



# GLOBAL ADVOCACY NEWS AND UPDATE

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**Happy New Year!** As we turn the page on a dynamic, sometimes turbulent year, we look forward to a fresh and healthy 2019. In this issue, we provide you with a look ahead—at new research, the new US Congress, and new research priorities. We also provide an overview of our key Advocacy principles and issues, which demonstrate our commitment to working hard for the investment community. We welcome your comments or questions and wish you a prosperous new year.

—Kurt Schacht, CFA, Managing Director of Advocacy

## MARKET TRANSPARENCY, STRUCTURE, & FAIRNESS

# PRIVATE VS. PUBLIC MARKETS: CAPITAL FORMATION AND IMPLICATIONS FOR INVESTORS

**Capital formation shift:** In late November, CFA Institute released [new research](#) focused on the evolving capital formation landscape, including recommendations for improving investor access to private markets. Increasingly, well-funded private institutional investors are leading a shift in capital formation away from public markets, which may have profound implications for retail investors. The report, [Capital Formation: The Evolving Role of Public and Private Markets](#), suggests that the growing ability of entrepreneurs to access private capital has encouraged a shift from public market capital raising, which carries fewer regulatory burdens and typically enables entrepreneurs to retain greater control over their businesses. The report also finds that firms are staying private longer and raising more capital privately than in the past. This trend is leaving individual investors with fewer IPO opportunities, causing them to miss out on the returns provided by rapidly growing new businesses.

**Recommendations:** The report offers policy recommendations to ensure fuller market transparency and level the playing field for individual investors: better disclosure and transparency standards in the private markets, stringent investor protections, and access to private market investments by pension savers.

**Our position:** Author of the report Sviatoslav Rosov, CFA, Director, Capital Markets Policy at CFA Institute, commented: “Individuals are being told to save for their retirements by investing in the public markets at a time when companies are increasingly preferring to avoid or defer a public listing. This may deprive savers of the ability to participate in high-growth business models and further promote the sense that markets are being operated for the benefit of ‘insiders’. We believe the solution is to allow savers to invest in private markets through their pension funds or a similar professional intermediary.”

## ADVOCACY IN ACTION

### MEDIA & INDUSTRY ATTENTION

*Financial Times* (1 January) reported on research from CFA Institute that suggests the frequency of a company's financial reporting does not materially affect its level of corporate investment.

In a *NASDAQ* (28 December) article, Kurt Schacht, CFA, Managing Director of Advocacy at CFA Institute, wrote about the proxy process: "The voting of corporate proxies is a crucial nexus between shareowner and the officers/directors entrusted to run the business."

In *Forbes India* (26 December), Mary Leung, CFA, Head of Advocacy, APAC, at CFA Institute, wrote about the rise of dual-class shares.

In *The Hill* (16 December), Kurt Schacht, CFA, Managing Director of Advocacy at CFA Institute, wrote the FTC should stay away from investment managers.

In *Cotizalia* (15 December), Josina Kamerling, Head of Regulatory Outreach, EMEA, at CFA Institute, wrote about a CFA Institute study showing that the majority of investment professionals across the EU support incorporating ESG factors into the investment analysis process.

*CPA Journal* (10 December) reported on a comment letter by Sandra Peters, CFA, Head of Financial Reporting Policy at CFA Institute, on audit inspection feedback.

In *Asia Asset Management* (10 December) Rocky Tung, Director of Capital Markets Policy, APAC, at CFA Institute, wrote about corporate governance in Asia.

*Investment & Pensions Europe* (5 December) reported companies are delaying initial public offerings to "take advantage of a stockpile of investor cash waiting to be deployed privately," according to a report from CFA Institute.

*Morningstar* (4 December) reported on a CFA Institute Research Foundation paper that was awarded "Best Alternatives Paper 2018" by *Savvy Investor*.

*Pensions & Investments* (3 December) reported companies are "staying private longer and raising more capital privately" than before as investors shift away from public markets in favor of private, according to a report by CFA Institute.

*FTAdviser* (UK) (30 November) quoted Josina Kamerling, Head of Regulatory Outreach, EMEA, at CFA Institute, on the CFA Institute ESG member survey.

In *Hong Kong Economic Journal* (30 November), Rocky Tung, Director of Capital Markets Policy, APAC, at CFA Institute, wrote on how to improve corporate governance in Asia.

In *Financial Forum* (29 November), Josina Kamerling, Head of Regulatory Outreach, EMEA, at CFA Institute, wrote about the progress of the European Commission's Capital Markets Union project.

In a *NASDAQ* (28 November) op-ed, Kurt Schacht, CFA, Managing Director of Advocacy at CFA Institute, wrote about the importance of corporate governance.

In *The Hill* (23 November), Kurt Schacht, CFA, Managing Director of Advocacy at CFA Institute, discussed the issues surrounding proxy voting.

