CFA Institute

ADVOCACY UPDATE

GLOBAL ADVOCACY NEWS AND UPDATE

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IN THIS ISSUE

FOR COMMENTS OR QUESTIONS, CONTACT

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In this issue, we provide updates on key issues affecting the global financial industry, with an aim, as always, to promote investor protection and advance rules and standards that improve market structure, transparency, and fairness. Specifically, you will find the latest on important rules from the US Securities and Exchange Commission (SEC) and the Department of Labor (DOL) and our related positions and actions. On a global level, we focus on COVID-19 economic risks as well as new efforts to tackle the critical endeavor of establishing ESG global standards. Our key media coverage and events are also provided. Stay safe and healthy!

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

INVESTOR PROTECTION

NEW SEC PROXY ADVISOR RULES ARE UNCONSTITUTIONAL

Challenging SEC rule's constitutionality: CFA Institute and the Council of Institutional Investors (CII) filed an amicus brief in October asking the court to throw out new SEC proxy advisor rules over constitutional concerns. The brief filed with the D.C. District Court comes in support of a lawsuit that Institutional Shareholder Services filed in October 2019 challenging the new proxy rule pronouncements.

Our position: Specifically, the CFA Institute/CII brief points out the new rules' serious risks to the continued availability of timely, high-quality, and independent financial advice and analysis. It argues that the SEC does not have a legal or economic basis to classify proxy advisors as proxy solicitors, which makes them subject to onerous filing rules and results in directly challenging the independence and free speech aspects of the financial analysis that goes into proxy voting advice and opinions.

Free speech violation: CFA Institute is particularly concerned with the First Amendment free speech implications of the SEC's requirement that proxy analysts disseminate and subsidize companies' rebuttals of critical voting advice. "It is tantamount to an analyst coming up with independent research on a company, which then demands its objections to the analyst's report be included," said James Allen, head of capital markets policy for the Americas at CFA Institute. The SEC claims the rule was to rectify proxy advisor miscommunications and mistakes that pose a significant risk to investor protection as justification for the new proxy regulatory action. Allen added, however, "the SEC has failed to provide any reliable evidence to verify there are material problems with the accuracy of proxy advice." CFA Institute joined CII and several of its members, including California Public Employees' Retirement System (CalPERS), California State Teachers' Retirement System (CalSTRS), and the New York City Comptroller's Office, in filing the amicus.

ADVOCACY IN ACTION

MEDIA ATTENTION

Financial Times (20 October), *Reuters*, *MarketWatch*, *MSN*, *U.S. News & World Report*, *Nasdaq*, and *Yahoo! News* (19 October) reported CFA Institute was one of many groups to publicly oppose the SEC's plan to increase the assets-under-management threshold.

Pensions & Investments (19 October) cited CFA Institute Capital Markets Policy Senior Director Matt Orsagh on Canada's fossil fuel reliance.

Bloomberg Tax (16 October) quoted CFA Institute Financial Reporting Policy Head Sandy Peters on the pandemic's effects on earnings reporting.

El Nuevo Lunes (ESP) (16 October) interviewed Gary Baker, managing director of CFA Institute EMEA, on climate change and a recent survey from CFA Institute.

Top1000Funds (16 October) cited CFA Institute Capital Market Policy Senior Director Matt Orsagh on the CFA Institute climate change report.

Morning Consult (15 October): CFA Institute Policy Director Kurt Schacht and Senior Manager Karina Karakulova wrote about the COVID stimulus causing irregularities.

Politico (15 October) reported on Financial Stability Board (FSB) Chair and Federal Reserve (Fed) Vice Chair Randal Quarles's discussion of the regulation of nonbanks at a CFA Institute event.

Financial Times (15 October) quoted Sir Paul Tucker, chair of the Systemic Risk Council, from the Systemic Risk Council webinar.

Financial Investigator (NLD) (15 October) cited CFA Institute Capital Market Policy Senior Director Matt Orsagh on companies avoiding short-term thinking.

Financial Investigator (NLD) (15 October) summarized the recent report from CFA Institute on climate change analysis.

American Banker (14 October) reported on FSB Chair and Fed Vice Chair Randal Quarles's comments on capital relief for big banks at a CFA Institute event.

Business Times (SGP) (13 October): Mary Leung, head of standards and advocacy at CFA Institute Asia Pacific, wrote about the CFA Institute coronavirus survey.

Cinco Dias El Pais (ESP) (13 October) cited CFA Institute Capital Markets Policy Director Matt Orsagh on the recent CFA Institute survey on climate change.

Funds People (ESP) (14 October) quoted CFA Institute Head of Regulatory Outreach Josina Kamerling on sustainable investment.

Reuters (9 October) reported on FSB Chair and Fed Vice Chair Randal Quarles's participation in a Systemic Risk Council webinar.

