information from charities, and charities have not determined this information for themselves.<sup>5</sup> A donor who gives to a charity that a charity reviewer or evaluator recommends will receive more measurable social impact for his or her buck than a donor who does not; nevertheless, even they are falling short of providing donors with complete information. As Steven Goldberg points out, donors often do not know what charities are accomplishing, but rather only what they are trying to accomplish.<sup>6</sup> Charities report on their efforts instead of their results.<sup>7</sup> This restriction of

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*Catching Change*, 31 GA. ST. U. L. REV. 289 (2015).

3. See *Chicago Ideas: Efficient Markets Theory*, UNIV. OF CHI. BOOTH SCH. OF BUS., <http://www.chicagobooth.edu/ideas/efficientmarket.aspx> (last visited Mar. 5, 2014) (explaining that investment capital is allocated to its most productive use in an efficient market).

4. STEVEN H. GOLDBERG, BILLIONS OF DROPS IN MILLIONS OF BUCKETS: WHY PHILANTHROPY DOESN’T ADVANCE SOCIAL PROGRESS 192 (2009).

5. *Id.* at 193.

6. *Id.* at 192–93.

7. *Id.* at 193.

information highlights inefficiencies of the charitable market because it shows investments often do not end up with the highest performing charities.

*Impact Investing Has the Right Tools for an Efficient Charitable Market*

The measuring social impact problem that plagues the charitable sector and prevents an efficient charitable market is notable absent from an emerging U.S. business sector known as impact investing.<sup>8</sup> This new economic sector seeks to use the best of business thought to resolve social and environmental problems.<sup>9</sup> Like the charitable sector, impact investing has social impact as a goal, but it has profit earning as another. In other words, it is a growing sector for those consumers and investors who are increasingly making their choices based upon their “personal, social, and environmental values” and thus demand that businesses have a double bottom line: profit and social impact.<sup>10</sup> A double bottom line means that a business will earn a profit for investors and produce a benefit to society or social impact.<sup>11</sup> This sector has resulted in a new legal structure known as a benefit corporation,<sup>12</sup> and well-known companies, such as Patagonia, are gaining consumer and investor attention.<sup>13</sup> In order for investors to make informed choices within this sector, “new assessment tools” and a process for “transparent decision making” have been developed.<sup>14</sup> In sum, impact investors want benefit corporations to be transparent and accountable in their measuring of profit and social impact. From its inception, impact investing has had the mechanisms necessary to ensure efficiency, i.e., the flow of capital to those companies that will put it to its most productive

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8. Kathleen Wilburn & Ralph Wilburn, *The Double Bottom Line: Profit and Social Benefit*, 57 BUS. HORIZONS 11, 12 (2013) (explaining several names have been used to describe the sector, e.g., creative capitalism, philanthrocapitalism, impact investing, inter alia). For purposes of this article, I will refer to this sector as impact investing.

9. Amit Bouri, *How Standards Emerge: The Role of Investor Leadership in Realizing the Potential of IRIS*, INNOVATIONS, Summer 2011, at 157.

10. Wilburn, *supra* note 8, at 12.

11. Mariano L. Bernardez, *Minding the Business of Business: Tools and Models to Design and Measure Wealth Creation*, 22 PERFORMANCE IMPROVEMENT Q. 17, 18 (2009).

12. Wilburn, *supra* note 8, at 12.

13. See *Corporate Responsibility*, PATAGONIA, <http://www.patagonia.com/us/patagonia.go?assetid=67372> (last visited Aug. 13, 2014) (describing Patagonia’s efforts to ensure that their products are produced under safe, fair, legal, and humane working conditions); see also *B Corps: Firms with Benefits*, THE ECONOMIST, Jan. 7, 2012, available at <http://www.economist.com/node/21542432/print> (outlining the qualification requirements for benefit corporations).

14. Wilburn, *supra* note 8, at 12.

use.<sup>15</sup>

In the charitable sector, donors are becoming more focused on the actual achievement of social good in the same way that impact investors are, especially in terms of today's most pressing global problems. If a level of efficiency similar to what is present in the financial markets is to be reached in the charitable market, charities must become more transparent and accountable in terms of how they measure social impact as well. The solution is to provide charities with proper assessment tools, akin to those used in impact investing.

*Mimicking Impact Investing: New Tools for an Efficient Charitable Market*

In this article, I identify how impact investing tools may help to establish an efficient charitable market. Part I explains the origins of impact investing and why it holds valuable keys for measuring social impact in the charitable sector today. Part II examines how an accessible tool used in impact investing may serve as part of the solution for the problem of measuring social impact. Part III answers how donors, once equipped with accurate social impact information, may select a charity in which to invest. This article sets forth a way to direct investment to those charities that will put it to its most productive use in order to establish a more efficient charitable market by examining the tools used in impact investing.

I. IMPACT INVESTING & ITS RELEVANCE TO THE CHARITABLE SECTOR

A growing movement in the U.S. business sector centers around equipping companies with a new business model that will allow them to “combine a social mission with a business engine” and to show results in terms of profits and social impact, i.e., the double bottom line.<sup>16</sup> This movement has resulted in impact investing.<sup>17</sup> Impact investors include the following: “large foundations, traditional financial institutions, high net worth individuals, and government agencies.”<sup>18</sup>

A crucial step in establishing an efficient charitable market is providing donors with a way to determine which charities will put capital to its most productive use. Accordingly, donors need to know what

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15. See Wilburn, *supra* note 8, at 15 (explaining how the flow of capital will be determined by which companies will put funds to their most productive use).

16. Wilburn, *supra* note 8, at 11.

17. Heerad Sabeti, *The For-Benefit Enterprise*, 89 HARV. BUS. REV. 99, 104 (2011).

18. Bouri, *supra* note 9, at 148.

“return” they will receive if they invest in a given charity. In the charitable sector, a “return” is the social impact or good accomplished. Without a way to measure social impact, donors cannot make an informed decision about where to invest.

As explained in this section, it would make sense that the same tools impact investors use to make informed decisions would be integral to donors. After all, both impact investors and donors want to know what social impact their dollars have had, and they must choose where to invest among numerous organizations.<sup>19</sup> The only difference is that impact investors also want to know what profit their dollars have made. In this section, I explore the recent history of impact investing, why its tools make sense for the charitable sector, and the current state of and thought on the problem of measuring social impact and comparing options within the charitable sector.

#### A. *Origins of Impact Investing*

The most important shaper of impact investing by a wide margin has been B Lab, a nonprofit organization established by former corporate executives.<sup>20</sup> In fact, B Lab’s stated aim is to create the sector.<sup>21</sup> Accordingly, B Lab’s three initiatives have centered around the following: (1) advancing “legislation [to create] a corporate form, [i.e.], the benefit corporation [or B corporation]”, (2) “[building] a community of certified B corporations”, and (3) “[speeding up] the growth of impact investing “through use of [customized tools that allow investors to] hold companies accountable for creating both profit and social good.”<sup>22</sup> I will consider the first initiative briefly below before turning to the third initiative, which holds the most relevance in terms of creating a more efficient charitable market.

B Lab has successfully completed its first initiative. A necessary component of impact investing is a specialized corporate form,<sup>23</sup> in the same way that a nonprofit corporation is an essential component of having a charitable sector.<sup>24</sup> B Lab drafted the legal documents state legislatures

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19. Wilburn, *supra* note 8, at 12.

20. Wilburn, *supra* note 8, at 13; see also Mark Loewenstein, *Benefit Corporations: A Challenge in Corporate Governance*, 68 BUS. LAW. 1007, 1012–13 (2013) (explaining B Lab’s mission and how it seeks to achieve that mission).

21. Bouri, *supra* note 9, at 157.

22. See Wilburn, *supra* note 8, at 12–13 (stating that the GIIRS Ratings and Analytics system (“GIIRS”) described *infra* in Part IV, is one such tool).

23. Wilburn, *supra* note 8, at 13–14.

24. See *Exemption Requirements - 501(c)(3) Organizations*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption->

have used to introduce a groundbreaking corporate structure known as the benefit corporation.<sup>25</sup> At present, nineteen states and the District of Columbia have adopted this structure. One of the “benefits” of this corporation is that directors and managers are shielded from shareholder lawsuits challenging their decision to give greater weight to social benefit than to profit in making business decisions.<sup>26</sup> Notably, there have been several approaches to creating this sector as a distinct one within the overarching system of capitalism.<sup>27</sup> Currently, there are approximately 1,000 benefit corporations in the United States, which is a relatively small number when viewed in light of the charitable sector and the business sector.<sup>28</sup>

At the same time, the impact investment movement is growing not only within the United States but also globally;<sup>29</sup> therefore, it is particularly adaptable to the system that I proposed in my previous articles.<sup>30</sup> For example, the United Kingdom introduced a Community Interest Company (CIC) structure in 2004.<sup>31</sup> Prior to the enactment of the CIC structure, Belgium developed a form known as the for-profit/for-purpose Société à Finalité Sociale (SFS).<sup>32</sup> Many other European countries are leaning toward adopting similar laws.<sup>33</sup> In order for efficiency to exist, donors must be able to select among not only U.S. charities but also international charities that will put funds to their most productive use.

Under current law, unlike nonprofit organizations, benefit

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Requirements-Section-501(c)(3)-Organizations (Mar. 13, 2014) (defining the requirements necessary to obtain nonprofit status for tax purposes and noting that such organizations may receive tax-deductible contributions).

25. Wilburn, *supra* note 8, at 13–14.

26. See Wilburn, *supra* note 8, at 16–17 (describing how managers and directors are shielded from shareholder suits); see also Lloyd Hitoshi Mayer & Joseph R. Ganahl, *Taxing Social Enterprise*, 66 STAN. L. REV. 387, 393 (2014) (explaining that Ben & Jerry’s owners felt forced under corporate law to sell their company to Unilever instead of to “socially responsible investors”).

27. See Mayer & Ganahl, *supra* note 26, at 402 (stating there are other US legal forms); see also Kate Cooney, *Benefit Corporation and L3C Adoption: A Survey*, STANFORD SOCIAL INNOVATION REVIEW (Dec. 5, 2014), [http://www.ssireview.org/blog/entry/benefit\\_corporation\\_and\\_l3c\\_adoption\\_a\\_survey](http://www.ssireview.org/blog/entry/benefit_corporation_and_l3c_adoption_a_survey) (explaining that although multiple US legal forms specific to the sector exist, the benefit corporation is the most common).

28. See Cooney, *supra* note 27.

29. See Mayer & Ganahl, *supra* note 26, at 392, 403.

30. Johnson, *supra* note 2.

31. Wilburn, *supra* note 8, at 12. See Mayer & Ganahl, *supra* note 26, at 402–403 (explaining that the CIC form varies significantly from US forms although its overall aim is similar).

32. Wilburn, *supra* note 8, at 12.

33. *B Corps: Firms with Benefits*, *supra* note 13.

corporations cannot take in tax-deductible contributions.<sup>34</sup> Thus, impact investing operates in the space between confronting global problems through grants in the case of “nonprofit philanthropy and government aid” and maximizing profits as a sole aim in the case of mainstream investing.<sup>35</sup> At the same time, the overall approach of impact investing holds keys to improving the charitable sector, and the charitable sector must take advantage of the innovative tools impact investors are using to enable donors to direct their investment to the most effective providers of social good.

