

22 June 2009

Comments re: GIPS® 2010 Exposure Draft

Dear GIPS Executive Committee:

Thank you for this opportunity to comment on the proposed GIPS 2010 revisions and for your efforts sifting through the many conflicting ideas and interests and compiling multiple layers of suggested changes in this exposure draft. Our attached comments are derived from working closely with hundreds of investment managers globally and from our own commitment to supporting the Standards' ongoing relevance and ethical objectives, most notably promoting fair and full disclosure and ensuring the presentation of accurate and consistent performance data globally.

Sincerely,

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Attachment

0. FUNDAMENTALS OF COMPLIANCE

0.A.7: Once a FIRM has met all **the applicable REQUIREMENTS elements** of the GIPS standards, the FIRM MUST use **one of** the following **compliance statements** to indicate that the FIRM is in compliance with the GIPS standards. **The compliance statement MUST remain in a single paragraph.**

For FIRMS that are currently verified:

"[Insert name of FIRM] claims compliance with the Global Investment Performance Standards (GIPS®) and has prepared and presented this report in compliance with the ~~Global Investment Performance Standards (GIPS®)~~ standards. [Insert name of FIRM] has been independently verified for the periods [insert dates]. A copy of the VERIFICATION REPORT(S) is/are available upon request."

For FIRMS that have been verified, but are not currently verified:

"[Insert name of FIRM] claims compliance with the Global Investment Performance Standards (GIPS®) and has prepared and presented this report in compliance with the GIPS standards. [Insert name of FIRM] has been independently verified for the periods [insert dates]. The FIRM is not currently independently verified."

For purposes of this provision, a VERIFICATION is considered current if the VERIFICATION REPORT covers a period ending not more than 24 months ago.

For FIRMS that have not been verified:

"[Insert name of FIRM] claims compliance with the Global Investment Performance Standards (GIPS®) and has prepared and presented this report in compliance with the GIPS standards. [Insert name of FIRM] has not been independently verified."

Do you agree with including disclosure of the firm's verification status in the claim of compliance?

Yes, we believe that requiring disclosure of a firm's verification status is an appropriate compromise in lieu of mandatory verification.

We feel that it may also be necessary to further expand on the required language in the compliance statement referencing the completion of a verification to also outline the scope of verification. We feel that requiring specific language would help to reduce the level of confusion throughout the industry, as well as with the investing public. The language we suggest is already included in the Standards, though it is noted as language to be included in a verification report, not necessarily in a compliant disclosure presentation. We feel that it belongs in both.

A verification attests to whether:

- The firm has complied with all the composite construction requirements of the GIPS standards on a firm-wide basis, and

- The firm’s processes and procedures are designed to calculate and present performance results in compliance with the GIPS standards.

Beyond this, we believe it should also be permitted, though not necessarily required, for firms to make reference to the name of the verification firm that completed the verification, which is consistent with the language currently recommended in provision 0.B.3, often an investment manager preference, and could lead to more sound verification practices.

Do you agree with the classification of a current verification being within the last 24 months?

No, we believe that 24 months is too long a period for a verification to be considered “current.” A more appropriate lag would likely be 12 months or, at most, 18 months. However, the most appropriate approach, in our opinion, would be to allow the industry to decide when a verification has grown stale and should no longer be considered current. The proposed compliance statement requires the specific time period through which the verification was completed. It seems unnecessary for the Standards to require further specification that the verification is not “current.” Instead, it should be left to the reader of that particular presentation to make their own determination as to whether or not they feel the verification is current.

0.A.12: FIRMS MUST provide a complete list and description of the FIRM’S COMPOSITES ~~list and COMPOSITE DESCRIPTION~~ to any existing or PROSPECTIVE CLIENT ~~prospective client~~ that makes such a request (~~a sample list and COMPOSITE DESCRIPTION are included in Appendix B~~). FIRMS MUST list ~~“discontinued closed”~~ COMPOSITES on the FIRM’S list of COMPOSITES for at least 5 years after closure discontinuation.

If “at least 5 years after closure” is intended to be counted from the end of the calendar year in which the composite closed, rather than the specific inter-year date of closure, then this should be clearly stated here.

0.A.14: When the FIRM jointly markets with other ~~FIRMS~~ firms the FIRM claiming compliance with the GIPS standards MUST be sure that it is clearly defined and separate relative to ~~any other FIRMS~~ firms being marketed and that it is clear which FIRM is claiming compliance.

Consider revising the end of the sentence to say “...it is clear which FIRM is or FIRMS are claiming compliance.”

0.A.15: FIRMS ~~are encouraged to comply with the RECOMMENDATIONS AND~~ MUST comply with all applicable REQUIREMENTS of the GIPS standards, including any updates ~~d~~ and clarifications published by CFA Institute and the ~~Investment Performance Council~~ GIPS Executive Committee. Which will be made available via the CFA Institute GIPS website. ([www.cfainstitute.org/gipsstandards.org](http://www.cfainstitute.org/gipsstandards)) as well as the *GIPS Handbook*.

Though not materially changed in this redraft, this provision would better serve the industry and the stated objectives of the Standards if it did not require adherence to updates and clarifications that have not been subject to a comment period and consideration of the resulting feedback. We encourage the Executive Committee to rethink this stance and instead specify that requirements are outlined in the Standards and in Guidance Statements, and all other published information that has not been subject to public comment should be considered recommendations only. If such clarifications are truly not new interpretations, then not making them requirements should not detract from the requirements already stated in the Standards or in Guidance Statements.

