Investment Company Institute Response to
CFA Institute's Exposure Draft on ESG Disclosure Standards for Investment Products
(submitted July 14, 2021)

Please note that the Exposure Draft utilizes a template with each question followed by a text box for the response. We have included below only the questions to which we responded.

<u>Questions for Investment Managers</u>

1. **Are the draft provisions helpful in establishing or clarifying the type of information that should be included in an investment product's disclosures regarding the ESG-related aspects of the investment product's strategy?**

No, and we therefore oppose the adoption of the CFA Institute ESG Disclosure Standards for Investment Products (CFA Standards). We commend the CFA Institute—and, in particular, the ESG Working Group, ESG Technical Committee and ESG Verification Subcommittee—for making the effort to assemble a set of standards for improving environmental, social, and governance (ESG)-related disclosures about investment products. That said, the creation of another set of disclosure standards, which merely offer different, but not materially improved, standards in comparison to a plethora of existing standard-setting efforts would: (i) impose undue and unnecessary burdens on investment managers; (ii) be of questionable benefit to investors; and (iii) create confusion, undermining the ultimate goal of effective disclosure standards for investment products. Rather than establish a separate set of disclosure standards, the CFA Institute could contribute its perspective to support ongoing governmental efforts to promote better regulatory approaches.

As the trade association representing regulated funds globally, our comments focus on the application of the CFA Standards to regulated funds.[1] As the CFA Institute considers the extent of the support for this initiative, we strongly recommend that you take into account the many voices we represent in this one response. ICI's members include over 800 investment managers that manage 28,000 regulated funds with $40 trillion in assets. Many of our members have global operations and must comply with regulatory requirements in multiple jurisdictions. Our members often rely on ICI to communicate their views on policy matters, rather than submitting individual responses, when, as is the case here, their views are generally aligned. Although for purposes of tallying support for the initiative or specific standards, the CFA Institute appears to count each comment letter as "one vote,"[2] we strongly recommend that you take into account the many voices we represent in this one response. And those voices oppose the adoption of the CFA Standards.

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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$31.1 trillion in the United States, serving more than 100 million US shareholders, and US$9.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in Washington, DC, London, Brussels, and Hong Kong.

[2] *See* CFA Institute, *Exposure Draft for CFA Institute ESG Disc • The US Securities and Exchange Commission (SEC) announced its annual regulatory agenda and indicated that it may propose requirements for investment companies*

In our October 2020 response to the Consultation Paper, we highlighted the fast pace of regulatory activity relating to ESG investment products, noting several developments in Europe, Asia, and the United States.[3] That rapid pace of regulatory activity has continued, if not accelerated, since we commented on the Consultation Paper—and since the CFA Institute published its Exposure Draft on May 11, 2021. Significant developments that occurred *just in June 2021* include:

- The US Securities and Exchange Commission (SEC) announced its annual regulatory agenda and indicated that it may propose requirements for investment companies and investment advisers related to ESG factors, including ESG claims and related disclosures, with a proposal expected by April 2022.[4]

- The International Organization of Securities Commissions (IOSCO) published a consultation seeking feedback on proposed recommendations about sustainability-related regulatory and supervisory expectations.[5] IOSCO's recommendations cover investment product disclosure and many of the topics covered by the CFA Standards, such as disclosures about investment objectives, investment strategies, risks, and proxy voting and shareholder engagement.[6] Significantly, the point of the IOSCO work is to help jurisdictions develop product disclosure requirements. The CFA Institute would be adding its likely overlapping content to these disclosures and seemingly undermining the global work towards a set of common baseline standards.

- The United Kingdom's Financial Conduct Authority (FCA) proposed new disclosure requirements for investment managers focused on relevant climate-related risks and the

and investment advisers related to ESG factors, including ESG claims and related disclosures, with a proposal expected by April 2022losure Standards for Investment Products (May 2021) at 1, *available at* https://www.cfainstitute.org/-/media/documents/support/ethics/exposure-draft-cfa-institute-esg-disclosure-standards-for-investment-products.ashx.

