

**Response Form**  
**for the**  
***Exposure Draft of the***  
***CFA Institute Diversity, Equity and Inclusion Code (USA and Canada)***

Diversity, equity, and inclusion (DEI) is critical to the future of the investment industry. We recognize that a diversity of perspectives will lead to better investor outcomes; an inclusive investment industry will better serve our diverse society. Further, we recognize that an organization, with an inclusive culture, awareness and education, and effective working relationships, is a better place to work.

CFA Institute is developing a voluntary, DEI Code (the “Code”), to be launched firstly in the USA and Canada. The purpose of the Code is to drive greater diversity, equity, and inclusion within the investment industry. The Code has been designed for the investment industry, by members of the investment industry. It is intended to meet industry where it is, define the current state, and drive improvement from a realistic foundation. Organizations from across the investment industry are invited to become signatories, including investment managers, asset owners and consultants.

The Code is supported by Implementation Guidance which is based upon tested practice from our industry research. It will be regularly updated to reflect changing DEI practice in the investment industry and elsewhere. We have designed a Reporting Framework to guide signatories in the process of reporting on their progress, which is included [here](#) for information only. Individual signatory reports will be kept confidential by CFA Institute, which will in turn report on industry developments.

The goal for this Exposure Draft is to elicit feedback on the proposed principles and recommendations within the Code. Please refer to the “Providing Feedback” guidelines for submitting comments.

**All comments must be received by 4 September 2021 in order to be considered.**

### **Providing Feedback**

Public commentary on the Exposure Draft will help shape the final version of the Code, which is expected to be issued in November 2021. **Comments should be provided in this Response Form**, found [here](#) on the CFA Institute website, **and submitted to [deicode@cfainstitute.org](mailto:deicode@cfainstitute.org)**. Designated spaces for comments appear in the Response Form in the order in which the Principles appear in the Exposure Draft. Questions directed toward the Codes’ intended users are posed in the Response Form, followed by designated spaces for comments related to the Principles and Implementation Guidance. General or summary comments on the Exposure Draft may be provided in the designated section at the end of the Response Form.

When providing feedback on a specific principle, it may be helpful to consider whether the meaning of the principle is clearly stated and whether the principle will add value for users of the Code. You may provide as few or as many comments as you wish.

The deadline for providing feedback is 4 September 2021. **Comments received after 4 September 2021 will not be considered.** Unless otherwise requested, all comments will be posted on the CFA Institute website.

#### Guidelines for submission

Comments are most useful when they:

- directly address a specific issue or question,
- provide a rationale and support for the opinions expressed, and
- suggest alternative solutions in the event of disagreement.

Positive comments in support of a proposal are equally as helpful as those that provide constructive suggestions for improvement.

#### Requirements for submission

In order for comments to be considered, please adhere to the following requirements:

- **Insert responses in the designated areas of the response form.**
- **Assign a unique file name to your response form before submitting.**
- **Provide all comments in English.**
- **Submit the response form as a Microsoft Word document.**
- **Submit the response form to [deicode@cfainstitute.org](mailto:deicode@cfainstitute.org) by 5:00 PM E.T. on 4 September 2021.**

**General Information (required)**

<p><b>Respondent:</b></p> <p><i>(Please enter your full name if you are submitting as an individual or the name of the organization if you are submitting on behalf of an organization.)</i></p>	Private Family Office
<p><b>Stakeholder Group:</b></p> <p><i>(Please select the stakeholder group with which you most closely identify.)</i></p>	Investor / Asset Owner
<p><b>Region:</b></p> <p><i>(If you are submitting as an individual, please select the region in which you live. If you are submitting on behalf of an organization and the organization has a significant presence in multiple regions, please select "Global". Otherwise, please select the region in which the organization has its main office.)</i></p>	North America
<p><b>Country:</b></p> <p><i>(If you are submitting as an individual, please enter the country in which you live. If you are submitting on behalf of an organization, please enter the country in which the organization has its main office.)</i></p>	USA
<p><b>Confidentiality Preference:</b></p> <p><i>(Please select your preference for whether or not your response is published on the CFA Institute website.)</i></p>	yes, my response may be published

## QUESTIONS FOR INTENDED USERS

### Questions for Investment Managers, Asset Owners, Consultants, and Investors

#### 1. Do you agree that the investment industry needs a DEI Code to drive change?

<QUESTION\_01>

##### Should CFA Institute be setting public policy?

The topics at hand are questions of public policy. In the United States of America, public policy issues are supposed to be openly debated on legislature floors by representatives elected by the people.

