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July 14, 2017

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

Re: GIPS® 20/20 Consultation Paper

Dear Sir or Madam:

The Investment Company Institute<sup>1</sup> is writing to recommend that the CFA Institute tailor the pooled fund-specific performance reporting standards that the GIPS 20/20 Consultation Paper (“Consultation Paper”)<sup>2</sup> contemplates to account for existing legal and regulatory requirements. Specifically, we strongly urge the CFA Institute to exclude regulated funds<sup>3</sup> from the scope of this project, because they currently are subject to robust performance reporting requirements.

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<sup>1</sup> 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\$19.6 trillion in the United States, serving more than 95 million US shareholders, and US\$5.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

<sup>2</sup> The 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). Revised Global Investment Performance Standards (“GIPS”), if implemented, would apply to all firms (“Firms”) that claim compliance with the standards, many of which are ICI members.

<sup>3</sup> Throughout this comment letter, 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 focus on the Consultation Paper’s potential impact on regulated funds and their investors.

The Consultation Paper contemplates a restructuring of GIPS, with “the relationship between the party presenting performance (*i.e.*, the investment manager or asset owner) and the receiver of the information (*i.e.*, prospective client, prospective pooled fund investor, or oversight board) [being] the defining criterion regarding how performance should be presented.” With respect to pooled funds generally, the Paper emphasizes the importance of fund performance (rather than composite performance). Further, “firms managing any type of pooled fund would be required to present to prospective investors in those funds a pooled fund report that would include only the pooled fund’s information.” Finally, the Paper proposes that investment management firms be required to provide the pooled fund report to existing investors on an annual basis, or alternatively, make an offer to provide the report to existing pooled fund investors on an annual basis.

A number of our members claim compliance with GIPS and see value in the standards. GIPS have fostered clarity, rigor, and consistency in performance reporting for separately managed accounts, private funds, and composites containing accounts and pooled funds. We commend the CFA Institute for its work in areas lacking in regulatory guidance and settled market practice. And we agree with the Consultation Paper’s suggestion that pooled fund-specific performance information is generally more appropriate for current and prospective pooled fund investors than more general Firm composite performance information.<sup>4</sup>

It does not follow, however, that pooled fund-specific performance reporting is in need of new or amended standards. 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.

If the CFA Institute wishes to move forward with pooled fund-specific performance reporting standards for at least some portion of the pooled fund universe, it must appropriately tailor them with existing legal or regulatory requirements in mind. At a minimum, it must distinguish between those pooled funds for which new standards are neither necessary nor appropriate, and those pooled funds for which they may be. Once the CFA Institute identifies genuine gaps in performance reporting requirements and practices for particular pooled fund types in particular jurisdictions, then it would be in position to put forward standards for that subset of pooled funds. This procedural approach is far more likely to result in standards that are useful to, and welcomed by, Firms and investors alike.

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<sup>4</sup> We are hopeful that this signals a willingness to revisit the requirement from the Guidance Statement on Broadly Distributed Pooled Funds that Firms provide, upon request, GIPS-compliant presentations for the composite in which the fund is included to prospective pooled fund investors. Firms should be under no obligation to do this for prospective *fund* investors, and in some jurisdictions may be legally precluded from doing so. *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](http://www.ici.org/pdf/29878.pdf), at 10 (explaining that in the United States, FINRA’s longstanding position is that the presentation of related performance information in communications used with retail investors does not comply with FINRA Rule 2210(d)).

Conducting this analysis leads to the conclusion that no justification exists for imposing additional requirements on Firms managing pooled funds already subject to legal or regulatory performance reporting requirements. Regulated funds in particular are the most comprehensively regulated investment product in jurisdictions worldwide. Regulated funds typically are subject to substantive regulation in a number of areas, including disclosure and reporting (*e.g.*, form, delivery, and timing). In many jurisdictions, the requirements for regulated funds are quite specific and detailed, particularly with respect to performance reporting.<sup>5</sup> In sum, highly-regulated performance reporting is already an integral part of regulated funds' ongoing responsibilities to current and prospective investors.

Consequently, we strongly urge the CFA Institute to exclude regulated funds from the scope of this project. Imposing a new layer of requirements on Firms, their regulated funds, or their existing regulated materials will create conflicts and confusion, because many regulatory jurisdictions require that regulated funds compute and present performance in a particular way. And requiring a new, parallel performance reporting regime would be duplicative, costly, and confusing to investors who would receive potentially differing performance data.

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<sup>5</sup> These requirements apply to the 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* ICI Comment Letter at 3-10 for additional detail and background.

We appreciate the opportunity to provide comments on the Consultation Paper. 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

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