



1401 H Street, NW, Washington, DC 20005-2148, USA  
202/326-5800 [www.ici.org](http://www.ici.org)

December 21, 2018

CFA Institute  
Global Investment Performance Standards  
915 E. High Street  
Charlottesville, VA 22902

Re: Exposure Draft of the 2020 Global Investment  
Performance Standards (GIPS®) (“Exposure  
Draft”)

Dear Sir or Madam:

The Investment Company Institute<sup>1</sup> generally supports how the Exposure Draft<sup>2</sup> treats broad distribution pooled funds (“funds”). The Exposure Draft recognizes the rigorous performance reporting and disclosure requirements that these funds follow and refrains from imposing duplicative and costly standards that would serve no useful purpose.

## **I. Executive Summary and Background**

We commend the CFA Institute for how it treats broad distribution pooled funds in the Exposure Draft. The CFA Institute has incorporated broad distribution pooled funds into its GIPS framework in a sensible way that serves the interests of current and prospective fund investors, along with these funds and their sponsoring firms. Specifically, we strongly support the Exposure Draft’s permissive approach to broad distribution pooled funds, under which firms *may* prepare and present a GIPS

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<sup>1</sup> The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$21.5 trillion in the United States, serving more than 100 million US shareholders, and US\$7.0 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](http://www.ici.org), with offices in London, Hong Kong, and Washington, DC.

<sup>2</sup> The Exposure Draft is available at [www.gipsstandards.org/standards/Documents/gips\\_2020\\_exposure\\_draft.pdf](http://www.gipsstandards.org/standards/Documents/gips_2020_exposure_draft.pdf). We comment only on the Exposure Draft’s treatment of broad distribution pooled funds and their sponsoring firms.

pooled fund report to prospective investors, and must follow the proposed advertising requirements *only if* the advertisements claim firm compliance with GIPS. This is appropriate because broad distribution pooled funds already are highly regulated. Below, we elaborate on these points and include a few comments that would further improve the Exposure Draft.

### **Background**

ICI did not support the CFA Institute's 2016 draft guidance statement on broadly distributed pooled funds,<sup>3</sup> which would have required fund offering documents and marketing material to include several specified disclosure items. We fundamentally objected to layering the proposed standards on the robust fund performance reporting and disclosure requirements already in effect worldwide.<sup>4</sup> We suggested, as alternatives, making all items in the draft guidance "recommended" and thus voluntary for firms to implement, and/or limiting any new requirements to *specific* offering documents and marketing material that include an affirmative firm claim of GIPS compliance.

In response to the CFA Institute's May 2017 GIPS 2020 consultation paper,<sup>5</sup> ICI urged the CFA Institute to exclude regulated funds from the project's scope.<sup>6</sup> And after the CFA Institute adopted the guidance statement on broadly distributed pooled funds in March 2017,<sup>7</sup> we again urged the CFA Institute to reconsider the need for, and its fundamental approach to, pooled fund-specific guidance and standards.<sup>8</sup>

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<sup>3</sup> The Exposure Draft of the Guidance Statement on Broadly Distributed Pooled Funds is available at [www.gipsstandards.org/standards/Documents/Guidance/exposure\\_draft\\_public\\_comment\\_pooled\\_funds\\_gs.pdf](http://www.gipsstandards.org/standards/Documents/Guidance/exposure_draft_public_comment_pooled_funds_gs.pdf). See Letter from Dorothy Donohue, Deputy General Counsel, ICI, to CFA Institute, dated April 29, 2016 ("2016 ICI Comment Letter"), available at [www.ici.org/pdf/29878.pdf](http://www.ici.org/pdf/29878.pdf).

<sup>4</sup> We noted that investor protection broadly, and the contents of offering documents and marketing material in particular, fall within the competence and supervisory mandates of national securities regulators; that regulated funds and their retail investors have been well-served by regulators' emphasis on developing highly detailed and prescriptive sets of performance reporting and disclosure requirements; that overlaying GIPS in those instances would be unnecessary and inappropriate; and that the CFA Institute should not substitute its judgment for that of these regulators worldwide.

<sup>5</sup> The GIPS 20/20 Consultation Paper is available at [www.gipsstandards.org/standards/Documents/Guidance/gips\\_2020\\_consultation\\_paper.pdf](http://www.gipsstandards.org/standards/Documents/Guidance/gips_2020_consultation_paper.pdf).

<sup>6</sup> Letter from Dorothy Donohue, Acting General Counsel, ICI, to CFA Institute, dated July 14, 2017, available at [www.gipsstandards.org/standards/Documents/Guidance/gips\\_2020\\_consultation\\_ici.pdf](http://www.gipsstandards.org/standards/Documents/Guidance/gips_2020_consultation_ici.pdf).

<sup>7</sup> The Guidance Statement on Broadly Distributed Pooled Funds ("2017 Guidance Statement") is available at [www.gipsstandards.org/standards/Documents/Guidance/gs\\_pooled\\_funds.pdf](http://www.gipsstandards.org/standards/Documents/Guidance/gs_pooled_funds.pdf).