B. *Why Impact Investing Makes Sense for the Charitable Sector*

After the legal structure for impact investing was established, new assessment tools were designed to ensure transparency and accountability for investors. Transparency and accountability are two hallmarks of impact investing, and they are crucial to investors in deciding which companies will put their funds to their most productive use.<sup>36</sup> Companies participating in this sector must subject themselves to an “annual review by outside evaluators” in addition to declaring their intent to be ethical firms that promote social good while also seeking profit.<sup>37</sup> In addition, B Lab has assisted with the development of tools necessary to keep companies transparent and accountable in terms of achieving profits and social impact. The charitable sector may use these same tools to inform donors of their most effective funding options within this sector.

Increasingly, donors are not willing to settle for just engaging in giving.<sup>38</sup> They are becoming more results oriented, which means they are holding charities more accountable. Eric Thurman, CEO of Geneva Global, which provides research and grant management for philanthropists internationally, refers to this as performance philanthropy. In the financial marketplace, no one refers to how much stock they own as an indicator of how well their investments are doing. Similarly, today’s donor does not want to give a substantial amount to a charity without understanding the resulting return or social impact of the donation.<sup>39</sup> Doing so would be poor management and not the way to address the global problems of today. An impact investor expects a financial return and a return in the form of social impact. Thus, impact investors demand a degree of rigor in terms of

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34. Wilburn, *supra* note 8, at 17

35. Bouri, *supra* note 9, at 147.

36. Wilburn, *supra* note 8, at 13.

37. Wilburn, *supra* note 8, at 11.

38. Eric Thurman, *Performance Philanthropy*, 28 HARV. INT’L REV. 18 (2006).

39. *Id.*

measuring social impact, which is missing in the charitable sector.<sup>40</sup>

By looking to impact investing, the charitable sector may bring new assessment tools to bear that will improve internal accountability for charities and assist donors with deciding which charities will produce the most social good per dollar of investment. Both impact investors and charitable donors need a measurement of social impact to make their respective sector more efficient.<sup>41</sup> An efficient charitable market will only exist if there are standardized measures of impact and a way to compare the performance of charities. This is evident in the impact investing marketplace. However, the current charitable marketplace lacks meaningful, standardized measures. As a result, donors also lack the ability to compare charities based upon these measures, e.g., ratings.

### C. *Current State of Charity Review and Evaluation*

Donors today lack guidance in terms of deciding which charities would put their dollars to their most productive use, and global problems are persisting as a result.<sup>42</sup> There are ways to determine how much of a donation will go toward the charity's mission and whether the charity is meeting its stated goals. As John Wasik stated in a *New York Times* article last year, "Most [current services and strategies] can help you determine if your dollars will reach the charity's 'mission' — and whether a nonprofit organization is effective in what it is striving to do."<sup>43</sup> Nevertheless, donors are left to puzzle over how much social impact their money has accomplished and over how to decide to give to one charity versus another in this context. Today, donors are becoming more selective in their choice of charities.<sup>44</sup> One possible reason for this is that donors become more selective as more information becomes available.<sup>45</sup> A crucial question for donors today is where to turn to find information about which charities are effective.<sup>46</sup> Given the current deficient evaluation of charities, donors are

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40. See Andrew Kassoy, *Making Every Dollar Count: Investing for Impact and Return*, FORBES, Sept. 21, 2011, <http://www.forbes.com/sites/csr/2011/09/21/making-every-dollar-count-investing-for-impact-and-return/> (relaying impact investors' assertions to B Lab that they "couldn't make impact investments based on good stories alone").

41. See Bouri, *supra* note 9, at 147–48 ("In any market, limited usage of standardized metrics and business performance reporting is a formidable barrier to the effective and efficient allocation of resources.").

42. *Johnson*, *supra* note 2.

43. John F. Wasik, *How to Choose a Charity Wisely*, N.Y. TIMES, Nov. 8, 2013, at F1.

44. *Id.*

45. *Id.* at F7.

46. See *id.* at F1 (noting that charities were "already witnessing greater selectivity among donors" in 2013).

left to seek advice from, inter alia, wealth managers, nonprofit accountants, or estate-planning attorneys.<sup>47</sup> The following paragraphs survey the current landscape in terms of U.S. charity review and evaluation.

In terms of charity reviewers and evaluators, there is not one that gives donors information sufficient to determine the measurable social impact of their donations or to determine a ranking or rating.<sup>48</sup> This stands in sharp contrast to impact investing. First, the Internal Revenue Service (“IRS”) attempts to collect information on charities through Form 990, the annual report charities are required to file.<sup>49</sup> However, the information reported on Form 990 is limited in scope and essentially covers only the charity’s income, program expenditures, mission, and the salaries of its most important executives.<sup>50</sup>

A fundamental problem with current charity reviewers and evaluators is that they do not provide much more information than the IRS. GuideStar provides information on over 1.8 million IRS-registered charities, but it primarily offers free access to Form 990.<sup>51</sup> Premium subscribers are granted access to financial analysis and to outside contractors of the charity.<sup>52</sup> As Wasik notes, there is one integral aspect of evaluation missing in terms of GuideStar: “What GuideStar does not do is give a qualified rating of a charity.”<sup>53</sup> Lindsay J. K. Nichols, a spokeswoman for GuideStar, has commented, “[GuideStar] is not a charity evaluator.”<sup>54</sup>

In examining actual charity evaluators, one still finds a lack of ratings or rankings that would be useful to a donor in deciding how to give most effectively. While the BBB Wise Giving Alliance (“the BBB Alliance”), which is affiliated with the Better Business Bureau, provides the most rigorous evaluations in the sector, it also fails to provide an overall rating, leaving the donor to compare charities and to reach a decision based upon

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47. *Id.* at F7.

48. See Alnoor Ebrahim and V. Kasturi, *The Limits of Nonprofit Impact: A Contingency Framework for Measuring Social Performance*, Working Paper 10-099, May 2010 35-38 (noting that although Charity Navigator and the Better Business Bureau Wise Giving Alliance launched a program to improve their metrics, they still do not deal with a useful standardized set of metrics, such as IRIS).

49. *Instructions for Form 990*, INTERNAL REVENUE SERVICE, 3 (Dec. 2, 2013), <http://www.irs.gov/pub/irs-pdf/i990.pdf>.

50. Wasik, *supra* note 43, at F7; see also *Form 990*, INTERNAL REVENUE SERVICE, (Dec. 2, 2013), <http://www.irs.gov/pub/irs-pdf/f990.pdf> (requiring reporting of only the stated information).

51. GUIDESTAR, <http://www.guidestar.org> (last visited Aug. 3, 2014).

52. *Comparison Chart*, GUIDESTAR, <http://www.guidestar.org/rxg/products/nonprofit-data-solutions/product-information/guidestar-premium/guidestar-premium-comparison-chart.aspx> (last visited Aug. 3, 2014).

53. Wasik, *supra* note 43, at F7.

54. Wasik, *supra* note 43, at F7.

limited information.<sup>55</sup> Currently, the BBB Alliance offers reviews of 1,300 national charities and 10,000 charities through its local affiliates to the public free of charge.<sup>56</sup> Its evaluation process involves determining whether a charity has satisfied twenty accountability standards that deal with, *inter alia*, governance, oversight, and effectiveness.<sup>57</sup> It conducts an assessment of charities every two years at no cost to them.<sup>58</sup> After evaluation, the BBB Alliance assigns each charity to one of five possible categorizations: (1) “accredited [i.e., all 20 standards satisfied]”, (2) “standards not met”, (3) “unable to verify”, (4) “did not disclose”, or (5) “review in progress.”<sup>59</sup> Accredited charities may pay a fee (contingent upon size) to secure a license for using the BBB Charity Seal online and in other promotional material.<sup>60</sup> As of the end of 2012, approximately forty percent of charities evaluated met all 20 standards and were accredited.<sup>61</sup>

The remaining players in the field of charity evaluation are less comprehensive than the BBB Alliance.<sup>62</sup> Charity Navigator reports on over 7,000 charities and assists users with finding charities that are doing work in an area in which they are interested.<sup>63</sup> Its main focus is on informing users of a given charity’s “financial health, accountability and transparency.”<sup>64</sup> Again, no overall numerical rating comparable to that used in the financial markets is present. Charity Navigator utilizes a star

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55. Wasik, *supra* note 43, at F7.

56. *More About Us*, BBB WISE GIVING ALLIANCE, <http://www.give.org/about-bbb-wga/more-about-us/> (last visited Aug. 3, 2014).

57. *How We Accredit Charities*, BBB WISE GIVING ALLIANCE, <http://www.give.org/for-charities/How-We-Accredit-Charities/> (last visited Aug. 3, 2014).

58. *Charity Seal Program FAQs*, BBB WISE GIVING ALLIANCE (May 2013), <http://www.bbb.org/us/Charity-Seal-Program/Information/> (“Charity evaluations are in effect for 24 months.”); *see also More About Us*, BBB WISE GIVING ALLIANCE, <http://www.give.org/about-bbb-wga/more-about-us/> (last visited Aug. 3, 2014) (clarifying “[e]valuations are done without charge to the charity . . .”).

59. *See, e.g., Salvation Army Charity Report*, BBB WISE GIVING ALLIANCE (Nov. 2011), <http://www.give.org/charity-reviews/national/religious/salvation-army-national-corporation-in-alexandria-va-1221> (showing the possible categorizations that the charity could be assigned in the Standards Legend).

60. *About Charity Seal Licensing*, BBB WISE GIVING ALLIANCE, <http://www.give.org/for-charities/about-charity-seal-licensing/> (last visited Aug. 3, 2014).

61. *Annual Report 2012*, BBB WISE GIVING ALLIANCE 6 (Dec. 31, 2012), <http://www.give.org/Global/WGA/Annual-Reports/2012-WGA-AR.pdf>.

62. Wasik, *supra* note 43, at F7.

63. *Overview*, CHARITY NAVIGATOR, <http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=628#.U985UIZ-N0s> (last visited Aug. 3, 2014).

64. Wasik, *supra* note 43, at F7; *see also Overview*, *supra* note 63 (stating that Charity Navigator reviews also include information about charities’ commitment to “good governance, best practices and openness with information.”).

rating system.<sup>65</sup> It consolidates information from Form 990 to determine, *inter alia*, how much of a charity's income goes to its program and what amount is used for administrative costs and fundraising.<sup>66</sup>

There are a few salient conclusions that may be made about the current state of donor access to information regarding a charity's use of funds. First, it is clear that Form 990 does not contain enough information to assist a donor with making the right choice.<sup>67</sup> Many times a review of audited financial statements will be necessary but not sufficient.<sup>68</sup> Another problem in reporting today is joint cost allocation, which refers to a charity's lumping of program expenses together with those expenses associated with fundraising.<sup>69</sup> According to the BBB Alliance, over twenty percent of national charities today engage in such allocation.<sup>70</sup> In addition, even those charities that seek to evaluate their own effectiveness rarely use independent auditors or promote the type of transparency that would be beneficial to donors.<sup>71</sup> Moreover, charities do not report on how well their program suits their mission. As Wasik noted, "Organizations may be funding ineffective ways of addressing their mission."<sup>72</sup> The donor is left to figure out whether academic research supports the program or course of action chosen. This issue is discussed further in the next section.

