

# Discussion Guide

Town of Wilton  
February 2021

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**Executive Summary**

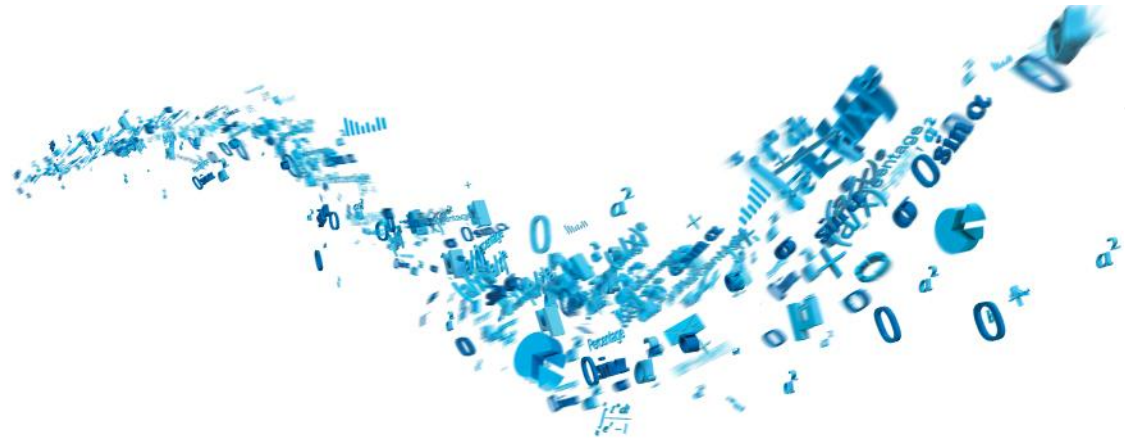
**Pension Plan Performance Summary**

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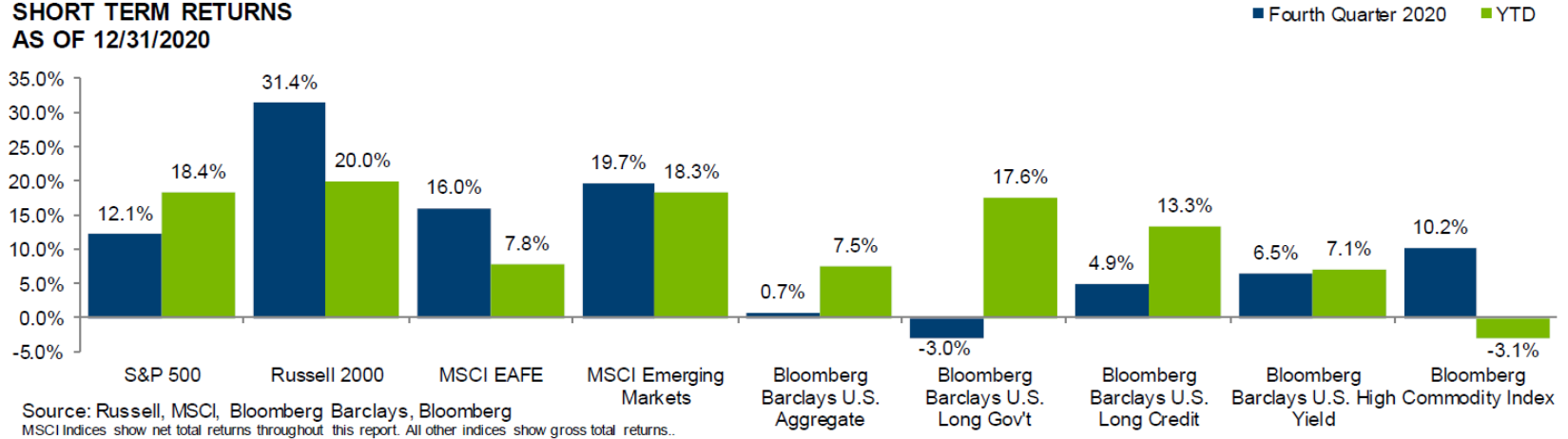
**Appendix**



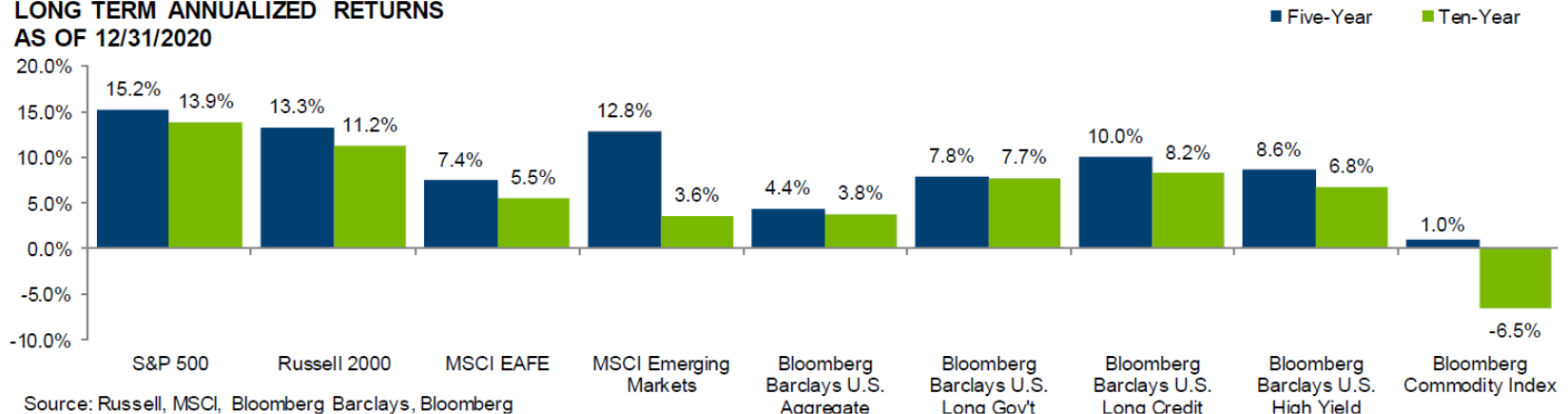
# Executive Summary

# Market Highlights

## SHORT TERM RETURNS AS OF 12/31/2020



## LONG TERM ANNUALIZED RETURNS AS OF 12/31/2020



# Market Highlights

Returns of the Major Capital Markets					
Period Ending 12/31/2020					
	Fourth Quarter	1-Year	3-Year <sup>1</sup>	5-Year <sup>1</sup>	10-Year <sup>1</sup>
<b>Equity</b>					
MSCI All Country World IMI	15.70%	16.25%	9.72%	12.15%	9.09%
MSCI All Country World	14.68%	16.25%	10.06%	12.26%	9.13%
Dow Jones U.S. Total Stock Market	14.76%	20.79%	14.41%	15.36%	13.74%
Russell 3000	14.68%	20.89%	14.49%	15.43%	13.79%
S&P 500	12.15%	18.40%	14.18%	15.22%	13.88%
Russell 2000	31.37%	19.96%	10.25%	13.26%	11.20%
MSCI All Country World ex-U.S. IMI	17.22%	11.12%	4.83%	8.98%	5.06%
MSCI All Country World ex-U.S.	17.01%	10.65%	4.88%	8.93%	4.92%
MSCI EAFE	16.05%	7.82%	4.28%	7.45%	5.51%
MSCI EAFE (Local Currency)	11.35%	0.84%	2.98%	5.80%	6.82%
MSCI Emerging Markets	19.70%	18.31%	6.17%	12.81%	3.63%
<b>Fixed Income</b>					
Bloomberg Barclays Global Aggregate	3.28%	9.20%	4.85%	4.79%	2.83%
Bloomberg Barclays U.S. Aggregate	0.67%	7.51%	5.34%	4.44%	3.84%
Bloomberg Barclays U.S. Long Gov't	-2.95%	17.55%	9.83%	7.84%	7.74%
Bloomberg Barclays U.S. Long Credit	4.92%	13.32%	9.23%	10.02%	8.24%
Bloomberg Barclays U.S. Long Gov't/Credit	1.68%	16.12%	9.80%	9.35%	8.16%
Bloomberg Barclays U.S. TIPS	1.62%	10.99%	5.92%	5.08%	3.81%
Bloomberg Barclays U.S. High Yield	6.45%	7.11%	6.24%	8.59%	6.80%
Bloomberg Barclays Global Treasury ex U.S.	4.66%	9.54%	4.48%	4.90%	1.81%
JP Morgan EMBI Global (Emerging Markets)	5.49%	5.88%	4.94%	6.84%	5.97%
<b>Commodities</b>					
Bloomberg Commodity Index	10.19%	-3.12%	-2.53%	1.03%	-6.50%
Goldman Sachs Commodity Index	14.49%	-23.72%	-8.21%	-1.85%	-8.76%
<b>Hedge Funds</b>					
HFRI Fund-Weighted Composite <sup>2</sup>	10.68%	11.61%	5.50%	6.10%	4.18%
HFRI Fund of Funds <sup>2</sup>	7.52%	10.27%	4.68%	4.44%	3.27%
<b>Real Estate</b>					
NAREIT U.S. Equity REITS	11.57%	-8.00%	3.40%	4.77%	8.31%
FTSE Global Core Infrastructure Index	7.23%	-0.66%	7.52%	10.43%	9.25%
<b>Private Equity</b>					
Burgiss Private iQ Global Private Equity <sup>3</sup>		6.20%	11.83%	10.92%	12.93%

MSCI Indices show net total returns throughout this report. All other indices show gross total returns.

<sup>1</sup> Periods are annualized.

<sup>2</sup> Latest 5 months of HFR data are estimated by HFR and may change in the future.

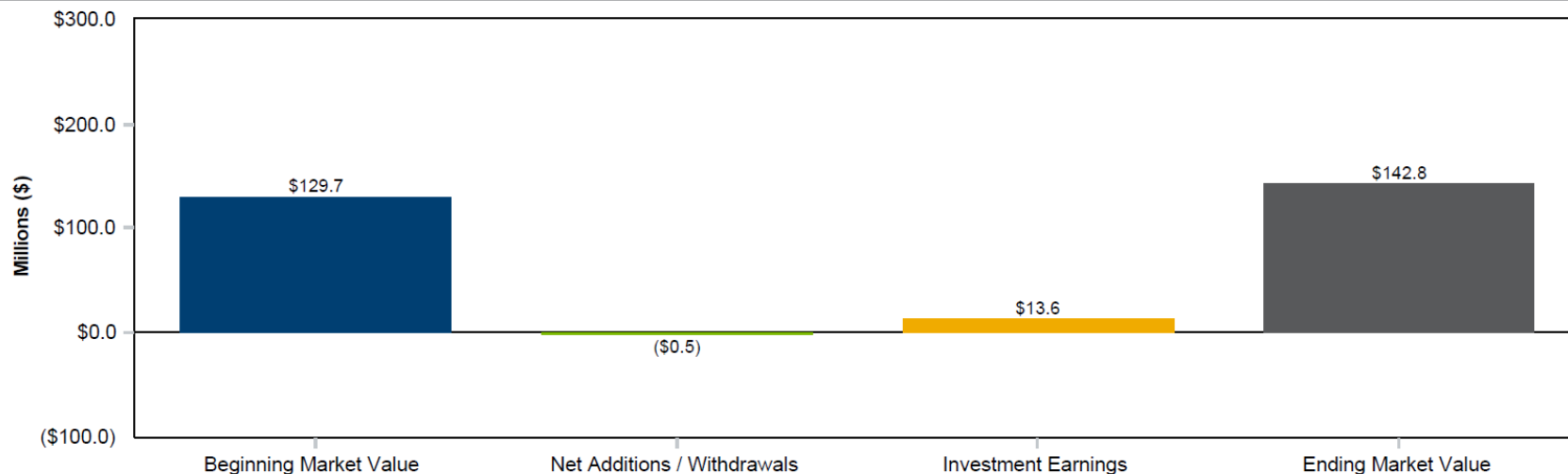
<sup>3</sup> Burgiss Private iQ Global Private Equity data is as at June 30, 2020