In the area of D&I, our elected representatives have done enormous amounts of work to put Federal and State laws on the books that require and enforce equal opportunity, including the:

- Equal Employment Act
- Civil Rights Act
- Americans with Disabilities Act

CFA Institute was not established for the purpose of setting public policy. The organization has no established expertise. It is not likely that the organization will produce public policy that is superior to legislatures staffed with experts, full time dedicated to such issues.

When public policy is set outside of our legislatures, it is a form of break down in the rule of law.

In the case of D&I, the laws of the land are extensive, well crafted, and have led to really good things over the years.

**Concern:** The purposes of CFA Institute as set forth in the Articles & Bylaws, do not include social or political advocacy on any issue. The DEI Code proposes activities well outside the scope of mission.

<QUESTION\_01>

#### 2. Do you consider the Principles cover the key areas for change?

<QUESTION\_02>

The topic areas covered by the principles are broad and far reaching.

<QUESTION\_02>

3. **Is there a DEI area that you would like to see covered by the Code that is not in the draft Code?**

<QUESTION\_03>

A DEI Code, if any, should be limited to advocating for excellence in the practice of investment management, regardless of race, religion or creed. It should seek to heighten awareness of the laws of the land speaking to D&I, honoring them and advocating that they be followed.

<QUESTION\_03>

4. **Will the draft Code help establish the changes in processes and practices that investment industry organizations need to drive up DEI internally?**

<QUESTION\_04>

Possibly, but there is at least an equal risk that they will sow seeds of division. Imagine working next to a person that was not hired for their skill in a business such as investment management, that is often beyond hyper competitive. Imagine the person who was hired because of their religion, or creed rather than on skill, what self-esteem does that foster?

<QUESTION\_04>

5. **Will the draft Implementation Guidance help enable the changes in process and practice that investment industry organizations need to drive up DEI internally?**

<QUESTION\_05>

Policy that requires metrics, report cards and review by proctors, implicitly says that CFA Institute does not hold investment firms in high regard and has no trust of them to do the right thing on their own. That is an approach that is not likely to be well received or do much to further CFA Institute's brand as a compelling industry partner.

<QUESTION\_05>

6. **To what extent would an investment firm becoming a signatory to the Code help provide the DEI-related information that is typically provided or asked for in Requests for Proposals (RFPs), Due Diligence Questionnaires (DDQs), other types of questionnaires and in client DEI-related discussions?**

<QUESTION\_06>

This is a tough one. It is likely that few investment firms would have counsel find it compelling to send HR info to anyone it did not absolutely have to, especially if the metrics dealt with sensitive matters like orientation or religion, et al.

<QUESTION\_06>

**7. To what extent are the draft Principles supportive of and complementary with local laws and regulations and other DEI codes and standards?**

<QUESTION\_07>

US Federal and State law is extensive with regard to D&I. The DEI Code makes no mention of existing law, and has no advocacy for it. The DEI Code seeks to establish advantaged playing fields, where existing Federal and State laws do not do that, but rather establish level playing fields. The DEI Code does not seek to complement, but rather seeks to establish new D&I rules. Policy more evoking the Reverend King may be better received than evoking Al Sharpton.

<QUESTION\_07>

**8. Would an investment organization becoming a signatory to the Code help provide investor reassurance about the investment organization's culture?**

<QUESTION\_08>

This will depend on the bias of the audience. Some will be elated at the affirmative embedded affirmative action. Some will be appalled at having to commit to considering hiring criminals and forced political contribution disclosure. The only certainty is that the organization will be drawn into a broad and far reaching social policy arguments, which by the DEI Code's own statements will have no end.

<QUESTION\_08>

9. **Would it be helpful if the Implementation Guidance to the Code is reviewed and updated annually or less frequently?**

<QUESTION\_09>

No opinion.

