CFA Institute

ADVOCACY UPDATE

GLOBAL ADVOCACY NEWS AND UPDATE

MAY 2021

IN THIS ISSUE

FOR COMMENTS OR QUESTIONS, CONTACT

Kurt N. Schacht, JD, CFA
CFA Institute Policy Director
Washington, DC
advocacy@cfainstitute.org

This spring has seen its share of market volume and volatility with the continuing surge in special purpose acquisition companies (SPACs) in initial public offerings (IPOs) and yet another near miss on systemic disruption due to over-leveraged financial firms. CFA Institute covers these important issues with lessons for our investment community and advocacy efforts to protect investors. We provide updates on other key areas, including news from the US Securities and Exchange Commission (SEC), US Congress, and Canada's regulatory regime. Finally, this issue highlights our latest advocacy in action, including recent events, activities, and media coverage.

INVESTOR PROTECTION

ARCHEGOS FINANCIAL MELTDOWN SIGNALS ACTION FOR REGULATORS

Another financial fallout: The much-publicized financial debacle surrounding Archegos Capital Management, which left markets reeling last month, has once again prompted concerns over systemic weaknesses and needed regulation. At its core, this incident involved Archegos building extremely leveraged positions in several prominent stocks, some of which have been regular fare for social media hype. As these massive positions faced declines in value, a forced unwinding by broker counterparties to Archegos resulted in extreme volatility and gaps in the trading of these stocks, as well as spillover effects on the overall market.

Systemic challenges: Archegos is another troubling example of how vulnerable our system of financial counterparties is and how we have yet to address these important system resilience shortcomings. Despite the fact that this episode did not require government intervention and that the various banks and brokerage counterparties involved were collectively able to absorb the losses, this was a disquieting and reminiscent moment of systemic fragility.

Regulatory action: To avoid yet another serious financial system disruption, several urgent steps for regulators are needed, including the following:

- Heighten disclosures: Require much fuller disclosure by the investor counterparty of both direct and derivative holdings showing the aggregate "effective" exposure risk.
- Increase compliance: Place higher compliance requirements on bank counterparty risk management that must include a fuller investigation of aggregate leverage and exposure by any investor counterparties.
- Define limits: Create clear definitions to limit excessive exposures for all parties at the onset.
- Comprehensive regulation: Create a definitive regulatory playbook for resolving exposures that slip through the process and become systemic.

© 2021 CFA Institute. All rights reserved.

MARKET INTEGRITY & TRANSPARENCY

PROMOTING BALANCE AROUND SPACS IN ASIA PACIFIC

Important response: On 28 April, CFA Institute and CFA Society Singapore submitted a joint response to the Consultation Paper on Proposed Listing Framework for Special Purpose Acquisition Companies (SPACs), issued by Singapore Exchange (SGX) Regulation, which is seeking market feedback on a proposed regulatory framework for the listing of SPACs.

Our position: We recognize that allowing SPACs would boost the SGX's relevance in the region, and their global competitiveness, while adding depth and diversification to the market. Market development needs, however, must be balanced with robust investor protection, education, and sound corporate governance practices. Without such balance, the potential exists for poor investor experience harming not just future SPAC issuances, but also investors' trust in capital markets as a whole.

Recommendations: We propose a package of rules and safeguards to help uphold investors' interests, while meeting the capital-raising needs of the market. We offer a number of ways in which the protection of targeted investor groups can be strengthened by taking into account the characteristics of a SPAC at different points in the life cycle, including IPO, secondary trading, merger, and post-merger listing. In general, our response promotes transparency, disclosure guidance, and risk mitigation to foster market integrity and investor protection. We take into account relevant regulations and practices in other markets, while aiming to reflect the characteristics of the Singapore financial market and its prominent role in the region.

Roundtables: To inform its response, CFA Society Singapore and CFA Institute held two virtual roundtable discussions and conducted an online survey to gather insight and views from members and financial professionals with relevant expertise. CFA Institute and regional CFA Societies also organized roundtables in Hong Kong and India to gather views on the introduction of SPACs in those markets.