[3] *See ICI Response to CFA Institute's Consultation on ESG Disclosure Standards for Investment Products* (submitted 19 October 2020), *available* at https://www.ici.org/system/files/attachments/32847a.pdf. For example, we noted the disclosure requirements under the EU's Sustainable Finance Disclosure Regulation (SFDR) and Taxonomy Regulation; the imposition of minimum standards for marketing retail ESG funds into France by the French securities regulator (Autorité des marchés financiers or AMF); guidance for specific disclosures for ESG and green funds by the Hong Kong Securities and Futures Commission (SFC); and regulatory interest of the US Securities and Exchange Commission, which is considering its rule for fund names and conducting ESG-focused exams, and by SEC Commissioners, who have spoken frequently on ESG.

[4] *See* SEC Press Release, *SEC Announces Annual Regulatory Agenda* (Jun. 11, 2021), *available at* https://www.sec.gov/news/press-release/2021-99 and the SEC's rulemaking list, *available* at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F.

[5] *See* IOSOC Media Release, *IOSCO consults on sustainability-related regulatory and supervisory expectations in asset management* (Jun. 30, 2021), *available at* https://www.iosco.org/news/pdf/IOSCONEWS610.pdf.

[6] *See* IOSCO, *Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management; Consultation Report* (Jun. 2021) *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD679.pdf.

manager's climate-related risk management arrangements, which include product or portfolio-level disclosure requirements.[7]

- The Hong Kong Securities and Futures Commission (SFC) published a circular to provide guidance on enhanced disclosure including periodic assessment and reporting for ESG funds and with additional guidance for funds with a climate-related focus.[8]

These recent, significant developments effectively demonstrate that there is no gap that needs to be filled by the CFA Institute and, in fact, the CFA Standards could duplicate or conflict with regulatory requirements.

We recognize that the CFA Standards would be voluntary, and that investment managers would be able to choose the investment products to which the CFA Standards apply. That said, we are concerned that the CFA Standards could produce the unhelpful consequence of being a *de facto* market requirement that sits on top of official-sector requirements and that may not be consistent with such official-sector requirements. As such, the CFA Standards would generate another layer of disclosure that could confuse investors and burden investment managers that face multiple disclosure obligations in jurisdictions around the world, with new ones likely to be imposed over the next few years.

The current regulatory activity, which will bring new disclosure requirements next year, raises the question of why the CFA Institute has determined to adopt its own standards this year. For example, if the SEC were to adopt new disclosure requirements for ESG funds, would the CFA Institute adjust its CFA Standards to align with those requirements? We anticipate a complicated road ahead as jurisdictions continue to consider ESG-related rules and disclosure requirements, and the addition of the CFA Standards to this mix—particularly *before* some regulatory authorities have determined what actions they might take—further complicates efforts to harmonize disclosure obligations.

For these reasons, we urge the CFA Institute to not adopt the CFA Standards. If, however, the CFA Institute determines to move forward, we urge it to delay any further action until after these significant regulatory developments are resolved. Moreover, if it determines to move forward, we recommend that, rather than adopt standards, it publish the recommendations for consideration by managers, enabling them to draw from the provisions that are appropriate to their circumstances.

In the event the CFA Institute chooses to move forward, we provide the following comments on the draft provisions.

[7] *See* FCA, *Consultation Paper: Enhancing climate-related disclosures by asset managers, life insurers, and FCA-regulated pension providers* (Jun. 2021), *available at* https://www.fca.org.uk/publication/consultation/cp21-17.pdf. The FCA plans for the new rules to come into effect for larger investment managers in January 2022.

[8] *See* SFC, *Circular to management companies of SFC-authorized unit trusts and mutual funds - ESG funds* (Jun. 29, 2021), *available at* https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/doc?refNo=21EC27.