If the committee would prefer to keep this wording, then another suggestion would be to circulate Q&A or any other clarifications for public comment before adding it to a Guidance Statement or to the GIPS website. If the Executive Committee feels that any published guidance that has previously been distributed without comment should be required, then those items should be made available for public comment in order to ensure the continued acceptance of the Standards by the industry.

0.A.16: FIRMS MUST comply with all applicable laws and regulations regarding the calculation and reporting of returns.

This requirement is too broad in scope since, as written, it goes well beyond materials currently covered by the GIPS standards and seems to encompass all information disseminated by the firm. This sounds good in theory, but is not practical for the purpose of the Standards. We suggest the following revision: “FIRMS MUST comply with all applicable laws and regulations regarding the calculation and reporting of returns with respect to COMPLIANT PRESENTATIONS.”

0.A.17: FIRMS MUST not present performance or performance related information that is false or misleading.

The intent here must be to prohibit the intentional distribution of false information, not to punish honest mistakes made by the firm. We suggest that the language be revised as follows: “FIRMS MUST not knowingly present performance or performance related information that is false or misleading. The firm also MUST implement appropriate controls in order to reduce the likelihood of false or misleading information being distributed.”

0.B.2: FIRMS SHOULD provide to each existing client on an annual basis, a COMPLIANT PRESENTATION for the COMPOSITE(S) in which the client’s PORTFOLIO is included.

“It is important to remember that the GIPS standards are primarily designed for presenting the firm’s performance to prospective clients rather than reporting performance to an existing client.” – CFA Institute, *Interpretive Guidance for Private Equity*, 1 December 2003

This recommendation appears to go beyond the spirit and intent of the Standards by stepping into the arena of client reporting. We do not feel this is appropriate. Though we agree that, if requested, a compliant presentation should be provided to an existing client, we disagree with the notion that every existing client needs or even wants to receive a compliant presentation on an ongoing basis. In many instances, the client is dictating to the firm what information can and will be provided to them and the GIPS standards should not attempt to interfere with or control that process.

Furthermore, such a recommendation can be potentially damaging to the investment firm and misleading to the client. By definition, the performance of half of the composite assets (and typically half of the accounts) will fall below the composite return. Communicating this information to an existing client may lead a large number of clients to question their investment manager’s ability, even though such dispersion is expected and could be the result of legitimate differences in portfolio construction. Conversely, those outperforming the composite may get a false sense of security that their portfolios are managed appropriately.

Ironically, this recommendation creates a de-facto peer universe against which a client can make a comparison. The CFA Institute, through its curriculum and other media, has for decades preached of the dangers of peer group comparisons. To place this provision into the Standards appears contradictory to best practices, at a minimum.

Lastly, this provision also does not address situations where the firm claiming compliance does not have a direct relationship with the client (e.g., sub-advisory or via an SMA/wrap fee program). In such scenarios, this recommendation would be difficult if not impossible to adhere to.

0.B.3: FIRMS SHOULD comply with the RECOMMENDATIONS of the GIPS standards, including RECOMMENDATIONS included in any updated information, Guidance Statements, interpretations, Questions & Answers (Q&As). And clarifications published by CFA Institute and the GIPS Executive Committee, which will be made available via the GIPS website (www.gipsstandards.org), as well as the GIPS Handbook.

Please see our comments regarding provision 0.A.15.

1. INPUT DATA

1.A.2 For periods beginning on or after 1 January 2011, PORTFOLIOS valuations MUST be valued at FAIR based-on-MARKET VALUES in accordance with the GIPS Valuation Principles in Appendix D. (not cost basis or book values).

Do you agree with the change from market value to fair value?

Yes, we agree with the change from market value to fair value as this will allow managers of non-traditional asset classes such as Guaranteed Investment Contracts to include these assets in their GIPS defined firm without having to get a legal opinion that their fair value procedures sufficiently approximate a true market value. However, we see no reason to either restrict managers just coming into compliance from including these assets in their firm prior to 1 January 2011 or to require them to include such assets prior to this date.

To such end, we recommend dropping footnote 2, and following up with guidance / Q&A that addresses the situation where a firm coming into compliance today is permitted to use fair value for historical time periods.

We also suggest readdressing other arbitrary start dates for firms coming in to compliance today, making a distinction between the historical requirement and where the industry is intellectually now. One argument against this might be an attempt to be more fair to all managers, and not give preferential treatment to firms late to adopt the Standards or penalize firms who came in to compliance earlier; however, we believe it's more important to be ethical and have intellectual integrity, than to support arbitrary start dates, and managers of GICS coming in to compliance today who have had fair value procedures in place at their firm all along should be allowed to claim those assets as part of their firm historically.

With disclosure, a firm should be allowed, but not required, to redefine their firm historically to include such assets if their only reason for not including them was because of the blanket exclusion previously noted in the Standards, which didn't take fair valuation procedures into consideration.

1.A.3³ FIRMS MUST value PORTFOLIOS in accordance with the COMPOSITE specific valuation policy. PORTFOLIOS MUST be valued:

- a) At least Monthly.**
- b) On the date of all LARGE CASH FLOWS.**
- c) No more frequently than required by the valuation policy.**

We disagree with the notion that a valuation policy must be established at the composite level. In practice, we find that valuation policies are more commonly established at the firm level. Such policies may be based around type of investment vehicle and/or asset class. One typical scenario is that mutual funds or other pooled investment vehicles are priced daily while separate accounts are priced monthly and on the date of all large cash flows. Such differences in methodology should not prohibit the inclusion of the pooled investment vehicles and separate accounts in the same composite, as long as a consistent valuation policy is established at the firm level.