INVESTOR PROTECTION

CFA INSTITUTE CALLS ON THE SEC TO IMPROVE INVESTOR PROTECTION RULE

Regulation Best Interest (Reg. BI) 2.0: With more and more retail investors entering the market and the investment product space becoming more complex, fiduciary advice has never been more important. CFA Institute has long advocated that a fiduciary duty standard should apply uniformly to all who provide personalized investment advice to retail investors. Since the SEC's adoption of Reg. BI in June 2020, we have maintained that the SEC needs to substantively address and improve what are clear deficiencies and gaps in the disclosures and procedures in the implementation Reg. BI.

Our position: In our letter entitled Reg. BI 2.0: A Short Manifesto for Improving Investor Protection, CFA Institute encouraged the SEC to take up a "directed effort to elevate the inadequate improvements offered by Reg. BI to meaningful, investor-focused protections." We assert that the rule has failed to adequately address and bring clarity to the broker/dealer advice standard of conduct, mis-selling of financial products, transparency of broker/dealers' conflicts of interest and financial incentives, and basic investor protections.

Recommendations: We offer observations and recommendations for improvements, including creating a clear and formal definition of "best interest" and revamping the form client relationship summary (CRS). We also raise general policy issues and propose a list of frequently asked questions to provide more specificity and clarity around the general obligations for disclosure, care, conflicts of interest, and compliance. As we emphasized in the letter, "such clarity is needed to curb mis-selling effectively and to raise the standards of conduct for the benefit of practitioners and investors alike."

INVESTOR PROTECTION

CFA INSTITUTE LAUNCHES SPAC WORKING GROUP

New working group: As mentioned in the April Advocacy Update newsletter, CFA Institute is launching a SPAC Working Group (SWG) to examine and make recommendations on the surge in US public listings of special purpose acquisition companies (SPACs) and the implications for investor protection, corporate governance, and market integrity. The working group, now in its formative stage, will include a range of market participants, SPAC practitioners, exchange representatives, academics, and legal experts. “We believe the working group will provide a valuable perspective to US and other global regulators, who have already signaled increased scrutiny of the SPAC structure and related disclosures,” explained Margaret Franklin, president and CEO, CFA Institute.

Areas of focus: CFA Institute plans to host quarterly discussions with the working group over the next year, focusing on SPAC structural features and disclosures, relevant listing standards, marketing practices, inherent conflicts of interests, and potentially misleading performance claims. The working group will also consider the popularity of SPACs globally, as other jurisdictions are moving to introduce the SPAC structure into their own public markets. The working group will publish a report in early 2022 and present its findings, along with any policy recommendations, to US and global regulators and policy makers.

Mark your calendars: In partnership with the CFA Society Washington, DC, CFA Institute is hosting a webinar, SPAC Attack: Examining Special Purpose Acquisition Companies on 3 June at 2 pm EST. The discussion will focus on the mechanics, prospects, and pitfalls of the SPAC structure, and what is on the horizon for the SPAC boom.

Join us for the
Financial Regulatory Symposium 2021
Business Conduct, Sustainability, and COVID-19 Market Ramifications

29 June: ESG Investing
30 June: Business Conduct in Covid Times

This CFA Institute annual event gathers senior regulators and policy makers from around the world to dive deeply into the most urgent questions faced by financial markets and investors today.

REGISTER NOW!

MARKET INTEGRITY & TRANSPARENCY

BAN ON DSC IS A WIN FOR CANADIAN INVESTORS

Long-awaited DSC ban: On 7 May 2021, the Ontario Securities Commission (OSC) announced their move to ban the deferred sales charge (DSC) purchase option for investment funds in Ontario effective 1 June 2022, harmonizing with the previously announced ban by the Canadian Securities Administrators, covering the rest of Canadian securities regulatory jurisdictions.