# Pension Plan Performance Summary

# Total Plan Asset Summary

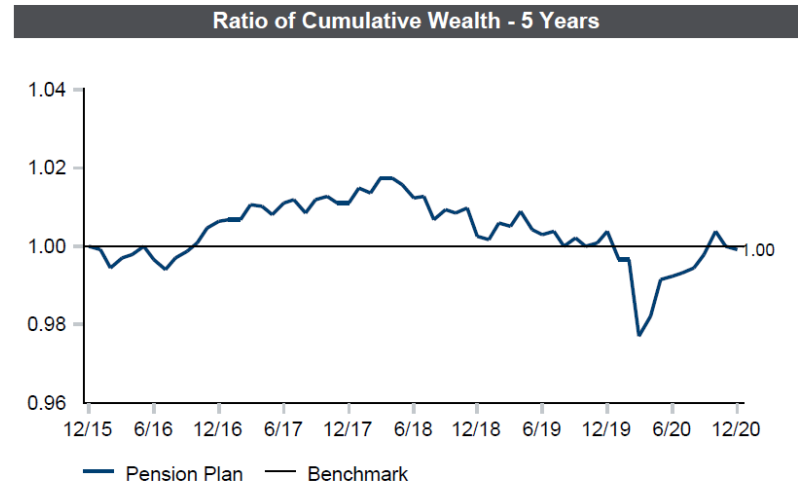
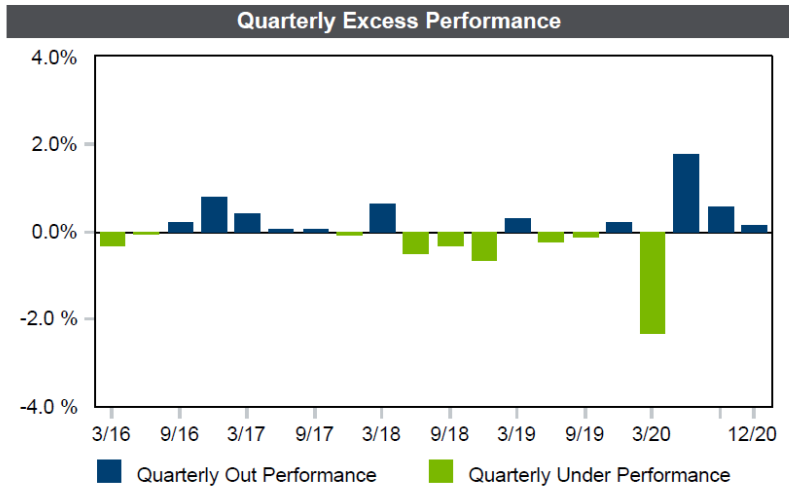
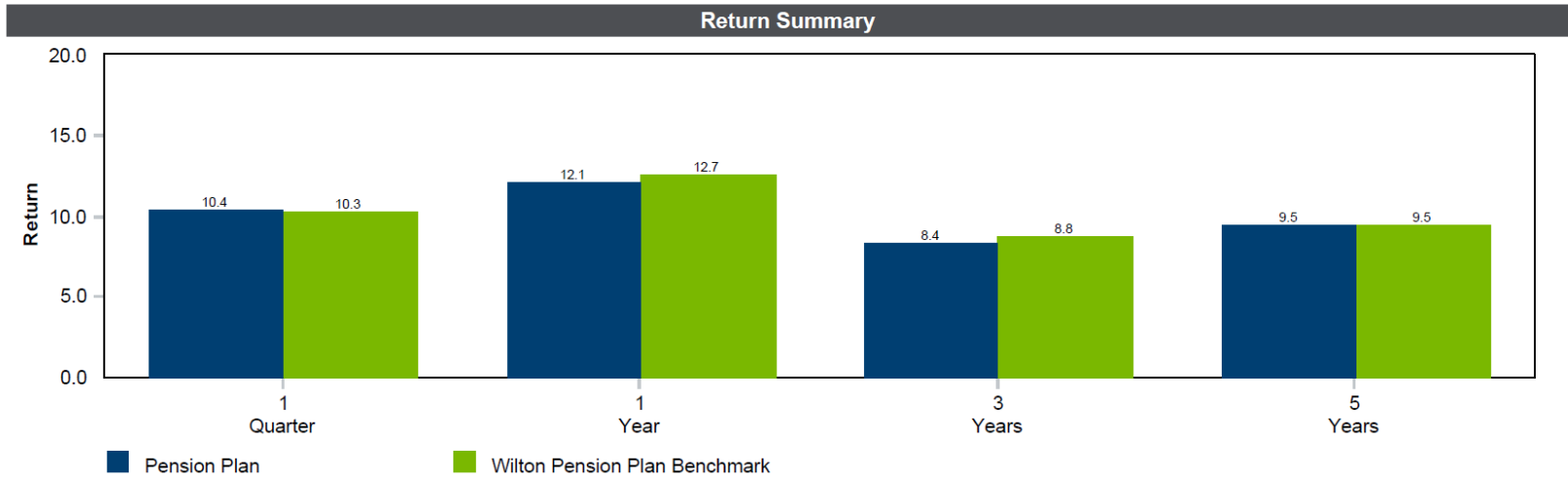
## Change in Market Value From October 1, 2020 to December 31, 2020



## Summary of Cash Flow

	1 Quarter	1 Year	Since Inception	Inception Date
Beginning Market Value	129,727,055	129,869,485	73,939,906	
+ Additions / Withdrawals	-528,799	-2,606,067	-3,882,251	
+ Investment Earnings	13,610,573	15,545,410	72,751,173	
<b>= Ending Market Value</b>	<b>142,808,828</b>	<b>142,808,828</b>	<b>142,808,828</b>	

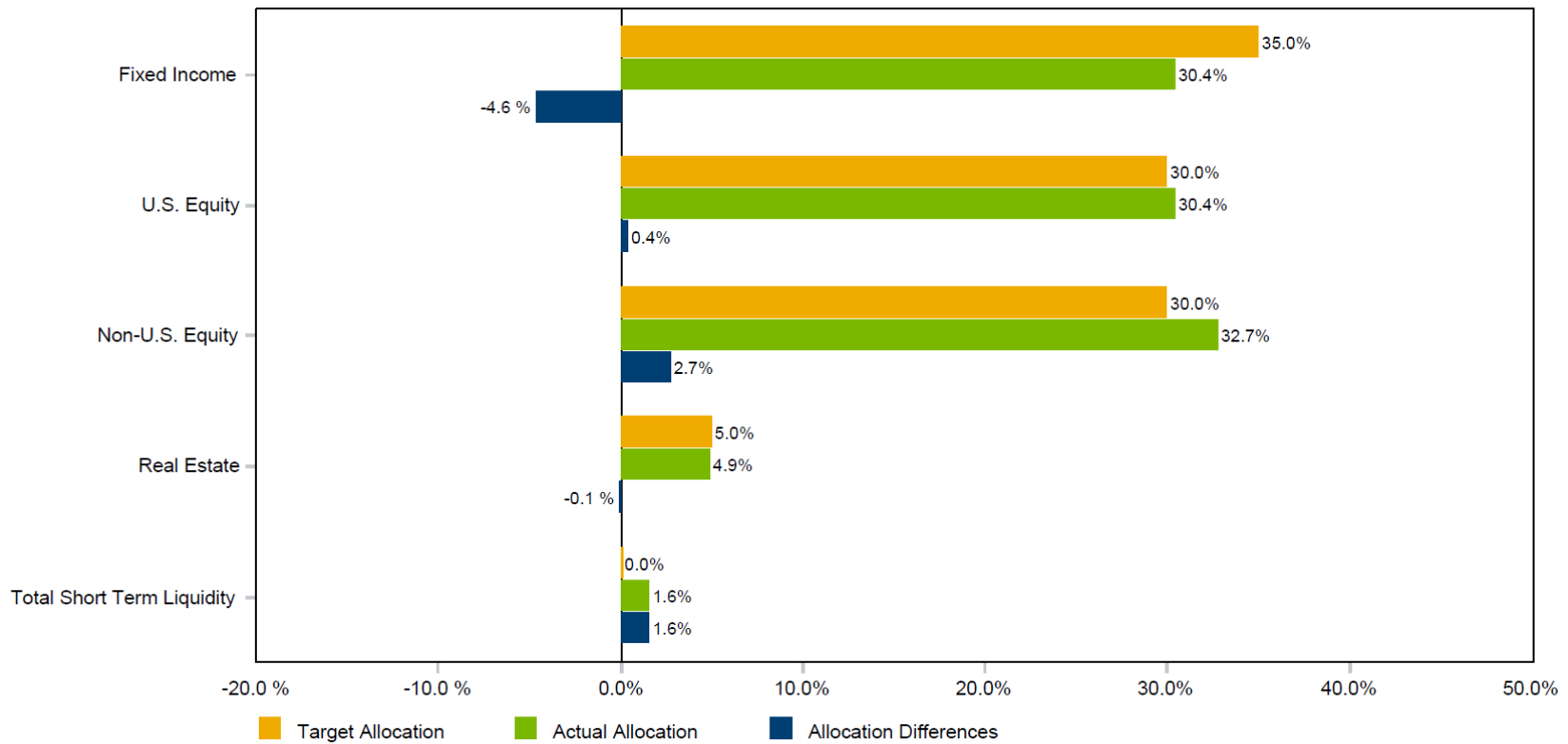
# Total Plan Performance Summary





# Asset Allocation as of December 31, 2020

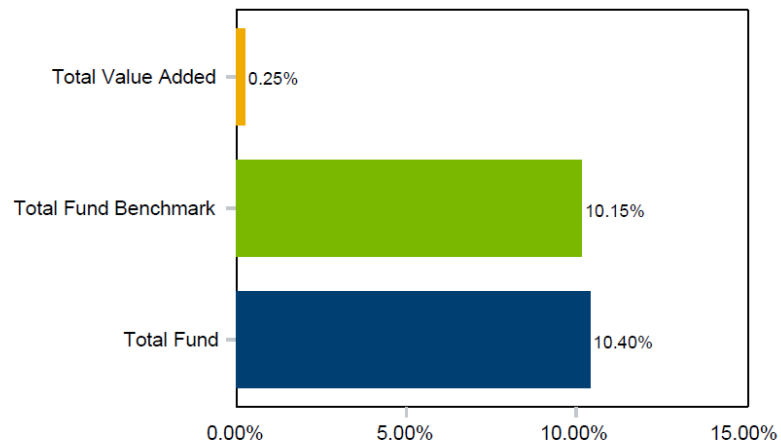
	Market Value (\$)	Current Allocation (%)	Target Allocation (%)	Differences (%)
Pension Plan	142,808,828.17	100.00	100.00	0.00
Fixed Income	43,381,141.30	30.38	35.00	-4.62
U.S. Equity	43,365,317.29	30.37	30.00	0.37
Non-U.S. Equity	46,746,822.64	32.73	30.00	2.73
Real Estate	7,027,114.07	4.92	5.00	-0.08



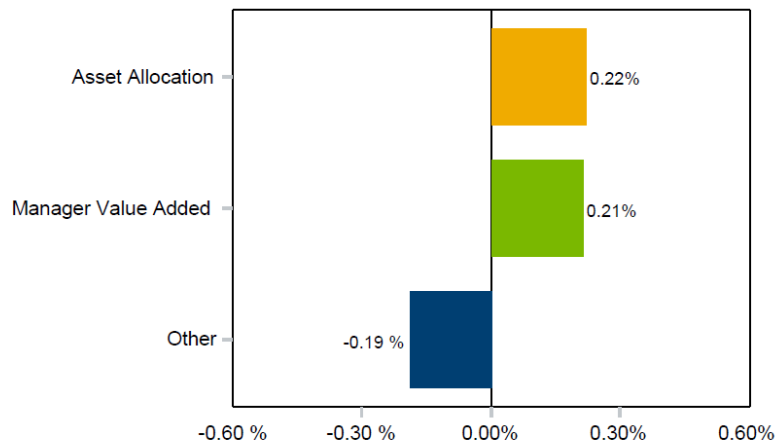
# Pension Total Fund Attribution: 1 Quarter as of December 31, 2020

## Pension Plan vs. Pension Att

### Total Fund Performance

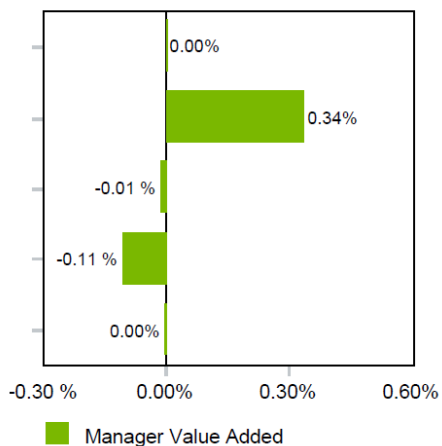
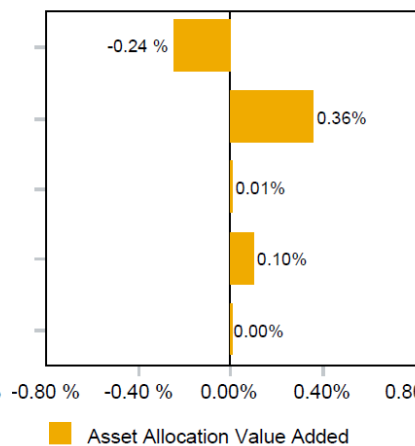
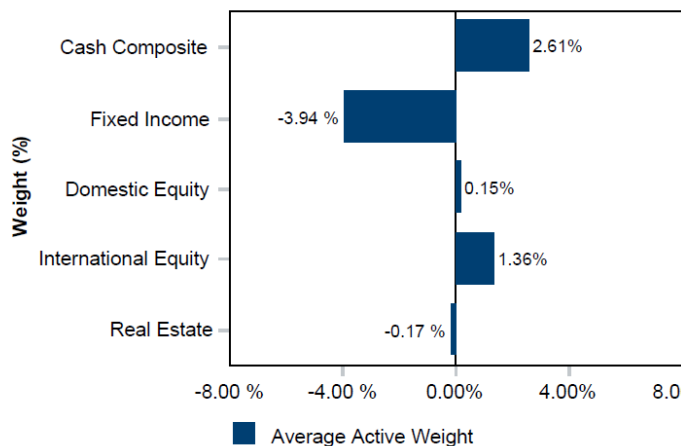