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65. See, e.g., *Financial Ratings Tables*, CHARITY NAVIGATOR, <http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=48#.U988n1Z-N0s> (last visited Aug. 3, 2014) (providing information on the scales used to assign financial health star ratings). Similar tables are used to calculate a charity's accountability and transparency score and star rating.

66. *How Do We Rate Charities' Financial Health?*, CHARITY NAVIGATOR, <http://www.charitynavigator.org/index.cfm?bay=content.view&cpid=35#.U98-Z1Z-N0s> (last visited Aug. 3, 2014).

67. Wasik, *supra* note 43, at F7. "There are many areas of interest . . . that are not included on the Form 990 . . . . Although information on quantity of services provided is required, information that provides measures of outcomes is lacking. Such data are necessary to assess what the programs, services, and activities are actually accomplishing and should cover economic, programmatic, social capital, and community-building outcomes." Linda M. Lampkin & Elizabeth T. Boris, *Nonprofit Organization Data: What We Have and What We Need*, 45 AM. BEHAV. SCIENTIST 1675, 1696-97 (2002).

68. See Wasik, *supra* note 43, at F7 (noting that the use of joint cost allocation by some charities can make a more detailed assessment necessary).

69. Wasik, *supra* note 43, at F7.

70. *Wise Giving Guide*, BBB WISE GIVING ALLIANCE 3 (Spring 2013), <https://www.give.org/globalassets/wga/wise-giving-guides/spring-2013-guide-article.pdf>.

71. Wasik, *supra* note 43, at F7; see also Press Release, Tim Ogden, The Worst (and Best) Way to Pick a Charity This Year (Dec. 1, 2009), available at [http://philanthropyaction.com/documents/Worst\\_Way\\_to\\_Pick\\_A\\_Charity\\_Dec\\_1\\_2009.pdf](http://philanthropyaction.com/documents/Worst_Way_to_Pick_A_Charity_Dec_1_2009.pdf) (quoting Ken Berger, President and CEO of Charity Navigator: "There is a place for financial measures, but donors need a complete picture of a charity to make a smart choice.").

72. Wasik, *supra* note 43, at F7.

Another evaluator, CharityWatch, assigns a grade to charities but only in terms of whether they have engaged in abuses or in terms of red flags.<sup>73</sup> CharityWatch does not rate charities based upon their social impact. At present, it has rated approximately 600 charities and assigned them a grade of A through F, dependent upon whether the charity has participated in abuses.<sup>74</sup>

Part of the problem is the sheer number of charities registered in the United States alone, which as of 2012 was over 1.4 million.<sup>75</sup> GiveWell, a rating agency, has attempted to resolve the evaluation dilemma by simply recommending a small number of charities per year.<sup>76</sup> In selecting these charities, GiveWell determines whether the charity's program is "proven, cost-effective, scalable and transparent."<sup>77</sup> Alexander Berger, GiveWell's senior research analyst, has stated, "because we're aiming to find the best giving opportunities possible—not to rate every charity—we don't research charities that are unlikely to excel on our criteria."<sup>78</sup> Thus, a solution is to narrow the number of charities that will be evaluated.<sup>79</sup>

#### D. *Current Thought on Measuring Social Impact*

The ability to measure social impact or "return" on investment is essential to the establishment of a more efficient charitable market.<sup>80</sup> In order to understand why impact investing makes sense for the charitable sector, one must first consider current thought and what the overall objectives of a system, i.e., a methodology, of measuring impact are. There have been numerous attempts to develop a methodology for measuring

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73. Wasik, *supra* note 43, at F7.

74. *Top-Rated Charities*, CHARITYWATCH, <http://www.charitywatch.org/toprated.html> (last updated May 22, 2014).

75. Sarah L. Pettijohn, *The Nonprofit Sector in Brief: Public Charities, Giving and Volunteering*, URBAN INSTITUTE (Oct. 27, 2014), available at <http://www.urban.org/research/publication/nonprofit-sector-brief-public-charities-giving-and-volunteering-2014>. Many of these charities are small organizations as evidenced by the low number required to file Form 990 for tax year 2010. *Statistics of Income: Charities and Other Tax-Exempt Organizations (2010)*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-soi/2010ExemptOrganizationsOneSheet.pdf>. However, the figure does not include most churches or church-related entities since they are not required to register for tax-exempt status with the IRS. *Publication 1828: Tax Guide for Churches & Religious Organizations 5*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>.

76. *About GiveWell*, GIVEWELL, <http://www.givewell.org/about> (last visited Aug. 3, 2014).

77. Wasik, *supra* note 43, at F7.

78. Wasik, *supra* note 43, at F7.

79. This is discussed in more detail in Part I-D-1.

80. GOLDBERG, *supra* note 4, at 207–09.

social impact for charities. In answering the question of what we should look for in terms of a way to measure social impact, scholars and professionals have missed the mark. The system does not have to be perfect. In the charitable sector, one must start with the premise that charities should satisfy a basic qualitative analysis before being subject to further evaluation. Charities satisfying this analysis should measure and report their social impact to donors, and the system they use to do so only needs to have two characteristics: (1) exceed the current situation and (2) have the ability to become more accurate.<sup>81</sup>

1. Narrowing the Field of Charities for Review – A Qualitative Approach

Broadly speaking, the methodology for measuring social impact may be qualitative or quantitative, and both approaches have been suggested for the charitable sector. This sub-section will briefly explore a qualitative approach. Although a qualitative approach does not encompass the requirements for a more efficient charitable market, it is a good starting point. Obtaining the information necessary for a quantitative approach is costly and requires the cooperation of charities and charity evaluators. A qualitative approach may be used to narrow the field of which charities should undergo a more extensive quantitative analysis as a step toward a more efficient charitable market.

As Eric Thurman has suggested, the underlying idea of a qualitative approach for measuring social impact is to ensure that funds are not given to causes but rather to outcomes.<sup>82</sup> The central question is the following:

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81. GOLDBERG, *supra* note 4, at 207. Drawing an analogy to how security prices, though imperfect, are useful in terms of evaluating a potential investment, Goldberg explains in the charitable market context, a system of measuring social impact must simply (1) exceed the current situation and (2) have the ability to improve. *See id.* at 197 (“When all is said and done, securities prices are nothing more than convenient approximations that market participants accept as a way of simplifying their economic interactions, with a full understanding that *market prices are useful even when they are way off the mark*, as they so often are. In fact, that’s the whole point of markets: to aggregate the imperfect and incomplete knowledge held by vast numbers of traders about how much various securities are worth and still make allocation choices that are better than we could without markets. Philanthropists face precisely the same problem: how to make better use of limited information to maximize output, in this case, social impact. Considering the dearth of useful tools available to donors today, the solution doesn’t have to be perfect or even all that good, at least at first. *It just needs to improve the status quo and get better over time.*”) (emphasis added).

82. Telephone Interview with Eric Thurman, former CEO, Geneva Global (June 2, 2014); *see also* GENEVA GLOBAL, <http://www.genevaglobal.com> (last visited Aug. 21, 2014) (“Core to our mission at Geneva Global is the belief that all philanthropic giving should be

What are the proxies that can be used to show results are occurring?<sup>83</sup> For example, in the context of combating human trafficking, the proxy is not how many young women have been rescued from brothels, but rather how many brothels exist.<sup>84</sup> Giving to the outcomes necessitates asking the right questions. Thurman has commented that this type of approach requires a charity to do more than just show it passed a financial audit.<sup>85</sup> After all, a charity may be able to produce a receipt for each expense but in essence have accomplished very little.<sup>86</sup> A financial audit tells the donor that the charity is adequate, but it does not tell the donor whether the charity is good at what it does. In sum, most charities are not held accountable for their outcomes. A qualitative approach addresses this problem and plays a crucial role in the process of helping donors select top performers.

Thurman developed a qualitative approach that he trained a team of philanthropy evaluators to use known as “need, program, results,” or “NPR.”<sup>87</sup> This approach involves asking a series of questions designed to determine whether the charity has the framework in place to produce desired outcomes. Following is a list of the questions:

- (1) Is the program tied to the need?
- (2) If so, does it produce results?
- (3) Will a donation bring about change?<sup>88</sup>

By focusing initially on whether a charity is “set up” to produce desired or stated outcomes, one can sort through which charities are likely to put donations to their most productive use more easily. If a charity’s program is not tied to the need or problem, the charity will not be able to put donations to a productive use because it will consistently put donations to the wrong use. If a charity has selected the wrong program, none of its program expenditures will result in the best use of funds because they will not address the need. Thurman’s approach is a circular one but in a positive sense. After answering the three questions above, the next question is whether there is less need than there was previously.<sup>89</sup>

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treated as a sound investment and evaluated accordingly.”).

83. Telephone Interview with Eric Thurman, *supra* note 82.

84. Telephone Interview with Eric Thurman, *supra* note 82.

85. Most of Form 990 deals with this limited analysis. See Wasik, *supra* note 43, at F7 (noting that “Form 990 can often be opaque” and that “audited financials contain much more detail.”).

86. Telephone Interview with Eric Thurman, *supra* note 82.

87. Telephone Interview with Eric Thurman, *supra* note 82.

88. Telephone Interview with Eric Thurman, *supra* note 82.

89. Telephone Interview with Eric Thurman, *supra* note 82.

A recent article in the *Stanford Social Innovation Review* reinforces Thurman's case for the use of qualitative analysis.<sup>90</sup> Most importantly, the authors contend that nonprofits need to set the agenda in terms of evaluation and should use a qualitative approach in addition to a quantitative one.<sup>91</sup> They point out that if nonprofits do not shape the evaluation conversation, donors will do it for them.<sup>92</sup> They note five specific items that nonprofits should talk more about in terms of evaluation.<sup>93</sup> First, nonprofits should focus more on their purpose and their strategy for achieving it.<sup>94</sup> As the authors advise, "all nonprofits should have a clearly defined theory for how they will create change that connects their strategies and programs to the results that they anticipate."<sup>95</sup> Second, nonprofits should spend more time discussing people.<sup>96</sup> Donors often want nonprofit assessment to include quantitative assessments, e.g., the number of people indirectly affected.<sup>97</sup> However, too much emphasis on quantitative analysis reduces a nonprofit's impact to a series of numbers.<sup>98</sup> The authors promote a more balanced approach that includes qualitative assessments as well: "Qualitative assessments that draw on conversations with people are often more consistent with how nonprofits operate, and they are also a methodologically valid form of evaluation."<sup>99</sup> Third, nonprofits would benefit from drawing attention to the big picture.<sup>100</sup> In other words, evaluation should consider how a given nonprofit's work fits within the collective transformation of an area.<sup>101</sup> Fourth, nonprofits should not shy away from discussing their challenges.<sup>102</sup> Their failures and lessons learned are beneficial in terms of collective learning.<sup>103</sup> Accordingly, the authors urge nonprofits to highlight not only monitoring but also transparency as a goal in evaluation. Finally, nonprofits should encourage more learning.<sup>104</sup> Currently, donors (who focus more on monitoring than learning) have a much louder voice in evaluation than beneficiaries and

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90. Karina Kloos & Daniela Papi, *Lost in Translation*, STAN. SOC. INNOVATION REV., Summer 2014, at 59.