2. CALCULATION METHODOLOGY

2.A.6 For periods beginning on or after 1 January 2010, COMPOSITE returns MUST be calculated by asset weighting the individual PORTFOLIO returns at least monthly.

We suggest that this provision grant some flexibility for firms that manage assets through SMA/wrap fee programs and place reliance on the sponsor for calculating performance information. In some instances, the sponsor may be unable or unwilling to provide monthly performance results. In such cases, we feel it should remain permissible to aggregate data from various sponsors and calculate results for a style specific SMA/wrap fee composite on a quarterly basis.

2.A.7 If the actual direct TRADING EXPENSES cannot be identified and segregated from a BUNDLED FEE:

a) When calculating GROSS-OF-FEES RETURNS, returns MUST be reduced by the entire BUNDLE FEE or a portion of the BUNDLED FEE that includes the direct TRADING EXPENSES. ~~FIRMS MUST NOT~~ ~~The use of~~ estimated TRADING EXPENSES ~~is not permitted~~.

b) When calculating NET-OF-FEES RETURNS, returns MUST be reduced by the entire BUNDLE FEE or the portion of the BUNDLED FEE that includes the direct TRADING EXPENSES and the INVESTMENT MANAGEMENT FEE. **FIRMS MUST NOT** use estimated TRADING EXPENSES.

The option of presenting “pure” gross-of-fee performance as supplemental information should be included as a third option under this provision.

3. COMPOSITE CONSTRUCTION

3.A.1 All actual, ~~fee paying~~, discretionary PORTFOLIOS MUST be included in at least one COMPOSITE. ~~Although non-fee-paying discretionary PORTFOLIOS may be included in a COMPOSITE (with appropriate disclosures), n~~ondiscretionary ~~PORTFOLIOS are not permitted to~~ **MUST NOT be included in a FIRM’S COMPOSITES.**

Do you agree with requiring the inclusion of non-fee paying discretionary portfolios in composites?

No. Though we do not disagree with the idea that non-fee-paying portfolios may be appropriate for composite inclusion, we do not feel that permitting their exclusion up to this point has created any problems. We do not see what issue is being addressed by making this change and, therefore, we see it as unnecessary.

3.A.6 ~~7~~ CARVE-OUT segments excluding cash are not permitted to be used to represent a discretionary PORTFOLIO and, as such, are not permitted to be included in COMPOSITE returns. When a single asset class is carved out of a multiple asset class PORTFOLIO and the returns are presented as part of a single asset COMPOSITE, cash MUST be allocated to the CARVE-OUT returns in a timely and consistent manner. ~~B~~ For periods beginning on or after 1 January 2010, CARVE-OUTS returns are not permitted to MUST NOT be included in ~~single asset class~~ COMPOSITES returns unless the CARVE-OUT is actually managed separately with its own cash balance.

Though this change was already circulated for public comment during the last redraft period, we feel it is necessary to reiterate some arguments against the prohibition of carve-outs. In principal, we do not feel that the presentation of carve-out results with cash allocated is inherently misleading as long as appropriate disclosure is provided. In addition, technology has not yet reached a point to facilitate easy, cost effective management of segment returns separately with their own cash balances.

Many firms have constructed their composites and formulated their marketing efforts based on the carve-out options currently in place. There are, for example, numerous cases where multiple portfolio sleeves are managed independently and cash is co-managed (as in the case with prime brokerage sweeps or master-feeder funds). Forcing these firms to dramatically change their processes to meet these requirements imposes more than just a huge administrative and financial burden upon these firms. This provision, if implemented in GIPS, will subject managers of asset class portfolios to an artificial cash constraint, one that may materially interfere with their ability to efficiently act on information for their clients' benefit. In many cases, this proposed restriction has caused managers to question the need for their firm to continue to claim compliance. Particularly in light of the current economic environment, we strongly encourage the Committee to reconsider this stance.

3.A.8 If a FIRM sets a minimum asset level for PORTFOLIOS to be included in a COMPOSITE, FIRMS MUST NOT include PORTFOLIOS below that asset level ~~can be included~~ in that COMPOSITE. Any changes to a COMPOSITE-specific minimum asset level ~~are not permitted to~~ MUST NOT be applied retroactively.

Confusion about this requirement could be avoided if a definition of the word "included" were added to the GIPS Glossary. Specifically, is inclusion a one-time event (i.e., initial inclusion) or is it a continual event that must be monitored on an ongoing basis? If inclusion is a continuum, then provision 3.A.8 would seem to contradict the Guidance Statement on Composite Definition which suggests that firms establish a threshold for the application of the minimum asset level since the establishment of such a threshold would allow accounts below the minimum to be "included" in the composite. However, if inclusion is a one time event then the threshold provision itself seems unnecessary. We suggest clarifying that accounts may fall below the minimum asset level after initial inclusion but that such portfolios must be monitored and eventually removed according to the firm's documented policy.

3.A.9 FIRMS MUST NOT present a COMPOSITE to a PROSPECTIVE CLIENT known to have a PORTFOLIO with assets less than the COMPOSITE'S minimum asset level.

Do you agree with changing 3.A.9 from a recommendation to a requirement?

First, we recommend that the use of the term “Portfolio” either be clarified in this context or replaced with another term such as “Investable Assets,” meaning the assets that the prospective client could potentially invest or intends to invest with the firm.