### Total Value Added:0.25%



### Total Asset Allocation:0.22%

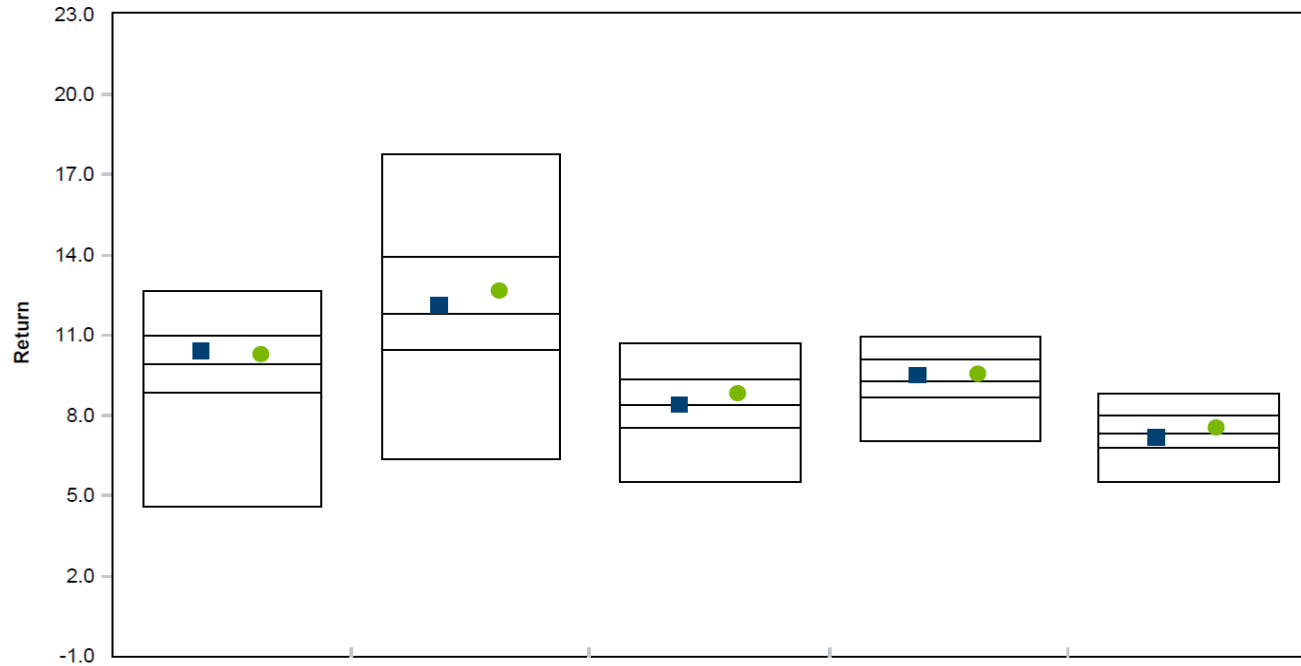
### Total Manager Value Added:0.21%



# Plan Sponsor Peer Group Analysis

## As of December 31, 2020

All Public Plans < \$1B-Total Fund



	1 Quarter	1 Year	3 Years	5 Years	7 Years
■ Pension Plan	10.4 (38)	12.1 (48)	8.4 (51)	9.5 (44)	7.2 (60)
● Wilton Pension Plan Benchmark	10.3 (40)	12.7 (39)	8.8 (38)	9.5 (44)	7.5 (43)
5th Percentile	12.7	17.8	10.7	11.0	8.8
1st Quartile	11.0	13.9	9.3	10.1	8.0
Median	9.9	11.8	8.4	9.3	7.4
3rd Quartile	8.8	10.4	7.5	8.7	6.8
95th Percentile	4.6	6.4	5.5	7.1	5.5
Population	276	271	246	226	208

# Performance as of December 31, 2020

	Allocation			Performance(%)								Inception Date
	Market Value (\$)	%	Policy(%)	1 Month	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception		
<b>Pension Plan</b>	<b>142,808,828</b>	<b>100.0</b>	<b>100.0</b>	<b>3.1</b>	<b>10.4</b>	<b>12.1</b>	<b>8.4</b>	<b>9.5</b>	<b>7.2</b>	<b>8.0</b>	<b>05/01/2012</b>	
<i>Wilton Pension Plan Benchmark</i>				3.2	10.3	12.7	8.8	9.5	7.5	8.2		
<b>Fixed Income</b>	<b>43,381,141</b>	<b>30.4</b>	<b>35.0</b>	<b>0.6</b>	<b>1.7</b>	<b>6.1</b>	<b>4.7</b>	<b>4.5</b>	<b>3.7</b>	<b>4.8</b>	<b>05/01/2008</b>	
<i>Wilton Pension FI Hybrid BB</i>				0.3	1.0	7.9	5.3	4.5	3.9	4.4		
<b>Vanguard Total Bond Market Index Instl</b>	<b>6,615,313</b>	<b>4.6</b>		<b>0.2</b> (84)	<b>0.7</b> (87)	<b>7.7</b> (64)	<b>5.4</b> (53)	<b>4.5</b> (64)	<b>-</b>	<b>3.8</b> (59)	<b>12/01/2014</b>	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.1 (89)	0.7 (87)	7.5 (70)	5.3 (58)	4.4 (66)	-	3.7 (60)		
<i>IM U.S. Broad Market Core Fixed Income (MF) Median</i>				0.3	1.3	8.1	5.5	4.7	-	3.9		
<b>Metropolitan West Total Return Bond PI</b>	<b>15,316,044</b>	<b>10.7</b>		<b>0.4</b> (71)	<b>1.3</b> (80)	<b>9.2</b> (36)	<b>6.1</b> (36)	<b>4.9</b> (65)	<b>4.4</b> (59)	<b>4.4</b> (32)	<b>05/01/2012</b>	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.1 (99)	0.7 (96)	7.5 (79)	5.3 (75)	4.4 (88)	4.1 (76)	3.4 (94)		
<i>IM U.S. Broad Market Core+ Fixed Income (MF) Median</i>				0.6	2.0	8.7	5.6	5.2	4.5	4.2		
<b>PGIM Total Return Bond R6</b>	<b>6,692,081</b>	<b>4.7</b>		<b>0.6</b> (51)	<b>2.4</b> (36)	<b>8.1</b> (63)	<b>6.1</b> (38)	<b>6.0</b> (19)	<b>-</b>	<b>5.0</b> (17)	<b>01/01/2015</b>	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.1 (99)	0.7 (96)	7.5 (79)	5.3 (75)	4.4 (88)	-	3.8 (86)		
<i>IM U.S. Broad Market Core+ Fixed Income (MF) Median</i>				0.6	2.0	8.7	5.6	5.2	-	4.3		
<b>PIMCO Income Fund</b>	<b>8,957,704</b>	<b>6.3</b>		<b>1.5</b> (29)	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1.5</b> (29)	<b>12/01/2020</b>	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.1 (98)	-	-	-	-	-	0.1 (98)		
<i>IM Multi-Sector General Bond (MF) Median</i>				1.3	-	-	-	-	-	1.3		
<b>Apollo Total Return Fund</b>	<b>5,800,000</b>	<b>4.1</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>01/01/2021</b>	
<i>50/50</i>				-	-	-	-	-	-	-		
<i>IM Multi-Sector General Bond (MF) Median</i>				-	-	-	-	-	-	-		
<b>Cash Equivalents</b>	<b>2,288,433</b>	<b>1.6</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.3</b>	<b>1.3</b>	<b>0.9</b>	<b>0.7</b>	<b>0.6</b>	<b>05/01/2008</b>	
<i>90 Day U.S. Treasury Bill</i>				0.0	0.0	0.7	1.6	1.2	0.9	0.6		
<b>Wells Fargo Government MM Fund</b>	<b>2,288,433</b>	<b>1.6</b>		<b>0.0</b>	<b>0.0</b>	<b>0.3</b>	<b>1.3</b>	<b>0.9</b>	<b>0.7</b>	<b>0.6</b>	<b>05/01/2012</b>	
<i>90 Day U.S. Treasury Bill</i>				0.0	0.0	0.7	1.6	1.2	0.9	0.7		
<b>U.S. Equity</b>	<b>43,365,317</b>	<b>30.4</b>	<b>30.0</b>	<b>4.5</b>	<b>14.7</b>	<b>15.5</b>	<b>12.7</b>	<b>14.2</b>	<b>12.0</b>	<b>10.4</b>	<b>05/01/2008</b>	
<i>Russell 3000 Index</i>				4.5	14.7	20.9	14.5	15.4	12.8	10.7		
<b>Vanguard Institutional Index Fund Instl</b>	<b>31,137,834</b>	<b>21.8</b>		<b>3.8</b> (17)	<b>12.1</b> (20)	<b>18.4</b> (19)	<b>14.2</b> (15)	<b>15.2</b> (16)	<b>12.9</b> (9)	<b>14.4</b> (9)	<b>05/01/2012</b>	
<i>S&amp;P 500 Index</i>				3.8 (21)	12.1 (19)	18.4 (10)	14.2 (6)	15.2 (6)	12.9 (4)	14.4 (4)		
<i>IM S&amp;P 500 Index (MF) Median</i>				3.8	12.1	18.2	14.0	15.0	12.7	14.2		
<b>Diamond Hill Small-Mid Cap Y</b>	<b>6,167,720</b>	<b>4.3</b>		<b>5.9</b> (20)	<b>23.3</b> (35)	<b>1.5</b> (65)	<b>4.4</b> (39)	<b>7.9</b> (67)	<b>6.9</b> (49)	<b>10.6</b> (27)	<b>05/01/2012</b>	
<i>Russell 2500 Value Index</i>				7.0 (8)	28.5 (9)	4.9 (34)	4.3 (39)	9.4 (36)	6.8 (50)	10.0 (48)		
<i>IM U.S. Mid Cap Value Equity (MF) Median</i>				5.3	22.1	3.2	3.1	8.9	6.8	9.6		

\* Consists of MSCI US REIT Index adjusted to include a 2% cash position (Lipper Money Market Average) through April 30, 2009; MSCI US REIT Index through January 31, 2018; MSCI US Investable Market Real Estate 25/50 Transition Index thereafter.

# Performance as of December 31, 2020

	Allocation			Performance(%)							
	Market Value (\$)	%	Policy(%)	1 Month	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception	Inception Date
Eaton Vance Atlanta Capital SMID Instl	6,059,764	4.2		6.2 (87)	21.2 (68)	11.2 (100)	12.3 (87)	14.4 (80)	12.4 (69)	14.3 (64)	05/01/2012
<i>Russell 2500 Growth Index</i>				8.6 (26)	25.9 (33)	40.5 (45)	19.9 (51)	18.7 (52)	14.1 (43)	16.0 (45)	
IM U.S. SMID Cap Growth Equity (MF) Median				7.8	22.9	36.8	19.9	19.4	13.7	15.3	
<b>Non-U.S. Equity</b>	<b>46,746,823</b>	<b>32.7</b>	<b>30.0</b>	<b>5.2</b>	<b>16.7</b>	<b>15.7</b>	<b>6.7</b>	<b>10.2</b>	<b>5.8</b>	<b>3.3</b>	<b>05/01/2008</b>
<i>MSCI AC World ex USA Index (Net)</i>				5.4	17.0	10.7	4.9	8.9	4.8	2.9	
American Funds EuroPacific Growth R6	12,003,405	8.4		6.8 (4)	20.0 (32)	25.3 (1)	10.7 (1)	12.5 (1)	-	8.4 (1)	07/01/2014
<i>MSCI AC World ex USA Index (Net)</i>				5.4 (36)	17.0 (39)	10.7 (8)	4.9 (11)	8.9 (1)	-	4.3 (21)	
IM International Large Cap Core Equity (MF) Median				5.1	16.3	7.5	3.9	7.2	-	3.3	
T. Rowe Price Overseas Stock Instl	11,752,229	8.2		6.0 (20)	16.5 (45)	9.3 (18)	4.6 (28)	8.5 (5)	-	-	07/01/2014
<i>MSCI EAFE Index (Net)</i>				4.6 (80)	16.0 (61)	7.8 (45)	4.3 (37)	7.4 (42)	-	4.0 (28)	
IM International Large Cap Core Equity (MF) Median				5.1	16.3	7.5	3.9	7.2	-	3.3	
Templeton Instl Foreign Smaller Companies Fund Adv	7,688,863	5.4		4.8 (95)	14.6 (95)	9.0 (52)	3.0 (42)	7.7 (60)	5.2 (56)	7.3 (51)	05/01/2012
<i>MSCI AC World ex USA Small Cap (Net)</i>				7.0 (42)	18.6 (38)	14.2 (14)	4.6 (13)	9.4 (15)	6.4 (15)	7.9 (35)	
IM International SMID Cap Core Equity (MF) Median				6.6	18.1	9.1	2.3	8.1	5.6	7.3	
GQG Partners Emerging Markets Equity	7,616,957	5.3		-	-	-	-	-	-	-	01/01/2021
<i>MSCI Emerging Markets Index</i>				-	-	-	-	-	-	-	
IM Emerging Markets Equity (MF) Median				-	-	-	-	-	-	-	
William Blair Emerging Markets Leaders Fund; R6	7,685,369	5.4		-	-	-	-	-	-	-	01/01/2021
<i>MSCI Emerging Markets Index</i>				-	-	-	-	-	-	-	
IM Emerging Markets Equity (MF) Median				-	-	-	-	-	-	-	
<b>Real Estate</b>	<b>7,027,114</b>	<b>4.9</b>	<b>5.0</b>	<b>2.8</b>	<b>9.2</b>	<b>-4.7</b>	<b>5.0</b>	<b>5.7</b>	<b>8.4</b>	<b>7.5</b>	<b>07/01/2012</b>
<i>Wilton Pension Real Estate</i>				2.8	9.3	-4.6	5.1	5.8	8.5	7.6	
Cohen & Steers Institutional Realty Shares	7,027,114	4.9		-	-	-	-	-	-	-	01/01/2021
<i>FTSE NAREIT All Equity REITs</i>				-	-	-	-	-	-	-	
IM Real Estate Sector (MF) Median				-	-	-	-	-	-	-	