91. *Id.* at 59.

92. *Id.*

93. *Id.* at 60.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

nonprofit workers who are directly involved and who may facilitate learning.<sup>105</sup>

Of these, the first recommendation seems the most relevant in terms of Thurman's qualitative approach. Granted, there are elements of quantitative analysis that are required with Thurman's approach. The only way to determine whether results have occurred is to count them on some level. One may argue that the metrics associated with making this determination in impact investing are too cumbersome. Others may contend that we should stop focusing on precision and ensure a charity's results are accurate.<sup>106</sup> However, Thurman advocates narrowing "proxies" or results in making a determination of whether a charity is putting funds to their most productive use, which means less quantitative analysis is necessary. This requires an identification of which indicators will demonstrate whether success is occurring, and typically, five or six should be used. Thurman argues that a totally open scale would lead to endless arguments. A necessary component after any analysis is undertaken is grading or ranking if the information will be meaningful to a donor's decision to give.<sup>107</sup> Instead of assigning each charity a numerical score, Thurman advocates assigning one of three grades based upon a charity's stage of success: "pass," "fail," or "adequate."

He notes that a pervasive misconception is waiting for longitudinal data, as discussed later. While some commentators in the area have advocated triangulating information,<sup>108</sup> Thurman turns the other direction. He notes the focus should not be on perfect due diligence since what is needed is only enough information to allow the donor to make the right decision.<sup>109</sup> He has stated that business-grade due diligence is enough and draws a parallel to a financial investor attempting to beat the market.<sup>110</sup> This is a very different approach from academic due diligence which tends to expend resources on finding the most precise and complete picture of information.<sup>111</sup>

Thurman and his dissenters (who prefer a more complex approach to measuring social impact) agree on the importance of asking what

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105. *Id.*

106. Michael McCreless & Brian Trelstad, *A GPS for Social Impact*, STAN. SOC. INNOVATION REV., Fall 2012, at 22.

107. *See supra* Part I-C.

108. *See supra* Part I-C.

109. Telephone Interview with Eric Thurman, *supra* note 82.

110. Telephone Interview with Eric Thurman, *supra* note 82.

111. *See* Telephone Interview with Eric Thurman, *supra* note 82; *see also* McCreless & Trelstad, *supra* note 106, at 22 ("[Precision] distracts us from attainable and accurate estimates of social impact, when in most situations, accuracy ('the truth') is more important than precision (calculating estimates to two decimal points).").

difference a given donation has made.<sup>112</sup> Thurman notes that in certain contexts, such as disaster relief, the answer to that question is how many lives were saved as a result of the donation, i.e., costs per life.<sup>113</sup> Really, it comes down to whether the program is aligned with saving a life from the outset and then what has occurred. For example, his company funds an educational program in Serbia to help young women avoid being trafficked.<sup>114</sup> The cost of educating one of these women may be recorded, and a charity may report to donors how much of a donation contributed to tuition. At the same time, the donor would never know what would have happened to one of the students in the absence of such funding, but under Thurman's approach, that is not worth agonizing over in thinking through how much information the donor should have.<sup>115</sup>

A qualitative-focused review, like NPR, serves as the best way of determining which charities merit a further evaluation of social impact, which ultimately would lead to a rating. The goal should be to provide donors with the information they need to make an informed choice among charities, as this would create a more efficient charitable market where funds are being directed to the most effective providers.

## 2. A System for Measuring Social Impact of Charities Selected for Review

Turning to the system for measuring social impact of selected charities, it is apparent that the impact investing approach makes sense for the charitable sector. As explained earlier, impact investors expect social impact as a return on their investment in the same way that donors have in recent years. Since impact investors also expect a financial return, the sector has had to bring a level of rigor commensurate with the financial markets to bear upon the measurement of both elements of their return. Financial markets are not overburdened by the desire to have perfect information, and this mindset is reflective of the approaches used in impact investing to measure social impact. As a result, in adopting a system for measuring social impact, the charitable sector should look for one that has two characteristics: (1) exceeds the current situation and (2) has the ability to become more accurate.<sup>116</sup> The following sub-section addresses those two characteristics in the context of the charitable sector.

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112. McCreless & Trelstad, *supra* note 106, at 22.

113. Telephone Interview with Eric Thurman, *supra* note 82.

114. Telephone Interview with Eric Thurman, *supra* note 82.

115. *Cf.* McCreless & Trelstad, *supra* note 106, at 22 (asserting the importance of ensuring that a charity's results are accurate).

116. GOLDBERG, *supra* note 4, at 197, 211–12.

a. *Exceed the Current Situation*

Examining the first of these two characteristics, the current situation may be exceeded by changing the source of questions for charities, i.e., not leaving what information is extracted up to donor requests. Too often donors request the wrong type of information from charities. They are concerned about how much of their donation is used for overhead versus a stated cause.<sup>117</sup> The current market does not require charities to be the effective providers of information they need to be for donors: “[M]arket incentives of the nonprofit world push charities toward happy anecdote and inspiring narrative rather than toward careful planning, research, and evidence-based investments.”<sup>118</sup> I would propose that charities should bear the responsibility for providing the information relevant to donors in making their investment decisions just as companies do. In impact investing, the companies, rather than the investors, maintain responsibility for tracking social good accomplished.<sup>119</sup> For example, Patagonia, the first California benefit corporation, maintains audit reports on its website and a list of its suppliers, and it also issues a publication that sets forth its environmental impact.<sup>120</sup>

The reason charities need to provide a measure of social impact is because it represents the “return” and serves as a way to help donors decide to give to one charity versus another. In contrast, stock market investors are provided with “convenient approximations” in the form of stock prices and dividends that allow them to simplify their economic decisions.<sup>121</sup> Stock prices provide a snapshot of how much stocks are worth, and even if they are not wholly accurate, they serve as an aggregation of information about how much stocks are worth.<sup>122</sup> Stock investors are able to make better investment decisions because of the existence of the market and within that system stock price and payment of dividends.<sup>123</sup> Even though stock investors do not have fully complete and accurate information, price is “sufficiently accurate to enable [them] to make reasonably intelligent

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117. Dan Pallotta, *The Way We Think About Charity is Dead Wrong*, TED.COM (Mar. 11, 2013), [http://www.ted.com/talks/dan\\_pallotta\\_the\\_way\\_we\\_think\\_about\\_charity\\_is\\_dead\\_wrong](http://www.ted.com/talks/dan_pallotta_the_way_we_think_about_charity_is_dead_wrong).

118. KEN STERN, *WITH CHARITY FOR ALL: WHY CHARITIES ARE FAILING AND A BETTER WAY TO GIVE* 19 (2013).

119. Wilburn, *supra* note 8, at 16.

120. Wilburn, *supra* note 8, at 16.

121. GOLDBERG, *supra* note 4, at 197.

122. GOLDBERG, *supra* note 4, at 197.

123. See GOLDBERG, *supra* note 4, at 197 (discussing the readily available indicia used by stock market investors to make easier economic decisions).

decisions . . . .”<sup>124</sup> The federal forms required of public companies also serve this purpose. Public companies are required to file annually, inter alia, Form 10-K, which reports on a company’s business and financial performance.<sup>125</sup> Donors do not have the information necessary to make these informed decisions, which means their funds often do not flow to the best servicers of a given need.

What is needed to extract the relevant information is a change from reliance on donor requests to a shifting of responsibility to charities. As explained above, donors are not requesting the information they need to determine whether charities will put their funds to their most productive use. Since the charities are seeking investment, they should be made to provide donors with this information.<sup>126</sup> Granted, the administrative cost of doing so is a counter argument to this point; however, charities should be in the business of collecting this information for themselves to determine whether they are accomplishing or hurting their stated objectives.<sup>127</sup> A potential implication of clear standards for measuring social impact is the development of a field of auditing akin to what is present with financial accounting.<sup>128</sup> Charities will need to have individuals who are familiar with such standards, which will result in a demand for social reporting experts.<sup>129</sup> One scholar has conjectured that social reporting could expand to a level of financial accounting where “social performance auditors [could be] trained.”<sup>130</sup>

b. *Have the Ability to Become More Accurate*

Second, the system used to measure social impact must be able to become more accurate.<sup>131</sup> Leaders in impact investing have advocated focusing less on precision and more on accuracy.<sup>132</sup> The systems they have

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124. GOLDBERG, *supra* note 4, at 209.

125. *Form 10-K*, U.S. SEC. & EXCH. COMM’N, <http://www.sec.gov/answers/form10k.htm> (last visited July 15, 2014).

126. See Leslie G. Espinoza, *Straining the Quality of Mercy: Abandoning the Quest for Informed Charitable Giving*, 64 S. CAL. L. REV. 605, 669 (1991) (“The notion that individuals will go to a state office to scrutinize financial reports before they [donate] is absurd. Even if the donating public were to become increasingly informed and know to request [Form 990] from the charity . . . very few donors would have the inclination or ability to scrutinize that kind of complex information.”).

127. STERN, *supra* note 118.

128. See Bouri, *supra* note 9, at 158 (discussing the auditing implications of a scheme in which charities provide donors with information about the charity’s investments).

129. Bouri, *supra* note 9, at 158.

130. Bouri, *supra* note 9, at 158.

131. GOLDBERG, *supra* note 4, at 197, 211–12.

132. This is discussed further in Part I-D-2-b, *infra*.

put in place for measuring social impact are focused on accuracy and have the ability to be improved. In fact, the systems undergo regular updates.<sup>133</sup>

## II. MEASURING SOCIAL IMPACT OF SELECTED CHARITIES WITH IRIS

If we look to the efforts of the impact investing movement, we can derive a system of measuring social impact that is appropriate for creating an efficient charitable market. Impact investors have devoted time and effort to developing a way to measure impact “reliably and consistently” because they recognize doing so will “help [them] to direct [their] efforts to the projects that offer the greatest promise for change.”<sup>134</sup> Following is a discussion of one of the greatest tools at the hands of social impact investors today: a system known as Impact Reporting & Investment Standards (“IRIS”).

### A. *A Brief Explanation of IRIS and Why It Would Work for the Charitable Sector*

IRIS is comprised of a set of standardized metrics designed to assess an organization’s “social, environmental, and financial performance.”<sup>135</sup> For purposes of this article, its ability to determine social performance, i.e., social impact, is most relevant. In 2008, The Rockefeller Foundation, Acumen, and B Lab developed IRIS; in 2009, it became an initiative of The Global Impact Investing Network (“GIIN”),<sup>136</sup> a nonprofit organization whose goal is “to increas[e] the scale and effectiveness of impact investing.”<sup>137</sup> IRIS was designed to overcome a stubborn barrier to the goal of getting funds into the hands of organizations that will produce the most social good.<sup>138</sup> It confronts the problem of the inability of investors to “define, measure, and track” the performance of organizations which they are funding.<sup>139</sup> Investors wanted a system of measuring social impact in a standardized manner that would help ensure an “efficient flow of capital”

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133. *Approach to Impact Investment*, GIIRS, <http://giirs.org/about-giirs/how-giirs-works/162> (last visited Aug. 8, 2014) (“[A] new version of the rating system [is released] every two years . . .”).