Second, depending on how the words “present” and “known” are interpreted this could place an unnecessary burden on a manager. In the context of a marketing presentation expressly shown to a prospect that is in ongoing, reciprocal communication with the firm and therefore the firm might be in a position to know how much the prospective client would intend to invest with them, this provision would be appropriate. However, if “present” could also refer to the manager fulfilling a request by any party to provide them with a fully compliant presentation, then to what extent would the manager have to try to determine to “know” the amount such a person or entity might potentially invest with them?

We are also concerned that this requirement will cause an additional record keeping burden for the firm claiming compliance. In order to maintain their claim and avoid regulatory action, the firm would likely need to document in some capacity how they validated that each group or individual who is provided a compliant presentation has met the minimum account size requirement. We feel that this is unwarranted and unnecessary.

We further question what problem is being solved by changing this provision from a recommendation to a requirement. We agree that composite minimums should be based on the amount needed to manage the portfolio according to the firm’s strategy, not for ease of composite construction or as a marketing tool. However, if providing a compliant presentation to a prospective client that has a minimum account size greater than the prospect is willing or able to invest would be considered misleading, then this situation is already being covered by proposed provision 0.A.17.

4. DISCLOSURE

As a general comment, we feel that the Standards are moving toward imposing unnecessarily extensive disclosure requirements, which reduces the overall value of the compliant presentation. The original intent of the Standards was to require minimal, standardized disclosures that would convey the most important information to the user of a presentation. As more and more less important disclosures are added to the mix, the vital information is increasingly lost in the shuffle.

Should firms be allowed to remove certain disclosures after a defined period of time? If so, which disclosures would be eligible for removal and after what period of time?

Yes, we agree that certain disclosures lose their importance after a certain period of time has passed. Whether the number of years is measured as of the date the current information is

presented through or as of the date that the presentation is provided should be expressly stated. Deciding which disclosures would be eligible for removal should be evaluated, by the firm, on a case by case basis given the materiality of the situation and the relevance to the presentation.

Suggestions for timed removal:

- Recommended disclosures may be deleted at any time.
- Any current disclosure that is no longer applicable.
- Composite name changes after two years
- Composite or firm redefinitions after two years
- Changes to the minimum asset level after two years
- Significant events after two years
- Changes in benchmarks after two years

If the general consensus is that any of the above disclosures should not be removed at any point in time, then we would suggest consideration for allowing their removal if they pertain to periods that are no longer presented, i.e. if the compliant presentation only shows the last ten years and the disclosure pertains to something more than ten years in the past.

4.A.5 FIRMS MUST disclose the presence, use, and extent of leverage, ~~or~~ derivatives and/or short positions, (if material), including a sufficient description of the use, frequency, of use and characteristics of the instruments sufficient to identify risks.

Do you agree with the inclusion of short positions in provision 4.A.5?

We agree with the inclusion of short positions in provision 4.A.5. We do note that, in the GIPS standards, the concepts of leverage, derivatives and risk seem to be convoluted and it sometimes appears they are assumed to be synonymous. Derivatives and leverage should be treated as distinct portfolio features, and should not necessarily be made to imply increased risk. In many cases the risk profile of the portfolio may not be altered and may even be reduced. Reporting of risk control goes beyond the purpose of the GIPS standards and their focus: presenting past performance to prospective clients. Accordingly, we believe there needs to be substantially more guidance on what constitutes “risks”, since previous draft guidance focused almost purely on quantitative risk. Also, we believe this provision should explicitly allow for differentiation between speculation, hedging, and replication, since such instruments are often used to mitigate portfolio risk.

4.A.9 If the COMPLIANT PRESENTATIONS presentation conforms with local laws and regulations that differ from the GIPS REQUIREMENTS of the GIPS standards. FIRMS MUST ~~disclosure-disclose this fact and disclose~~ the manner in which the local laws and regulations conflict with the GIPS standards.

We feel the wording is cumbersome. Why not state more clearly: If a COMPLIANT PRESENTATION does not meet specific requirements of the GIPS standards in order to conform with laws and regulations, FIRMS MUST disclose the manner in which the laws and regulations conflict with the GIPS standards.

4.A.12 FIRMS MUST disclose the FEE SCHEDULE appropriate to a the presentation COMPLIANT PRESENTATIONS

The provision should be changed to read, "FIRMS MUST disclose the FEE SCHEDULE appropriate to the PROSPECTIVE CLIENT receiving the COMPLIANT PRESENTATION," to agree with the definition of FEE SCHEDULE in the GIPS Glossary.

4.A.13 If a COMPOSITE contains PORTFOLIOS with BUNDLED FEES, Firms MUST disclose for each annual period shown the percentage of COMPOSITE assets that is BUNDLED FEE PORTFOLIOS.

The provision should include the effective date of January 1, 2006 since this provision was not outlined as a requirement in the Standards prior to that date. Noting the effective date would be consistent with provision 4.A.18 (use of sub-advisor) and 5.A.5 (percentage of composite assets that is composed of carve-outs).

4.A.14 If a COMPOSITE contains PORTFOLIOS with BUNDLED FEES, FIRMS MUST disclose the various types of fees that are included in the BUNDLED FEE.

The provision should include the effective date of January 1, 2006 since this provision was not outlined as a requirement in the Standards prior to that date.

4.A.20 FIRMS MUST disclose the COMPOSITE DESCRIPTION which must include sufficient information to allow a PROSPECTIVE CLIENT to understand the key characteristics of the COMPOSITE strategy, including risks.

Do you agree with requiring the disclosure of key characteristics and risks in the composite description?