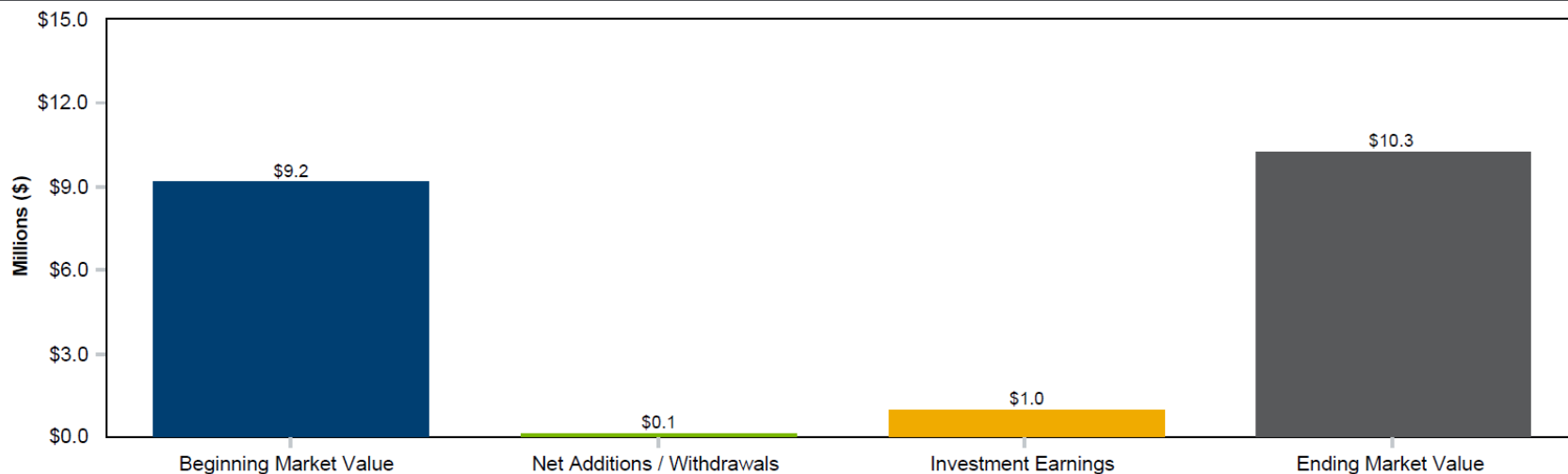
\* Consists of MSCI US REIT Index adjusted to include a 2% cash position (Lipper Money Market Average) through April 30, 2009; MSCI US REIT Index through January 31, 2018; MSCI US Investable Market Real Estate 25/50 Transition Index thereafter.



# OPEB Performance as of December 31, 2020

# Total Plan Asset Summary

## Change in Market Value From October 1, 2020 to December 31, 2020

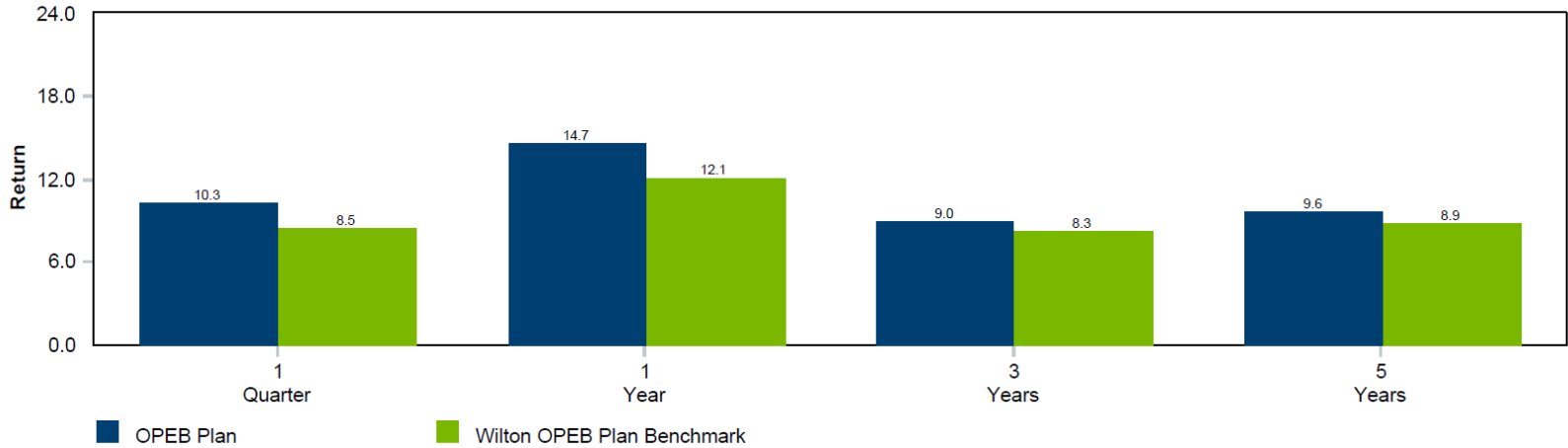


## Summary of Cash Flow

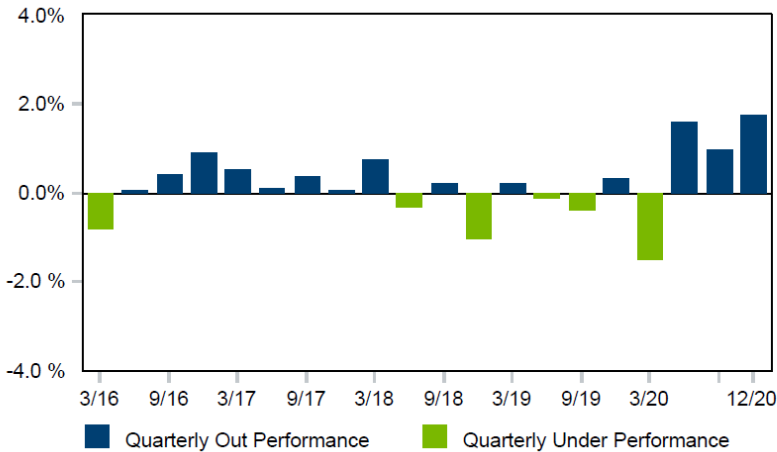
	1 Quarter	1 Year	Since Inception	Inception Date
Beginning Market Value	9,200,253	9,140,447	2,652,035	
+ Additions / Withdrawals	113,819	-160,128	3,225,003	
+ Investment Earnings	951,443	1,285,196	4,388,478	
<b>= Ending Market Value</b>	<b>10,265,516</b>	<b>10,265,516</b>	<b>10,265,516</b>	

