ICI Response to CFA Institute's Consultation on *ESG Disclosure Standards for Investment Products*[1] (submitted 19 October 2020)

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

Market Needs

Question 1: Do you agree that a standard is needed to help investors better understand and compare investment products with ESG-related features?

No, we do not agree that the CFA Institute's proposed Standard is needed to help investors better understand and compare investment products with ESG-related features.

First, we do not believe that it is possible for the CFA Institute to drive convergence around a global standard at this time. Although we agree that the objective of having a reasonable and uniform global standard is a goal worth seeking, there already is a crowded field of legislative and regulatory initiatives developing simultaneously in different jurisdictions.[2] The CFA Institute's initiative faces intense policymaker interest in this space, diverging approaches that different jurisdictions are taking to ESG fund[3] disclosure, and an extremely fast pace of continuing legislative and regulatory developments. We suggest that contributing the CFA Institute's perspective to ongoing governmental efforts would be a better approach than pursuing its own initiative.

In the United States, the Securities and Exchange Commission (SEC) is actively addressing ESG fund disclosure. For example, SEC staff reviews fund documents to ensure that investors have accurate and clear ESG fund disclosure, including a focus on ensuring that ESG-related fund names are not misleading. Most recently, the SEC asked a number of questions on the application of the 'Names Rule' (Rule 35d-1) to ESG fund names in its *Request for Comment on Fund Names*.[4] Further, the SEC's Office of Compliance Inspections and Examinations (OCIE) has conducted ESG-focused exams with highly specific document requests, and its 2020 exam priorities include a focus on 'the accuracy and adequacy of disclosures provided by registered investment advisers offering clients new types or emerging investment strategies, such as strategies focused on sustainable and responsible investing, which incorporate…ESG criteria.'[5] SEC Commissioners too have spoken on ESG, indicating a continued focus and possible further

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[1] The consultation is *available at* https://www.cfainstitute.org/en/ethics-standards/codes/esg-standards.

[2] This is in contrast to the regulatory environment at the time that the CFA Institute established the Global Investment Performance Standards (GIPS®), where regulators in many jurisdictions (including the United States) had not imposed specific requirements on how investment firms should present the firms' investment performance to prospective clients.

[3] We use the term 'ESG funds' throughout this letter to mean regulated funds (e.g., mutual funds, ETFs, and UCITS) that are explicitly ESG-focused.

[4] *See* SEC Release No. IC-33809 (March 2, 2020), *available at* https://www.sec.gov/rules/other/2020/ic-33809.pdf. ICI's response is *available at* https://www.ici.org/pdf/20_ltr_fundnames.pdf.

[5] *OCIE Document Request Letter that digs into ESG trading*, Regulatory Compliance Watch (Jul. 24, 2019), *available at* https://www.regcompliancewatch.com/ocie-document-request-letter-that-digs-into-esg-trading/; *2020 Examination Priorities: Office of Compliance Inspections and Examinations*, SEC (Jan. 7, 2020), *available at* https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf.

Commission action.[6] The SEC also established the Asset Management Advisory Committee (AMAC) which as part of its work is focusing on ESG-related fund disclosure.[7] AMAC's ESG Subcommittee is drafting potential recommendations for SEC action and will make final recommendations to the full AMAC in December 2020.

Separately, the European Union is imposing extensive new disclosure requirements on ESG funds with an eye toward future minimum standards or labels. Both the EU's Sustainable Finance Disclosure Regulation (SFDR) and Taxonomy Regulation provide detailed disclosure requirements for ESG-focused financial products (e.g., prospectus disclosure regarding the extent to which the fund is invested in 'environmentally sustainable' economic activities).[8] The European Commission also is completing work on amendments to the Markets in Financial Instruments Directive (MiFID) II framework that will define when an ESG fund can be used to meet a client's 'sustainability preferences' in the context of a suitability assessment.[9] The Commission's work in this area is continuing. It released a consultation earlier this year on a renewed sustainable finance strategy and is expected to release a draft toward the end of this year.[10]

Other countries, such as France and Hong Kong, have also been active in this space. As discussed further below, the French securities regulator's (Autorité des marchés financiers or AMF) recently imposed minimum standards for marketing retail ESG funds into France.[11] The Hong Kong Securities and Futures

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[6] *See e.g.,* Commissioner Roisman, *Keynote Speech at the Society for Corporate Governance National Conference* (7 July 2020), *available at* https://www.sec.gov/news/speech/roisman-keynote-society-corporate-governance-national-conference-2020; Commissioner Peirce, *Lucy's Human: Remarks at Virtual Roundtable on The Role of Asset Management in ESG Investing Hosted By Harvard Law School and the Program on International Financial Systems* (Sept. 17, 2020), *available at* https://www.sec.gov/news/speech/peirce-lucys-human-091720.