*Bloomberg Tax* and *Bloomberg BNA* (26 November) quoted Sandra Peters, CFA, Head of Financial Reporting Policy at CFA Institute, on investors wanting more revenue disclosures.

In *The Hill* (1 November), Kurt Schacht, CFA, Managing Director of Advocacy at CFA Institute, wrote that regulators should be cautious in reforming the Volcker Rule.

In *Seeking Alpha* (1 November), Mary Leung, Head of Advocacy, Asia Pacific at CFA Institute, discussed the recent pivot toward DCS listings in Asia.

## ADVOCACY OVERVIEW

# POLICY ADVOCACY IN A NUTSHELL

As we close one year and move on to the next, we want to share an overview of our advocacy principles and key issues across the globe. Although this list is not comprehensive, it provides a concise recap of our key priorities and efforts over the past year.

**ADVOCACY PRINCIPLES:** CFA Institute Policy Advocacy efforts focus on

1. advancing and promoting policies that serve investor protection over commercial interests,
2. creating content and advancing policy research that improves market structure, and
3. supporting the creation and adoption of rules and regulatory standards that improve and expand investment industry professionalism.

**KEY ISSUES AND PRIORITIES:**

### Capital Markets:

- **Uniform Fiduciary Duty—SEC Regulation Best Interest:** CFA Institute has long supported a uniform fiduciary duty for those providing investment advice to retail investors, and has called upon the SEC to create one. Our August 2018 [comment letter](#) summarized our recommendations.
- **Corporate Governance:** Key issues, such as environmental, social, and governance (ESG) integration, dual-class shares, share buybacks, and board diversity are changing the corporate governance landscape, prompting our action and advocacy, including
  - issuing [key ESG reports](#), in partnership with PRI, to uncover the main drivers of and barriers to ESG integration and highlight best practices; and
  - updating our guide, [The Corporate Governance of Listed Companies](#), to help investors incorporate governance factors into their decision making.
- **Fintech:** We continue to advocate for the multiple uses of data and technology in financial reporting and analysis, issuing [articles](#) and [white papers](#); and prompting the SEC's adoption of new [XBRL requirements](#).
- **Investment Products:** Promoting disclosure of risk and fees is a key priority, prompting a recent [report](#) and our efforts with the SEC. We continue to focus on ETFs, mutual fund schemes, use of derivatives, and crypto.
- **MiFID II:** CFA Institute shares the goal of MiFID II: enhancing transparency in market research and removing potential conflicts of interest between asset managers and clients. Our [report](#), which provides the results of our survey of European investment professionals on the impact of the new rules, has garnered wide attention.

### Financial & Corporate Reporting Issues:

- **Alternative Performance Measures (APM)/ Non-GAAP:** CFA Institute has long advocated against APM metrics, which can show better profitability and less comparability, including commenting on the 2003 SEC regulation. In 2018, we issued a [report](#) on investor perspectives.
- **Short-Termism:** CFA Institute is an advocate for quarterly versus semi-annual reporting, based on investors' need for timely, accurate, and relevant financials, which is reinforced by the findings of our 2017 [study](#).
- **Critical Audit Matters Reporting:** CFA Institute influenced significant changes in the Public Company Accounting Oversight Board (PCAOB) to US auditors' reports, which were approved by the SEC in October 2017. The [PCAOB's final standard](#) references our member surveys, and the SEC's order references our most recent [comment letter](#).
- **Sustainability/Integrated Reporting:** CFA Institute is focused on the sourcing, standards, and assurances surrounding integrated reporting to enhance clarity to policymakers. Our new partnership with the [International Integrated Reporting Council](#) supports our efforts in this area.
- **Segments Reporting:** CFA Institute issued a [survey report](#) highlighting the importance of segment reporting to investors.

### Other Issues:

- Brexit
- Millennial Study
- Capital Formation
- Financial Reporting Technology
- Systemic Risk
- Cybersecurity Readiness
- IFRS Regulations

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PROFESSIONAL PRACTICE

## 116TH CONGRESS AND THE CHANGES AHEAD

**New Congress:** The new Democratic control of the US House of Representatives is expected to change the focus of the House Committee on Financial Services. Over the past eight years, the Committee, chaired by Republican Representative Jeb Hensarling (R-TX), focused its energies on capital formation and signature bills such as the 2012 Jumpstart Our Business Startups (JOBS) Act. Many of the bills introduced during Rep. Hensarling’s tenure sought to reduce the regulatory burdens for banks and investment funds, including electronic crowdfunding systems. Congress also reduced the regulatory controls imposed by the succession of major financial regulatory laws known as Sarbanes-Oxley and Dodd-Frank.