# Total Plan Performance Summary

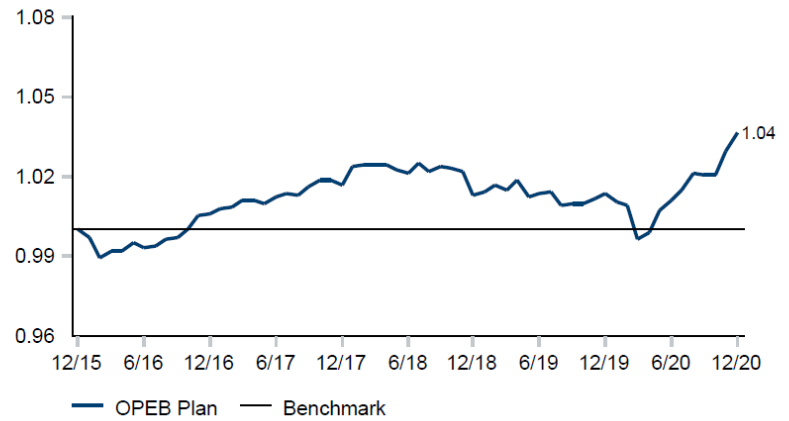
## Return Summary



## Quarterly Excess Performance



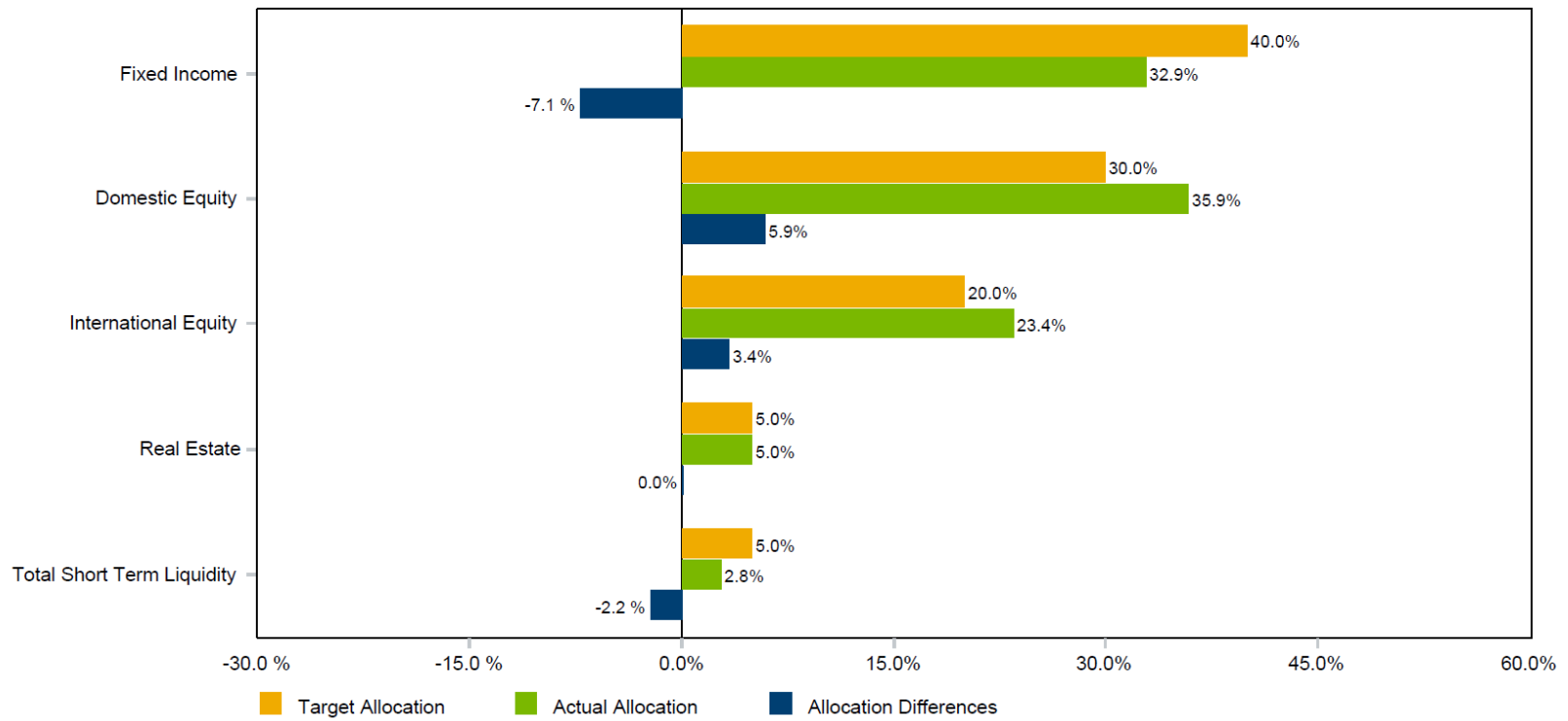
## Ratio of Cumulative Wealth - 5 Years





# Asset Allocation as of December 31, 2020

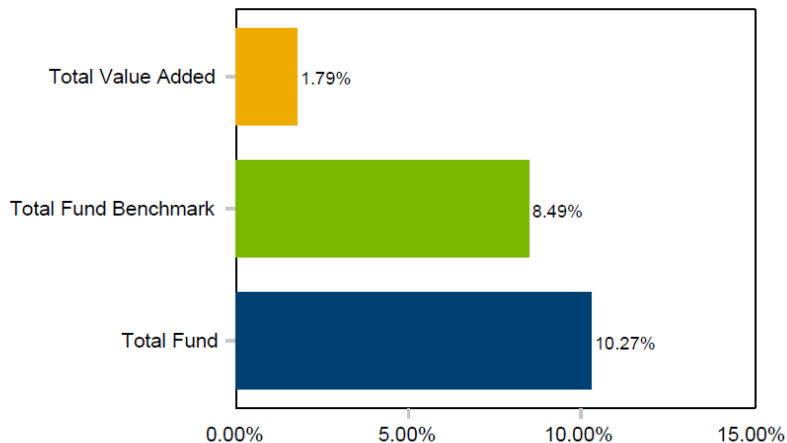
	Market Value (\$)	Current Allocation (%)	Target Allocation (%)	Differences (%)
OPEB Plan	10,265,515.68	100.00	100.00	0.00
<b>Fixed Income</b>	<b>3,374,813.71</b>	<b>32.88</b>	<b>40.00</b>	<b>-7.12</b>
<b>Domestic Equity</b>	<b>3,685,725.07</b>	<b>35.90</b>	<b>30.00</b>	<b>5.90</b>
<b>International Equity</b>	<b>2,406,229.37</b>	<b>23.44</b>	<b>20.00</b>	<b>3.44</b>
<b>Real Estate</b>	<b>512,222.80</b>	<b>4.99</b>	<b>5.00</b>	<b>-0.01</b>
<b>Total Short Term Liquidity</b>	<b>286,524.73</b>	<b>2.79</b>	<b>5.00</b>	<b>-2.21</b>



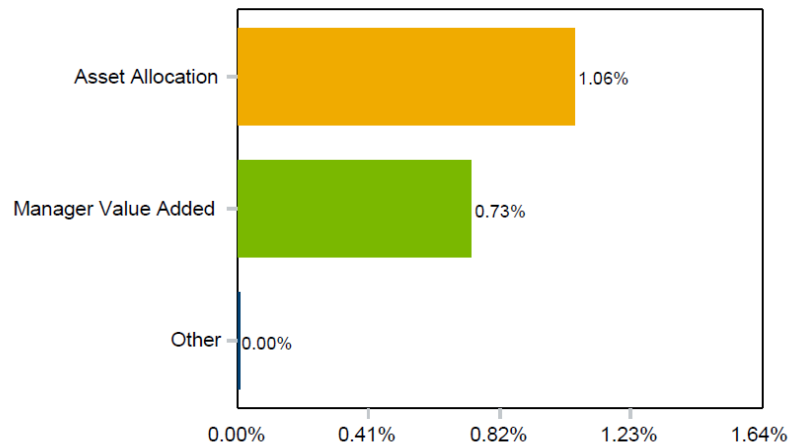
# OPEB Total Fund Attribution: 1 Quarter as of December 31, 2020

## OPEB Plan vs. OPEB Total Plan Attribution

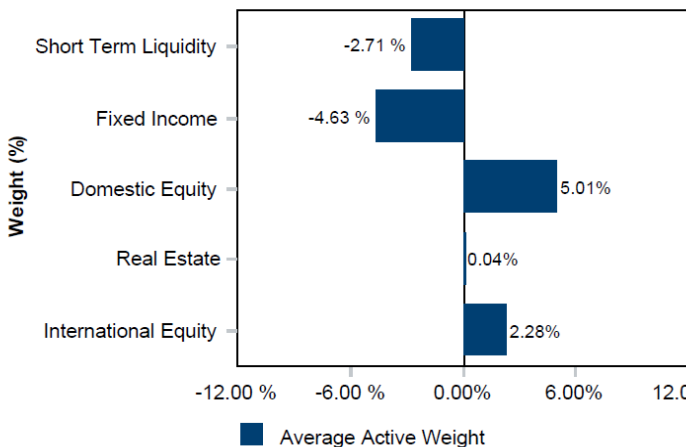
### Total Fund Performance



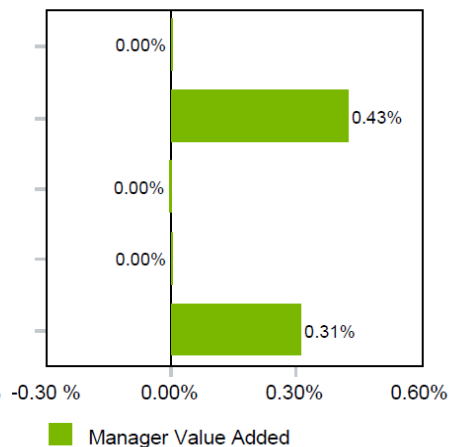
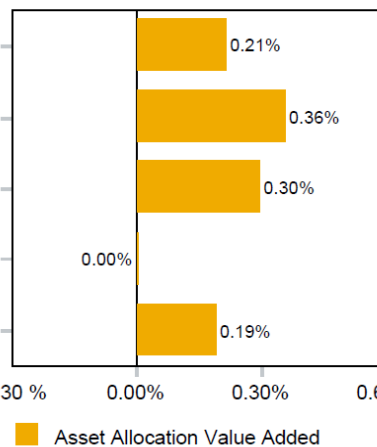
### Total Value Added: 1.79%



### Total Asset Allocation: 1.06%



### Total Manager Value Added: 0.73%



# Performance as of December 31, 2020

	Allocation			Performance(%)							Inception Date
	Market Value (\$)	%	Policy(%)	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception		
<b>OPEB Plan</b>	<b>10,265,516</b>	<b>100.0</b>	<b>100.0</b>	<b>10.3</b>	<b>14.7</b>	<b>9.0</b>	<b>9.6</b>	<b>7.7</b>	<b>8.1</b>	<b>05/01/2012</b>	
<i>Wilton OPEB Plan Benchmark</i>				8.5	12.1	8.3	8.9	7.1	7.5		
<b>Fixed Income</b>	<b>3,374,814</b>	<b>32.9</b>	<b>40.0</b>	<b>1.8</b>	<b>6.4</b>	<b>4.8</b>	<b>4.9</b>	<b>4.0</b>	<b>4.1</b>	<b>07/01/2010</b>	
<i>OPEB Fixed Income Composite Benchmark</i>				0.7	7.7	5.4	4.5	4.1	3.7		
Vanguard Short-Term Inflation Protection Adm	204,462	2.0		1.3 (94)	5.0 (92)	3.4 (85)	2.8 (92)	1.8 (93)	1.7 (92)	03/01/2014	
<i>Blmbg. Barc. U.S. TIPS 0-5 Year</i>				1.3 (95)	5.1 (91)	3.5 (81)	2.8 (86)	1.8 (89)	1.8 (86)		
IM U.S. TIPS (MF) Median				1.7	9.9	5.4	4.8	3.4	3.2		
Vanguard Total Bond Market Index Adm	631,730	6.2		0.7 (87)	7.7 (65)	5.4 (53)	4.5 (65)	4.1 (59)	7.2 (62)	06/01/2019	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.7 (87)	7.5 (70)	5.3 (58)	4.4 (66)	4.1 (59)	7.1 (66)		
IM U.S. Broad Market Core Fixed Income (MF) Median				1.3	8.1	5.5	4.7	4.2	7.4		
Metropolitan West Total Return Bond PI	864,348	8.4		1.3 (80)	9.2 (36)	6.1 (36)	4.9 (65)	4.4 (59)	8.2 (38)	06/01/2019	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.7 (96)	7.5 (79)	5.3 (75)	4.4 (88)	4.1 (76)	7.1 (76)		
IM U.S. Broad Market Core+ Fixed Income (MF) Median				2.0	8.7	5.6	5.2	4.5	7.8		
PGIM Total Return Bond R6	666,879	6.5		2.4 (36)	8.1 (63)	6.1 (38)	6.0 (19)	5.3 (14)	5.7 (19)	12/01/2015	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.7 (96)	7.5 (79)	5.3 (75)	4.4 (88)	4.1 (76)	4.3 (85)		
IM U.S. Broad Market Core+ Fixed Income (MF) Median				2.0	8.7	5.6	5.2	4.5	5.0		
BlackRock Strategic Income Opportunities Instl	648,613	6.3		4.1 (42)	7.2 (20)	4.7 (22)	4.5 (54)	3.7 (34)	3.7 (27)	03/01/2014	
<i>Blmbg. Barc. U.S. Aggregate</i>				0.7 (92)	7.5 (15)	5.3 (13)	4.4 (58)	4.1 (21)	3.9 (19)		
IM Alternative Credit Focus (MF) Median				3.9	4.8	3.8	4.6	3.4	3.2		
Templeton Global Bond R6	358,781	3.5		0.8 (84)	-4.1 (100)	-0.5 (100)	1.6 (95)	0.8 (100)	1.0 (100)	03/01/2014	
<i>FTSE World Government Bond Index</i>				2.8 (63)	10.1 (25)	5.0 (52)	4.8 (55)	2.8 (79)	2.4 (77)		
IM Global Fixed Income (MF) Median				3.6	8.1	5.0	5.0	3.5	3.3		
<b>Domestic Equity</b>	<b>3,685,725</b>	<b>35.9</b>	<b>30.0</b>	<b>14.7</b>	<b>21.0</b>	<b>14.5</b>	<b>15.4</b>	<b>12.8</b>	<b>15.5</b>	<b>07/01/2010</b>	
<i>Vanguard Spliced Total Stock Market Index</i>				14.7	21.0	14.5	15.4	12.8	15.5		
Vanguard Total Stock Market Index Adm	3,685,725	35.9		14.7 (44)	21.0 (22)	14.5 (16)	15.4 (13)	12.7 (11)	15.3 (13)	01/01/2012	
<i>Vanguard Spliced Total Stock Market Index *</i>				14.7 (44)	21.0 (21)	14.5 (16)	15.4 (13)	12.8 (11)	15.3 (12)		
IM U.S. Multi-Cap Core Equity (MF) Median				14.3	14.9	10.9	12.8	10.5	13.6		

\*Consists of Dow Jones U.S. Total Stock Market Index (formerly known as the Dow Jones Wilshire 5000 Index) through April 22, 2005; MSCI US Broad Market Index through June 2, 2013; and CRSP US Total Market Index thereafter. \*\* Total International Composite Index through August 31, 2006; MSCI EAFE + Emerging Markets Index through December 15, 2010; MSCI ACWI ex. U.S. IMI Index through June 2, 2013; FTSE Global All Cap ex U.S. Index thereafter. \*\*\* Consists of MSCI US REIT Index adjusted to include a 2% cash position (Lipper Money Market Average) through April 30, 2009; MSCI US REIT Index through January 31, 2018; MSCI US Investable Market Real Estate 25/50 Transition Index thereafter.