General Comments

a. *The CFA Institute should emphasize the voluntary nature of the CFA Standards and state that their application to regulated funds may not be appropriate or practicable and/or may be duplicative*.

Because regulated funds already are required by law and regulation to disclose significant information about their investment strategies and risks to investors,[9] the benefit to regulated fund investors of a compliant presentation consistent with the CFA Standards would be limited and possibly diminished. Moreover, because a regulated fund investment manager would have to maintain disclosures consistent with regulatory requirements and a compliant presentation consistent with the CFA Standards, its burden would be higher than that of an investment manager that could use a compliant presentation as the primary disclosure document about its investment products.

For these reasons, we urge the CFA Institute to make clear that, because regulated funds' extensive disclosures are heavily regulated, the application of the CFA Standards to regulated funds may not be appropriate or practicable and possibly duplicative. Such an express statement would further highlight the voluntary nature of the CFA Standards, the fact that one size does not fit all, and that the usefulness of the CFA Standards depends on the specific facts and circumstances of the investment manager and its investment products. Investment managers of regulated funds that choose not to apply the CFA Standards to regulated funds could point to that statement as further explanation for that decision.

Regulated funds are the most comprehensively regulated investment products in jurisdictions worldwide. The substantial advantages they provide to investors—including professional money management, diversification, and reasonable cost—are consistent across international borders. They include the benefit of substantive government regulation and oversight, as befits an investment product eligible for sale to retail investors. All regulated funds typically are subject to substantive regulation in a number of areas, including disclosure (e.g., form, delivery, and timing).

In the US, the SEC regulates funds and has detailed requirements that govern the content of fund statutory prospectuses, summary prospectuses[10] and sales material.[11] These regulations specify information funds are required, permitted, and prohibited from including in their documents. Similarly, the European Union imposes detailed prospectus[12] and key information

[9] *See, e.g.*, SEC, *Request for Comment on the Fund Retail Investor Experience and Disclosure* (Jun. 5, 2018) at 8-11 (describing fund disclosure requirements), *available* at https://www.sec.gov/rules/other/2018/33-10503.pdf.

[10] *See generally* Form N-1A (registration statement for open-end registered funds) and Rule 498 (summary prospectus for open-end registered funds) under the Securities Act of 1933 (1933 Act).

[11] *See generally* Rules 156 (sales literature) and 482 (advertising) under the 1933 Act and Rule 34b-1 (sales literature deemed to be misleading) under the Investment Company Act of 1940.

[12] *See* Arts. 69 (and the corresponding Schedule A of Annex I) and 70 of 2009/65/EC Directive.

document[13] requirements for Undertakings for the Collective Investment in Transferable Securities (UCITS) and regulates the content of marketing materials.[14]

A US regulated fund is required to provide more comprehensive information in its regulatory filings than would be covered in a compliant presentation. For instance, a US registered fund must provide fees and expenses and performance information, among other things. Given that a regulated fund's prospectus is designed to provide information to help investors evaluate a fund for investment, the benefits of a separate compliant presentation about one aspect of the fund—its ESG features—would be limited and, in fact, could confuse investors that expect all relevant information to be found in one place. Similarly, in the EU, a UCITS investor would receive required pre-contractual disclosures (e.g., prospectus), which, starting in 2022, will include a template with required sustainability disclosures under the Sustainable Finance Disclosure Regulation (SFDR) (which includes the investment strategy information). Adding the CFA Institute's template to these documents, also aiming to explain the product's investment strategy, is duplicative and could be confusing to investors.

Compare these limited (if any) investor benefits to the heightened burdens of compliance for an investment manager of regulated funds. A regulated fund investment manager would have to harmonize the disclosures required by law and regulation with those required by the CFA Standards. The Exposure Draft's mapping of the CFA Standards to the SFDR requirements demonstrates the complexity of this harmonization task.[15] A similar mapping exercise would have to be undertaken against other regulatory requirements, including those of the SEC.