We agree with requiring the disclosure of key characteristics but disagree with the disclosure of risks in the composite description. Prior to such a disclosure being required, we believe there would need to be substantially more guidance on what constitutes "risk". We envision regulatory authorities or the legal counsel of many firms viewing "disclosure of...risks" as a serious concern, and accordingly requiring the disclosure of multiple pages of all potential risks of investing in the presented product to fend off potential legal liability arising from such a disclosure requirement. Further, we foresee regulators acting aggressively (and often

inconsistently) when ambiguous language such as “sufficient information” or “key characteristics” is used. At the very least, these terms need to be clearly defined so that compliant firms understand what is expected of them. In essence, we see this modified requirement creating a great deal of exposure and potential liability for firms that choose to claim compliance.

4.A.28 FIRMS MUST disclose, for a minimum of 12 months, any change to the COMPLIANT PRESENTATION due to a correction of a material error.

We believe that this provision should be clarified to specify whether the presentation is being provided to a group or individual who previously received the erroneous presentation or if it is being provided to someone who never saw the incorrect information. In the latter situation, we do not feel that such disclosure of previous errors is necessary. The point here should be to try to provide the investing public with the most accurate information possible, not to penalize firms for making mistakes that only went to specific individuals that can be identified. Of course, if the firm has not maintained adequate records indicating who may have received the incorrect presentation, then the firm would be obligated to include the disclosure in all presentations regardless of who the intended recipient is.

4.A.29 FIRM MUST disclose the 3 year annualized EX-POST STANDARD DEVIATION (using a minimum of monthly periods) for the COMPOSITE and for the BENCHMARK as of the most recent annual period presented. The PERIODICITY of the COMPOSITE MUST be identical to the PERIODICITY of the BENCHMARK when calculating EX-POST STANDARD DEVIATION.

Do you agree with the inclusion of standard deviation disclosure?

We agree in principle with the disclosure of risk. Such disclosures are already recommended and if a firm chooses to present risk, they can already choose to present the measure of risk that is most meaningful and appropriate to their circumstances. As recommendations in the Standards, such information is already subject to verification when presented by a GIPS-compliant firm.

While we agree that risk information is useful, we think the process for incorporating them into the GIPS standards could be more robust. We think it would be helpful to start with an independent (outside of GIPS) set of risk calculation and presentation standards, to be voluntarily adopted by those firms that experience market demand for such information. These standards could specify, for example, risk-free rate assumptions, time periods, and return data granularity, and the corresponding disclosures. Presumably, as with the GIPS standards, these initial standards would be revised to address the concerns that come with new requirements, and “mature.” At that time, they could be merged into the GIPS standards. This “dual-track” approach would minimize the disruption to existing GIPS compliant firms and still permit a means for development of comprehensive risk disclosure standards. See also our comments to 4.A.5.

With respect to the specific use of 3-year standard deviation, if the Standards are trying to capture a risk measure that is broadly accepted, then the proposed provision does seem plausible.

However, under the current proposal, there is an assumption that firms have monthly composite returns. Asset weighting composites is only required quarterly, and it is likely that many firms would be not be able to meet the requirement. We think this provision must prescribe a course of action for composites that are only calculated on a quarterly basis prior to January 1, 2010. Similarly, the provision should explicitly note a 3-year exemption for composites that have less than three years of performance history. We also note that Private Equity returns (money-weighted) and Real Estate returns (quarterly) would not be able to meet this provision, and may be perceived to be inconsistent with the common notions of “risk” in those asset classes. Accordingly, the provision should explicitly exempt composites in these asset classes. We would also like to reiterate our caution toward the Standards increasing propensity for additional disclosures that may be burdensome for the firm attempting to maintain compliance and that will convolute compliant presentation materials and make them less meaningful.

4.B.1 If a parent company contains multiple defined FIRMS, each FIRM within the parent company ~~is encouraged to~~ SHOULD disclose a list of the other FIRMS contained within the parent company.

This is not an area that we feel the Standards need to venture into, either as a recommendation or a requirement. It is at the firm’s discretion to determine how they will define themselves and consistently hold themselves out to the public for GIPS purposes and should be the firm’s option to disclose additional information regarding the firm’s corporate structure if they chose to do so. By changing the wording to a formal recommendation, there’s concern that it might later become a formal requirement.

If this recommendation remains in the Standards, rather than stating “disclose the list,” we feel it would be clearer if the provision were to simply recommend that the firm “identify the other FIRMS contained within the parent company.”

5. PRESENTATION AND REPORTING

5.A.1 The following items MUST be included in each COMPLAINT PRESENTATION: ~~reported for each COMPOSITE presented:~~

5.A.1.b) Annual returns for all years.

This should read “Annual returns for all presented years.”

5.A.1.c) If the COMPOSITE contains 5 PORTFOLIOS or less, the number of PORTFOLIOS is not REQUIRED.

This should read “...5 or fewer PORTFOLIOS, the number of PORTFOLIOS is not REQUIRED.”

5.A.2 FIRMS may ~~link~~ LINK non-GIPS-compliant returns to their compliant history so long as the FIRMS meet the REQUIREMENTS for non-compliant performance...

This should read “REQUIREMENT” instead of “REQUIREMENTS” since the disclosure requirements associated with non-GIPS-compliant information are being streamlined. Also, it seems more appropriate to reference “the FIRM” in this provision, rather than “FIRMS.”

5.A.4.a)iii – The new FIRM has records that document and support the reported performance.

We find that this section, in particular, is unclear, and while it is unchanged from the 2006 version of the Standards, consideration of a change is warranted.