# Performance as of December 31, 2020

	Allocation			Performance(%)						
	Market Value (\$)	%	Policy(%)	1 Quarter	1 Year	3 Years	5 Years	7 Years	Since Inception	Inception Date
<b>International Equity</b>	<b>2,406,229</b>	<b>23.4</b>	<b>20.0</b>	<b>18.5</b>	<b>18.6</b>	<b>8.0</b>	<b>10.9</b>	<b>7.3</b>	<b>9.0</b>	<b>07/01/2010</b>
<i>OPEB International Equity Composite Benchmark</i>				17.1	10.9	4.9	9.0	5.0	7.2	
Vanguard Total International Stock Index Adm	1,146,718	11.2		16.9 (40)	11.3 (6)	5.0 (7)	9.1 (1)	5.1 (4)	6.7 (33)	05/01/2012
<i>Vanguard Spliced Total International Stock Index **</i>				17.2 (38)	11.2 (6)	5.0 (7)	9.1 (1)	5.2 (2)	6.7 (31)	
IM International Large Cap Core Equity (MF) Median				16.3	7.5	3.9	7.2	3.7	6.3	
<b>American Funds EuroPacific Growth R6</b>	<b>1,259,512</b>	<b>12.3</b>		<b>20.0 (32)</b>	<b>25.3 (1)</b>	<b>10.7 (1)</b>	<b>12.5 (1)</b>	<b>8.3 (1)</b>	<b>8.8 (1)</b>	<b>09/01/2014</b>
<i>MSCI AC World ex USA Index (Net)</i>				17.0 (39)	10.7 (8)	4.9 (11)	8.9 (1)	4.8 (7)	4.5 (25)	
IM International Large Cap Core Equity (MF) Median				16.3	7.5	3.9	7.2	3.7	3.7	
<b>Real Estate</b>	<b>512,223</b>	<b>5.0</b>	<b>5.0</b>	<b>9.3</b>	<b>-4.7</b>	<b>5.0</b>	<b>5.7</b>	<b>8.4</b>	<b>10.3</b>	<b>07/01/2010</b>
<i>Vanguard Real Estate Spliced Index</i>				9.3	-4.6	5.1	5.8	8.5	10.4	
Vanguard Real Estate Index Fund Adm	512,223	5.0		9.3 (56)	-4.7 (45)	5.0 (45)	5.7 (42)	8.4 (38)	10.3 (39)	07/01/2010
<i>Vanguard Real Estate Spliced Index ***</i>				9.3 (55)	-4.6 (44)	5.1 (40)	5.8 (40)	8.5 (36)	10.4 (36)	
IM Real Estate Sector (MF) Median				9.5	-5.1	4.7	5.4	8.1	10.0	
<b>Total Short Term Liquidity</b>	<b>286,525</b>	<b>2.8</b>	<b>5.0</b>	<b>0.0</b>	<b>0.2</b>	<b>1.1</b>	<b>0.8</b>	<b>0.5</b>	<b>0.4</b>	<b>01/01/2012</b>
Wells Fargo Government MM Fund	124,634	1.2		0.0 (90)	0.4 (37)	1.4 (48)	1.0 (39)	0.7 (34)	0.6 (31)	04/01/2012
<i>90 Day U.S. Treasury Bill</i>				0.0 (2)	0.7 (1)	1.6 (11)	1.2 (15)	0.9 (15)	0.7 (15)	
IM U.S. Taxable Money Market (MF) Median				0.0	0.4	1.4	1.0	0.7	0.6	
Webster Cash	161,890	1.6								

\*Consists of Dow Jones U.S. Total Stock Market Index (formerly known as the Dow Jones Wilshire 5000 Index) through April 22, 2005; MSCI US Broad Market Index through June 2, 2013; and CRSP US Total Market Index thereafter. \*\* Total International Composite Index through August 31, 2006; MSCI EAFE + Emerging Markets Index through December 15, 2010; MSCI ACWI ex. U.S. IMI Index through June 2, 2013; FTSE Global All Cap ex U.S. Index thereafter. \*\*\* Consists of MSCI US REIT Index adjusted to include a 2% cash position (Lipper Money Market Average) through April 30, 2009; MSCI US REIT Index through January 31, 2018; MSCI US Investable Market Real Estate 25/50 Transition Index thereafter.



# Aon Medium Term Views

# Medium-Term Views



## Cross Asset Class Views

---	--	-	=	+	++	+++
		Core fixed income	Equities			
		Credit		Alternatives		
			Cash			

Equity view remains neutral and downside risks persist

We still favor uncorrelated sources of returns from a risk-mitigation view

Coronavirus risks persist near-term but vaccine news strengthens our view on non-US equities

We are neutral between local and USD EMD, preferred to loans and US high yield

### Equity Regions

Better virus containment and growth story is supportive for EM Asia

### Credit

---	--	-	=	+	++	+++
		USA	EAFE	Emerging		

---	--	-	=	+	++	+++
		Bank Loans	USD EMD Local EMD	Selected ABS		
		High Yield				

### Equity Styles

### Core Fixed Income

---	--	-	=	+	++	+++
		Low Vol.	Quality Value			
		Growth				

---	--	-	=	+	++	+++
		Treasuries	Inv. Grade	TIPS		

Pro-cyclical stance maintained. Value preferred to growth

Potential returns remain unattractive but future yield rises look moderate

TIPS remain attractive relative to nominal

### Alternatives

---	--	-	=	+	++	+++
		Dir. Hedge Funds	Commodities	Non-Dir. Hedge Funds		
				Global Infra.		
				Private Credit		
			Real Estate			

Non-correlated alternatives still generally preferred

### Currencies versus USD

---	--	-	=	+	++	+++
				EUR		
				GBP		
				JPY		
				EM		

We remain negative on the US dollar in the medium-term

Please refer to the end of the document for interpretation guidelines

# Equities:

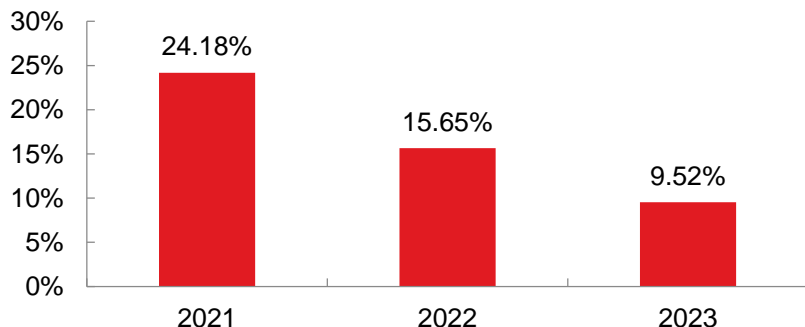
## Stimulus and vaccines should be supportive, but equities are not cheap



- Equity markets continued to ride high over most of Q4, as further stimulus packages were introduced and especially on the news that a number of vaccines had been approved in several countries, bringing hope of an end to restrictions at some point in 2021. At the same time, there has been a rotation into pro-cyclical and value sectors as “reflation” increasingly became the word on investors’ minds.
- Of course, the impact of a stellar year in terms of equity returns is that valuations have moved far in excess of long-term averages, especially on ratios relative to earnings. In the case of the latter, earnings are expected to grow over 24% for the MSCI World index this year, before growing a smaller but still healthy 15% in 2022. **If the vaccine roll-out is successful and does truly bring the pandemic to a close this year, these estimates are possible, but the risk of delays is still significant and earnings disappointment cannot be ruled out.**
- Nonetheless, there is a huge amount of fiscal and monetary support now, and the now-confirmed Democratic “blue wave” in the US has raised the chances of even further stimulus soon. **The combination of government support and very low interest rates will likely support equities for now. However, we are not expecting strong trends and have a neutral view on equities.**

### 2021 and 2022 earnings expected to be strong

Expected EPS Growth



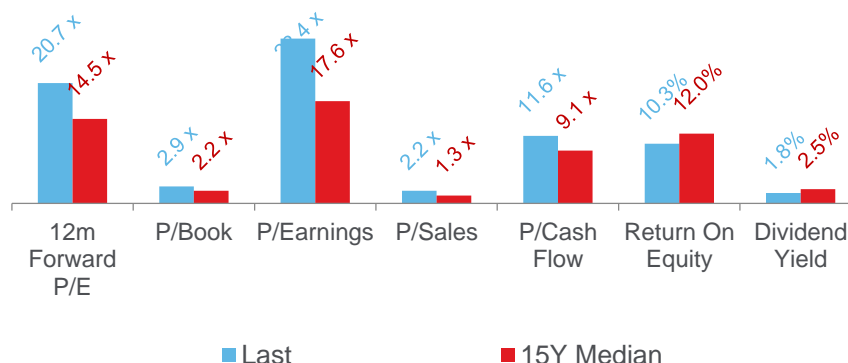
Source: Factset, Aon

### Earnings have been revised back up sharply



Source: Factset, Aon

### MSCI World valuations are very expensive



Source: Factset, Aon, MSCI

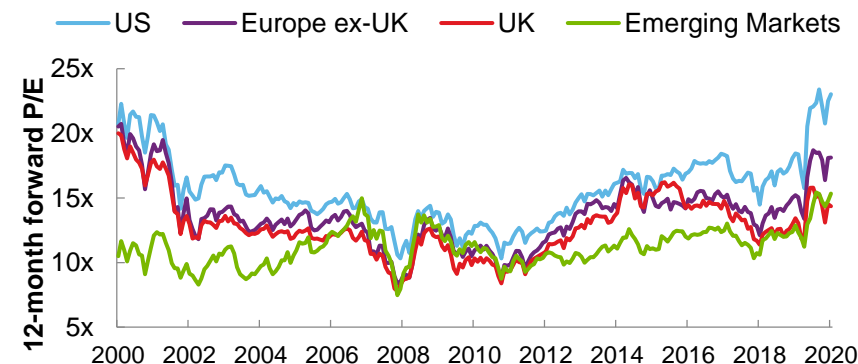
# Equities:



## Vaccine news strengthens our preference for non-US and Value equities

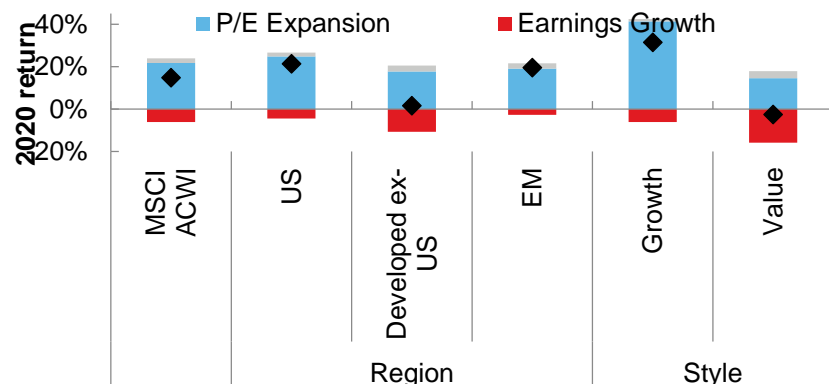
- 2020 was undoubtedly a banner year for US stocks, and for US tech stocks in particular. The runaway outperformance of these stocks has reached astonishing levels. US equity valuations have risen to levels last seen during the dotcom bubble, and **the continued outperformance of US stocks is hard to justify.**
- Whilst this divergence persisted before the pandemic, we believe the sheer size of the valuation disparities reached has become unsustainable. Q4 saw some of the gaps narrow as regions and sectors that have been hardest hit by Covid rallied on the back of the vaccine news. **A sustained economic recovery on the back of the vaccines would help non-US and Value equities to catch up.**
- The market has seemingly focused on the prospects of reflation, with stimulus measures turbocharging the global recovery. The Democrats securing a "Blue Wave" should also unlock further fiscal stimulus in the US. Value and cyclical stocks should perform well in this environment.
- We continue to believe in the strategic case for EM equities. **Better virus containment and attractive long-term growth prospects keep us positive on EM.**

### Large valuation gaps between markets



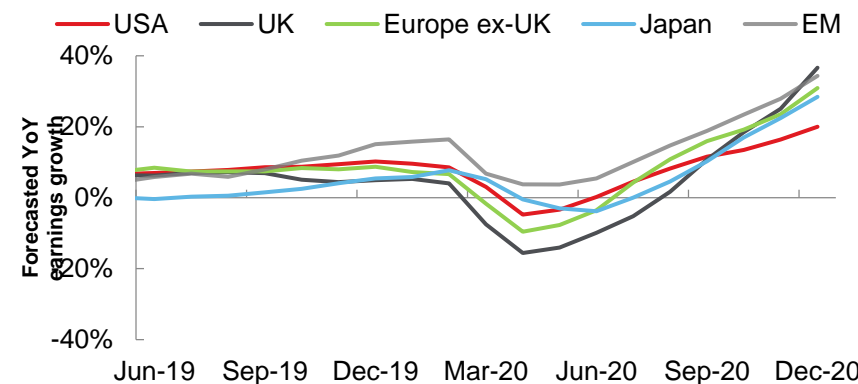
Source: Factset, MSCI, Aon.

### Non-US and Value equities may catch up if earnings recover



Source: Factset, MSCI, Aon. Changes in the 12-month forward P/E and earnings per share shown. Local currency returns and MSCI World Growth and Value indices shown.

### Earnings outlook revised up sharply on vaccine news



Source: Factset, MSCI, Aon.