**New Leadership:** Under the leadership of incoming Chair Representative Maxine Waters (D-CA), the House Committee on Financial Services is expected to retain an interest in capital formation issues, tempered with a greater focus on investor protection. Representative Carolyn Maloney (D-NY) is expected to chair the reconfigured subcommittee on capital markets issues, replacing Representative Bill Huizenga (R-MI) in that role. We expect the SEC’s pending fiduciary duty rules to dominate much of the capital markets space in the 116th Congress. Although the rule is in the SEC’s jurisdiction, Congress can influence the outcome of the agency’s final rules and is interested in having the SEC address conflicts of interest and advice regarding high-risk products. Other likely capital markets issues for focus in the subcommittee include disclosures on sustainability products and long-term investing.

**Our position:** CFA Institute will continue to work with staff and members from both parties in Congress. We will do so by offering comments and education on capital markets issues to members of Congress, and by providing updates on the positions espoused in regulatory consultations.




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PROFESSIONAL PRACTICE

## CMPC GLOBAL POLICY PRIORITIES

**Policy discussion:** The CFA Institute Capital Markets Policy Council (CMPC) met in Washington, DC, to discuss financial technology policy issues, capital markets research projects, advocacy efforts, and policy expectations across the three global regions. The meeting also included informative presentations:

- Tomica Tilleman, chair of the Global Blockchain Business Council, discussed the applications and limits of distributed ledger technologies in financial services.
- David O’Sullivan, EU ambassador to the United States, reviewed prospects for post-Brexit trans-channel relations and EU trading relations with the United Kingdom, the United States, and China.
- Brian Scholl, Principal Economic Advisor and Senior Economist at the Office of the Investor Advocate, discussed surveys on investors’ comprehension of disclosures proposed by the SEC in Regulation Best Interest and in the Customer Relationship Summary forms

**Issues moving forward:** Concluding the meeting, a round-the-table discussion highlighted each member’s policy concerns, including financial technology (particularly its governance, application, and oversight in China), private market capital formation, continued pension transformation in favor of defined-contribution plans, corporate governance in Asia, potential risks of index and exchange-traded funds, and US regulatory reform.

The next CMPC meeting is tentatively planned for late October 2019.

## PROFESSIONAL PRACTICE

**2019 POLICY ADVOCACY PRIORITY RESEARCH PROJECTS**

The CFA Institute Advocacy group has identified its priority research projects for 2019. In future issues of this newsletter, we will highlight two priority projects to provide an understanding of our policy direction. The first two appear below.

**1. Priority Research Project—Asia Pacific: *Study on Commissions and other Sales Inducements***

Commissions and other sales inducements can create conflict of interests and behavioral biases among investment advisors. They can lead to widespread mis-selling of financial products and create processes that do not put clients' interest first. The issue has come to the forefront in the Asia-Pacific region (APAC) with the establishment in Australia in late 2017 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The Commission uncovered a staggering level of misconduct among financial advisors and bankers, affecting hundreds of thousands of customers. Other markets in APAC are likely facing similar issues with limited transparency around products and fees and the mis-selling of financial services across the region. Global markets have addressed these investor protection issues in various forms, including banning commissions, establishing criteria for fee-based advice, and revamping the business model for sales-driven distributors of financial products.

This research project will evaluate select markets in APAC on the investor protection issues noted above, and will examine the effectiveness of various mis-selling protections and different measures to improve disclosure of fees, investor outcomes, and conflict management. By analyzing experiences across a number of markets, this project will help inform the progress of APAC's regulations and improve the quality of financial advice.

**2. Priority Research Project—United States: *A Coherent Regulatory Structure for US Financial Markets***

When the global financial system inched toward collapse between the summer of 2007 and early 2009, many in the United States found the structure of the country's financial regulatory system was partly to blame. Constructed through multiple political compromises during the 20th century, the hodgepodge structure of the US system led to the inconsistent application of regulations by different regulators to similar entities, activities, and products. Key elements of the market slipped through regulatory cracks, contributing to the system's ultimate problems. Yet, when the time arrived to reform the system, policymakers chose further incremental change to the existing regulatory structure rather than an overhaul, in part due to fear that hastily crafted legislation could make matters even worse. Nevertheless, the incremental regulatory changes made in 2010 forced the industry to change its business practices.



In the past decade, advances in financial technologies have been introduced both to cut costs and to help manage risks. Automated advisers, for example, help provided personalized investment advice to investors with small amounts of invested assets. Distributed ledger technologies (also known as blockchain) have the potential to reduce systemic risk through instantaneous credit decisions. And crypto assets could enhance certainty of custody and ownership. The issue, however, is whether the current regulatory system can deal with these changes.

This project would seek the help of partners to craft proposed lasting reform of the US financial regulatory system in a manner that is rational, workable, effective, and relatively efficient. It would, among other outcomes, produce white papers and reports on different segments of the regulatory system, examining, for example, the regulation of fintech applications in securities and investment markets, the revamping of mutual fund and ETF prospectuses and ongoing disclosures to make them more useful to different investors, and the overhaul of the timing, structure, and presentation of corporate disclosure documents.