134. McCreless & Trelstad, *supra* note 106, at 22.

135. *About Us*, GIIN, <http://www.thegiin.org/cgi-bin/iowa/aboutus/index.html> (last visited Aug. 3, 2014).

136. *About IRIS*, IRIS, <http://iris.thegiin.org/about-iris/> (last visited Aug. 3, 2014).

137. GIIN, *supra* note 135.

138. GIIN, *supra* note 135.

139. GIIN, *supra* note 135 (stating that this barrier is the result of a lack of “transparency, credibility, and consistency” in terms of measuring social impact).

to companies.<sup>140</sup>

This tells us that at the heart of IRIS was efficiency, which is the same goal that I put forth for the charitable market. As a result, an examination into IRIS is highly relevant for establishing a more efficient charitable market; ultimately, IRIS may serve as a model for standards to be used in measuring social impact in the charitable sector.<sup>141</sup> Impact investors have realized that in order for impact investing to grow, there must be “rigorous, standardized measures” in place for them to use.<sup>142</sup> In other words, in order for efficiency to exist with respect to impact investing, there must be a standardized way to measure social impact. As Amit Bouri comments, “The proliferation of [impact investing] activity has made evident the inefficiencies and constraints that result from the lack of both a common language to describe impact, and basic market intelligence such as performance benchmarks.”<sup>143</sup>

In examining IRIS, it is clear the two characteristics of a system for measuring social impact detailed earlier are met. IRIS exceeds the current system that charity services and evaluators are using, and it has the ability to be more accurate over time. IRIS was developed to help solve, *inter alia*, the problem of unsuitable impact measurement and the related problem of absence of performance comparability data within the impact investing industry.<sup>144</sup> IRIS also seeks to accomplish the following over time: (1) the development and correcting of the IRIS system; (2) growth of awareness of and accessibility to IRIS; and (3) promotion of voluntary use of the system through self-reporting that will lead to performance data and thus other market intelligence.<sup>145</sup>

In 2011, the GIIN released the first IRIS performance data report, which is an overview of reporting organizations by sector and/or region.<sup>146</sup> This report contains data on over 460 such businesses.<sup>147</sup> Six funds submitted the data contained therein, including Acumen Fund and Root Capital.<sup>148</sup> It provides an overview of these businesses, including their

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140. Bouri, *supra* note 9, at 146.

141. *See* Bouri, *supra* note 9, at 146. (explaining that, while remaining relevant to investors and organizations, IRIS is useful in terms of developing the impact industry as a whole).

142. Bouri, *supra* note 9, at 147.

143. Bouri, *supra* note 9, at 147.

144. Bouri, *supra* note 9, at 147.

145. GIIN, *supra* note 135.

146. *2011 IRIS Data Report*, GIIN, <http://iris.thegiin.org/research> (last visited Aug. 3, 2014).

147. GIIN, *supra* note 135.

148. GIIN, *supra* note 135, at 3.

profitability by sector and/or region.<sup>149</sup> This is a small number in terms of the overall number of organizations in the impact investing industry, and thus only provides limited understanding of it for now.<sup>150</sup> However, in the future, such reports will help to inform investors further and to ensure funds are flowing to the most effective organizations.<sup>151</sup> The same type of performance data reports may be generated for the charitable sector with the goal of securing a more efficient charitable market.

As Amit Bouri states, IRIS “performance data” may be used “to complement conclusions extrapolated from anecdotes.”<sup>152</sup> The very criticism about charities resorting to stories of “happy anecdote” would be countered with the use of IRIS. The goal of a more efficient charitable market may be facilitated through IRIS: “Ultimately, [the] IRIS initiative seeks to enable more informed allocations of resources across the impact investing industry.”<sup>153</sup> The same holds true in terms of using IRIS in the charitable sector.

IRIS would enable charities to communicate their value cogently to donors by reporting on their performance.<sup>154</sup> In addition, donors would have a standardized way to measure performance across organizations. Suddenly, donors would be able to compare and to aggregate performance data before making a decision to fund or to continue funding a given charity.<sup>155</sup> Overall, this system for measuring social impact would be a highly effective tool in the hands of donors in the charitable sector. The GIIN provides IRIS as a “free public good” designed to encourage greater “transparency, credibility, and accountability” in terms of social impact measurement throughout the impact investing arena.<sup>156</sup> Presumably, the charity reviewers and evaluators discussed in Part I would fulfill the role of the GIIN. The next section discusses how it may be implemented in more detail.

#### B. *How IRIS Would Work in the Charitable Sector*

Charities would choose to report data to an IRIS initiative either on their own or through working with “data collection partners.”<sup>157</sup> Put

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149. GIIN, *supra* note 135, at ii.

150. Bouri, *supra* note 9, at 156.

151. Bouri, *supra* note 9, at 156.

152. Bouri, *supra* note 9, at 150.

153. Bouri, *supra* note 9, at 150.

154. Bouri, *supra* note 9, at 150.

155. Bouri, *supra* note 9, at 150.

156. *About IRIS*, *supra* note 136.

157. Currently, impact investors work with “data collection partners” such as the Aspen Network of Development Entrepreneurs (ANDE), the Microfinance Information Exchange

simply, IRIS enables the reporting of data based upon “consistent terms and definitions” across charities.<sup>158</sup> Indeed, IRIS is similar to a dictionary, providing terms and definitions typically used in measuring social impact.<sup>159</sup> Prior to IRIS, impact investing organizations were left to make their own “unique performance indicators” instead of relying on industry standards.<sup>160</sup> As stated earlier, charities and donors currently come up with their own standards of what is valuable and that approach is not working. At the same time, IRIS does leave the choice of standardized terms up to the individual charity.<sup>161</sup> In other words, charities may select the indicators that are relevant to and best reflect their purpose and goals.<sup>162</sup> After these indicators are selected, one may compare and aggregate performance based upon standardized data.<sup>163</sup> Eventually, charity evaluators, such as the BBB Alliance and Charity Navigator, should play a role in determining which IRIS indicators are well suited for various areas of the charitable sector.<sup>164</sup> For example, the world’s top provider of microfinance data, MIX, has worked to ensure its taxonomy is congruent with that of IRIS’s.<sup>165</sup> Similarly, ANDE, “a global network of organizations” with the aim of advancing entrepreneurship in developing nations, is collaborating with its individual members to assess which IRIS indicators best suit the need of measuring the success of new businesses.<sup>166</sup>

If charity reviewers and evaluators serve as partner-organizations,<sup>167</sup> they would be useful in assisting with aggregating data, which would result in “market intelligence” that is beneficial to the entire charitable sector.<sup>168</sup>

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(MIX), and Pulse (a technology database) to report data. *See* Bouri, *supra* note 9, at 148–49 (describing how the data collection process works and how it contributes to the value proposition of IRIS).

158. *See* Bouri, *supra* note 9, at 149, fig.1 (illustrating how the IRIS model results in consistent terms and definitions, leading to more useful comparisons of organizations).

159. *See* Bouri, *supra* note 9, at 150 (describing how IRIS provides clear and consistent definitions for reporting terms while allowing the organizations and investors to choose which terms they will use in their reporting).

160. *See* Bouri, *supra* note 9, at 157 (highlighting the benefit of using industry standard terms).

161. *See* Bouri, *supra* note 9, at 150 (acknowledging the flexibility that organizations are given when choosing terms for their reports).

162. *See* Bouri, *supra* note 9, at 150 (describing why the flexibility in choosing terms is beneficial to the reporting process).

163. *See* Bouri, *supra* note 9, at 150 (illustrating how the use of standardized terms helps facilitate useful comparisons).

164. *See* Bouri, *supra* note 9, at 157 (providing an example of where this has already been implemented in terms of impact investing).

165. Bouri, *supra* note 9, at 157.

166. Bouri, *supra* note 9, at 157.

167. Bouri, *supra* note 9, at 148–49.

168. *See* Bouri, *supra* note 9, at 149 (indicating how the IRIS initiative is beneficial to

These partners may use IRIS to construct frameworks customized for specific sectors, which would serve as another resource for both charities and donors.<sup>169</sup> The more charities that opt into reporting IRIS standards, the greater the value of the standards.<sup>170</sup>

### C. *Getting Charities On Board*

The main challenge clearly is convincing a subset of charities to serve as the first adopters.<sup>171</sup> The utility of IRIS is dependent upon charities' voluntary adoption of it. There are a number of reasons why a charity would choose to report data using IRIS standards. First, a given charity would be able to differentiate itself from other charities with the same or similar charitable purposes. The assistance to donors that the data provides is significant for a charity in attracting additional funds. IRIS's standardized terms and definitions allow charities to take the guesswork away for a donor who wants to know what its outputs are and how its outputs coagulate to produce outcomes over a number of years.<sup>172</sup> Second, donors are able to determine the cost of outputs since IRIS provides a way for them to measure "unit cost of one output" across a given endeavor or purpose.<sup>173</sup> As a result, a charity can showcase its ability to provide cost effective solutions, more advantageous economies of scale, etc.<sup>174</sup> Finally, a problem for charities is securing the technical know-how and funding necessary to measure impact and to determine the "output indicators" that are most relevant in terms of their "intended outcomes." IRIS provides an accessible, user-friendly, and clearly delineated "set of impact indicators" that charities may use.<sup>175</sup> Presumably, these early adopters will recognize IRIS's innate value, i.e., simplifying impact reporting, helping with donor decision-making, and demonstrating a commitment to producing social impact.<sup>176</sup> Once the utility of IRIS is accepted, it has the ability to serve as

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the entire sector).

169. Bouri, *supra* note 9, at 149.

170. See Bouri, *supra* note 9, at 149 (describing the network effects of the IRIS initiative).

171. See Bouri, *supra* note 9, at 146 (stressing the importance of early adopters and suggesting that the IRIS initiative will become increasingly useful as the number of users increases).

172. Bouri, *supra* note 9, at 154.

173. See Bouri, *supra* note 9, at 154 (illustrating how IRIS helps investors calculate the value of an enterprise's outputs).

174. Bouri, *supra* note 9, at 154.

175. Bouri, *supra* note 9, at 154.

176. Bouri, *supra* note 9, at 154.

a standard throughout the sector.<sup>177</sup>

Granted, IRIS does require a collective commitment and additional costs.<sup>178</sup> Charities will have to devote time and resources to implementing the system.<sup>179</sup> At the same time, in the impact investing context, users have reported that this devotion has resulted in immediate benefits, including better internal management and advantages to their investors.<sup>180</sup> Specifically, starting a system of measuring impact has resulted in the ability to find ways to cut costs and other strategic movement.<sup>181</sup> Moreover, if a group of donors (who already require a charity to provide specific indicators of performance) all agree to the same set of IRIS indicators, ultimately a charity will save time by being able to provide a single assessment.<sup>182</sup> Thus, as stated, charities that use IRIS will be able to attract more capital because it serves as a way for them to communicate their performance in terms of a credible, data-centered system.<sup>183</sup> To be meaningful, IRIS indicators should reflect an organization's self-proclaimed method and impact goals.<sup>184</sup> IRIS serves as the next step after a qualitative approach is used.