[7] *See* https://www.sec.gov/page/asset-management-advisory-committee. AMAC is comprised of individuals representing the views of retail and institutional investors, small and large funds, intermediaries, and other market participants.

[8] *See* 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://eurlex.europa.eu/eli/reg/2019/2088/oj. *See also* Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation), *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R0852&from=EN.

[9] *See* COMMISSION DELEGATED REGULATION (EU) …/...of XXX amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms, *available at* https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12068-Strengthening-the-consideration-of-sustainability-risks-and-factors-for-financial-products-Regulation-EU-2017-565-. *See also* COMMISSION DELEGATED DIRECTIVE (EU) .../… of XXX amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors and preferences into the product governance obligations, *available at* https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12067-Strengthening-the-consideration-of-sustainability-risks-and-factors-for-financial-products-Directive-EU-2017-593-.

[10] The consultation is *available at* https://ec.europa.eu/info/consultations/finance-2020-sustainable-finance-strategy_en.

[11] *See* AMF Position/Recommendation (DOC-2020-03): Information to be provided by collective investment schemes incorporating non-financial approaches (11 March 2020, updated on 28 July 2010). The updated document is *available at* https://doctrine.amf-france.org/en_US/Reglementation/Doctrine/Doctrine-

Commission (SFC) released guidance in April 2019 requiring specific disclosures for ESG and green funds.[12]

Second, we have significant concerns that the proposed voluntary Standard would duplicate or conflict with the disclosure that asset managers are already legally required to provide or regulators are developing. As noted above, regulators are taking very different and uncoordinated approaches to this area. We provide examples below of two areas in which the proposed Standard requires disclosure that conflicts or creates confusion with existing or proposed legal requirements in different jurisdictions.

As an example, we caution that the CFA Institute's proposed approach to defining 'ESG Integration' as an 'ESG-Related Feature' is likely to complicate further asset managers' compliance efforts as they try to navigate how to comply with conflicting treatment of disclosure of ESG integration in the United States and the European Union. The US Department of Labor (DOL) is moving forward with regulation to address ESG investments in retirement plans that is expected effectively to complicate and discourage disclosure of ESG as DOL stated it was concerned that some investment products were being marketed on the basis of certain benefits unrelated to financial performance.[13] In contrast, the European Union soon will require asset managers to use ESG integration in the investment process for all funds and to disclose this in all fund prospectuses (including for non-ESG funds).[14]

As another example, the proposed Standard would cause conflict with the French AMF's minimum standards for marketing retail ESG funds into France.[15] Notably, the AMF standards effectively prohibit non-ESG funds from including prospectus or marketing disclosure that has more than a very brief mention of ESG integration or engagement with investee companies on ESG matters. This prohibition would present a conflict with the CFA Institute's proposed approach to disclosure of 'ESG Integration' and 'Proxy Voting, Engagement, and Stewardship.' We also note the AMF has recommended that the European Commission impose similar requirements at the EU-level.

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list/Doctrine?docVersion=2.0&docId=workspace%3A%2F%2FSpacesStore%2F138e8494-3731-476e-a7da-7bf79200c1a2&category=II+-+Investment+products#fragment-1 (click on 'download document').

[12] *See Circular to management companies of SFC-authorized unit trusts and mutual funds - Green or ESG funds*, HK Securities and Futures Commission (11 Apr 2019), *available at* https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=19EC18.

[13] Department of Labor, *Proposed Rule: Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 39113, 39116 (June 30, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-06-30/pdf/2020-13705.pdf. The proposal treats any fund that includes ESG and/or 'any similarly oriented assessments or judgments in their investment mandates' as 'ESG investments' that are subject to heightened scrutiny and increased administrative burden. DOL has sent the final rule to the Office of Management and Budget (OMB) for review. *See* OMB website at https://www.reginfo.gov/public/do/eoDetails?rrid=130722.

