INVESTMENT COMPANY INSTITUTE

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October 23, 2017

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

Re: CFA Institute's Recent Work Related to Broadly Distributed Pooled Funds

Dear Sir or Madam:

The Investment Company Institute[1] is writing to express deep concerns with the CFA Institute's recent work related to broadly distributed pooled funds.[2] This fund-related work lacks a compelling rationale and demonstrates little regard for the current legal and regulatory requirements that apply to Firms and their regulated funds.[3]

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[1] The Investment Company Institute (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$20.5 trillion in the United States, serving more than 100 million US shareholders, and US$6.7 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] We specifically reference (i) the March 2017 Guidance Statement on Broadly Distributed Pooled Funds ("Guidance Statement"), available at www.gipsstandards.org/standards/Documents/Guidance/gs_pooled_funds.pdf, and (ii) the May 2017 GIPS 20/20 Consultation Paper ("Consultation Paper"), available at www.gipsstandards.org/standards/Documents/Guidance/gips_2020_consultation_paper.pdf. Global Investment Performance Standards ("GIPS") apply to all firms ("Firms") that claim compliance with the standards, many of which are ICI members.

[3] We use the term "regulated funds" to include regulated US funds (comprehensively regulated under the Investment Company Act of 1940), and regulated non-US funds, which are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors (*e.g.*, funds domiciled in the European Union and qualified under the UCITS Directive). We use the term "pooled funds" to refer to the entire universe of pooled investment vehicles, irrespective of the degree to which they are regulated. Our comments in this letter focus on the Guidance Statement's and Consultation Paper's potential impact on regulated funds and their investors.

ICI did not support the Exposure Draft of the Guidance Statement on Broadly Distributed Pooled Funds ("Exposure Draft").[4] We fundamentally objected to layering the proposed standards on the robust fund performance reporting and disclosure requirements already in place in numerous jurisdictions around the globe. 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 is unnecessary and inappropriate; and that the CFA Institute should not substitute its judgment for that of these regulators worldwide. We suggested, as alternative approaches that would advance the CFA Institute's objectives, (i) simply making all items in the Exposure Draft "recommended" and thus voluntary for Firms to implement, and/or (ii) limiting any new requirements to *specific* offering documents and marketing material that refer to a Firm claim of GIPS compliance.

The final Guidance Statement offered no more of a justification for this initiative than the Exposure Draft, and therefore our fundamental objections remain.

If the CFA Institute insists on moving forward with this initiative—and there is no good reason to believe that it should—then at the very least it should competently establish the safe harbor that the Guidance Statement requires.[5] We are extremely concerned that, to date, the CFA Institute has not formally identified *any* pooled fund types or regulatory regimes as being included within this safe harbor. The Guidance Statement's effective date for compliance is January 1, 2018. In advance of this effective date, many Firms have been waiting for the CFA Institute to issue this safe harbor guidance, after which they intend to review (and if necessary, modify) offering documents and/or marketing material for those funds *not* included within the safe harbor. Even if the CFA Institute were to release complete safe harbor guidance today, Firms would have only weeks to finish this challenging, resource-intensive, and time-consuming process. The CFA Institute's lack of formal action with respect to the safe harbor has created this delay and compliance bottleneck, and therefore the CFA

[4] *See* Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, to CFA Institute, dated April 29, 2016 ("ICI Comment Letter"), available at www.ici.org/pdf/29878.pdf,

[5] The Guidance Statement requires the CFA Institute to review the legal and/or regulatory requirements applicable to pooled funds and identify those regimes that it determines to qualify for inclusion under the safe harbor. If so, Firms falling under those jurisdictions will be deemed to have met the requirements of Provision 0.A.9 (regarding the provision of a compliant presentation) and the Guidance Statement (leaving Firms with nothing more to do for those of their funds included within the safe harbor).

Institute must promptly delay the effectiveness of the Guidance Statement and set a new effective date based on a suitable period *following* the completion of its safe harbor guidance.[6]

The CFA Institute's apparent difficulty in administering its own safe harbor is not surprising. The CFA Institute effectively has assumed some of the burden that the Exposure Draft would have placed entirely on each Firm sponsoring funds—an implicit acknowledgement of the overbroad nature of this initiative, and its inherent complexity and cost. As stated in the ICI Comment Letter,

> "This legal and compliance 'gap analysis' would be a significant undertaking for all Firms, and would become geometrically costly and burdensome for Firms that manage and distribute funds in multiple jurisdictions, each with its own applicable regulatory requirements."[7]

The difficulty the CFA Institute now encounters underscores how little it attended to the legal and practical implications of its work, particularly with respect to its global dimensions. With respect to regulated funds' performance reporting and disclosure requirements, the CFA Institute, Firms, and regulated funds are not dealing with a blank slate—far from it. Analysis of the highly detailed and prescriptive set of (differing worldwide) legal and regulatory requirements that apply to regulated funds makes clear the challenges associated with attempting to overlay a new universal set of standards on top of them, and points to a more measured and collaborative approach that respects legal authorities' judgment, and the existing requirements under which regulated funds operate.

Furthermore, the CFA Institute's preparation and finalization of the Guidance Statement, and its failure to subsequently issue safe harbor guidance, do not augur well for the CFA Institute's proposed and ongoing GIPS 20/20 work as it relates to regulated funds. The Consultation Paper is not clear about what new pooled fund-specific performance requirements the CFA Institute is considering. In our 2017 comment letter,[8] we pointed out that the Consultation Paper makes no attempt to analyze pooled funds' current reporting requirements—a fatal omission, and a step that must precede any consideration of whether new standards are warranted. We strongly urged the CFA Institute to exclude regulated funds from the scope of this project, because they currently are subject to robust performance reporting requirements.

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[6] The fewer pooled fund types or regulatory regimes included within the safe harbor, the more work will be left for Firms (particularly for those that sponsor or offer funds in multiple jurisdictions). At a minimum, a nine-month delay in the effective date from the time CFA Institute issues its final safe harbor guidance is warranted, to give Firms sufficient time to complete these reviews and make any necessary changes to their funds' offering documents and/or marketing material.

[7] ICI Comment Letter at 8.

[8] *See* Letter from Dorothy Donohue, Acting General Counsel, Investment Company Institute, to CFA Institute, dated July 14, 2017, available at www.ici.org/pdf/30778a.pdf.

We therefore strongly urge the CFA Institute to reconsider the need for, and its fundamental approach to, issuing pooled fund-specific guidance and standards. Specifically, it must analyze the current and varied legal and regulatory requirements that apply to pooled funds globally, and assess whether and to what extent those requirements are genuinely inadequate. We are confident that, for regulated funds across many jurisdictions, they are not. To the extent that the CFA Institute were to identify genuine gaps in these requirements in certain jurisdictions (or for certain types of pooled funds), it then could evaluate and propose targeted ways in which it may play a constructive role in improving standards (which could include working directly with specific regulators to improve standards in those jurisdictions). If the CFA Institute is not willing to proceed in this prudent fashion, then it should abandon its pooled fund-specific work.

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If you have any questions with respect to regulated US funds, please contact me at (202) 218-3563 or Matthew Thornton at (202) 371-5406; for questions regarding regulated non-US funds, please contact Eva Mykolenko at (202) 326-5837.

Sincerely,

/s/ Dorothy Donohue
Acting General Counsel

cc: CFA Institute Board of Governors
Paul Smith, CFA
Robert Jenkins, FSIP
Heather Brilliant, CFA
Frederic P. Lebel, CFA
Paul Smith, CFA
Diane Nordin, CFA
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