# Core fixed income: Yields and inflation expectations on the rise



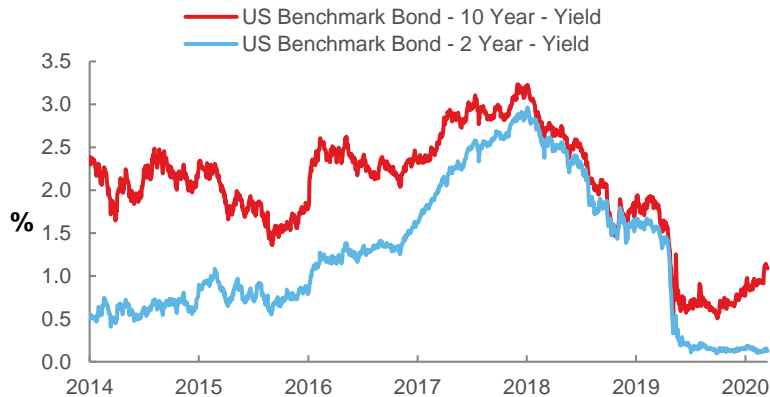
- Following the tumultuous period last March and April when the pandemic triggered global lockdowns, yields have been steady in general but two developments in Q4 have triggered jumps, which are still small in relative terms but are being seen as the start of upwardly trending yields in 2021. These two developments were the approval of vaccines, bringing closer the end of the pandemic, and the election of Joe Biden and the eventual full control of Congress, which has significantly raise the prospect of further government stimulus.
- As well as pushing yields higher, inflation expectations have edged up too. The scenario is one of reflationary policies, a return to growth and rising inflation. Of course, this is coming at the cost of historic increases in government debt. **Our view is that Treasury yields will be anchored in the short end by persistently accommodative monetary policy throughout this year, but mid- to long-duration yields are likely to trend higher.** These trends are likely to be limited, however, by economic scarring and the probability of fiscal clawback through higher taxes or lower spending.
- We continue to think TIPS look attractive versus Treasuries, especially as conditions move towards more inflationary policies.**

## Inflation expectations are on the rise



Source: Bloomberg

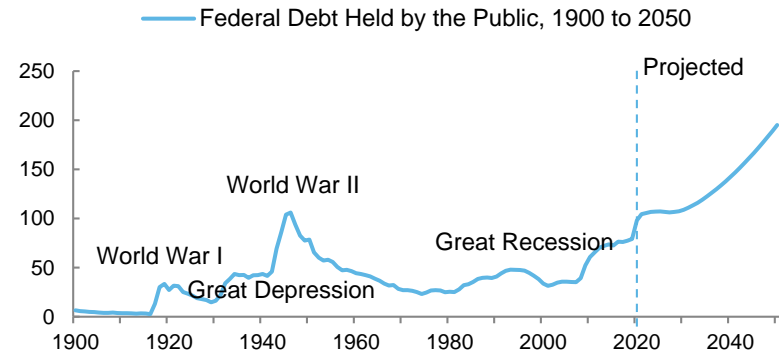
## Mid- and long-duration yields have jumped on vaccine news



Source: Factset

## The pandemic has created an enormous debt burden

US Federal debt projection if current laws are unchanged



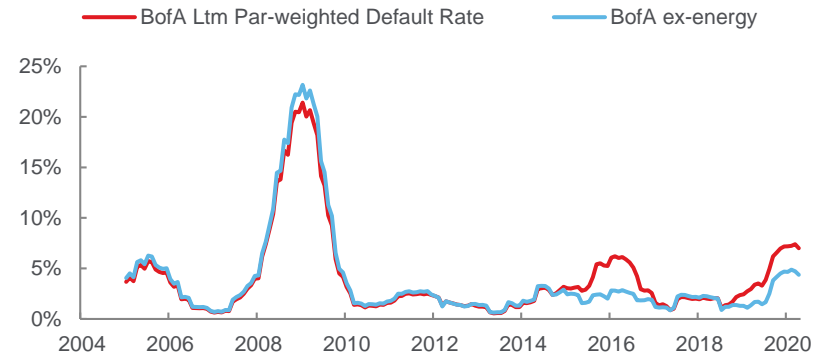
Source: Congressional Budget Office, data as at September 21st, 2020



# High Yield bonds continue to push to ever lower spreads

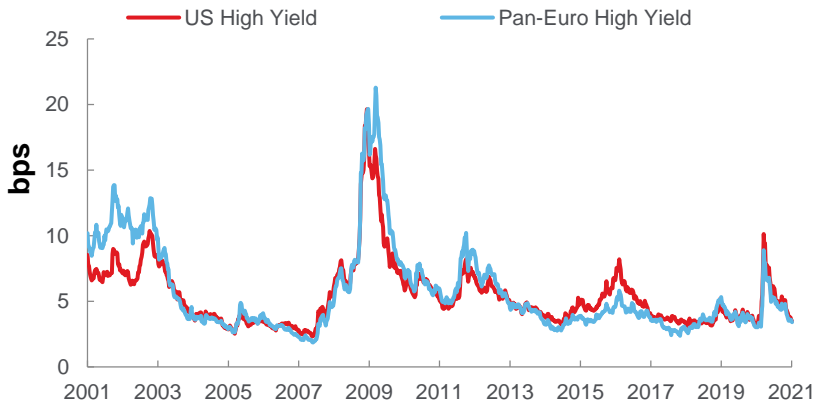
- We continue to believe that high yield bonds do not offer a good risk/reward trade-off, driven by ever richer credit spreads that do not fully account for the underlying risks in companies. We believe that these bonds are expensive, and the outlook will be hampered by low outright yields. **Relative and absolute returns are likely to disappoint.**
- First, default rates continue to be elevated, following the pandemic, and latest forecasts are that through 2021 they are expected to remain elevated as the damage of the pandemic works through the economic system.
- Second, when spreads and yields are assessed against history, they are expensive, pandemic or no pandemic. Further, when assessed against fundamentals they are also expensive.
- **Our view here is not that there will be an immediate catalyst for large negative returns on these bonds but that, as spreads and yields continue to be stuck at these levels, the outlook for competitive returns versus other asset classes is muted.**

## Default rates in the US remain elevated



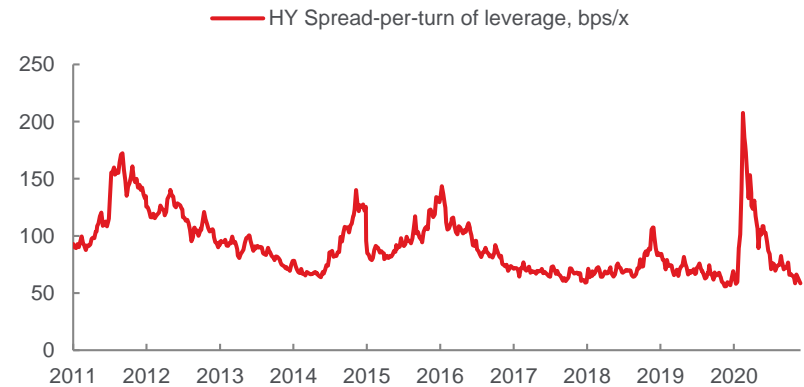
Source: Bank of America Merrill Lynch

## Yields and spreads have fallen to very low levels



Source: Bloomberg

## Measured against leverage, spreads are expensive



Source: Bank of America Merrill Lynch

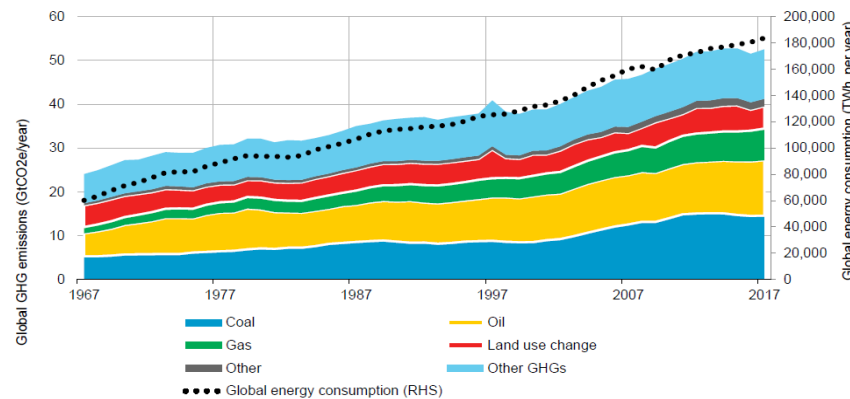
# Alternatives Special Focus:

## Sustainable Fiscal Stimulus and Infrastructure - the US joins the fray



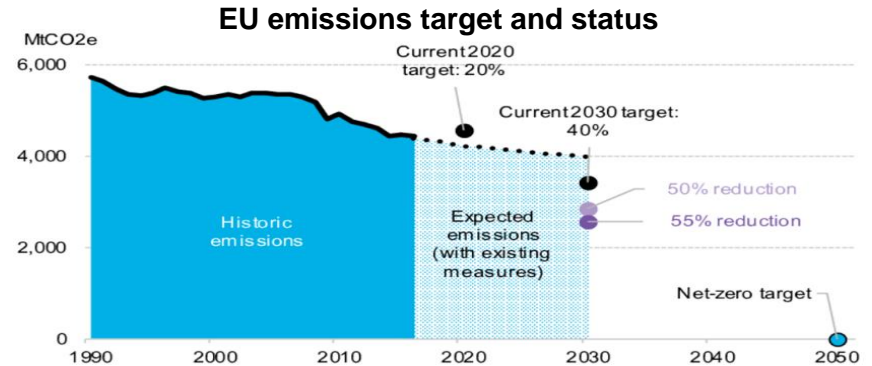
- Better awareness of climate change challenges are driving governments to accelerate their ambition. Governments are prioritising sustainable infrastructure investments for their use in fiscal stimulus packages, while increasing consideration of social responsibility in investment.
- In the US, Biden's climate plan will invest \$1.7 trillion in sustainable infrastructure and clean energy over 10 years, decarbonise power systems by 2035 and achieve net zero emissions by 2050, while also advancing social justice.
- **Sustained policy support is expected to drive strong growth in renewable energy, transport and other green infrastructure.** While this is reinforcing the growing take-up of renewable energy, there is a long way to go to replace fossil fuel energy, where consumption is still growing (see bottom right chart).
- **The required transformation requires huge amounts of capital, creating opportunities for investors in ESG, impact and low carbon investments, focused on infrastructure.**

### Energy use and carbon emissions must decouple



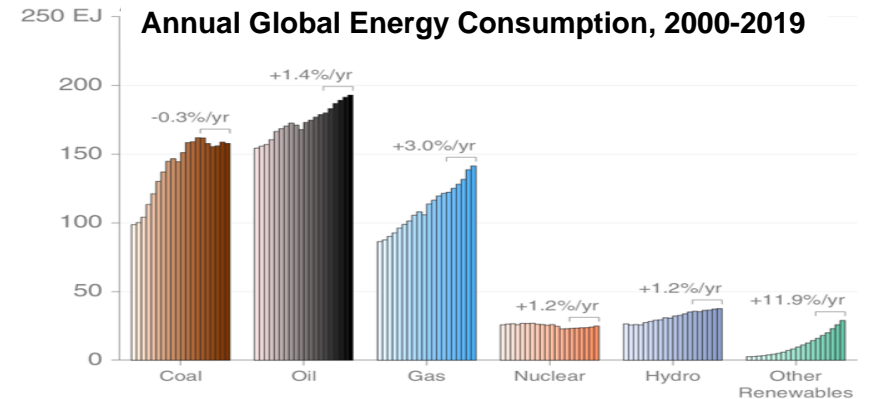
Source: LGIM analysis, Lambert, BP Statistical Review

### Europe has to achieve net zero GHG emissions by law

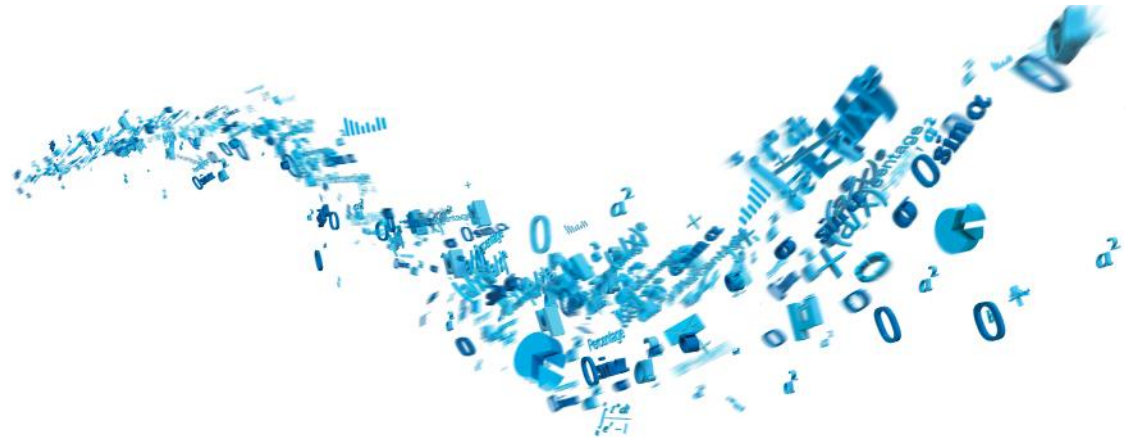


Source: European Environment Agency, European Commission, Bloomberg. Note: includes UK

### Renewable energy is accelerating but has a long way to go



Source: LGIM Analysis, Baring Partners. Growth rates shown from 2014-2019



# Legal Consulting & Compliance Update



First Quarter 2021

# Aon Quarterly Update

## Retirement Legal Consulting & Compliance

### In this Issue

- 2 Pooled Employer Plans Are Here!
- 3 New IRS Guidance on Missing Participants with a Snapshot Reminder
- 4 What's Safe for SECURE Act Safe Harbor Changes
- 5 Final DOL Regulations on ESG Investment Issues
- 6 Proxy Voting and Shareholder Rights—Final Fiduciary Rules
- 8 Avoid Pitfalls—Ensure Regulatory Compliance
- 9 Case Highlights Challenges in Recovery of Overpayments
- 10 Final Plan Rollover Regulations Provide Expected Relief
- 10 Tax-Free Employer Payment of Student Loans Extended Until 2026
- 11 Remote Notarization and Electronic Submissions Becoming a New Normal
- 12 Quarterly Roundup of Other New Developments

### Prior Issues

To access prior issues, [click here](#) and select "Newsletters"

### Editor's Note

Happy, New Year! Welcome to our first edition of the *Quarterly Update* for 2021!