There are firms that suggest that the new firm must have all of the records of the accounts that have been included in the composite for the presented time frame. We believe this severely limits a portfolio manager’s ability to transport his prior track record to a new firm and serves to unnecessarily limit the ability of new firms to provide useful historical performance information to the investing public.

There are also firms that believe they are only required to maintain records sufficient to support the reported performance, and not necessarily the records for all accounts in the composite at the prior firm. There are many scenarios in which less than all of the records would be sufficient to support the performance. In the United States, the SEC has opined (through their no-action letter addressed to Horizon Asset Management dated September 13, 1996) that an investment adviser advertisement that includes prior performance results of accounts managed by a predecessor entity would not, in and of itself, be misleading provided that:

- 1) the person or persons who manage accounts at the adviser were also those primarily responsible for achieving the prior performance results,
- 2) the accounts managed at the predecessor entity are so similar to the accounts currently under management that the performance results would provide relevant information to prospective clients,
- 3) all accounts that were managed in a substantially similar manner are advertised *unless the exclusion of any such account would not result in materially higher performance*, [emphasis added]
- 4) the advertisement is consistent with staff interpretations with respect to the advertisement of performance results, and
- 5) the advertisement includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

Above all else, we feel that this requirement should be clarified to indicate that the records requirement is subject to local law and regulation. Additionally, we feel that there needs to be more discussion on who is the ultimate judge of the adequacy of the records (regulators, verifiers, or the CFA Institute) and the intellectual thought of what can be supported (how much is enough to support the performance track record; certainly less than “all”). Showing performance unlinked may be a good option if other portability requirements are not met (such as the new firm not bringing on the full team or creating an altered team/strategy at the new firm); showing performance unlinked (or not at all) when other portability requirements are met and there are *enough* books and records to support the performance for regulators, just not *all* of them, is a disservice to the industry.

It should also be noted that having too strict of a requirement here can lead to an anti-competitive stance by the Standards in that it limits the ability of managers to change firms. When imposing strict requirements, consideration should also be given to the ethics involved in whether it is better for a manager to show a potential investor his/her previous track record in the interest of providing fair and transparent disclosure or whether it is better to withhold such information when limited books and records are available.

5.A.5 For periods beginning on or after 1 January 2006 and ending prior to 1 January 2011, if a COMPOSITE includes ~~or is formed using asset class~~ CARVE-OUTS ~~from multiple asset class PORTFOLIOS~~, the ~~presentation~~ COMPLIANT PRESENTATION MUST include the percentage of the COMPOSITE assets that is composed of CARVE-OUTS ~~prospectively for each period~~.

Is it appropriate to discontinue disclosure 5.A.5. for periods after 1 January 2010?

Yes, the percentage of composite assets composed of carve-outs should still be included for periods prior to 1 January 2010.

5.A.6 The ~~total return~~ TOTAL RETURN for the BENCHMARK (or BENCHMARKS) that reflects the investment strategy or mandate represented by the COMPOSITE MUST be presented for each ~~annual~~ period.

- a) **If ~~no~~ the FIRM determines no appropriate BENCHMARK ~~is presented for the COMPOSITE~~ exists, the ~~presentation~~ FIRM MUST ~~explain~~ disclose why no BENCHMARK is ~~disclosed~~ presented.**

The reason why no benchmark would be presented is because no benchmark is appropriate. The disclosure requirement should be to simply state that fact and should be revised to read "...must disclose that no BENCHMARK is appropriate."

- b) **If the FIRM changes the BENCHMARK ~~that is used for a given COMPOSITE in the performance presentation~~, the FIRM MUST disclose ~~both~~ the date, nature, and ~~the~~ reason(s) for the change.**

The use of the word "nature" is a bit confusing here. We take this to mean the name of the previous benchmark. If that is the case a more explicit requirement would be beneficial, i.e. "...the FIRM MUST disclose the date and reason(s) for the change as well as provide a description of the previous benchmark."

5.A.8 For periods beginning on or after 1 January 2011, if a COMPOSITE contains any PROPRIETARY ASSETS, the FIRM MUST present, as of the end of each annual period, the percentage of the COMPOSITE assets represented by the PROPRIETARY ASSETS.

Do you agree with the requirement to present the percentage of the composite assets composed of proprietary assets?

We fail to see a compelling reason for requiring this information as it is not readily apparent what problems such a disclosure solves or prevents. In many cases, proprietary assets are already included in the required non-fee-paying percentage disclosure. If included, we recommend including an “if material” caveat with the requirement, as making reference to a minimal amount of proprietary assets in a composite seems to add little or no benefit to the user of a presentation. However, if a material portion of the assets in a composite are proprietary, then the disclosure potentially has value.

5.B.5 FIRMS SHOULD present greater than 10 years of annual performance in the COMPLIANT PRESENTATION.

This recommendation is not being driven by the marketplace and we believe it should be removed completely. We also caution that the presentation of more than 10 years of performance information may be considered misleading in certain situations.

5.B.6. FIRMS SHOULD update COMPLIANT PRESENTATIONS quarterly.

We agree with this recommendation. More frequent updates to compliant presentations are in the best interest of the investing public.

5.B.7 FIRMS SHOULD present the 3 year annualized EX-POST STANDARD DEVIATION (using a minimum of monthly periods) and the corresponding 3 year annualized TOTAL RETURN for each annual period presented for the COMPOSITE and for the BENCHMARK. The PERIODICITY of the COMPOSITE MUST be identical to the PERIODICITY of the BENCHMARK when calculating EX-POST STANDARD DEVIATION.