<sup>8</sup> Letter from Dorothy Donohue, Acting General Counsel, ICI, to CFA Institute, dated October 23, 2017, available at [www.ici.org/pdf/30922a.pdf](http://www.ici.org/pdf/30922a.pdf).

## II. Comments on the Exposure Draft

In this section, we:

- Explain why we strongly support the Exposure Draft’s standards affecting broad distribution pooled funds;
- Recommend changes to the “broad distribution pooled fund” definition to better achieve the framework’s intent; and
- Explain why we oppose the proposed requirements for firms to maintain and distribute lists of their broad distribution pooled funds.

### A. Treatment of Broad Distribution Pooled Funds and Their Sponsoring Firms

The Exposure Draft would impose on firms distinct composite<sup>9</sup> and pooled fund-specific reporting obligations. The Exposure Draft further distinguishes between a firm’s pooled fund-specific reporting obligations, depending on fund type (*i.e.*, limited distribution pooled funds<sup>10</sup> and broad distribution pooled funds). Firms would prepare and present GIPS pooled fund reports to all prospective investors of limited distribution pooled funds. Firms would not be required to prepare and present GIPS pooled fund reports to prospective broad distribution pooled fund investors, but could voluntarily do so.

The Exposure Draft’s detailed advertising requirements and recommendations for broad distribution pooled funds apply only if a firm claims compliance with GIPS in a GIPS advertisement.<sup>11</sup> In other words,

“A firm selling participation in a broad distribution pooled fund that would like to promote its claim of compliance with the GIPS standards but does not wish to prepare a GIPS Pooled Fund Report can do so in a GIPS Advertisement prepared in accordance with the GIPS Advertising Guidelines. If a firm does not wish to prepare a GIPS Pooled Fund Report or a GIPS Advertisement for a broad distribution pooled fund, it must not use the GIPS claim of compliance in materials for that broad distribution pooled fund.”<sup>12</sup>

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<sup>9</sup> A composite is an aggregation of one or more portfolios or funds that are managed according to a similar investment mandate, objective, or strategy. Composite reporting obligations are relevant when a firm is marketing its advisory services generally, rather than a specific pooled fund.

<sup>10</sup> A “limited distribution pooled fund” would be defined in relevant part as “[a] pooled fund that is not publicly available to multiple investors and for which the typical marketing practice involves contact between the firm managing the pooled fund and the pooled fund prospective investor.”

<sup>11</sup> See Section 13.G and H of the Exposure Draft.

<sup>12</sup> Exposure Draft at 5.

We strongly support the treatment of broad distribution pooled funds, as outlined above. The Exposure Draft recognizes (at least implicitly) that within the asset management universe, GIPS should complement—rather than compete with or duplicate—the rigorous standards already in place.<sup>13</sup> This approach significantly improves upon the 2017 Guidance Statement, which would have imposed substantive disclosure requirements on broad distribution pooled fund documents and put the onus on firms to reconcile conflicts between the new guidance and existing legal requirements. Furthermore, this approach removes disincentives to adopt, or maintain compliance with, GIPS.

## **B. “Broad Distribution Pooled Fund” Definition**

The “broad distribution pooled fund” definition is critical because it determines a firm’s divergent responsibilities for different fund types. The Exposure Draft defines “broad distribution pooled fund” as follows:

“A POOLED FUND that is publicly available to multiple investors, for which the typical marketing practice involves no or minimal personal contact between the FIRM managing the POOLED FUND and the POOLED FUND PROSPECTIVE INVESTOR. These funds are typically sold to the general public and are highly regulated.”

The proposed definition includes too many concepts, which in some cases may conflict. Focusing the definition on a single element—degree of regulation—would effectively serve the framework’s intent. Specifically, we recommend defining “broad distribution pooled fund” as follows:

“A POOLED FUND that is substantively regulated under a framework that would permit the public offering of the POOLED FUND’S shares.”<sup>14</sup>

Our proposed definition would be much easier for firms to interpret and apply. Further, it would position the GIPS framework to complement broad distribution pooled funds’ existing regulatory requirements. By contrast, the Exposure Draft’s proposed definition—which, in addition to regulatory status, includes marketing and distribution considerations—could lead to anomalous and inappropriate

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<sup>13</sup> Requirements currently apply to broad distribution pooled funds regarding performance disclosures made to prospective investors and existing investors in offering documents (*e.g.*, prospectuses), subsequent mandatory disclosures made to existing investors (*e.g.*, in the United States, updated prospectuses, and annual and semi-annual shareholder reports), voluntary marketing materials (*e.g.*, websites and fund factsheets), and through third parties. *See* 2016 ICI Comment Letter at 3-10 for additional detail and background.

<sup>14</sup> To be clear, the firm’s assessment of the pooled fund’s regulatory framework would be dispositive. To illustrate, if a pooled fund operates under a regulatory framework that would permit the offering of the pooled fund’s shares or interests to the public, the pooled fund would qualify as a “broad distribution pooled fund,” even if the pooled fund limits the offering of its shares or interests in some way (*e.g.*, to institutional investors only).

results. For example, US mutual funds and ETFs categorically should qualify as “broad distribution pooled funds” because they are highly regulated retail investment vehicles, particularly with respect to their disclosure and performance reporting obligations. But in certain instances, firm personnel could interact with current or prospective fund investors (particularly institutional investors) in a sales or marketing capacity. Or, such a fund could operate under the demanding US regulated fund framework, yet be marketed to and owned only by a small number of institutional investors.