Another interesting point is that "network effects" may result from the use of IRIS.<sup>185</sup> A system of comparison using the IRIS standards is the most significant in terms of an efficient charitable market and is discussed in Part IV. Importantly, Bouri states that an ecosystem springing from IRIS "may expand to include impact investing professionals and scholars who can further refine, analyze, and apply IRIS data."<sup>186</sup> Given the innate value and network effects of a system of comparison, an IRIS-like system for the charitable sector meets the objective of providing a way to measure social impact.

IRIS is a system that will grow and adapt to the changing needs of the

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177. Bouri, *supra* note 9, at 154.

178. Bouri, *supra* note 9, at 154.

179. See Bouri, *supra* note 9, at 154 (explaining the challenges that lay ahead for IRIS).

180. See Bouri, *supra* note 9, at 154 (discussing how early IRIS adopters have found IRIS useful internally).

181. See Bouri, *supra* note 9, at 155 ("[T]echnical assistance providers have noted that enterprises often find cost savings and strategic advantages when they begin the measurement process.").

182. See Bouri, *supra* note 9, at 155 ("[I]nvestors may identify different benefits for their investees, such as decreased reporting time, if multiple stakeholders agree to a set of IRIS indicators.").

183. See Bouri, *supra* note 9, at 158 (highlighting that use of IRIS has the potential to increase access to capital for innovative charitable enterprises).

184. Bouri, *supra* note 9, at 155.

185. Bouri, *supra* note 9, at 155.

186. Bouri, *supra* note 9, at 155.

charitable sector.<sup>187</sup> Although impact investing and, accordingly, historical observation of the utility of IRIS are only emerging, it is clear that “industry standards” will develop and serve as a source of tremendous value to this new sector.<sup>188</sup> Numerous future benefits will result from starting the process of having charities opt into the system. Difficulties in collecting data and adopting IRIS will be identified over time.<sup>189</sup> Some charities will choose to customize further frameworks used to report data through IRIS.<sup>190</sup> Perhaps most significantly, reports of aggregated performance data will enable a more complete analysis of the charitable sector and contribute to its overall effectiveness.<sup>191</sup>

Those already using IRIS in the impact investing context have found it to be of immense value in terms of internal management and in terms of providing investors with the information they need.<sup>192</sup> The spread of IRIS necessary to create a critical mass that will one day result in market intelligence for the impact investing industry will depend upon whether early adopters of the system share their experiences with others, and on their willingness to cooperate with efforts to produce aggregated performance reports.<sup>193</sup> These same two actions will be essential for IRIS to lead to a more efficient charitable market.<sup>194</sup> The network effects of IRIS will result in greater enrollment in the system.<sup>195</sup> As donors begin to make decisions about giving based upon “a set of standards and then [to] track and [to] make decisions based on these data,” networks and organizations will need to emerge to further market intelligence and to assist with presenting “credible, standardized, and useful information.”<sup>196</sup> Just as IRIS may be used within the impact industry to “open a vast new pool of capital . . . to address the world’s most pressing social and environmental problems,” it may be used to direct charitable funds to their most productive use in terms of these same problems.<sup>197</sup> Ultimately, the network effects of IRIS will help “to increase the efficiency of social and environmental performance management so that effective [organizations] receive the capital they need to scale their impact.”<sup>198</sup> This same result is

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187. See Bouri, *supra* note 9, at 155 (discussing the flexibility of IRIS).

188. Bouri, *supra* note 9, at 155.

189. Bouri, *supra* note 9, at 158.

190. Bouri, *supra* note 9, at 158.

191. Bouri, *supra* note 9, at 158.

192. Bouri, *supra* note 9, at 158.

193. Bouri, *supra* note 9, at 158.

194. Bouri, *supra* note 9, at 158.

195. Bouri, *supra* note 9, at 158.

196. Bouri, *supra* note 9, at 158.

197. Bouri, *supra* note 9, at 158.

198. Bouri, *supra* note 9, at 158.

crucial for the charitable sector.

### III. THE GPS APPROACH WILL GET CHARITIES IN THE WRONG DIRECTION

While IRIS does provide several advantages for measuring social impact, some impact investing managers have found it to lack the characteristics of a complete assessment tool. They have advocated using an approach that incorporates IRIS and goes beyond it. Social impact investing managers Michael McCreless and Brian Trelstad, both of whom have worked at social investment funds Root Capital and Acumen Fund, have commented: “Measuring social impact is a quixotic pursuit.”<sup>199</sup> While they have conceded that IRIS is a useful tool for measuring, managing, and reporting on social impact, and even perhaps relevantly staying generally aligned with other funds in terms of investment decisions, it is still incomplete.

According to McCreless and Trelstad, the reason IRIS is incomplete is because the social investor who desires to discover the “real social impact” of his or her investment must know what would have happened if the investment had not been made, and that occurrence is fictional.<sup>200</sup> Such investors would like to know how lives have been changed as a result of the investment.<sup>201</sup> The authors point out that these changes typically are unobservable, and even if they were, they would be difficult to quantify.<sup>202</sup> Even if they were quantifiable, the form in which they are reported would be subject to “different cultural and economic ‘currencies.’”<sup>203</sup> The authors underscore this issue with a poignant example: how could an investor compare the social impact of a bed net that prevents one Kenyan child from contracting malaria with a loan to a farmer resulting in crop production that generates food and income?<sup>204</sup> They argue that while IRIS is a useful starting point, it only measures social impact along one axis. McCreless and Trelstad advocate a more complex approach known as the GPS approach. The GPS approach has been designed to assist, *inter alia*, in the future selection of organizations in which to invest.<sup>205</sup> In this section, I

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199. McCreless & Trelstad, *supra* note 106, at 21.

200. McCreless & Trelstad, *supra* note 106, at 21.

201. McCreless & Trelstad, *supra* note 106, at 21.

202. McCreless & Trelstad, *supra* note 106, at 21.

203. McCreless & Trelstad, *supra* note 106, at 21.

204. McCreless & Trelstad, *supra* note 106, at 21.

205. Although there are other approaches besides IRIS and GPS, these are the only two viable systems being put forward as ways of measuring impact. *See, e.g., Relationship Between SROI and Other Approaches*, THE SROI NETWORK, [http://www.thesroinetwork.org/publications/publications/cat\\_view/217-relationship-](http://www.thesroinetwork.org/publications/publications/cat_view/217-relationship-)

consider whether the GPS approach is a better choice than IRIS alone for measuring social impact in the charitable sector. Ultimately, I conclude that the GPS approach falls behind IRIS due to its complexity, associated administrative problems, and likely overloading of donors.

A. *IRIS + Accurate Estimates of Social Impact = GPS Approach*

McCreless and Trelstad start with a basic premise: any system for measuring social impact should be accurate. They note there should be a focus on obtaining “accurate estimates of social impact” instead of on precision. Accuracy would provide donors with a truthful picture of what their funds have accomplished rather than a decimal point-based figure.<sup>206</sup> While impact measurement is “unsolvable precisely, [it is] quite solvable imprecisely and accurately.”<sup>207</sup> In sum, they argue most methodologies attempt to be both accurate and precise, and a different approach is needed.<sup>208</sup> The problem with increased focus on precision is that the methodology will be too expensive. The problem with less focus on precision is an inevitably less rigorous methodology that is “often imprecise, inaccurate, or both.”<sup>209</sup> Ultimately, this polarity pushes organizations or assessors into having no data (due to over focus on precision) or to accepting data that is likely inaccurate (due to a lesser standard of rigor).<sup>210</sup> The authors argue that instead of focusing on precise numerical figures to make investment decisions, donors simply need a way to make an accurate estimate about a charity’s work, so they may decide which organizations will put their funds to the most productive use.<sup>211</sup> Accurate estimates may be obtained through using a combination of methodologies, including IRIS, or what the authors term the “GPS approach.”<sup>212</sup> The GPS approach allows donors “to triangulate . . . impact

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between-sroi-and-other-approaches (last visited May 6, 2014) (listing documents explaining alternative approaches and arguing that the Social Return on Investment (“SROI”) method may serve as a complement to IRIS and GIIRS). GIIRS is described *infra* in Part IV.

206. McCreless & Trelstad, *supra* note 106, at 21.

207. McCreless & Trelstad, *supra* note 106, at 21.

208. McCreless & Trelstad, *supra* note 106, at 21.

209. McCreless & Trelstad, *supra* note 106, at 21.

210. McCreless & Trelstad, *supra* note 106, at 21.

211. McCreless & Trelstad, *supra* note 106, at 21.

212. See McCreless & Trelstad, *supra* note 106, at 21 (explaining that the authors refer to their approach as the GPS Approach because it involves “a process of triangulation similar to that of a GPS, which combines multiple satellite signals to triangulate an accurate estimate of a person’s location on Earth,” stating that the GPS approach was developed to respond to an over-emphasis on precision, and noting “accuracy” may be accomplished through a rigorous combination of methodologies to put forth a “compelling and accurate story”).

reliably and consistently . . . to direct [investment] to the projects that offer the greatest promise for change.”<sup>213</sup> McCreless and Trelstad definitively contend that IRIS should serve as part of this approach.<sup>214</sup>

They argue the GPS approach would be useful to charities not only in communicating their performance to current and potential donors but also in gaining a better understanding of their use of resources. As McCreless and Trelstad point out, “The GPS approach helps us to converge on a single, internally consistent, and well-articulated point of view on which projects have greatest impact, for use both in setting internal strategy and in external communication.”<sup>215</sup> These advantages are relevant to and translatable to the charitable context. Nevertheless, there is a current rating system that relies upon IRIS that would be more amenable to the charitable context at this time, which I discuss in Part IV.

Under the GPS approach, three dimensions of impact are examined.<sup>216</sup> First, the type of impact (e.g., outputs or outcomes) or the nature of the person/organizations to be assisted is identified.<sup>217</sup> IRIS is used to determine the comparability of outputs across organizations.<sup>218</sup> Second, the scale of impact or the number helped is analyzed.<sup>219</sup> Third, the depth of change per type of impact, per person is considered.<sup>220</sup> Specifically, this last dimension refers to the “change in subjectively experienced well-being [captured by the economic term ‘utility’] associated with [stated] outcomes.”<sup>221</sup> This would mean social impact is equal to a sum comprised of the following: (1) changes in well-being (e.g., depth), (2) for all impact types, (3) for all intended people (e.g., scale). In terms of implementing the GPS approach, the authors have developed a “Social and Environmental Scorecard” (“scorecard”) that charities could use to evaluate their impact along the three dimensions. For example, social investment fund Root Capital’s<sup>222</sup> scorecard provides the following in terms of information about

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213. McCreless & Trelstad, *supra* note 106, at 22.