Please see our comments regarding provision 4.A.29.

6. REAL ESTATE

6.A.2 REAL ESTATE investment MUST be valued by an independent external PROFESSIONALLY DESIGNATED, CERTIFIED, OR LICENSED COMMERCIAL PROPERTY VALUER/APPRaiser at least once every 36 months. For periods beginning on or after 1 January 2012, REAL ESTATE investment must be valued by an independent external PROFESSIONALLY DESIGNATED, CERTIFIED, OR LICENSED COMMERCIAL PROPERTY VALUER/APPRaiser at least once every 12 months. In market where neither professionally designated nor appropriately sanctioned valuers or appraisers are available and valuers or appraisers from other countries bearing such credentials do not commonly operate, then the ~~party responsible for engaging such services~~

~~locally shall~~ **FIRM MUST** take necessary steps to ensure that only well-qualified **independent** property valuers **or appraisers** are used.

Do you agree that real estate investments must be valued by an independent external appraiser every 12 months beginning 1 January 2012?

We disagree with the requirement that real estate investments must be valued by an independent external appraiser every 12 months beginning 1 January 2012.

1. Such a requirement will be extremely costly for firms managing real estate portfolios.

We feel this will cause firms to either:

- a. Consider defining their firm to exclude real estate operations (which we feel is not in the spirit of the Standards) or
 - b. Cease or fail to claim compliance with the Standards.
2. The requirement is not necessary in many circumstances. With the exception of recent years, real estate prices are fairly stable. A large portion of real estate property such as raw land or agricultural use land will have minimal valuation fluctuations in even a 3-year period. Like private equity, annual internal valuations can be useful if GIPS requires a well-defined and transparent fair value policy for real estate assets.

6.B.1 For periods beginning prior to 1 January 2012, REAL ESTATE investments SHOULD be valued by an independent external PROFESSIONALLY DESIGNATED, CERTIFIED, or LICENSED COMMERCIAL PROPERTY VALUER/APPRaiser at least once every 12 months~~at least quarterly.~~

Though we are more supportive of this provision as a recommendation rather than a requirement, we still have the same concerns with the proposed recommendation as we do with the proposed requirement (6.A.2). In addition, we fundamentally disagree with the notion that an external appraisal of real estate would be more accurate than an internal appraisal by a firm that knows and understands their investments and the nature of the market environment in which they are operating. Therefore some recommendations or requirements pertaining to the firm's process of documenting their internal valuations could be more appropriate.

6.A.4 INCOME and CAPITAL RETURNS (component returns) MUST be calculated separately using geometrically LINKED TIME-WEIGHTED RATES OF RETURN.

We agree in principle but note that the requirement that "(component returns) MUST be calculated separately using geometrically LINKED TIME-WEIGHTED RATES OF RETURN" will raise issues with respect to compounding over time and summing multiple-period component returns to multiple-period total return.

6.A.415 FIRM MUST present ~~The income and capital appreciation~~ component returns MUST be presented in addition to TOTAL RETURN.

Do you agree that component returns must be disclosed, and that the methodology described in provision 6.A.9.b will no longer be acceptable for periods beginning after 1 January 2011?

Yes.

CLOSED-END REAL ESTATE FUND PROVISIONS

Do you agree with the additional requirements and recommendations for closed-end real estate funds as defined?

We agree with the requirements and recommendations outlined, though we do feel that it would be better if they were stated in their own, separate section of the Standards in order to avoid confusion.

7. PRIVATE EQUITY

We agree with all proposed changes to the private equity provisions.

8. WRAP FEE/SMA

Is it appropriate and/or necessary to include provision 8.A.6, which addresses presenting performance to existing clients, in the GIPS standards?

The Standards should not address client reporting. If the wrap sponsor makes such a request for sponsor specific performance then the firm MUST be allowed to provide the presentation.

Should firms be allowed to present a “sponsor-specific composite” as opposed to a “style-specific composite”?

If a firm believes it is more appropriate to provide a sponsor with a “sponsor-specific composite,” we see no reason to disallow them from doing so. In fact, preventing them from doing this may go against the spirit of the Standards. It does seem that it would be inappropriate in any situation to provide anyone other than the sponsor or that sponsor’s prospects with a presentation that is specific to only that sponsor and which excludes other discretionary portfolios that meet the composite definition.

Section III - Verification

In the first paragraph of this section the word “should” has been added, but since this is a term included in the GIPS Glossary it should be in ALL CAPS, or because in this context it is NOT being used as a recommendation, perhaps a different word SHOULD be used (may?).

Section III.A. Item 5: If less than one year has passed since a firm’s inception date, the current proposed language would not allow them to be verified until they were through the end of their first partial calendar year. Why should a firm be prevented from receiving verification until twelve months have passed since their inception if they want to be verified for their first few months or quarters? Similarly, a firm formed in December could be verified for a period of just a few weeks! We recommend that “through year-end” be removed, or perhaps changed to “inception date through quarter-end if less than one year,” especially in that the Standards are considering quarterly updates to the disclosure page. We believe it is in the best interest of management firms and the public to allow start-up firms to be verified as soon as possible.

Item 7: Including the word “audit” in the context of “other audit and/or internal control work performed by the VERIFICATION firm” seems inappropriate given that CPA firms often perform verifications and performance examinations, and there is confusion in the industry equating a verification or performance examination to an audit of financial statements. We recommend removing any reference to the word “audit” from the Standards, and at the very least, changing this language from “other audit” to something specific, such as “SAS 70 audit and/or internal control work.”