Hong Kong Economic Journal (CAN) (9 October): Sara Cheng, senior director of capital market policy and strategy at CFA Institute Asia Pacific, discussed the use of thrust techniques in financial services.

Sustainability Accounting Standards Board blog (5 October): Matt Orsagh, director of capital markets policy at CFA Institute, wrote about the recent report from CFA Institute on climate change.

Columbia Law School Blue Sky Blog (29 September): Kurt Schacht, head of advocacy policy, and Karina Karakulova, senior manager at CFA Institute, wrote about the Labor Department's attack on investor protection and shareholder rights.

Regulation Asia (HKG) (28 September) *Al Khaleej* (ARE) (26 September), *NEWSManagers* (FRA), *ValueSpectrum* (NLD) (24 September), *Pensions & Investments* (23 September), and *Financial Investigator* (NLD) (22 September) reported that CFA Institute released a report on climate change analysis in investments.

ThinkAdvisor (23 September) cited CFA Institute Capital Markets Policy Head James Allen on SEC changing its definition of an "accredited investor."

Pensions & Investments (21 September) quoted CFA Institute Capital Markets Policy Head James Allen on the DOL's 30-day comment period.

Global Investor Group (18 September) cited CFA Institute Capital Markets Policy Director Matt Orsagh's comments on investor confusion over ESG.

MARKET INTEGRITY & TRANSPARENCY

ADVOCATING FOR TRANSPARENCY IN INVESTMENT MANAGER HOLDINGS

Opposing threshold change: CFA Institute voiced its opposition to a proposal by the SEC to reduce transparency into the holdings of institutional investment managers. Under a requirement known as 13F, the SEC proposes raising the reporting threshold for disclosing quarterly holdings of certain equity assets from more than $100 million to $3.5 billion. This change would exempt nearly 90 percent of current filers, totaling more than 4,500 institutional investment managers with $2.322 trillion in reported assets. (The SEC notes that nearly 91 percent of the dollar value of the reported assets would continue to be reported.)

Our position: In our comment letter to the SEC, we argued that such a drastic change would reduce transparency and investor confidence. Investors use 13F holdings disclosures for a variety of purposes, from tracking crowded trades to performing due diligence on smaller investment managers. Public companies use the data to identify an important segment of their shareholder base and to engage in shareholder dialogue. Academics use the data for research that helps to inform markets and regulators.

Other questions: We also questioned the SEC's authority to raise the reporting threshold, because the enabling statute appears to give the SEC authority only to lower it. We also noted the contrast from the SEC's recent approach used in a separate rule, which made no change to the financial thresholds in the accredited investor definition, designed to protect individual investors. In our view, those are the thresholds in need of updating since they have been eroded by nearly four decades of inflation.

Media coverage: CFA Institute and other respected financial organizations' opposition to this change received wide media pickup, including in *Financial Times*, *Reuters*, *MarketWatch*, *MSN*, and *U.S. News & World Report*, among others.

GLOBAL EVENTS & ACTIVITIES

SYSTEMIC RISK COUNCIL: WHO WILL STEP UP TO MOUNTING COVID-19 ECONOMIC RISKS?

Timely event: The CFA Institute sponsored an online debate on 14 October that focused on the current state-of-play on COVID-19-induced systemic hazards. The Systemic Risk Council (SRC) webinar, *Ensuring Financial Stability: Relaunching the Reform Debate After Pandemic Dislocation*, covered a range of issues highlighted in a recently released paper by the SRC urging regulators to keep an eye on the ball when it comes to systemic risk protections. The SRC has significant concern with those provisions that have been rolled back since the 2008 financial crisis as well as those that remain on the to-do list of current policy leaders.

Key takeaways: There was a palpable sense of unease and urgency around looming economic risks. Although the financial support and stimulus rolled out in core markets against the COVID-19 pandemic has been enormous, it is clear that more will be needed to counteract escalating risks. Key takeaways from the debate include the following:

- Serious systemic vulnerabilities remain despite the massive stimulus
- Challenges to global bank resiliency remain heightened
- Dangerous pockets of nonbank systemic risk are being ignored
- Better global cooperation is essential to stem this crisis
- Timely actions to address the risks that plainly confront us are critical

MARKET INTEGRITY & TRANSPARENCY

MOVING TOWARD GLOBAL ESG CORPORATE DISCLOSURE STANDARDS

Convergence of standards: Much progress and activity have transpired surrounding the important issue of establishing global environmental, social, and governance (ESG) sustainability corporate disclosure standards. CFA Institute has long supported efforts to achieve global financial standards, including ongoing advocacy for sustainability standards. The time has come for regulators and other stakeholders globally to recognize the importance of consistent global standards as they relate to sustainability disclosures.