[14] *See* SFDR Article 6, *supra* note 8. In June 2020, the European Commission published draft amendments to Delegated Acts integrating 'sustainability risk' into the UCITS Directive and the Alternative Investment Fund Managers Directive (AIFMD). The proposed amendments are intended to go hand-in-hand with the new SFDR requirements and effectively integrate those disclosure requirements into the substantive provisions of the UCITS Directive and AIFMD. See COMMISSION DELEGATED DIRECTIVE (EU) .../ of XXX amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for Undertakings for Collective Investment in Transferable Securities (UCITS), *available at* https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11959-Integration-of-sustainability-risks-and-factors-for-undertakings-for-collective-investment-in-transferable-securities-.

[15] *See* AMF Position/Recommendation (DOC-2020-03), *supra* note 11.

The proposed Standard cannot avoid or reconcile all potential conflicts and overlapping requirements and would exacerbate tensions with national legal requirements. This dilemma is amply evidenced by the continued intense pace of policymaking activity and the increasing divergence among jurisdictions. The proposed Standard would only add another layer of complexity and likely divergence for asset managers and funds to try to navigate for investors.

Third, we believe that this Standard as proposed would add significant costs to ESG funds, without corresponding investor benefits. Our members currently are expending enormous amounts of resources implementing the new EU requirements and preparing to navigate new requirements in certain Asian jurisdictions. We expect the pace to continue as other jurisdictions contemplate and enact their own requirements.[16] The CFA Institute's proposed Standard would add yet another layer of disclosure rather than creating a uniform 'global' standard. Far from it, the standard will just add to the mosaic of different and multiple requirements.

As a final point, we recognize that the proposed Standard would be voluntary, but the CFA Institute should be mindful that the Standard may become a de facto market requirement. Given the CFA Institute's considerable market influence, we strongly object to implementing requirements that inevitably will put asset managers in an untenable position as they navigate an increasingly crowded field of duplicative, overlapping, or conflicting legal requirements coupled with the CFA Institute's voluntary standards.

Although we strongly oppose the proposed Standard and urge the CFA Institute to abandon it, we provide answers to several remaining questions in the event the CFA Institute chooses to move forward.

Terminology

Question 2: Are any of the defined terms ambiguous? If so, how could they be clarified?

The proposed Standard defines the term 'ESG-related need' as 'A benefit related to ESG matters that an investor must obtain (needs) or would like to obtain (wants).' We recommend instead using the term 'ESG-related preference', which more accurately aligns to the definition. The word 'need' is unnecessarily confusing in this context.

Purpose and Scope

Question 3: In addition to the examples listed in Table 1, which regulations and standards, either in existence or in development, should be considered during the development of the Standard to avoid duplication or conflict and to ensure alignment and referencing if and when applicable?

See response to Question 1.

Question 4: Do you agree that a disclosure-based approach would be more helpful to achieve the Standard's goals of transparency and comparability than a prescriptive-based approach?

[16] *See also* IOSCO published a report in April 2020 on *Sustainable Finance and the Role of Securities Regulators and IOSCO*, and is continuing workstreams on improving sustainability-related disclosures made by issuers and asset managers. The report is *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf.

Yes, we agree that a disclosure-based approach is better than a prescriptive approach, which would effectively create minimum standards for ESG investment products.

A minimum standard could narrow the existing diversity of ESG investing strategies and reduce investor choice, without corresponding investor protection benefits. A broad spectrum of strategies exists to meet a wide range of client demand. Each asset manager has a proprietary investment process, and the variety of approaches to ESG investing reflects managers' unique value propositions.

We also caution that creating prescriptive standards risks codifying only today's understanding of ESG investing. ESG investing is an area that is evolving quickly, and a prescriptive standard has the potential to hinder product development and innovation.

We agree with the CFA Institute that investors benefit when ESG funds provide clear disclosure for an investor to be able to understand the distinctions among different types of strategies so they can choose the strategy that best fits their objectives. The proposed Standard is not needed, however, to achieve that purpose and instead would complicate existing disclosure.

Question 5: Do you agree that the Standard should focus only on product-level disclosures and not firm-level disclosures?

The Standard should not focus on firm-level disclosures. Firm-level disclosures would not achieve the Standard's stated objective of helping investors more easily understand and compare different ESG-focused investment products.

Question 6: Do you agree that an asset manager should be permitted to choose the investment products to which they apply the Standard rather than be required to apply the Standard to all their investment products with ESG-related features?

Yes, it is essential that asset managers be permitted to choose the investment products to which they apply the Standard. As explained in our response to Question 1, the European Union soon will require asset managers to use ESG integration in the investment process for all funds and to disclose this in all fund prospectuses. The CFA Institute's proposed Standard defines ESG integration as an ESG-Related Feature, so if an asset manager was required to apply the Standard to all products with ESG integration, then the manager would be required to apply the Standard to all funds distributed in the European Union.