The inclusion of test results and competency in the list of items that a verifier must assess in determining whether or not to rely on the work of another verification firm without specifying how they are to make such an assessment seems problematic. In order to assess testing results it seems necessary to obtain and review the testing performed by the other verifier. If the verifier is not willing to provide this information then how else could the verifier seeking to place reliance on their work meet this requirement? If this is going to be a requirement then it seems necessary to outline additional requirements on the part of both verification firms. We suggest making this a recommendation for the time being (at least with respect to the issues of test results and competency).

Section III.B. We agree with the changes from SHOULD to MUST in this section and believe that the edits and additional language will improve the consistency of verification services.

Section III.C. We applaud the removal of the term “performance audit” from the first paragraph. In fact, we suggest removing the concept of a composite specific performance examination from the Standards entirely. If the industry pushes for and/or compliant firms desire the completion of a composite specific performance examination, such a procedure could be conducted outside of the framework of the Standards following traditional auditing procedures. Doing so would not retract from the value or integrity of the verification process, as a firm that claims compliance with the Standards would need to disclose the period of verification, regardless of any performance examinations completed separately.

Should specific verification procedures be included for GIPS provisions 0.A.16 and 0.A.17?

Yes.

As previously noted, proposed provision 0.A.16 is too broad in scope and, as currently written, not appropriate for inclusion in the GIPS standards. However, after revision this requirement

will still require additional clarification from a verification perspective. In particular, the Standards should clarify what the verifier's obligations will be in terms of reviewing for adherence to laws and regulations and at what point apparent violations of laws and regulations would prevent the verification firm from being able to issue an opinion. It should also be noted that, similar to the GIPS standards, laws and regulations are often open to interpretation which adds another level of complexity to the proposed requirement.

With regard to provision 0.A.17, any verification procedures that will be outlined need to be placed in the context of a scenario where the verifier detects false or misleading information. It should not require the verifier to specifically detect fraud, just as an auditor is not required to detect fraud, especially considering verification procedures are much less comprehensive in scope than a financial audit. Requirements similar to those for an auditor detecting fraud would seem appropriate for a verifier in this context. Such requirements should be included to remove any ambiguity.

Appendix C – GIPS Advertising Guidelines

We agree with all proposed changes to the GIPS Advertising Guidelines.

Appendix D – GIPS Valuation Principles

Do you agree with the requirements and recommendations in the GIPS Valuation Principles below?

Yes, with the recommended changes below.

Valuation Requirements and Recommendations must be separated (as in the main body of the GIPS standards) to clearly delineate requirements from recommendations. This must also be done in the Real Estate and Private Equity sections. Thus you would have breaks after paragraphs 8, 18, and 27 and a Heading "Recommendations."

2. "Obligations" should be replaced by "legal and regulatory requirements." "Obligations" is too broad a term, which would include the GIPS standards, and "legal and regulatory requirements" is a better lead-in to paragraph 3.

7. This paragraph, as written, states that if an "objective, observable, unadjusted quoted market value" is not available, the firm must use "objective, observable quoted market prices for similar investments," as the first alternative, and if those are not available, the firm must use the stale price. The intent should be to give a firm guidance on how the process should work, not force them to use prices that would not be acceptable. Since the firm often starts with a stale price that it is trying to update, telling them to use the stale price is not acceptable. It seems logical to change the second sentence in a. to say "If not available, then the firm must use their valuation process, based on the following inputs, in order: b, c, d, and e," which are all inputs to the process and not usable prices.

8 and 9. Both of these items should also be listed in the Disclosures section as items 4.A.30 and 4.B.4, respectively.

Appendix E: GIPS Glossary

Do you agree with the definition of prospective client? If not, how should it be defined?

Yes, as far as it goes, but the definition should be expanded to identify a non-client. In most jurisdictions, for commingled funds, the fund is the client, not the investor. There is confusion in this area, some claiming that potential fund investors are prospective clients, and others claiming that the funds are the clients, not the underlying investors. A similar situation arises in the wrap fee business, in situations where the firm only has a contract with the wrap sponsor, whom they see as their client, not the underlying accounts, with which the firm has no contact. These points could be clarified by adding another sentence to the definition, such as: “Potential investors in commingled funds or wrap programs would not be considered prospective clients of the FIRM, whether they could qualify to be a client or not.”

Rather than saying “e.g. has assets above the COMPOSITE minimum,” we recommend either the use of the defined term “INVESTABLE ASSETS” or revising this to say “e.g. has assets above the COMPOSITE minimum which they could potentially invest or intend to invest with the FIRM”.

The phrase “expressed interest” is rather broad. Besides expressing interest to the firm, this could also be interpreted to mean expressing interest to a consultant, in which case the firm might be providing a presentation to someone who has not expressed their interest to them. It seems like this phrase should be clarified.

Composite Inception Date: With the addition of “in a Compliant Presentation” to the first sentence, it seems necessary to revise the last sentence to say “Instead, it is the initial date of the compliant performance record.”

Total Firm Assets: The last part of the revised text should be further revised to say “...provided the Firm has discretion over the selection and retention of the Sub-advisor”. This would address any situation where the Firm had the ability to select the sub-advisor initially but not the ability to fire them and replace them with another sub-advisor.

After-Tax

We agree with the decision to remove the country-specific guidance on taxation issues and address them separately. We look forward to finding out more about how the committee expects such issues to be separately addressed without creating defacto CVGs, and if after-tax performance would likely fall back in to the realm of supplemental information.