Thus, the marketing and distribution components of the definition could inadvertently obligate firms to engage in fund-by-fund “facts and circumstances” analyses of their marketing and distribution practices, resulting in uncertainty regarding their fund designations. Moreover, the inherent subjectivity of these judgments could result in firms classifying substantially similar funds differently. This in turn could result in investor confusion and the delivery of incomparable information about similar funds, at odds with the long-standing goals GIPS.

We do not believe that these results were intended, and our streamlined definition would avoid these complications.

### **C. Broad Distribution Pooled Fund Lists**

A firm that manages broad distribution pooled funds would be required to:

- maintain a list of such funds, and include terminated funds for at least five years;
- provide the complete list of “appropriate” funds, along with their descriptions, upon the prospective investor’s request; and
- disclose in its composite and pooled fund reports that its list of broad distribution pooled funds would be available upon request.<sup>15</sup>

We recommend eliminating all these listing requirements because they are unlikely to help prospective investors. Providing *fund-specific* information upon request is reasonable, but requiring firms to maintain and provide comprehensive lists of funds with their descriptions—many of which may be of little or no interest to the investor—is overinclusive disclosure that will not meaningfully assist investors in their decision-making. Moreover, creating and maintaining these lists would be especially burdensome for those firms that sponsor hundreds of funds in multiple jurisdictions. The burdens of these requirements clearly would outweigh the benefits.

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<sup>15</sup> See Sections 1.A.19.c, 1.A.20.c and d, 4.C.12.c, 5.C.11.c, 6.C.11.c, and 7.C.11.c of the Exposure Draft.

If the CFA Institute keeps list-related requirements of some kind, we recommend three specific changes. First, it should delete the terminated funds provision. Including these funds is likely to confuse investors, potentially frustrate those that may consider investing in them, and provide little meaningful information.<sup>16</sup>

Second, the CFA Institute should strike the term “appropriate” from Item 1.A.20.c. In some jurisdictions, the term could suggest obligations associated with investment recommendations (*e.g.*, fiduciary duties or suitability obligations). And a firm often will have no direct contact with prospective fund investors, and therefore will not know which of its funds could be “appropriate” for prospective investors.<sup>17</sup>

Finally, firms should be permitted (but not required) to satisfy any listing requirements by maintaining their fund lists on websites and directing prospective investors to them upon their request. This would ease compliance with the requirements for some firms.

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<sup>16</sup> To the extent that this terminated fund provision is motivated by survivorship bias concerns, broad distribution pooled fund terminations are very different from composite terminations, with respect to regulation, procedure, and underlying rationale. In Europe, decisions to liquidate or merge regulated funds (*i.e.*, UCITS) are heavily regulated on a pan-European basis. Fund mergers and liquidations require board approval; fund mergers also generally require regulatory approval, shareholder approval, validation by the UCITS auditor of the criteria used to value the liabilities and assets involved in the merger transaction, and approval of the fund’s depository. *See generally* Directive on Undertakings for Collective Investment in Transferable Securities, [2009/65/EC](#), July 13, 2009 at Chapter VI (Mergers).

In the US, decisions to liquidate or merge regulated funds are not undertaken lightly by fund boards or advisers. Fund liquidations require board approval; fund mergers require board and shareholder approval. These transactions may be costly and result in lost assets for advisers, creating inherent checks on the transactions’ desirability. In fact, fund liquidations or mergers may be motivated by a wide range of factors and considerations, and performance considerations alone rarely explain these transactions. *See generally* Board Consideration of Fund Mergers, Independent Directors Council Task Force Report, June 2006, available at [www.idc.org/pdf/ppr\\_idc\\_fund\\_mergers.pdf](#). And US fund mergers follow detailed regulatory guidance in determining the “survivor” for accounting purposes (the surviving fund assumes the financial and performance history of the fund it most closely resembles). *See, e.g.*, North American Security Trust, SEC No-Action Letter (pub. avail. Aug. 5, 1994) (the factors used to determine which fund will be the accounting survivor of a merger include a comparison of the funds’ investment advisers, investment objectives, policies, and restrictions, expense structures and expense ratios, asset size, and portfolio composition).

<sup>17</sup> If the CFA Institute chooses to maintain listing requirements, we also recommend permitting, but not requiring, firms to tailor their lists based on general terms of eligibility or other disclosed categories (*e.g.*, a firm offering funds in multiple jurisdictions could provide a list comprised only of US funds to its prospective US investors).

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If you have any questions with respect to regulated US funds, please contact me at (202) 326-5813 or Matthew Thornton at (202) 371-5406; for questions regarding regulated non-US funds, please contact Eva Mykolenko at (202) 326-5837.

Sincerely,

/s/ Susan Olson  
General Counsel