For these reasons, there may not be broad adoption of the CFA Standards. If the CFA Institute determines to adopt final CFA Standards, we urge it to make clear, through the CFA Standards or accompanying statements, that the application of the CFA Standards to regulated funds may not be appropriate or practicable and can be duplicative for some jurisdictions.

b. *Investment managers should have the option to cross reference to a fund's existing regulatory documentation and to firmwide policies to satisfy the Standard's disclosure requirements*.

The Exposure Draft proposes that all disclosures required by the CFA Standards be contained in a single document. We recommend that investment managers be able to cross-reference

[13] While the relevant key information document is going through changes, both the current version that applies to UCITS (Key Investor Information Document (UCITS KIID)) and the upcoming version (the PRIIPs Key Information Document (PRIIPs KID)) include information on UCITS' risks and investment profile.

[14] *See* European Securities and Markets Authority's Guidelines on marketing communications on cross-border distribution of funds, available at https://www.esma.europa.eu/sites/default/files/library/esma34-45-1244_-_final_report_on_the_guidelines_on_marketing_communications.pdf, specifying that marketing communications must describe the risks and rewards in an equally prominent manner; and must contain clear, fair and not misleading information. The guidelines also specifically address marketing principles for products' sustainability-related aspects, *see* section 6.5 at p. 43. Individual EU Member States add additional marketing requirements, including for ESG funds.

[15] *See* Mapping of SFDR Requirements to Exposure Draft Provisions, available at https://www.cfainstitute.org/-/media/documents/support/ethics/Mapping-of-SFDR-Requirements-to-Exposure-Draft-Provisions.ashx.

certain disclosures contained in other documents, rather than require a regulated fund investment manager to maintain duplicative information in the two documents.

Similarly, many investment managers have firm-wide policies that are applicable to all investment products. In that case, an investment manager should have the flexibility to cross-reference firm-wide compliant information, rather than duplicate the disclosures for each investment product.

c. *The CFA Standards should apply only to funds that use sustainable investing strategies (ESG Funds), and not those that integrate ESG factors into the investment process (ESG Integrated Funds).*[16]

We strongly urge the CFA Institute to narrow the scope of the CFA Standards so that they capture *only* those investment products that use sustainable investing strategies and *not* those that merely integrate ESG factors into the traditional investment process. Provision 5 requires certain disclosures if ESG information is used in an investment process or stewardship activities and Provision 7 requires certain disclosures if financially material ESG information is used alongside traditional financial analysis and valuation.

An increasing number of funds integrate ESG factors into the traditional investment process and, as a result, the universe of funds that could be considered as having "ESG-related features" as defined by the CFA Institute also likely will increase – possibly to cover most investment products. Indeed, the EU is requiring basic disclosure of ESG integration for all funds.[17]

For ESG Integrated Funds, ESG factors are among many factors considered in the investment process and requiring specific and expanded disclosures relating to ESG factors would be disproportionate to their role in the investment process.[18] For example, an investment manager may consider many different attributes when selecting securities for the fund, such as revenues, earnings, cash flows, profitability, leverage, new products, and new management. This type of expanded disclosure could over-emphasize the relative importance of the ESG factors and provide a misleading picture of the security selection process. In short, it could be confusing to

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[16] For purposes of our comments, we refer to those funds that use sustainable investing strategies, such as exclusionary, inclusionary, and impact investing, as "ESG Funds" and those that integrate ESG factors into a traditional investment process as "ESG Integrated Funds." *See* ICI, *Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction* (July 2020), available at https://www.ici.org/system/files/attachments/20_ppr_esg_integration.pdf.

[17] *See* Art. 6 of REGULATION (EU) 2019/2088 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 November 2019 on sustainability-related disclosures in the financial services sector (Sustainable Finance Disclosure Regulation or SFDR), *available at* https://eur-lex.europa.eu/eli/reg/2019/2088/oj.