Design Principles

Question 9: Should the Standard require that all disclosures be made in a single document? If disclosures were spread across multiple documents, would that pose a challenge for investors to understand and compare investment products?

No. Managers should have the option to use a product's existing regulatory documentation (e.g., via hyperlinks) to satisfy the Standard's disclosure requirements. Regulators have developed summary documents (such as the summary prospectus or Key Investor Information Document) that they believe contain the important information for investors in making an investment decision. These documents also typically have requirements around what information can or must be included and some limit the page length of these documents. Rather than duplicating information in a new document that may already be in regulatory documents, asset managers should be able to provide that information to investors by choosing how best to provide this information such as by using technology (e.g., via hyperlinks), while seeking to avoid overwhelming investors with multiple documents that contain duplicative or similar information.

From an operational standpoint, if there was a requirement to maintain a separate document that duplicates information from regulatory documents then managers would be required to update it each time a regulatory document is updated. This type of approach would increase the likelihood of errors or outdated information, especially given that some managers may have thousands of products potentially in scope.

The consultation rightly states that any future CFA Institute disclosure requirements should prioritize content over format and allow asset managers flexibility as to how to present information. Prescriptive formatting requirements would increase further an asset manager's disclosure burden and further complicate efforts to harmonize any CFA Institute standards with regulator-imposed format requirements.

Question 10: Do you agree with the design principle for independent examination?

No. Fund disclosure, including for ESG funds, is already subject to extensive legal requirements, including liability provisions, and periodic regulatory review and examination. There is no benefit in requiring funds to pay a third party to duplicate what regulators are already doing. Indeed, it will add unnecessary cost and complexity.

Investors do not need third parties to assure the accuracy of fund disclosure that is already heavily regulated and examined for compliance. Asset managers have internal controls to help assure compliance with disclosure requirements and, importantly, they have significant legal liability for material omissions or misstatements. As discussed in our response to Question 1, regulators already are reviewing fund disclosure and are keenly focused on ensuring that ESG fund disclosure is fulsome, investor-friendly, and accurate. In evaluating the cost against the benefits, we urge the CFA Institute to be mindful that fund shareholders ultimately would shoulder any costs associated with obtaining third party assurances and opinions. We further note that the hurdles associated with mandatory external assurance would place a proportionately higher burden on smaller asset managers.

Despite these concerns, if the CFA Institute determines to move forward with a verification requirement, we recommend permitting managers to disclose what internal or external assurance the asset manager has received. This approach would allow managers to choose to disclose what internal controls they have in place to validate the investment strategy disclosure. As an example, we note that the Financial Reporting Council (FRC) similarly considered the issue of whether to require UK Stewardship Code signatories to obtain external assurance. The FRC ultimately determined based on stakeholder feedback to require signatories to disclose 'what internal or external assurance they have received in relation to stewardship (undertaken directly or on their behalf) and the rationale for their chosen approach.'[17] A similar approach would work for the CFA Institute's proposed Standard.

[17] Principle 5 of the UK Stewardship Code states that 'Signatories review their policies, assure their processes and assess the effectiveness of their activities.' *See* The UK Stewardship Code 2020, *available at*

Question 11: Should independent examination be required, or should it be recommended as best practice but ultimately left to the discretion of the asset manager?

See our response to Question 10.

Question 12: Should the independent examiner (i) examine the disclosures relative to only the design of the investment product, or (ii) examine the disclosures relative to both the design and implementation of the investment product?

See our response to Question 10.

Proposal for General Disclosure Requirements

Question 13: Do you agree with the scope of the general disclosure requirements? Are there topics that should be added, deleted, or modified?

No, we question the value of the proposed general disclosure requirements, especially considering that most of these disclosure requirements are redundant with existing legal requirements for regulated funds.