Policy win: This policy change will have significant impact for the Canadian investor community (particularly to its least-wealthy investors) and has long been a goal of the Canadian Advocacy Council (CAC), an operating committee of CFA Societies Canada. The DSC option was effectively nontransparent, excessively costly, and restrictive in the face of dynamic investor needs and investment objectives. The ban is part of a continued healthy evolution of the investment advisory industry in Canada.

Advocacy efforts: This significant move by the OSC was a reversal from its previous opposition to a complete ban (stemming from the prior political leadership in Ontario). The change of course is attributed to the steadfast advocacy to government and the OSC by a small number of investor advocates, with the CAC chief among them. This effort is an example of CFA Institute and CFA Societies Canada’s core mission to promote transparency, ethics, professionalism, and fairer markets.

Acknowledgment: In recognition of our efforts and leadership on this matter, Ontario Finance Minister Peter Bethlenfalvy shared CFA Societies Canada’s LinkedIn announcement relating to the DSC move on his personal LinkedIn feed, in lieu of his own announcement of the policy change.

ADVOCACY ENGAGEMENT & ACTIVITIES

POLICY LESSONS ON THE GAMESTOP SAGA

Policy preview from a DC insider: On 28 April, CFA Institute and CFA Society Iowa hosted a timely webinar on meme stock trading, Lessons and Reflections from the GameStop Saga: A Market and Policy Discussion. Kevin Shires, president, CFA Society Iowa, kicked off the event with Will Binger, policy adviser to Iowa Congressmember Cindy Axne, member of the House Financial Services Committee. Ahead of the fourth congressional hearing focused on the GameStop saga (this time with regulators like the SEC and Financial Industry Regulatory Authority (FINRA), their discussion focused on the new, postelection policy landscape in Washington, DC, including Congress's response to the GameStop-induced market volatility. Binger indicated that this issue will remain a committee focus and that regulation of payment for order flow, however granular or far-reaching, is likely inevitable. Congress has since introduced a number of bills seeking greater transparency or an outright ban of payment for order flow.

Regulatory priorities: The webinar also featured a discussion with Karina Karakulova, senior manager, Capital Markets Policy at CFA Institute, and Dr. Tyler Jensen, assistant professor of finance at Iowa State University, on how recent market events have affected capital markets and US policy making. Their dialogue highlighted the wide-ranging set of regulatory policy solutions prompted by meme stock trading, including market plumbing, greater transparency of short-selling, and gamification and user experience as well as social media influences. In his testimony before the House Financial Services Committee the following week, SEC Chair Gary Gensler confirmed these priorities and announced that he has directed SEC staff to compile relevant recommendations or draft proposals for public input.

Policy engagement: The event reinforced the value of continuous policy engagement and gave members a unique opportunity to hear directly from congressional staff working behind the scenes on key policy matters and legislation.

ADVOCACY ENGAGEMENT & ACTIVITIES

TOP SEC OFFICIALS WEIGH IN ON RULEMAKING PRIORITIES

Stephen Deane, CFA Institute, closing remarks

Important event: CFA Institute and the finance centers at University of Maryland and Lehigh University co-sponsored the SEC's Conference on Financial Regulation, held virtually 13–14 May. Over two days, this prominent conference featured discussions by top SEC officials, including new SEC Chair Gary Gensler, Commissioner Caroline Crenshaw, Chief Economist Jessica Wachter, and Head of the Division of Corporation Finance John Coates. This annual event is a forum for leaders from academia, government, the financial sector, and the SEC to discuss regulatory policies and relevant topics.

Topics and priorities: Chair Gensler opened the conference and spoke about two of his top rulemaking priorities—disclosures of a company's climate risks and human capital management. "I anticipate the climate-related and human capital disclosures will be the initial steps of our broader efforts to update our disclosure regime for modern markets," said Gensler. "What prior SECs have done in the past with disclosure underpins much of what we do in promoting our three-part mission—protecting investors, facilitating capital formation, and promoting competition." Other topics covered in the conference included financial intermediation, SEC research, asset management, climate change, corporate finance, and market microstructure.