[18] The notes to Provision 1.A.5 demonstrate the difficulty (and contradictory nature) of applying the CFA Standards to ESG Integrated Funds. The notes state that "[a]ll disclosures must be proportionate, with no overstatement of either the effect of an investment product's ESG-related features on ESG issues or the effect that ESG information has on any aspect of an investment product." The extended disclosures that an ESG Integrated Fund would be required to make pursuant to the CFA Standards would be disproportionate.

investors and would be an unnecessary burden on investment managers of ESG Integrated Funds.[19]

If the CFA Institute determines to include ESG Integrated Funds within the scope of the CFA Standards, we again urge the CFA Institute to emphasize the voluntary nature of the CFA Standards and expressly state that their application may not be appropriate or practicable for ESG Integrated Funds.

d. *The CFA Institute should explicitly state that investment managers may determine materiality based on the regulatory standards of their jurisdiction*.

The CFA Standards include several references to materiality, including requiring that an investment manager not omit material information about the ESG-related features of an investment product (1.A.4), correct material errors in compliant presentations (1.A.15), disclose a summary description of the policies and procedures for notifying investors when material changes are made (2.A.7), and disclose a listing of material changes to the ESG-related features of an investment product since inception (2.A.8). The CFA Standards should make clear that the basis for determining materiality is the same as that used for purposes of regulatory compliance (such as for prospectus updates).

Any disclosure regime should be premised on a legal standard that is well understood and predictable, yet flexible to accommodate a changing landscape. In the US, materiality is a familiar concept under the securities laws, with a well-developed body of case law and regulatory guidance that provides a defined and well-understood framework for making materiality determinations. It is, thus, critical that the CFA Institute not suggest the creation of a standard distinct from well-developed jurisdictional standards.

Additionally, we recommend that the Provision 2.A.8 requirement to disclose a listing of material changes since inception be deleted. We question whether a list of past material changes provides new investors with relevant information. Indeed, such a list could cause confusion to new investors investing after those changes are made. For these reasons, we recommend deleting this standard.

2. **To what extent are the draft provisions supportive of and complementary with local laws and regulations and other codes and standards? Would preparing and presenting a compliant presentation in any way hinder your ability to comply with local laws and regulation or with other codes and standards?**

As discussed more fully in response to Question #1, regulated funds are subject to extensive disclosure requirements. As a result, regulated fund investment managers would have to harmonize disclosures consistent with regulatory requirements and the CFA Standards. The SFDR mapping illustrates that there may be some overlapping requirements and some instances where the CFA Standards require more detail than regulatory requirements. The same may be said about US disclosure requirements and those of other jurisdictions. The challenges, in

[19] We note that the introductory discussion states that the Code of Ethics and Standards of Professional Conduct require disclosure of "significant limitations and risks associated with the investment process." *See* Exposure Draft at 3. The application of this to an ESG Integrated Fund is not clear.

addition to potential conflicts between the CFA Standards and other reporting regimes, include the burdens associated with harmonizing and maintaining two sets of disclosure documents, with different standards. This burden could affect smaller investment managers more significantly. As noted above, the regulatory disclosure requirements continue to evolve and, for that reason, we urge the CFA Institute to, at a minimum, delay further action until the regulatory developments are resolved.

3. **Do you expect it will be feasible and practical for your organization to provide the information required by the draft disclosure provisions and adhere to the draft fundamental provisions?**

   As discussed in response to Questions #1 and #2, a primary burden is harmonizing and maintaining separate disclosure documents with different standards, which could be greater for smaller investment managers with limited resources.

5. **Would it be helpful if the Standards contained a recommended format or template for compliant presentations?**

   We do not recommend that the CFA Standards mandate a format or template. We note that the sample presentations could provide a sufficient guide for how to format a presentation. We also caution against any format that would require programming or data tagging. Such an additional requirement would only add to investment managers' burdens without a comparable benefit to retail regulated fund investors.

