ADVOCACY UPDATE

GLOBAL ADVOCACY NEWS AND UPDATE

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IN THIS ISSUE

FOR COMMENTS OR QUESTIONS, CONTACT

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Welcome to 2021, a new year that we hope is better, brighter, and healthy for all! We are off to a busy start, and after a quick look at highlights from 2020, we share several key updates on our advocacy work around the world. On behalf of our global team, I wish you all a happy, prosperous year ahead!

—Kurt N. Schacht, JD, CFA, CFA Institute Policy Director

ADVOCACY PRIORITIES

2020 POLICY ADVOCACY HIGHLIGHTS POINT US FORWARD FOR 2021

A unique year: The 2020 pandemic that shook the world and altered the workplace, changed the way CFA Institute exercised our policy views, but did not slow us down or deter our accomplishments.

Key metrics: Our influence and impact were demonstrated by several metrics in 2020, including record-level media coverage for the year. CFA Institute and Systemic Risk Council policy views were highlighted in more than 520 media features, including in top financial media outlets, such as *Bloomberg, Financial Times,* and the *Wall Street Journal* and in leading media outlets in Asia and Europe. In addition, our prominent and growing "seats at the table" (i.e., participation in important advisory committees affecting legislation and regulation) continue to reflect how our voice is valued in global regulatory work. The International Financial Reporting Standards Foundation (IFRS), International Integrated Reporting Council (IIRC), and International Accounting Standards Board (IASB) are among the key organization "seats" we hold.

Select advocacy wins in 2020: Despite the tumultuous year, we are pleased to share several important achievements in important policy areas:

- **Environmental, Social, and Governance (ESG):** Across the globe, CFA Institute focused on studying, reporting, and promoting key ESG issues, including our series of ESG reports and our consultation paper on developing global ESG standards.
- **Systemic Risk Council (SRC):** The SRC made global headlines with its March 2020 recommendation to the G–20 finance ministers and central bank governors that banks suspend bonuses, dividends, and buybacks during the COVID-19 crisis. Most major countries around the world are considering or have adopted this guidance.
- **Capital Markets EU:** CFA Institute inaugurated the first global regulatory discussion on business conduct and professionalism at the International Organization of Securities Commissions (IOSCO) 2020 Financial Industry Regulatory Symposium in February 2020. Another important report on *Sustainable Value for Money* was launched with other key stakeholders, including the European Federation of Investors and Financial Services Users at Euronext Brussels conference.

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- **Capital Markets Asia:** For the third year, CFA Institute has been a recipient of the Financial Education Champion award by the Investor and Financial Education Council (IFEC), a public organization with the mission of improving financial literacy in Asia. In addition, various meetings across the region were held on the thought-leadership report "Sales Inducements in Asia Pacific," which provides guidance on regulation and industry practices around sales commissions and fees.
- **Capital Markets Americas:** CFA Institute met regularly with the US Securities Exchange Commission (SEC) and legislators, and testified before congressional committees. Our detailed critiques of various regulatory initiatives and systemic risk urgencies were recognized and referenced in a range of publications, events, and hearings, including proxy advisor voting, Regulation Best Interest (Reg BI), and stimulus accountability, among other topics.
- **Financial Reporting:** CFA Institute had significant and frequent engagement with key industry bodies, including the IFRS, European Securities and Markets Authority (ESMA), the European Financial Reporting Advisory Group (EFRAG), the Council of Institutional Investors (CII), International Forum of Independent Audit Regulators (IFIAR), and other important standard-setters.

Top 10 Advocacy Policy Issues for 2021

As we look ahead, CFA Institute has established its top policy issues affecting investor protection and market integrity for the coming year.