- **International Financial Reporting Standards (IFRS) Foundation:** The Trustees of the IFRS Foundation published a consultation paper to assess demand for global sustainability standards and, if demand is strong, to determine whether and to what extent the Foundation might contribute to the development of such standards. Kurt Schacht, advocacy director at CFA institute, who also serves as an IFRS trustee, noted "the Trustees are seeking global input on the need for a more consistent approach to sustainability reporting and the role that IFRS Foundation might take in coordinating the development of standards."

  Input needed: The IFRS consultation paper sets out possible ways the Foundation might contribute to more consistent sustainability reporting using its experience in international standard-setting and its well-established governance structure. One possible option outlined in the paper is for the Foundation to establish a new sustainability standards board, operating alongside the International Accounting Standards Board (IASB). The consult asks about collaboration with other ESG bodies and the many initiatives under way in recent years around sustainability reporting. Interested parties can find more information and submit a response to the consultation (due 31 December 2020).

- **Global coalition:** As noted in a 17 September post, CFA Institute supports a recent framework *Statement of Intent to Work Together Towards Comprehensive Corporate Reporting*, put forth by five standard-setting institutions — CDP Global, Climate Disclosure Standards Board (CDSB), Global Reporting Initiative (GRI), International Integrated Reporting Council (IIRC), and Sustainability Accounting Standards Board (SASB) — for the development of a market-based and globally coherent solution for sustainability disclosure standards. As we noted in a recent comment letter, a common language that enables investors to distinguish between financial value-relevant and values-relevant disclosures is important in serving the needs of investors. It is also crucial to be clear on what investors need and what is material to their investment decision-making process, and then to consider separately the information needs of other stakeholders, including investors who invest based on values over value.

- **WEF/IBC report:** CFA Institute liaised with the World Economic Forum (WEF) and responded to its joint report with International Business Council (IBC), *Measuring Stakeholder Capitalism*, which utilizes standards issued by the SASB and the GRI to promote a framework for ESG reporting. The report represents an effort by the business community to get ahead of the emerging efforts to increase ESG disclosures. The WEF/IBC reports have been issued without investor engagement — something we have highlighted as critical.

INVESTOR PROTECTION

CFA INSTITUTE URGES DOL TO RECONSIDER PROPOSED RULES ON PROXY VOTING

Objections to DOL rule: In a 5 October comment letter on the DOL's *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights*, CFA Institute urged the DOL to reconsider major elements of its proposal and to seek greater industry input before proceeding to a final rule. We objected to the rationale and lack of evidentiary basis for the rulemaking, the rushed process, and the proposal's heavy-handed and costly approach. We also reiterated our concerns with the DOL's discouragement of ESG considerations in investment, engagement, and proxy-voting decisions.

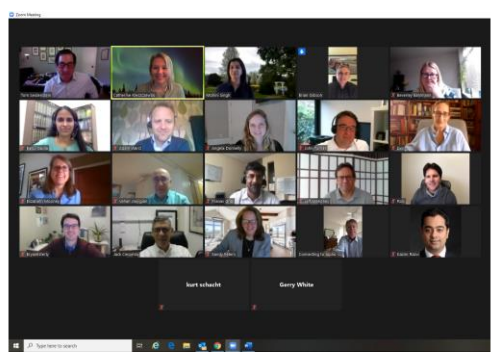
Our position: The proposal requires fiduciaries to satisfy a six-part test before casting *each* proxy vote, and permits votes *only* when they can prudently determine that the matter being voted on would have an "economic impact" on the plan investment. CFA Institute believes the individual cost-benefit analysis of proxy votes is unworkable, costly, and unnecessary. CFA Institute also opposes the "permitted practices" around which plan fiduciaries can model proxy-voting policies as setting inappropriate precedents. Additionally, CFA Institute raised concerns about the proposal's extension of plan-specific analysis and documentation requirements to both investment managers and proxy advisors.

Discouraging corporate governance: CFA Institute stressed that we support DOL's emphasis on a fiduciary's obligations to exercise shareowner rights, including clarifying that there is no obligation to vote every proxy, but we believe the new requirements are an unnecessary departure from existing market practices. Moreover, the rules are so substantial that they ultimately will deter proxy voting altogether, undermining corporate governance at US public companies and market integrity.

GLOBAL EVENTS & ACTIVITIES

ESTABLISHING PRIORITIES FOR FINANCIAL REPORTING POLICY

Corporate Disclosure Policy Council (CDPC) Summit: On 30 September and 1 October, the CFA Institute Financial Reporting Policy Group (FRPG) held its CDPC annual summit to update strategic priorities and plans for the coming year. The first day of the summit focused on the "Future of Audits" and featured Tom Seidenstein, chair of the International Auditing and Assurance Standards Board (IAASB), and Wes Bricker, head of assurance at PricewaterhouseCoopers (PwC), giving perspectives from both a leading standard setter and a practitioner. Discussions included how many jurisdictions around the world are exploring ways to improve the quality of the audit and detect fraud to increase confidence in the audit process. Other areas of focus included data and technology, nonfinancial information, virtual audits, going concern, and audit evidence.