- **Description of the investment product's investment mandate, objective, or strategy** – This information is already provided in a fund's regulatory documents.
- **Time horizon of the ESG investment analysis** – We do not believe that asset managers would be able to disclose meaningfully the time horizon of ESG investment analysis for a fund given that different ESG factors may be relevant over different time horizons. It is unclear how a manager would make this disclosure for strategies other than impact investment strategies where a manager may be investing with a view toward delivering specific outcomes within a stated time period.
- **The investment universe (prior to any exclusions)** – This information is already provided in a fund's regulatory documents.
- **The investment product's benchmark(s)** – A fund typically would already be required to compare its performance to, or disclose its, performance benchmark. It is unclear what value this general disclosure requirement adds.
- **Description of any monitoring and review procedures to evaluate the investment product's alignment with its stated investment objectives** – As explained in our response to Question 10, asset managers are subject to legal requirements to ensure accurate disclosure including extensive internal controls and significant legal liability for misstatements. It is unclear what value this general disclosure requirement adds.
- **The ESG-related or sustainable labels and standards with which the investment product claims compliance** – This requirement is circular. A fund that claims compliance with an ESG-related or sustainable label or standard would by definition disclose the label or standard with which it claims compliance.

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https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Dec-19-Final-Corrected.pdf.

- **Whether the investment product has been independently examined** – We disagree with the proposed requirement for independent examination as explained in our response to Question 10. Including this as a general disclosure requirement would seem to suggest to an investor that there is merit to independent examination.
- **Material changes to the investment product's ESG-related features and the effective date of the changes including, specifically, if the investment product has transitioned from an investment product without ESG-related features to an investment product with ESG-related features** – A fund would already be required to disclose material changes to its investment strategy. This general disclosure requirement adds no value.

Question 14: Should the disclosure requirements address an investment product's intention to align with policy goals, such as the UN Sustainable Development Goals (SDGs), and if so, should these requirements be part of general disclosure requirements or feature-specific disclosure requirements?

No, an investment product that intends to align with policy goals such as the UN SDGs would disclose that alignment as a matter of course.

Question 15: Should the disclosure requirements include an explanation of whether, and if so how, an investment product considers principal adverse impacts on sustainability factors and where to find additional information, as required by Article 7 of Regulation EU 2019/2088 Sustainable Finance Disclosure Regulation?

No, we strongly recommend against incorporating references to legal requirements from one jurisdiction into a global standard that would apply in other jurisdictions with different legal requirements.

Proposal for ESG-Related Features and Feature-Specific Disclosure Requirements

Question 16: Do you believe that 'ESG Integration' is a clear and appropriate name for this feature? If not, please suggest an alternative and explain why it would be a better choice.

No, 'ESG Integration' should not be defined as an ESG-Related Feature covered by the CFA Institute's proposed Standard. (See also our response to Question 36 on 'Proxy Voting, Engagement, and Stewardship'). The Standard instead should focus on Features B through E, which are product-related features that are specific to ESG-focused investment products.

Including 'ESG Integration' as an ESG-Related Feature is likely to create confusion between ESG integration and ESG investing strategies. As we discuss in our publication *Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction* (ICI ESG Primer), a manager may use ESG integration in the investment process for a fund that is not an ESG-focused investment product.[18] As proposed, a product that uses 'ESG Integration' or 'Proxy Voting, Engagement and Stewardship' would be subject to both the general disclosures and applicable feature-specific disclosures. This would scope in many products that are not explicitly ESG-focused.

[18] *See* ICI, *Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction* (July 2020), *available at* https://www.ici.org/pdf/20_ppr_esg_integration.pdf. This document was unanimously endorsed by the Board of Governors of the ICI, *available at* https://www.ici.org/esg/international/advocacy/20_news_esgprimer.

As a further point, we caution that defining 'ESG Integration' as an ESG-Related Feature (with accompanying disclosure requirements) is likely to create problems for asset managers as they try to navigate different jurisdictions' treatment of disclosure of ESG integration. As we explain in our response to Question 1, the EU is set to require basic disclosure of ESG integration for all funds; France requires non-ESG funds to avoid disclosure of ESG integration beyond a cursory reference; and the US DOL is moving forward with regulation that is expected to effectively discourage disclosure of ESG integration.

Question 19: Do you agree with the issues to be addressed by the disclosure requirements specific to Feature (A)? Are there issues that should be added, deleted, or modified?

See our response to Question 16.

As a further comment, however, we strongly caution against requiring disclosure around ESG performance attribution analysis (see p. 15 of the consultation, which would require 'A description of the qualitative or quantitative attribution performance analysis, if any, for evaluating material ESG-related factors'). For ESG integrated strategies, ESG is one factor(s) considered alongside many other financial factors, and it is difficult to disaggregate/attribute performance to ESG alone, especially if the strategy fully embeds ESG information without explicit use of ESG ratings/scores in constructing a universe. More broadly, it is our understanding that the market is not yet ready for mandated ESG performance attribution, given that there is no consistent methodology or data system infrastructure. A senior industry representative gave a presentation on ESG performance attribution at a recent meeting of the SEC-established Asset Management Advisory Committee (AMAC) and further remarked that ESG performance attribution may present a significant burden on ESG funds and reduce incentives to develop new strategies.[19]

Question 21: Are 'negative screening' and 'norms-based screening' similar enough, particularly in the types of issues to be addressed by disclosure requirements, that they can both be covered by Feature (B) ESG-Related Exclusions? If you prefer that they be two separate features, please explain the key differences in function, benefits, and disclosure requirements.