1. **Investment management professionals:** regulation, culture, and professional conduct, such as mis-selling of financial products; Reg BI in US markets; legal duties; Department of Labor (DOL) efforts to diminish Employee Retirement Income Security Act (ERISA) fiduciary responsibilities, professional conduct, and culture in all regions
2. **Investment products and markets:** regulation, investor protection, and integrity matters, including fees and costs transparency; updating investment fund rules, disclosure efficiency, and clarity; EU adjustments to Markets in Financial Instruments Directive (MiFID II), Undertaking for the Collective Investment in Transferable Securities (UCiTS), and Packaged Retail Investment Products (PRIPs); value-for-money rules; new initial public offering (IPO) structures
3. **ESG and sustainability:** investment manager and corporate reporting responsibilities, including emerging rules and regulations related to investment manager duties to consider and document ESG factoring; sustainability reporting requirements for corporates; developing standard disclosures for pitching ESG investment products
4. **COVID-19-related anomalies:** reliability of financial reporting estimates and adjustments because of COVID-19; escalating systemic risks related to massive leverage and deficit-funded stimulus; political pressure to suspend accounting rules related to impairment of assets
5. **Corporate governance:** dual class or non-voting common shares; board diversity; proxy voting mechanics; proxy adviser censorship; stakeholder versus shareholder model
6. **Fintech**: impacts of technology on investment management, including robo-advice; artificial intelligence in financial analysis, financial reporting, and audit technology advances; use of technology by regulators to monitor investment practitioners and markets
7. **Systemic risk:** exit strategy for massive COVID-19 leverage and stimulus; Central Clearing Counterparties; bank resilience and resolution protocols
8. **Investor use of non-GAAP and other alternative performance measures:** proliferation of use by investors of nonstandardized, unaudited information; undue reliance on growing issuer "spin" outside the audited financials; use of non-GAAP measures as executive compensation metrics
9. **Financial reporting rules for intangibles**: issues on reporting, valuation, and impairment rules concerning various intangible assets, such as good will and intellectual property assets; audit quality and emerging practices in reporting critical audit matters
10. **Capital Markets Union (CMU)**: drivers of a more coordinated and consistent regulation of markets and participants across the EU; more coordination on COVID-19 relief and post-Brexit trade

ADVOCACY IN ACTION

MEDIA ATTENTION

Financial Times (20 January): Paul Tucker, chair of the Systemic Risk Council, wrote an opinion piece on the dangers of another financial crisis to the financial system.

Dirigentes Funds & Market (ESP) (19 January): CFA Institute Director of Regulatory Affairs Josina Kamerling discussed the pan-European pension plan.

IEXProfs (NLD) (15 January) reported that CFA Institute has updated its guidelines for investment funds with an ESG label.

Corporate Secretary (14 January) cited recommendations by CFA Institute regarding the NASDAQ's board diversity proposal.

Pensions & Investments (8 January) reported on the CFA Institute report that indicates ESG investing is "now entering a true mainstreaming phase."

Economic Times (IND) (8 January): CFA Institute India Capital Markets Policy Director Sivananth Ramachandran examined stewardship among retail investors.

LexBlog (6 January) cited the SRC's push for more clearinghouse regulations.

NordSIP (30 December) referenced the CFA Institute report that reviews ESG and responsible investing by global institutional investors.

Financial Times (22 December) quoted a CFA Institute study on UK investment professionals using ESG ratings when making investment decisions.

Insurance Asset Risk (UK) (20 December) cited CFA Institute Regulatory Outreach Head Josina Kamerling on the need for a more holistic regulatory approach.

Financial Investigator (NLD) (17 December) quoted CFA Institute Capital Markets Policy Director Matt Orsagh on how finance can help slow climate change.

Funds People (17 December) reported on new research from CFA Institute citing that markets are too focused on the short term.

Outlook India (16 December) cited a survey from CFA Institute on the low level of awareness of stewardship codes among institutional investors in the Asia-Pacific region.

CityWire (ESP) (15 December) reported on a study from CFA Institute indicating that the coronavirus pandemic intensified the debate on sustainability.

Pensions & Investments (11 December) reported on the criticisms by CFA Institute on the new DOL rule on proxy voting.