<QUESTION\_09>

10. **Would your firm be prepared to contribute examples of tested DEI practice to update the Implementation Guidance to the Code?**

<QUESTION\_10>

Uncertain. Counsel would need to approve.

<QUESTION\_10>

## DEI CODE AND IMPLEMENTATION GUIDANCE FOR INVESTMENT ORGANIZATIONS

### General comments section

#### **11. General comments on the Code and Implementation Guidance:**

<COMMENT\_11>

##### **Can the liability created for CFA Institute, its staff and the Board of Governors be appropriately mitigated?**

Getting into the business of judging D&I at investment firms creates liability for CFA Institute, staff and the Board of Governors.

For example, what happens if a firm is judged by CFA Institute staff to be “diversity deficient,” and then the firm in question believes it has lost client revenue or worse reputation as a result? What happens if CFA Institute D&I advocacy is perceived by a group to be uneven, favoring or focusing on one group more than another?

The topics at hand risk severe societal shaming, and are ones where emotions on all sides run high. Walking on to such a field, let alone positioning CFA as the judge of relativities, is fraught with risk, including legal risk and risk CFA Institute’s hard-won reputation.

CFA Institute staff, no matter how well intended, could never be in a position to get it all 100% right all the time in considering every circumstance of human resource composition level and/or trend, across an industry as diverse as the investment industry.

The CFA Institute Board of Governors will be challenged to establish policies and procedures that would demonstrate oversight at the level of prudent expert fiduciary.

Considering an issue as mundane as record keeping highlights the challenge. Poor record keeping would create a liability and the charge of negligent oversight, while excellent record keeping could create the proverbial invitation to a lawsuit. No win.

**Concern:** Can E&O and D&O insurance be purchased for CFA Institute, staff and the Board of Governors that would provide coverage for the DEI Code’s proposed endeavors?

Could the D&I business be one that is readily agreeable by all in concept at a high level, but a minefield in the details of implementation?

##### **Full Membership Vote – the Articles of Incorporation of CFA Institute need to be changed if lawful process is to be followed in adopting the DEI Code.**

The DEI Code is a material change to the scope of mission of CFA Institute. Historically, the CFA Institute has had as its sole focus the pursuit of excellence in the practice of investment management.



The DEI Code expands the mission by getting CFA Institute involved in setting and policing investment firm human resources. More than this, it places on the CFA organization the view for the first time ever, that special treatment for certain groups will result in the best investment outcomes. Right or wrong, this is a material departure from CFA's past and from the existing laws of the land, which focus on establishing equal playing fields for all, and not advantaged fields for special groups.

**Concern:** The DEI Code materials give a time table of November of 2021 for the DEI Code to be adopted. However, there is no mention of going to a vote of the full CFA Institute member base? Given the material change to the scope of mission that the DEI Code proposes, and the legal and reputational risks involved, it is reasonable that adoption of the Code DEI be put to a vote of all the voting members of CFA Institute. *A review of the Articles and Bylaws of CFA Institute supports the requirement for a full member vote, as social and political advocacy is not one of the explicitly enumerated purposes of the corporation. CFA Institute (exact correct legal entity name) is a Virginia corporation. Virginia law requires a vote by all those eligible in order for articles of any corporation to be changed. Counsel should be consulted here as to the majority/super majority required.*

<COMMENT\_11>

12. Comments on Principle #1 and associated Implementation Guidance:

<COMMENT\_12>

ENTER RESPONSE HERE

<COMMENT\_12>

13. Comments on Principle #2 and associated Implementation Guidance:

<COMMENT\_13>

ENTER RESPONSE HERE

<COMMENT\_13>

14. Comments on Principle #3 and associated Implementation Guidance:

<COMMENT\_14>

ENTER RESPONSE HERE

<COMMENT\_14>

15. Comments on Principle #4 and associated Implementation Guidance:

<COMMENT\_15>

ENTER RESPONSE HERE

<COMMENT\_15>

**16. Comments on Principle #5 and associated Implementation Guidance:**

<COMMENT\_16>

ENTER RESPONSE HERE

<COMMENT\_16>

**17. Comments on Principle #6 and associated Implementation Guidance:**

<COMMENT\_17>

ENTER RESPONSE HERE

<COMMENT\_17>