214. McCreless & Trelstad, *supra* note 106, at 22.

215. McCreless & Trelstad, *supra* note 106, at 22.

216. McCreless & Trelstad, *supra* note 106, at 22.

217. McCreless & Trelstad, *supra* note 106, at 22.

218. The next section discusses the current rating system that has burgeoned from using IRIS for comparability purposes. See *infra* Part IV (describing the GIIRS “impact assessment” system as it relates to the standardized metrics used in IRIS).

219. *Infra* Part IV.

220. *Infra* Part IV.

221. *Infra* Part IV.

222. Root Capital is a social investment fund that serves farmer associations and private organizations in rural areas of Africa and Latin America by providing capital to support sustainable environmental practices. *Our Approach*, ROOT CAPITAL, <http://www.rootcapital.org/our-approach> (last visited Aug. 8, 2014); see also McCreless & Trelstad, *supra* note 106, at 22 (discussing how the GPS approach focuses on type of

loans made to small farmers internationally: (1) four types of impact—(a) incomes, (b) worker treatment, (c) community, and (d) environment; (2) scale—the number of farmers affected; and (3) depth—for each of the four types of impact identified.<sup>223</sup> The authors note that the GPS approach satisfies the need for an “intellectually coherent approach” for measuring social impact.<sup>224</sup> This approach allows for more organized thinking and a better framework for discussing impact.

#### B. *Problems with the GPS Approach*

Underscoring the difficulty with any system designed to measure performance, including those associated with the financial markets, the authors themselves find the GPS approach still wanting. Although the GPS approach, like IRIS, is focused on output metrics, even the authors advocate supplementing the three dimensions of the GPS approach with more in-depth information in certain cases.<sup>225</sup> The authors emphasize the need for examining other data such as “enterprise- or project-reported information, site visits . . . , case studies and other reports by third parties, qualitative and quantitative surveys . . . , data gathered using new approaches to mobile technology, and literature reviews,” while not neglecting to factor in cost data to determine cost-effectiveness.<sup>226</sup> In sum, the authors advocate estimating a given project’s impact in terms of the three inputs identified (type of impact, scale, and depth) along with cost-effectiveness and casualty.<sup>227</sup> If a charity has provided an IRIS profile and a scorecard (satisfying the GPS approach factors) that indicates more in-depth studies would be beneficial, presumably the charity would have attracted enough funds through its performance to finance more in-depth studies. However, this is a daunting list even if the primary aim is not to conclude an analysis of an organization with great precision. Although the authors are not advocating a more in-depth analysis of every organization, the sheer added complication makes it unlikely this approach will be adopted throughout the charitable sector.<sup>228</sup>

The threshold question of who will conduct the GPS approach for well-meaning donors (who do not run their own funds or have their own social investment managers) is a valid one. Presumably, larger foundations

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impact, scale of impact, and depth of impact).

223. McCreless & Trelstad, *supra* note 106, at 22.

224. McCreless & Trelstad, *supra* note 106, at 22.

225. McCreless & Trelstad, *supra* note 106, at 22.

226. McCreless & Trelstad, *supra* note 106, at 22.

227. McCreless & Trelstad, *supra* note 106, at 22.

228. McCreless & Trelstad, *supra* note 106, at 22.

such as the Gates Foundation and the Moore Foundation, could designate individuals to conduct these analyses and make the results public. In addition, one of the charity reviewers and evaluators mentioned earlier could undertake this type of approach and make the results available online. Finally, donor-advised funds could choose to use this approach to provide information to clients about their registered charities.<sup>229</sup> However, there is no guarantee that will be true.

There is also the question of whether donors would become overwhelmed by having so much additional information available. Stock market investors also have a plethora of information about company performance at their disposal, but they do not need to appeal to each source each time they seek to make a decision about investing.<sup>230</sup> They are able to isolate those factors that are most relevant given a circumstance. It is unclear whether the same ability would apply right away in the charitable context.

### C. *The Importance of Comparability*

Measuring social impact is only the first step in the process of getting the right information into the hands of donors; the next step is providing them with a way to compare charities (based upon such measures). One valid advantage that the GPS approach has over IRIS is its rating or grading of organizations. The authors argue that after accurate estimates are

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229. “Different types of sponsoring organizations offer different services to their clients. Community and public foundations know their community or issue area well and can provide excellent information to the donor about strategic or effective grantees . . . . National sponsoring organizations, particularly the larger ones, typically maintain extensive national databases with relevant information about prospective grantees.” Ruth Masterson, *The Best of Both Worlds: Using Private Foundations and Donor Advised Funds*, ASSOCIATION OF SMALL FOUNDATIONS (2010), <http://www.fidelitycharitable.org/docs/Using-Private-Foundations-and-Donor-Advised-Funds.pdf>. Organizations such as Fidelity Charitable offer the use of Charity Navigator, GuideStar, and BBB Wise Giving Alliance to help clients research charities. *Donor-Advised Funds*, FIDELITY CHARITABLE, <http://www.fidelitycharitable.org/giving-strategies/give/donor-advised.shtml> (last visited Aug. 8, 2014).

230. “[O]verall I think investors are better informed and are not suffering from too much information.” Eleanor Bloxham, *Do Investors Have Too Much Information?*, FORTUNE (Oct. 29, 2013), <http://fortune.com/2013/10/29/do-investors-have-too-much-information/> (quoting Gregory P. Taxin, President of Clinton Group, Inc.). “The SEC will best serve investors by focusing on making data more accessible, not limiting the amount.” *Id.* (quoting Laura Berry, Executive Director of ICCR). “While not all investors review every single document filed with the SEC, there are investors who read and analyze the various pieces of information and trade on that information. . . . Not everyone needs to read everything, but the information is useful to someone.” *Id.* (quoting Vineeta Anand, Chief Research Analyst of AFL-CIO Office of Investment).

obtained, projects may be compared.<sup>231</sup> The GPS approach is the beginning stage of a system that will combine results from varying methodologies to produce accurate categorization based upon level of social impact. Ultimately, they conclude their approach will result in standards of comparability, i.e., what are “unacceptable, acceptable, and outstanding levels of impact.”<sup>232</sup>

Even if a donor has complete information about performance (under IRIS or alternatively the GPS approach which utilizes IRIS), without comparability data, the choice among similar charities still would be a difficult and an ill-informed one. One need only consider the frustrations in selecting the “best performing” printer, digital camera, or smartphone by reading about the features of each to understand the problem of information overload for proper decision-making. Simply stated, efficiency requires that investors or donors have the ability to compare organizations. It is only through a system of comparability, i.e., a rating system, that investors and donors will end up allocating resources to those organizations that will put their funds to their most productive use. The ability to compare organizations is of crucial importance in terms of efficiency, and the GPS approach satisfies this by giving donors this ability. The GPS approach provides a way to sort organizations based upon level of impact, e.g., “failure, status quo, success, [or] game changer. . . .”<sup>233</sup> The authors also refer to “impact teams” who would produce ratings, so organizations may be sorted by level of impact.<sup>234</sup>

Nevertheless, while IRIS alone does not address comparability, it is a system that allows for comparability as even McCreless and Trelstad have noted.<sup>235</sup> There is a current rating system that is based upon IRIS and that is used in impact investing today. I examine this rating system in the next section. McCreless and Trelstad denounce it on the grounds that it tries to determine a “common numerical index.”<sup>236</sup> They contend this is wasted effort, and instead investors should look to a measurement system that combines and triangulates various pieces of information “to rank or categorize [organizations] by level of impact.”<sup>237</sup> However, McCreless and Trelstad’s viewpoint is a result of their placing too little emphasis on the value of comparability overall. They state that, “once we are confident in

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231. McCreless & Trelstad, *supra* note 106, at 22.

232. McCreless & Trelstad, *supra* note 106, at 22.

233. McCreless & Trelstad, *supra* note 106, at 22.

234. McCreless & Trelstad, *supra* note 106, at 22. The current rating system used in impact investing is discussed *supra* in Part II.

235. McCreless & Trelstad, *supra* note 106, at 22.

236. McCreless & Trelstad, *supra* note 106, at 22.

237. McCreless & Trelstad, *supra* note 106, at 22.

the accuracy of our assessments, we can shift our focus to . . . perhaps comparability.”<sup>238</sup> Comparability is an essential component of establishing a more efficient charitable market and not an item that should be loosely communicated through grades for now and then refined later. Complicating the assessment process decreases the chance that reliable comparability, which is essential, will occur.

McCreless and Trelstad are arguing for an assessment system that involves combining methodologies, and thus, they believe IRIS should be supplemented with their GPS approach. They argue certain charities may choose to measure their social impact further along the three dimensions of the GPS approach, presumably by completing scorecards. I would conclude that IRIS is the appropriate starting point. As McCreless and Trelstad assert, assessment should focus on accuracy, not precision. IRIS already provides accurate information about a charity’s social impact, and the GPS approach, while perhaps more accurate, places an additional burden on the donor or on a charity reviewer or evaluator willing to take up the cause. Adding more complexity to the area of measuring social impact is not an appropriate step at this time.

Eventually, donors will learn how to navigate various assessment systems; however, in the meantime, they merely need a way to measure social impact that is better than the current system and has the ability to become more accurate, as explained. The IRIS system, combined with a system of comparability based upon it, does provide the basis for a solution for today that is adaptable to future needs. A crucial question is how we can translate an accurate measurement of social impact to a decision to invest in one charity versus another. I address that question in the next section, which focuses on achieving comparability data, i.e., a rating system based upon IRIS.

#### IV. COMPARING CHARITIES BY SOCIAL IMPACT – GIIRS (A RATING SYSTEM BASED ON IRIS)

Even if we solve the problem of measuring impact with IRIS, we still are left with the following question: how can donors make the right decision now that performance information is available? An ability to compare charities is required. The GPS approach, which incorporates IRIS, provides a way of rating charities by level of social impact and assigns charities a category by social impact level, including “failure, status quo, success, [or] game changer. . . .”<sup>239</sup> However, as explained, this

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238. McCreless & Trelstad, *supra* note 106, at 22.

239. McCreless & Trelstad, *supra* note 106, at 22.

approach requires tremendous effort on the part of donors or on the part of charity reviewers and evaluators. What is needed is a standardized system for rating and comparing charities independent of donors that is based on IRIS. I propose that a charitable equivalent of the current rating system used in impact investing provides a solution to the problem of comparability.

A more general rating system based solely on IRIS is necessary for a more efficient charitable market. Impact investing has developed a solution to this problem for its investors, and this solution is the proper one for the charitable sector as well.<sup>240</sup> It uses a rating system (based upon the standardized metrics in IRIS) that compares organizations, inter alia, across sectors and geographically.<sup>241</sup> A rating system similar to the one used in impact investing would allow donors to select top-performing charities more easily and would result in a more efficient charitable market. Thus, within a given sector, geographic location, or other indicator field, donors would be provided with a ranking of top performers. Following is an examination of the rating system currently used in impact investing known as the Global Impact Investing Rating System (“GIIRS”) and a discussion of why the charitable sector should also adopt it.<sup>242</sup>

#### A. *A Brief Explanation of GIIRS*

In 2011, B Lab, the nonprofit mentioned in Part I, launched GIIRS, and IRIS serves as the basis for it.<sup>243</sup> GIIRS is “the world’s first platform for rating and analyzing investments based on their social and environmental impact.”<sup>244</sup> B Lab’s purpose in launching GIIRS was to increase growth in impact investing by allowing investors access to the corporate social responsibility programs of companies in a manner similar to how they would analyze companies’ “financial risk and return.”<sup>245</sup> A modification of this rating system should be used to enable donors to consider whether their funds are flowing to those charities that are producing the most social impact per program dollar expended.