Hong Kong Economic Journal (HKG) (9 December) reported on a CFA Institute study showing that investment experts have become more interested in ESG in 2020.

Crowdfund Insider (9 December) reported that Sheila Bair, SRC founding chair, has joined Wealthfront's Banking Advisory Group.

The Asset (HKG) (7 December) quoted Mary Leung, head of advocacy, Asia Pacific, at CFA Institute on Hong Kong SAR climate change disclosure rules.

NASDAQ (4 December): CFA Institute Policy Director Kurt Schacht wrote on the progress toward sustainability standards.

Bankers Online (4 December) reported that the SEC announced the appointment of eight new members to its Investor Advisory Committee, including Sandra J. Peters, senior head, Global Financial Reporting Policy, CFA Institute.

Investment News (3 December) quoted Jim Allen, head of capital markets policy for the Americas at CFA Institute, about the new administration's potential new regulatory policies.

Financial Times (1 December) cited SRC Chair Paul Tucker on the significance of the bond market weaknesses.

MLex Market Insight (23 November) quoted SRC Head Paul Tucker's comments on the US decision to end credit facilities.

MARKET INTEGRITY & TRANSPARENCY

IN SUPPORT OF NASDAQ BOARD DIVERSITY RULE

4 January letter: CFA Institute issued a supportive comment letter on NASDAQ's Board Diversity Rule proposal in review by the SEC, which proposes better corporate disclosure of board member diversity and directs companies to add more diversity to board membership on most NASDAQ-listed firms.

Our position: CFA Institute has long been supportive of global efforts to advance first-class, investor-focused corporate governance and board practice. Board diversity is ever more relevant in affecting company culture, cognitive diversity, and stakeholder awareness. These attributes are becoming an increasingly important investment consideration for many investors around the world. In overall support of the proposal, our comment letter offered four main points:

- **Demand better diversity disclosure:** We support the proposal as it is addresses investor and other stakeholder demand for better diversity information, coupled with strong encouragement for more diverse membership on public company boards.
- **Support more detailed, high-quality information:** We support the NASDAQ in requiring more detailed information on the current makeup of the board, with specific information about diversity attributes of the members, including establishing a uniform definition of "diversity," improving diversity reporting and data collection, and providing standardized data.
- **Advance the comply-or-explain model:** Instead of requiring a board "quota," the proposal recommends that if a company is unable or unwilling to meet the minimum diversity requirements, it must explain why it does not meet the objective. This is an appropriate and flexible approach to promoting diverse board representation.
- **Urge the SEC to support better disclosure:** CFA Institute encourages the SEC to sign off on the NASDAQ's proposal as an important step in advancing diversity within the financial services industry.

Next steps: The SEC is currently reviewing all comments received and is expected to make a final determination in second quarter 2021.

MARKET INTEGRITY & TRANSPARENCY

ENHANCING CLIMATE-RELATED DISCLOSURES IN APAC

Climate risk standards: On 15 January, CFA Institute and CFA Society Hong Kong submitted a joint response in support of the Consultation Paper on the Management and Disclosure of Climate-Related Risks by Fund Manager, issued in October 2020 by the Securities and Futures Commission (SFC) in Hong Kong SAR. The SFC proposes to amend the Fund Manager Code of Conduct to require fund managers of collective investment schemes (but not those who manage discretionary accounts) to consider climate-related risks when making investment decisions and to make appropriate disclosures.

Our position: CFA Institute believes that integration of material ESG factors is an important component of a complete and thorough financial analysis. We support initiatives that advance the availability, quality, consistency, and comparability of ESG information available to investors.

Broad support: CFA Institute expressed a broad agreement with the proposed changes. In particular, we support the requirement that fund managers disclose, on the entity level, their approach, process, and governance as related to climate-related risks, including cases when the risks are deemed irrelevant. We agree that passive investment strategies should not be exempted from the requirements, but discretionary accounts should, at least initially. We have reservations, however, about the requirement that large fund managers disclose weighted average carbon intensity (WACI), because of the potential issues with availability of accurate data and the usefulness of the measure to investors.