CDPC virtual summit

Focus on ESG disclosures: The second day of the summit focused on ESG, sustainability, and nonfinancial disclosures and its importance to investors. Nathalie Wallace, trade advisor, State Street Global Advisors, provided perspectives on the importance of ESG data and the need for standardization of both ratings and disclosures to support ESG and sustainability analysis. In addition, Veronica Poole, global IFRS leader, Deloitte, and Neil Stevenson, director, Deloitte, provided a roundup of various initiatives by the EU, IASB, International Organization of Securities Commissions (IOSCO), and the big four accountancy firms in formulating high-quality global standards to support ESG analysis for investors. They called out the increased momentum behind a global nonfinancial reporting standard, citing feedback on Accountancy Europe's consultation on Interconnected Standard Setting for Corporate Reporting.

GLOBAL EVENTS & ACTIVITIES

KEY ENGAGEMENTS

Systemic Risk Council Webinar: Is Covid-19 Make or Break for the EU? (24 September): An interactive discussion featured an expert panel of System Risk Council members and prominent figures from EU institutions sharing their views on European angles of the COVID-19 fiscal and monetary response. Gary Baker, managing director, EMEA, and Josina Kamerling, head, regulatory outreach, EMEA, at CFA Institute, moderated a panel focused on the coordination of Eurozone relief packages, a tense budgeting process, how COVID measures play into the discussions about EU institutions and the formation of a strong Capital Markets Union (CMU), and looming systemic risks that need further attention.

How the EU and Germany Are Preparing Finance for a New Age (29 September): CFA Institute and CFA Society Germany organized a high-level online conference on the priorities of the German EU presidency, featuring Dr. Jörg Kukies, state secretary at the German Federal Ministry of Finance; Dr. Sabine Mauderer, executive board member of the German Bundesbank; and Thomas Wieser, chair of the CMU High-Level Forum and former secretary general of the Eurogroup. Discussions covered Eurozone economic issues, and how Germany plans to support the recovery of the economy through new financial measures focusing on green finance and digitalization.

CMVM Annual Conference: Investing in the Recovery: The Role of the Capital Markets (8 October): Josina Kamerling participated in the Portuguese Securities Market Commission CMVM (*Comissão do Mercado de Valores Mobiliários*) annual conference roundtable focused on trends in sustainable investment and corporate responsibility. The discussion centered around responsible investing and ESG, with a focus on ethical issues in governance.

Improving Transparency and Comparability of Investment Products with ESG-Related Features (21 September): CFA Institute hosted an ESG webinar highlighting views and perspectives from the CFA Institute Consultation Paper, *ESG Disclosure Standards for Investment Products.*

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On the Board Agenda: Building an Effective Ecosystem for ESG (22 September): Mary Leung, head of advocacy for Asia Pacific at CFA Institute, participated with the HKEX chair and the Link REIT CEO on an ESG-focused panel discussion organized by KPMG and Spencer Stuart. The discussion focused on Hong Kong SAR's role in driving the ESG agenda in Asia Pacific, how gender-diverse business leadership can enhance company performance, and how women can influence the dialogue on ESG.

FinTech for ESG: Data for Asset Managers (23 September): Mary Leung participated in a webinar, organized by CFA Institute in collaboration with the Fintech Association of Hong Kong. The online discussion highlighted the role of fintech companies in driving the adoption of ESG frameworks among investors and financial institutions.

How to Understand and Prepare Climate-Related Disclosures (25 September): Mary Leung presented at the Hong Kong Green Finance Association's online workshop focused on the Securities and Futures Commission's (SFC) Strategy Framework for Green Finance and the most recent update to the HKEX's *Environment, Social, and Governance Reporting Guide* for listed issuers, which emphasized climate-related disclosures.

Evaluation of New Economy Technology Companies (8 October): CFA Institute hosted an IOSCO World Investor Week webinar in collaboration with CFA Society Hong Kong and the Association of Chartered Certified Accountants (ACCA). Discussion focused on business models of technology companies in a range of subsectors as well as how to valuate such companies using financial and nonfinancial analysis and methodologies.

India Pension Roundtable (9 October): Sivananth Ramachandran, director of capital market policy for India at CFA Institute, organized the CFA Institute's third roundtable on pensions in India, focused on *The Code on Social Security 2020* (signed into law on 28 September) and its impact on pensions. In our view, the Code makes a move in the right direction; however, it is voluntary only for small establishments. Moreover, the new rules around wages and gratuity must be combined with adequate provisioning so that investors have a full picture of companies' liabilities.