Key themes: In her keynote address, Commissioner Crenshaw focused on the importance of data-driven analysis to effective regulation, including the need for better information in making regulatory decisions in the private markets. CFA Institute Advocacy Senior Director Stephen Deane gave closing remarks highlighting five policy themes: climate change and environmental, social, and governance (ESG); systemic financial risks (including prime money market funds and municipal bond mutual funds); market structure (including equity market data fees and fixed-income pre-trade transparency); public versus private markets; and corporate control and proxy voting.

ADVOCACY IN ACTION

MEDIA ATTENTION

Yahoo! Finance (HKG), *Apple Daily* (HKG) (17 May) *Regulation Asia* (11 May), *Pensions & Investments* (10 May), and *FundFire* (7 May) reported that CFA Institute set up a SPAC working group to examine how best to protect investors during the current boom in SPACs.

Investments & Pensions Europe (10 May) reported CFA Institute is set to virtually host the Financial Regulatory Symposium 2021.

Advisor Perspectives (5 May) covered the letter by CFA Institute to the SEC recommending that it improve Reg. BI.

Investment News (4 May) cited a CFA Institute survey on investor trust.

Investments & Pensions Europe (28 April) quoted CFA Institute Financial Reporting Policy Advocacy Head Sandy Peters on the support of a single sustainability regulator.

Protocol (27 April) cited a CFA Institute survey on payment for order flow.

New York Times (23 April) quoted Systemic Risk Council Chair Paul Tucker on call for changes to money market fund regulation.

Barron's (22 April): CFA Institute Advocacy Senior Director Stephen Deane wrote on the rising popularity of SPACs.

ChinaDaily Hong Kong (23 April) quoted Mary Leung, head of advocacy, Asia Pacific, CFA Institute, on small and midsize enterprises' ability to deal with ESG disclosure regulations.

EVENTS & ACTIVITIES

Members of the European Parliament's (MEPs) Economic and Monetary Affairs Committee: CFA Institute advocacy EMEA team has held ongoing monthly chatroom discussions with this important committee as a valuable way to exchange information with the MEPs and other independent Brussels-based associations. Topics have included the challenges of a capital markets union (CMU), nonperforming loans (NPLs) and securitization, SPACs, retail investor education, and the EU sustainable agenda. More opportunities for events and engagement are forthcoming.

EVENTS & ACTIVITIES

Brave New World: Integrating ESG into Portfolios (11 May): Olivier Fines, head of advocacy and capital markets policy research, EMEA, CFA Institute, presented at the event organized by the Brazilian Association of Capital Market Investors, in partnership with CFA Society Brazil and Principles for Responsible Investment on the interplay between the Taxonomy, the Sustainable Finance Disclosure Regulation, (SFDR) and the Non-Financial Reporting Directive (NFRD) in the context of the EU's overarching objectives on sustainable finance.

Bangko Sentral ng Pilipinas (BSP) (7 May): Mary Leung, head of advocacy for Asia Pacific, CFA Institute, presented to the central bank of the Philippines on an overview of CFA Institute ESG disclosure standard's objectives, highlighting how it would be useful to various stakeholder groups (including regulators, asset managers, consultants, and investors).

Responsible Investment Association Australasia 2021 (7 May): Mary Leung participated in the panel discussion "The International Policies Shaping How Australian Investors and Advisers Operate" at this event focused on how responsible investing can better deliver real-world outcomes. She discussed the proposed CFA Institute ESG standard, the implications that ESG regulations in the EU and the United States have on the Australia asset management and financial services industry, and how effective they are in combating greenwashing.

New Zealand Financial Market Authority (3 May): Mary Leung presented an update on the ESG Disclosure Standard for Investment Products, including its objectives and usefulness for stakeholder groups.

UCITS and AIFMD Dublin Conference (27 April): Olivier Fines presented at a panel, "Investor Protection and Delivering Value for Money," and focused on the harmonization issues in the EU on the various regulations that deal with investments, including Markets in Financial Instruments Directive (MiFID II), alternative investment fund managers directive (AIFMD), undertakings for the collective investment in transferable securities (UCITS), and packaged retail and insurance-based investments products (PRIIPs).