GLOBAL EVENTS & ACTIVITIES

BREXIT UPDATE: QUESTIONS AND COMPLEXITIES REMAIN

Trade deal accord: On 24 December, four years after the Brexit referendum, the EU and United Kingdom finally agreed to a comprehensive agreement that covers some aspects of trade between the two entities. Financial services were not addressed in the deal; instead, they agreed to several unilateral decisions on jurisdiction access and a deadline of March 2021 to establish structured regulatory cooperation for a stable, durable relationship.

Cross-border complexities: Given the free movement of capital and a complex regulatory framework in the EU, investment management has become an enmeshed and complicated ecosystem in Europe. The UK's central role and efficiency in cross-border operations will now radically change given Brexit. UK and EU firms now are effectively facing two different regulatory and legal regimes with no (yet) clear bridges between them.

Interim agreements: Some critical and temporary equivalence agreements have been designed to ensure that clearing of euro-denominated outstanding derivatives contracts would be allowed to carry on until a long-term solution is found, and regulators have agreed to extend a memorandum of understanding to permit UK firms' continued services in investment management. A comprehensive equivalence regime will require significant political discussions.

Questions remain: Is Brexit creating a rift between big and small players in terms of the outfits that have the capacity to adapt to different regimes? How is trading affected on the continent? How is the industry adapting to the loss of the marketing passport? Does the EU have the technical capacity to replicate the depth and breadth of the UK-based clearing framework? How is liquidity affected by the new fragmentation? Will investors continue to have access to the best investment solutions or should we expect costs to rise?

Our approach: CFA Institute is concerned with how Brexit will affect the investment management industry and aims to clarify the practical and technical details of the ways in which the industry has to adapt to these new circumstances. We plan to release our analysis of these effects, along with policy considerations, throughout the year.

Awards and Recognition

Industry Association of the Year: On 15 December, *Regulation Asia*, a financial news and intelligence provider, named CFA Institute the Industry Association of the Year. The award recognizes CFA Institute for developing best practices and industry standards, educating investment professionals, connecting the investment community, and promoting regulatory harmonization.

Financial Education Champion Award: On 17 December, the IFEC in Hong Kong SAR announced that CFA Institute was, for the third year in a row, among the recipients of its annual Financial Education Champion Award. IFEC is a financial education subsidiary of the SFC, supported by four financial regulators and the Education Bureau. The award recognizes the continuing contributions toward improving financial literacy in Hong Kong SAR.

Best ESG Paper 2020: CFA Institute was awarded the best ESG paper by *Savvy Investor*, for its paper "Climate Change Analysis in the Investment Process," which educates and informs the investment community about climate change, its potential economic impacts, and how to incorporate its analysis into the investment process.

Sandy Peters Appointed as a New Member of the SEC's IAC

On 3 December, the SEC announced its eight new members to its Investor Advisory Committee (IAC), including CFA Institute Senior Head of Global Financial Reporting Policy Sandra J. Peters. The IAC was established under the Dodd-Frank Wall Street Reform and Consumer Protection Act to, among other things, advise the SEC on regulatory priorities, regulation of securities products, trading strategies, fee structures, disclosure effectiveness, and initiatives to help protect investors and promote investor confidence and the integrity of the US securities markets.