SECTION 1: FUNDAMENTAL REQUIREMENTS AND RECOMMENDATIONS

Comments on Provision 1.A.1:

Provision 1.A.1 requires the investment manager to document policies and procedures to establish and maintain compliance with the CFA Standards. Investment managers generally already have policies and procedures to address regulated disclosures, client presentations, and advertising, among other things, and should not be required to develop policies and procedures specific to the CFA Standards.

Comments on Provision 1.A.4:

See response to Question #1.

Comments on Provision 1.A.7:

Provision 1.A.7 requires that an investment manager not communicate information about the investment product "in a manner that is likely to inhibit a typical investor's understanding of the investment product." This standard is vague and subjective. We question how this would be evaluated in any independent examination. We believe the requirements that disclosures not be false or misleading (1.A.5) and not contradict information provided elsewhere (1.A.6) are sufficient to address accuracy concerns.

Comments on Provision 1.A.8:

Provision 1.A.8 states that the investment manager must not present information in a compliant presentation "in a manner that makes it difficult for an investor" to locate all of the required information and the notes state this would be best achieved with a standalone document or an identified section within an existing document. As discussed in response to Question #1, we continue to urge the CFA Institute to allow investment managers more flexibility in how this information is presented.

Comments on Provision 1.A.10:

Provision 1.A.10 requires an investment manager to update the compliant presentation when changes are made to the CFA Standards that apply to the investment product or changes are made to the investment product that affect information included in the compliant presentation. This illustrates the compliance effort that would be required to maintain updates to the compliant presentation, alongside other disclosure documents.

Comments on Provision 1.A.11:

Provisions 1.A.11 and 1.B.2 suggest an oversight function for compliant presentations that is wholly unnecessary, given the highly regulated activities of regulated funds and their managers. Provision 1.A.11 would require an investment manager to capture, maintain, and make available all documents and information necessary to support the information in the compliant presentation. Regulated fund investment managers are already required to maintain books and records related to their advisory business and this requirement would be duplicative.[20] It is also not clear for whom the documents would be made available. Provision 1.B.2 states that an investment manager "should" have an independent third party examine the compliant presentation it has prepared. Regulated funds and their investment managers are already subject to significant third-party, as well as internal, oversight. In the US, for example, SEC rules require both registered funds and their investment managers to designate a chief compliance officer (CCO) who oversees their SEC-required compliance programs. The fund's CCO must report directly to the fund's board of directors. Moreover, the SEC reviews registered fund disclosures and conducts periodic examinations of registered funds and their investment managers. The SEC's enforcement and examination programs are robust, and the SEC has recently stated that ESG funds are a focus of both these programs.[21] In addition, the Financial Industry Regulatory Authority (FINRA) has detailed rules governing registered fund sales

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[20] *See e.g.*, Rule 204-2 under the Investment Advisers Act of 1940.

[21] *See* SEC Press Release, *SEC Announces Enforcement Task Force Focused on Climate and ESG Issues* (Mar. 4, 2021), *available at* https://www.sec.gov/news/press-release/2021-42 (stating that the task force will analyze disclosure and compliance issues relating to investment advisers' and funds' ESG strategies); and SEC Press Release, *SEC Division of Examinations Announces 2021 Examination Priorities* (Mar. 3, 2021), *available at* https://www.sec.gov/news/press-release/2021-39 (stating that the Division of Examinations will review the consistency and adequacy of the disclosures registered investment advisers and fund complexes provide to clients regarding investment strategies that focus on ESG factors); *see also*, *SEC Division of Examinations Risk Alert* (Apr. 9, 2021), *available at* https://www.sec.gov/files/esg-risk-alert.pdf (contains observations from the Division's ESG examinations of funds and investment advisers over the past two years).

material that apply to registered broker-dealers (including principal underwriters[22] and other broker-dealer intermediaries that are commonly instrumental in selling fund shares).[23] FINRA rules also require the filing of these materials with it, and FINRA staff then reviews and provides comments on these materials.