The 'negative screening' and 'norms-based screening' are quite different approaches to exclusion. As a consequence, more flexible language that accommodates a variety of approaches is superior to dividing 'ESG-Related Exclusions' into more narrow sub-categories. We suggest a revised definition in our response to Question 22.

Question 22: Is Feature (B) clearly defined? If not, please suggest how the definition could be made clearer or more precise.

No, the definition as described in the 'Benefits' and 'Notes' sections of the chart on pages 15-16 is too narrow and does not capture investments that are excluded for purposes other than ethical reasons (e.g., a fund that excludes investments in companies with a certain threshold of revenue from thermal coal on the basis of financial analysis). We recommend using the language from the ICI ESG Primer definition of ESG Exclusionary Investing: 'Funds with this type of investment approach may exclude

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[19] *See* Transcript from AMAC meeting on September 16, 2020, at p. 35, *available at* https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf.

companies or sectors that do not meet certain sustainability criteria or do not align with investors' objectives.'[20]

Question 23: Do you agree with the issues to be addressed by the disclosure requirements specific to Feature (B)? Are there issues that should be added, deleted, or modified?

We have a comment on the following disclosure item:

- **Differences, if any, between the investment product's exclusions and the benchmark's exclusions** – This description is not clear. This appears to assume that the benchmark implements exclusions.

Question 24: Do you believe that 'Best-in-Class' is a clear and appropriate name for this feature? If not, is 'Positive ESG Performance Profile' a better name? If you dislike both of these names, please suggest an alternative and explain why it would be a better choice.

No. The name of this feature is problematic, and the definition is confusing. The term 'Best-in-Class' is too restrictive and does not account for selection based on sector-based ESG ranking, or best-in-universe. We note that regulators sometimes find 'best-in-class' and similar designations problematic as they cannot be proven.

Question 26: Is Feature (C) clearly defined? If not, please explain how the definition could be made clearer or more precise.

No, 'Best-in-Class' (Feature C) is not clearly defined.

Question 36: Do you agree that 'Proxy Voting, Engagement, and Stewardship' should be a distinct feature? If not, would you prefer that the types of issues to be addressed by disclosure requirements be redistributed to other features or to general disclosures?

No, 'Proxy Voting, Engagement, and Stewardship' should not be defined as an ESG-Related Feature covered by the CFA Institute's proposed Standard. The Standard should focus on Features B through E, which are product-related features that are specific to ESG-focused investment products. (See also our response to Question 16 on 'ESG Integration').

Similar to ESG integration, a manager may use vote proxies and engage with investee companies for a fund that is not an ESG-focused investment product. 'Proxy Voting, Engagement, and Stewardship' can be characterized as a process feature (rather than a product feature) that can be applied broadly to non-ESG funds. As proposed, a product that uses 'ESG Integration' or 'Proxy Voting, Engagement and Stewardship' would be subject to both the general disclosures and applicable feature-specific disclosures. This would scope in many products that are not explicitly ESG-focused.

As a further point, we caution that defining 'Proxy Voting, Engagement, and Stewardship' as an ESG-Related Feature (with accompanying disclosure requirements) is likely to create problems for asset managers as they try to navigate different jurisdictions' treatment of disclosure of funds' proxy voting and engagement with investee companies. For example, the EU requires proxy voting and engagement disclosure for all funds, with an increasing focus on sustainability impact. In the US, all regulated funds

[20] *See* ICI ESG Primer, *supra* note 18, at p. 5.

must publicly report their proxy votes for their portfolio company holdings. In addition, in the US, both the SEC and DOL have been focused on asset managers' proxy voting policies and procedures generally and particularly on their use of proxy advisory firms, including with respect to ESG matters. Many asset managers already are signatories to stewardship codes (e.g., the UK Stewardship Code) that require extensive disclosure on how funds engage with investee companies, including on ESG matters. Accordingly, given these issues, 'Proxy Voting, Engagement and Stewardship' should not be an ESG-Related Feature.