INVESTOR PROTECTION

MIDNIGHT RULEMAKING AT THE DOL

Key investment retirement proposals finalized as 2020 ends: In the last months of the Trump administration, the DOL fast-tracked its rulemaking agenda and finalized two key proposals concerning investment advice duties and fiduciary obligations under ERISA, the federal law that governs most retirement plans in the private industry:

Proxy voting rule: CFA Institute strongly opposed the proposed rule, as did more than 90 percent of the comment filers, and we are pleased that DOL addressed some of our biggest objections in adopting a substantively improved final rule. Specifically, DOL eliminated (1) a requirement that ERISA fiduciaries perform a cost-benefit analysis for *each* proxy vote and *only* vote if the vaguely defined "economic impact" of the vote outweighs its costs; and (2) a "permitted practice" of adopting a policy of voting with management. The final rule, nonetheless, heavily relies on DOL's problematic ESG investing final rule, as well as on the SEC's guidance to investment advisers on proxy voting. For these reasons, among others, we remain concerned that "the rule-making weakens investor stewardship practices, inhibits incorporation of material ESG factors, and unnecessarily disrupts a market-driven, cost-efficient and functioning proxy system," as noted by Jim Allen, CFA Institute head of Americas capital markets policy (in *Pensions & Investments*.)

Our impact: Significantly, the final rule notes that multiple commenters referenced CFA Institute views, including citations from our Code of Ethics and Standards of Professional Conduct, *Corporate Governance Manual*, and various surveys and papers. Of special note is a comment letter from key members of US Congress, including ranking members of key congressional committees, which quoted a CFA Institute position paper.

Investment advice fiduciary exemption: CFA Institute strongly opposed this DOL proposed rule, which we saw as weakening investor protections and the ERISA fiduciary regime. Our position called for a fiduciary duty standard that would apply uniformly to all who provide personalized investment advice to retail investors. Therefore, we are disappointed that in issuing the final rule, the DOL left much of the proposal intact, including the reinstatement of the "five-part" test to determine fiduciary status and an exemption that allows investment-advice fiduciaries to receive compensation from otherwise-prohibited transactions as long as they meet a standard largely modeled after the SEC's untested Reg BI.

Moving forward: Because the final rule goes into effect after inauguration day, we expect the incoming Biden administration will freeze its implementation. We will continue our advocacy as we anticipate the new administration to pursue a more ambitious fiduciary standard as well as enhancement of and stronger enforcement of Reg BI.

CFA Institute Partners with HKEX on Professional Excellence in ESG

CFA Institute established an important partnership with Hong Kong Exchanges and Clearing (HKEX), the operator of the Stock Exchange of Hong Kong SAR, to promote professional excellence in ESG issues and sustainable finance. CFA Institute has been named a knowledge partner of the HKEX's newly launched Sustainable and Green Exchange (STAGE), an online repository of product information, focused on sustainable-themed financial products from Asian issuers. At launch, it featured 29 sustainable, green, and transition bonds from a variety of sectors, as well as ESG-themed exchange-traded products. Products featured on STAGE are required to provide additional voluntary ESG disclosures.

MARKET INTEGRITY & TRANSPARENCY

IN SUPPORT OF SEC'S MUTUAL FUND–ETF RULE PROPOSAL

Major rewrite for mutual funds and exchange-traded funds (ETF): The SEC's proposal offers a significant overhaul of the disclosure rules for mutual funds and ETFs, which has drawn unusual bipartisan praise. As noted in our comment letter, CFA Institute supports the proposal as a substantial improvement to the disclosure framework benefiting retail investors and enhancing investor protections.

Simplifying the shareholder report: Under the proposal, the annual shareholder report would be reduced from more than 100 pages to just three or four pages by moving some information online for those who want to dig deeper. This simplified approach would allow retail investors to focus on information of most importance, such as performance and expenses.

Fees and expenses: The rule would sharpen information on fees and expenses in both the shareholder report and the prospectus. Updated advertising rules would take aim at potentially misleading fund advertising claims of "no fee," "zero fee," or low-fee accounts that leave out certain expenses.

Fund risks: In the prospectus, a fund would be allowed to disclose only those risks that it deems as principal risks, which would be listed in order of importance, not alphabetically, to clarify and simplify for readers.

Recommendations: CFA Institute also offers several further improvements to the proposal, outlined in our letter, including enhancing the expense table, requiring explanation of material changes, and clarifying language to distinguish certain areas, such as benchmarks and a broad-based market index, and prospectus and shareholder reports.