GIIRS is best understood through an examination of how it works alongside IRIS to assist investors. Similar to IRIS, GIIRS streamlines the process of measuring social impact for multiple investors, or in the case of

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240. See Bouri, *supra* note 9, at 149–50 (explaining the value of a generalizable rating system in order to better articulate value in this sector).

241. See Kassoy, *supra* note 40.

242. Bouri, *supra* note 9, at 149–50.

243. Kassoy, *supra* note 40.

244. Kassoy, *supra* note 40.

245. Wilburn, *supra* note 8, at 19.

the charitable marketplace, multiple donors. GIIRS uses a survey, known as an Impact Assessment, that results in a rating for organizations that is similar to what Morningstar or Moody's provides in the financial market context.<sup>246</sup> The survey itself is largely consistent with IRIS standards. As Bouri notes, "the GIIRS survey uses many IRIS [terms and] definitions in its questions about social and environmental performance."<sup>247</sup> Every two years the GIIRS rating system is updated.<sup>248</sup> Essentially, GIIRS gives impact investors a complete, comparable, and objective assessment or rating of an organization's social and environmental impact.<sup>249</sup> It provides investors with the tools they need to analyze aggregated performance data on social impact, generally collected through IRIS.<sup>250</sup> Put simply, GIIRS helps investors select the right organizations within a given area and makes impact investing more efficient.

#### B. *GIIRS and IRIS: A Comparison*

GIIRS may be better understood by examining how it is similar to and different from IRIS. In terms of social performance, GIIRS is a comprehensive rating whereas IRIS is a set of standardized metrics used to describe performance.<sup>251</sup> B Lab manages GIIRS, and the GIIN manages IRIS.<sup>252</sup> In terms of use, GIIRS provides a third-party or objective evaluation about performance, whereas IRIS is used by the organization to track and manage performance, and by investors to obtain relevant performance information.<sup>253</sup> The information required for each differs as well. For GIIRS, users complete an Impact Assessment that involves a set of required questions dealing with multiple aspects of work, which specifically are based upon the organization's size, sector, and region.<sup>254</sup> There are currently over forty versions of the Impact Assessment, each of

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246. Bouri, *supra* note 9, at 157.

247. Bouri, *supra* note 9, at 157.

248. *Approach to Impact Investment*, GIIRS, <http://giirs.nonprofitsoapbox.com/about-giirs/how-giirs-works/162> (last visited Aug. 8, 2014).

249. Press Release, B Lab, Launch of the World's First Ratings and Analytics Platform for Impact Investing: 15 Pioneer Investors with \$1.5 Billion in Impact Assets Declare Investment Preference for GIIRS-rated Funds and Companies, (Sept. 20, 2011) [http://www.csrwire.com/preview/press\\_release/YGpEmK4WpnNNI53cXcxsLO8iEJ4hkW1Q1TkRM65Y](http://www.csrwire.com/preview/press_release/YGpEmK4WpnNNI53cXcxsLO8iEJ4hkW1Q1TkRM65Y).

250. *Id.*; see also Bouri, *supra* note 9, at 157 (providing detail on IRIS and GIIRS reporting infrastructure).

251. *IRIS & GIIRS*, GIIRS, <http://giirs.nonprofitsoapbox.com/about-giirs/how-giirs-works/163> (last visited Aug. 8, 2014).

252. *Id.*

253. *Id.*

254. *Id.*

which elucidate a company's impact while collectively providing a standardized methodology and an overarching framework. Each GIIRS Assessment contains 15-20 weighted questions covering the following four "Impact Areas": Governance, Workers, Community, and Environment.<sup>255</sup> Each of these four areas contains several sub-categories as well.<sup>256</sup>

Unlike GIIRS, IRIS does not have required metrics that must be used. Instead, IRIS users are able to choose their metrics and do so in light of their activities, impact objectives, and investor requirements or other criteria.<sup>257</sup> With GIIRS, the data collected is standardized because Impact Assessments are used.<sup>258</sup> With IRIS, the organization is responsible for collecting data.<sup>259</sup> The final step of reporting is completed by GIIRS (along with third-party verification) and self-reported by the organization to its investors and voluntarily to IRIS.<sup>260</sup>

In sum, IRIS provides a standardized set of metrics, whereas GIIRS provides comparable metrics that will ensure efficient capital flow to the organizations that will put such capital to its most productive use.<sup>261</sup> GIIRS helps investors decide where their funds should go in light of how well an organization is doing relative to others in terms of social impact.<sup>262</sup> Impact investors may use GIIRS to examine the social impact of organizations across several factors: "geography, sector, industry, and size."<sup>263</sup> Charitable donors also need this tool if IRIS is to be relevant to their investment decisions.

### C. *Does GIIRS Work and How Would It Apply to the Charitable Sector?*

After just two years, GIIRS has had a notable effect on impact investing, which suggests a similar platform could produce the same for charitable giving. Currently, over 6,000 companies use GIIRS.<sup>264</sup>

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255. *Company Assessment Structure*, GIIRS, <http://giirs.nonprofitsoapbox.com/about-giirs/how-giirs-works/164> (last visited Aug. 8, 2014).

256. *Id.*; see also *Appendix IV: GIIRS Company Assessment – Key Issues and Indicators*, GIIRS, <http://giirs.nonprofitsoapbox.com/about-giirs/how-giirs-works/174> (last visited Aug. 8, 2014) (providing a complete a complete list of all the impact indicators within each impact area).

257. *IRIS & GIIRS*, *supra* note 251.

258. *IRIS & GIIRS*, *supra* note 251.

259. *IRIS & GIIRS*, *supra* note 251.

260. *IRIS & GIIRS*, *supra* note 251.

261. *IRIS & GIIRS*, *supra* note 251 ("GIIRS has the potential to catalyze hundreds of billions of dollars of sidelined investment capital to flow to the world's most inspiring and talented entrepreneurs.").

262. Press Release, *supra* note 249.

263. *GIIRS Company Assessment Structure*, *supra* note 255.

264. GIIRS, *What is a GIIRS Impact Rating?*, (last visited Aug. 8, 2014),

Remarkably, “[i]n May 2013, 63 funds and 409 companies from 30 countries were in the process of obtaining a GIIRS rating, and 21 institutional investors had declared a preference for GIIRS-rated investments in their impact investment portfolios.”<sup>265</sup> One of the reasons for its success was its well-executed start. With the launch of GIIRS in 2011, fifteen GIIRS Pioneer Investors agreed to prefer “GIIRS-rated funds and companies.”<sup>266</sup> The GIIRS Pioneer Investors represent, inter alia, a variety of private equity investors and include worldwide financial institutions and foundations, e.g., J.P. Morgan, The Rockefeller Foundation, and W.K. Kellogg Foundation.<sup>267</sup> Two years later, 53 GIIRS Pioneer Funds experimented with management of almost \$2 billion in assets in 30 countries.<sup>268</sup> The GIIRS Pioneer Investors and future users realized the value of “credible, comparable metrics on impact.”<sup>269</sup> By 2016, GIIRS intends to make available Impact Ratings for over 2,500 companies and over 350 funds, providing over 150 investors with the means to benchmark social performance in the same manner that financial performance currently is assessed.<sup>270</sup> GIIRS is offering an essential “capital markets infrastructure” to the impact industry.<sup>271</sup> This same infrastructure would be of immeasurable value to the charitable sector.

The next logical step for the charitable sector would be to incorporate B Lab’s recently launched GIIRS system to assist donors with comparing the social impact of various charities. The GIIRS system is translated easily into relevance for the charitable market. The Pioneer Investors in the charitable context would be a group of U.S. donors, individuals, private foundations, or donor advised funds, who agree to make their decisions to contribute to a given charity based upon that charity’s GIIRS rating. GIIRS Impact Assessments of the charities would be completed annually as well. The GIIRS Impact Assessments would be based upon specialized impact areas with sub-categories for each area. Charity evaluators would serve as the third-party verifiers, and charities would choose whether to report their

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<http://giirs.nonprofitsoapbox.com/about-giirs/how-giirs-works/159>.

265. Wilburn, *supra* note 8, at 19.

266. Press Release, *supra* note 249 (stating the “global beta test” involved over “200 companies across 30 countries”).

267. Wilburn, *supra* note 8, at 19 (noting that GIIRS Pioneer Investors have committed \$9 million to advance adoption of GIIRS and to develop further products, including one for public markets).

268. *Pioneer Funds*, GIIRS, <http://giirs.nonprofitsoapbox.com/for-funds/pioneer> (last visited Aug. 9, 2014).

269. Press Release, *supra* note 249 (quoting Andrew Kasoy, co-founder of B Lab).

270. Wilburn, *supra* note 8, at 19.

271. Press Release, *supra* note 249 (noting that this infrastructure is equipped to direct \$1 trillion toward impact investments in the developing world over the next ten years).

ratings to IRIS. GIIRS would solve the problem of assisting donors with a way to compare charities based upon uniform standards of performance and would ultimately result in a more efficient charitable market.

### CONCLUSION

In order for an efficient charitable market to exist, the charitable sector must enable donors to determine which charities will put an investment to its most productive use. Donors currently do not have the information necessary to make informed decisions about where to give. As a result, their funds often do not flow to the most effective charities. As this article has shown, impact investing holds valuable solutions for this problem. Both impact investors and charitable donors need standardized measurements of social impact in order for efficiency to exist. These measurements allow them to evaluate their “return” on a given investment. Before considering how impact investing tools may resolve this problem, it is important to consider the criteria to be used in narrowing the number of charities for review in terms of social impact and the overall criteria of a system for measuring social impact of selected charities. In terms of the former, charities should undergo the qualitative review set forth known as NPR. This review would reveal, *inter alia*, whether a given charity’s program is well suited for solving a stated need. Any charity failing to satisfy the review would not require further review since it would not be able to provide the most social good per dollar of investment for a given cause. In terms of the latter, under current thought, a system for measuring social impact only needs to exceed the current situation and have the ability to become more accurate.

An impact investing tool known as IRIS satisfies the criteria for a system of measuring social impact in the charitable sector. IRIS provides a standardized set of metrics, and it is adaptable to the changing needs of the sector. An alternative tool for measuring social impact recently introduced to impact investing, the GPS approach, is too cumbersome and dependent upon third-party actors to be relevant at this time. The question of how donors may compare respective charities by level of social impact was resolved through looking to a rating system based upon IRIS known as GIIRS. A modified version of GIIRS would provide a way to ensure funding of effective charities. If we provide donors with a way to determine where their charitable dollars will do the most good through establishing a more efficient charitable market in the manner set forth, the most pressing global and humanitarian problems of today stand a chance of being resolved during our lifetime.