In light of the significant oversight that already exists for regulated funds and their investment advisers, we strongly urge the CFA Institute to revise the recommendation for an independent examination to exclude circumstances when an investment product is regulated and already subject to extensive legal requirements and regulatory review and examination.

SECTION 2: GENERAL INFORMATION

Comments on Provision 2.A.6:

Provision 2.A.6 requires standard disclosure that depends on whether the compliant presentation had an independent examination. Consistent with our suggestion that the CFA Institute not recommend an independent examination for regulated funds, we recommend that a compliant presentation regarding a regulated fund not be required to include the standard language about an independent examination (or, at least, permit an explanation that the investment product is already subject to extensive regulation and oversight).

Comments on Provision 2.A.7:

See response to Question #1.

Comments on Provision 2.A.8:

See response to Question #1.

SECTION 3: OBJECTIVES

Comments on Provision 3.A.1:

Provision 3.A.1 requires the compliant presentation to state all of the investment product's objectives, including the financial objective, impact objective (if any), and all other types of objectives. Disclosures in regulatory documents about the investment objective could differ from those made in a compliant presentation because of different disclosure requirements. For example, a compliant presentation consistent with the CFA Standards would include more

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[22] Registered investment advisers manage funds, and principal underwriters offer their shares.

[23] See generally FINRA Rules 2210, 2212, 2213, and 2214. FINRA Rule 2210 in particular imposes a number of content requirements on retail communications (e.g., standard fund advertisements), and also requires filing of these materials with FINRA.

extensive and detailed information than is required in a US-registered fund's prospectus. Whereas a US registered open-end fund must simply disclose its "investment objectives or goals," [24] the CFA Standards would require details that include: (a) the desired outcome in measurable and observable terms; (b) the stakeholders who will benefit from the desired outcome; and (c) the target date, if any, by which the desired outcome is to be achieved.

We strongly recommend that the CFA Institute delete the requirement that a compliant statement provide these details. For example, we question the relevance of the interest of any stakeholder other than the shareholders of the regulated fund. The identification of the relevant stakeholder also could involve a level of subjectivity. In the US, investment advisers owe a fiduciary duty to the fund and act in the best interests of fund shareholders. A description of the benefits to any other stakeholders would confuse investors and obscure a fund's investment objective, which is intended to benefit shareholders.

SECTION 4: BENCHMARKS

Comments on Provision 4.A.1:

Provision 4.A.1 requires a compliant presentation to include a description of the benchmark against which an investment product's returns or risks are compared and Provision 4.A.2 requires it to include instructions for how an investor can obtain detailed information about the index methodologies. We recommend that the CFA Standards not require this disclosure for regulated funds that provide information about benchmarks in their regulatory documents. The CFA Institute should be mindful that requiring these disclosures about third-parties in a compliant presentation could raise additional challenges for investment managers, including relating to licensing fees, accompanying disclosures required by third-party providers, and legal implications for referencing them.

Comments on Provision 4.A.2:

See comment on Provision 4.A.1.

SECTION 5: SOURCES AND TYPES OF ESG INFORMATION

Comments on Provision 5.A.1:

Provisions 5.A.1 and 5.A.2 require, if ESG information is used in the investment process or stewardship activities, that the compliant presentation include a description of the sources and types of ESG information and a description of the efforts taken, if any, to evaluate the reliability of the ESG information. These standards illustrate why the application of the CFA Standards to

[24] *See* Item 2 of Form N-1A under the 1933 Act.

ESG Integrated Funds is problematic. They would require an ESG Integrated Fund to provide a disproportionate amount of detail about the ESG information that is evaluated than other factors that might be considered in the investment process and stewardship activities. For example, an investment manager will consider several factors when evaluating the relative attractiveness of a company's securities and some of these may be based on third-party research or other sources. Yet, a fund generally is not required to disclose efforts to verify their sources of information. The emphasis on the ESG factors is disproportionate, especially where traditional investment factors may be more heavily weighted in the security analysis and selection process. This disproportionate attention to the ESG factors could confuse investors and overplay their role in the overall investment process, which the notes to Provision 1.A.5 caution against.