MARKET INTEGRITY & TRANSPARENCY

CFA INSTITUTE REAFFIRMS POSITION ON ESG INTEGRATION

ESG momentum: In the past year, interest and activity in ESG integration and investing has escalated and advanced around the globe. With new reporting and disclosure developments and a surge in ESG funds and sustainable-focused investment spending, CFA Institute has continued its focus, research, and education on this area. Given this momentum, CFA Institute is clarifying and reaffirming its stated position of ESG integration (published January 2019).

Our position: We focus on integrating material ESG information into the investment process, while calling for improvements in ESG reporting and standards, recognizing the progress that has been made in this area in recent years. Some of the key points of emphasis from our statement include the following:

- The integration of material ESG factors into the investment process is not a violation of fiduciary duty.
- CFA Institute Code of Ethics and Standards of Professional Conduct require CFA® charterholders to conduct appropriate research and investigation of all material information relevant to their investment analyses and decisions.
- We support mandated disclosures of investment managers regarding if, and how, a manager covers integration of ESG.
- We do not support mandated integration of ESG factors by investment managers.
- We favor a "comply-or-explain" model for disclosure requirements around material ESG data.

INVESTOR PROTECTION

THE POWER OF THE COMMENT LETTER

Effective tool: In a recent paper, CFA Institute outlines the effectiveness of the comment letter in advocacy and making an impact on behalf of the investment community. Comment letters contribute to and help shape the debate and ultimate outcomes of regulatory proposals by standard-setters and regulatory agencies, including the SEC and the DOL.

Key points: Comment letters have an impact on the following:

- **The public debate:** Comment letters establish a record of our views, which is especially important as issues evolve. We can leverage comment letters at industry events, in communications, and in conversations with regulators, Hill staffers, and the media.
- **Proposal deliberations:** Our arguments can influence the consideration and outcomes of regulators. When agencies cite our comment letters, it has a multiplier effect on our influence and provides an important metric by which to measure our impact.
- **The stakeholder community:** Other organizations and participants can be influenced by our views and may draw from our arguments in their own advocacy.
- **Our reputation:** Our comment letters showcase the quality of our analyses and advocacy.

Moving forward: Measuring our impact through comments letters allows us to articulate our views and track progress of an issue rather than simply counting the final rule as a binary victory or defeat. Specifically, the incoming Biden administration may now revise a number of the SEC and DOL's recent policies, which we opposed. We will continue to promote our views as the new president, Congress, and regulatory agencies set out their policy priorities for capital markets.

GLOBAL EVENTS & ACTIVITIES

KEY ENGAGEMENTS

Japan Investment Conference 2020 (17 December): Mary Leung, head of advocacy, APAC, at CFA Institute, moderated the panel discussion "Investment and Gender Diversity" at the day-long virtual event hosted by CFA Society Japan focused on "Women in Investment Management."

Capital Markets Policy Council Meeting (9 and 10 December): The global advocacy team at CFA Institute held this annual event to discuss regulatory matters and industry trends and to prioritize their advocacy agenda for the coming year.

Future of Sustainability Media Roundtable (8 December): Mary Leung conducted a media roundtable for the "Future of Sustainability in Investment Management Report" in the Asia-Pacific region, focused on the influences, drivers, enablers, and actions in support of sustainability in investment management.

2nd Corporate Governance in Investing Summit (26 November): CFA Society India, in partnership with CFA Institute, organized a summit focused on capital raising since the COVID-19 pandemic, investor rights, the stewardship code, record independent director resignations in India, and the recent update to the ESG disclosure regulations for companies.

Stewardship Codes Industry Roundtable (24 November): Sivananth Ramachandran, director of capital market policy for India, at CFA Institute, moderated the roundtable, attended by chief investment officers of large Indian mutual funds. Mary Leung presented the findings of the CFA Institute Stewardship 2.0 report. The discussion focused on how to prioritize engagement, collaborate with other investors, and balance engagement versus sell decisions.