Comments on Provision 5.A.2:

See comment on Provision 5.A.1.

SECTION 6: ESG EXCLUSIONS

Comments on Provision 6.A.1:

Provision 6.A.1 requires a compliant presentation to include a description of all exclusion criteria that are based on ESG information or ESG issues, which must include for each criterion: (a) the characteristic of the investment that is evaluated; (b) the threshold or condition for exclusion; and (c) a reference, where applicable, to any law, regulation, and third-party standard, guideline, or framework used in the establishment or evaluation of the criterion. The requirement that an investment manager disclose specific information for "each criterion" would produce unnecessarily granular information that would not be particularly useful to investors and also could raise concerns about whether an investment manager would be expected to disclose proprietary information. A better approach would be to simply require a description of the exclusion criteria.

Comments on Provision 6.A.2:

Provision 6.A.2 requires, for an investment product that has an exclusion based on ESG information or ESG issues, that the compliant presentation include the rationale for the exclusion. Describing the reason for an exclusion can have some elements of subjectivity, could require an inappropriate level of granularity, and is not necessary for understanding a fund's investment strategy. For these reasons, we recommend that this standard be deleted.

SECTION 7: ESG INFORMATION IN FINANCIAL ANALYSIS AND VALUATION

General comments on Section 7:

Provision 7.A requires, if financially material ESG information is used alongside traditional financial information in financial analysis and valuation, that the compliant presentation contain detailed information about the use of financially material ESG information, including the rationale for its use (7.A.1), a description of the research and analysis undertaken to determine the ESG information that is financially material (7.A.2), the circumstances (if any) in which financially material ESG information is not used (7.A.3), and a description of how financially material ESG information is used, differentiated by type of investment when necessary (7.A.4). These standards further illustrate the disproportionate disclosure that an ESG Integrated Fund would be required to provide regarding the ESG information that is used and why the application of the CFA Standards to ESG Integrated Funds is not appropriate. Even for ESG Funds, we find this level of granularity—such as parsing the circumstances in which ESG information is material, when even immaterial ESG information could be considered in the mix of information incorporated into financial analysis and valuation—to be unnecessarily burdensome. Moreover, the determination of materiality can be fact specific and vary among issuers, raising the question of how meaningful this information could be to investors and whether such detailed information could be conveyed in plain language for investors.

Finally, it is critically important that investment managers not be required to disclose proprietary information about their processes and methods. The level of detail that would be required under this standard, such as the research and analysis undertaken and how the information is used, raises this concern and, thus, should not be required.

SECTION 8: PORTFOLIO-LEVEL ESG CRITERIA AND CHARACTERISTICS

Comments on Provision 8.A.2:

Provision 8.A.2 would require, for an investment product that has portfolio-level criteria based on ESG information or ESG issues, the compliant presentation to include the rationale for the portfolio-level criteria. Similar to our comment regarding providing the rationale for an exclusion, we recommend deleting the requirement that the compliant presentation include the rationale for the portfolio-level criteria. Describing the reason for the portfolio-level criteria can have some elements of subjectivity and is not necessary for understanding a fund's investment strategy.

SECTION 10: STEWARDSHIP

Comments on Provision 10.A.1:

Provision 10.A.1 requires disclosure of a summary description of the investment manager's or investment product's stewardship policies that are relevant to ESG issues, if any. The notes acknowledge that stewardship policies may apply firm-wide. As previously noted, we recommend that, in those circumstances, an investment manager have the flexibility to cross-

reference the firm-wide policy, rather than provide duplicative disclosure in a compliant presentation.

GLOSSARY

Comments on STEWARDSHIP ACTIVITY:

The definition of Stewardship Activity includes enforcement of covenants, exercise of warrants, and lending of securities, which are financial decisions and not stewardship activities.