We open this issue with an update on the game-changing Pooled Employer Plan (PEP). This article reminds employers of all sizes as to the benefits of participating in this newly enacted multiple employer plan where the pooled plan provider (PPP) serves as both the plan administrator and a named fiduciary of the PEP. The article also discusses the Department of Labor (DOL) registration requirements for the PPP and the value employers may gain by participating in this brand-new retirement program.

The IRS has been busy issuing new guidance in several areas of interest to our readers. We include five articles on the latest IRS guidance. Plan sponsors, waiting on comprehensive guidance regarding missing participants, will have to wait a bit longer. Until then, we report the latest IRS guidance affecting qualified plan distributions to state unclaimed property funds with a reminder of those situations where the IRS will not challenge a plan's qualified status.

We also report on the latest IRS guidance on the advance notice requirement for safe harbor plans relying on safe harbor nonretroactive contributions and plans with midyear amendments to add such contributions; the final IRS regulations on plan loan rollover offsets and qualified plan loan offsets (or QPLOS) as well as the related federal income tax reporting requirements; and two welcome IRS extensions. First is the extension of the temporary relief from the "physically present" requirement while witnessing the signature of a participant or spousal consent (if required) with respect to a benefit election. The other relates to the extension of employer-paid student loan assistance that can be excluded from employee federal taxable income until 2026.

The DOL has similarly been busy with finalizing rules of interest to plan fiduciaries. Guidance in the area of "environmental, social and corporate governance" (ESG) investments (sometimes colloquially referred to as "investments with purpose") continues its push-pull journey. This edition also reports on the DOL's latest shift to pecuniary factors as the basis for plan fiduciaries to evaluate investment opportunities and updates our readers on the final DOL regulations intended to clarify a fiduciary's duties relating to the voting of proxies and shareholder rights. This article includes a list of principles that fiduciaries must comply with when making decisions on exercising shareholder rights and proxy voting.

Plan sponsors continue to favorably report that they have come to rely on Aon's annual compliance tools: Our updated IRS compensation and benefit limitations for retirement plans, detailed Compliance Calendar that lists key compliance milestones and due dates that apply to qualified retirement and health and welfare plans, and our year-end plan guidance relating to retirement plans. We include an article with links to these tools for your convenience.

Last but not least, plan sponsors and retirement plans routinely face challenges when they seek the return of overpayments from plan participants, beneficiaries, or alternate payees. We include a case summary that illustrates the importance of plan language regarding the recoupment of overpayments and procedural protections when processing certain "high-risk" transactions like lump sums or other accelerated payments and QDRO assignments.

We trust that you will enjoy reading our first edition of the new year. If you have any questions or need any assistance with the topics covered, please contact the author of the article or Tom Meagher, our practice leader.

**Susan Motter**  
Associate Partner

# Pooled Employer Plans Are Here!

by David Alpert and Linda M. Lee



As previously reported in the [Special Edition, Second Quarter 2020](#), and [Fourth Quarter 2020](#) issues of our *Quarterly Updates*, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) amended the Internal Revenue Code of 1986 (Code) and the Employee Retirement Income Security Act of 1974 (ERISA) to permit the establishment of pooled employer plans (PEPs) effective January 1, 2021. PEPs are a new type of qualified defined contribution multiple employer plan (MEP) for unrelated employers.

**Rationale for PEPs.** A key goal of the SECURE Act was to increase retirement savings by employers. In permitting PEPs, the SECURE Act intended to make MEPs more attractive by eliminating outdated barriers to the use of MEPs by unrelated employers and improving the quality of MEP service providers. The Department of Labor (DOL) has noted that expanding access to PEPs will allow small and mid-size businesses to obtain the economies of scale ordinarily associated with large plans. PEPs may decrease plan-related administrative burdens, fiduciary liability, and costs for employers of any size. As the DOL has stated, “by allowing most of the management and administrative responsibilities of sponsoring a retirement plan to be transferred to a pooled plan provider, PEPs will give employers, especially small unrelated employers, a way to offer their employees a workplace retirement savings option with reduced burdens and costs compared to sponsoring their own separate retirement plan.”

**Pooled Plan Providers.** A PEP must have a pooled plan provider (PPP) that serves as the plan administrator and a named fiduciary of the PEP. In addition, the PPP has other responsibilities with respect to the PEP and must register with the DOL and Department of the Treasury (Treasury). Based on provisions of the SECURE Act, and subject to regulatory guidance, a significant number of compliance and fiduciary obligations that normally accompany a single employer’s administration of its own qualified savings plan will fall upon the PPP rather than the employer.

**Registration and Qualification Requirements.** The DOL has established PPP registration requirements. In addition, PPPs will want to be sure that PEP documents and operations comply with the Code and ERISA.

- **Registration Requirements.** On November 16, 2020, the DOL published final regulations regarding the registration requirements for PPPs. The filing with the DOL also satisfies the requirement to register with the Treasury. The registration statement must be filed by the PPP before PEP operations begin and contain information regarding the PPP and the PEP, including a description of the services to be provided by the PPP and its affiliates. The registration statement also must be supplemented within specified time periods under certain circumstances.

- **PEP Qualification.** Although not presently a requirement, most (if not all) PPPs will want the Internal Revenue Service (IRS) to issue a formal letter as to the qualified status of the PEP and its related trust under the Code. As an ongoing matter, the PPP also will need to ensure that it and the PEP satisfy all applicable requirements of the Code and ERISA.

**Aon Has a PEP!** Aon has registered to begin operations as the PPP of the Aon PEP effective January 1, 2021 and submitted a request to the IRS for a determination as to the qualified status of the Aon PEP under the Code. Aon also has been working with a wide variety of employers regarding the Aon PEP, including some joining the Aon PEP in January 2021 or thereafter in the first quarter of the year, and others that are seriously considering later 2021 adoption dates.

Please contact your Aon consultant to discuss how the Aon PEP may better serve your organization’s needs.

# New IRS Guidance on Missing Participants with a Snapshot Reminder

by Susan Motter



On October 16, 2020, the Internal Revenue Service (IRS) issued Revenue Ruling 2020-24 and Revenue Procedure 2020-46 which affect qualified plan distributions to state unclaimed property funds. Revenue Ruling 2020-24 addresses the federal income tax withholding and reporting obligations when a qualified plan distribution is made to an unclaimed property fund. Revenue Procedure 2020-46 makes it easier for participants who collect their qualified retirement plan benefits from a state unclaimed property fund to roll over their benefits.

Revenue Ruling 2020-24 addresses the situation in which a qualified retirement plan benefit (that doesn't include a designated Roth account) is paid to a state's unclaimed property fund and the participant to whom the benefit is owed has not made a tax withholding election. The guidance makes clear that retirement plans are to issue Forms 1099-R to participants covering any amounts paid to a state's unclaimed property fund, as well as deducted the appropriate amount of income tax and include the amount withheld on the Form 1099-R. The revenue ruling provides transition relief to payors and plan administrators who do not meet the withholding and reporting requirements described in the ruling. Payors and plan administrators will not be treated as failing to comply with respect to payments made before January 1, 2022, or the date it becomes "reasonably practicable" for them to comply.

Revenue Procedure 2020-46 updates and modifies a previous Revenue Procedure (2016-47) and allows plan administrators (as well as IRA providers) to accept late 60-day rollovers from individuals who self-certify that they qualify for a waiver of the 60-day requirement. Certifications under the 2016 procedure were permitted only for 11 specified reasons (e.g., errors by a financial institution, postal errors, family member death, and serious illness). Revenue Procedure 2020-46 adds a 12th reason, allowing self-certification if the distribution from a qualified plan (or IRA) was made to a state's unclaimed property fund. The model certification that accompanied the original 2016 guidance has also been updated to reflect the new reason for waiver.

On October 29, 2020, the IRS published *Issue Snapshot—IRS Procedures Regarding Missing Participants and Beneficiaries* (Snapshot) to remind plan sponsors that the IRS will not challenge a plan's tax-qualified status if the plan has followed certain guidance on missing participant search procedures. As a booklet to its new October guidance, the IRS reminds plan sponsors of other guidance that relates to benefits of missing participants and beneficiaries. Specifically, the Snapshot reminds plan sponsors of missing participant/beneficiary search procedures to be used in certain specified situations where the IRS will not challenge a plan's tax-qualified status, as well as possibly assist in the avoidance of the need to make a transfer of benefits of missing participants and beneficiaries to state unclaimed property funds.

The Snapshot provides that the IRS will not challenge a plan's qualified status if the plan has followed the IRS guidance in the following situations:

- **Required Minimum Distributions (RMDs).** The IRS will not disqualify a plan for failing to commence or make an RMD if the plan has performed a diligent search to locate the participant. The search must include: reviewing plan and related plan records, sponsor or publicly available records or directories for alternative contact information, using a commercial locator service, a credit reporting agency, or a proprietary internet search tool for locating individuals; and sending a contact letter by certified mail to the last known mailing address, or through other appropriate means (including use of email addresses and telephone numbers) for additional contact information.

- **Corrective Distributions under EPCRS.** If additional benefits are owed to participants or beneficiaries, the IRS Employee Plans Compliance Resolution System (EPCRS) requires a "reasonable" search to locate these individuals after an unsuccessful mailing to the last known address. Reasonable actions include a second mailing to the individual's last known address using certified mail. If that is unsuccessful, the plan should use an additional search method, such as a commercial locator service, a credit reporting agency, or internet search tools. A plan following these procedures will not be treated as failing to make the appropriate correction under EPCRS if an individual cannot be found, but still must make the corrective distribution if the individual is later found.

- **Suspension of Benefits Notices from Multiemployer Plans.** A multiemployer plan in critical and declining status is not permitted to suspend benefits without providing a notice to certain individuals, except for individuals who cannot be contacted by "reasonable" efforts. Reasonable actions include contacting the bargaining parties for the plan and other related plans and using an internet search tool, a credit reporting agency, and a commercial locator service to search for individuals for whom the plan was unable to obtain updated information from bargaining parties.

The IRS, Department of Labor, and the Pension Benefit Guaranty Corporation have yet to issue guidance with respect to required search procedures to be used by an ongoing retirement plan (i.e., not a terminated plan). Thus, plan fiduciaries remain on their own to determine what missing participant search procedures are "reasonable" or "prudent." Until the three agencies (which are reportedly coordinating guidance) issue new guidance, plan fiduciaries of ongoing plans should focus their efforts on best practices for locating missing participants and beneficiaries.

Aon's Retirement Legal Consulting & Compliance consultants are available to assist plan fiduciaries in understanding the new guidance, as well as provide assistance with establishing best practices for locating missing participants and beneficiaries.

# What's Safe for SECURE Act Safe Harbor Changes

by Dan Schwallie



The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) eliminates the advance safe harbor notice requirement for certain safe harbor plans relying on safe harbor nonelective contributions for plan years beginning after December 31, 2019. The SECURE Act also changes the rules on amending a plan midyear to add safe harbor nonelective contributions and becoming an actual deferral percentage (ADP) safe harbor plan, in the case of a 401(k) plan, or actual contribution percentage (ACP) safe harbor plan, in the case of a 401(k) or 403(b) plan. The Internal Revenue Service issued Notice 2020-86 on December 9, 2020 to address these SECURE Act changes for ADP/ACP safe harbor plans that rely on safe harbor nonelective contributions.

## Advance Notice No Longer Required for Certain Plans Using Safe

### Harbor Nonelective Contributions

Notice 2020-86 clarifies that the only safe harbor plans not required to provide an advance safe harbor notice under the SECURE Act changes are:

- A traditional safe harbor plan relying on safe harbor nonelective contributions, but only if the traditional safe harbor plan either has no matching contributions or will ACP test its matching contributions; and
- A qualified automatic contribution arrangement (QACA) plan relying on safe harbor nonelective contributions.

### Traditional Safe Harbor Plans

The SECURE Act eliminates the advance safe harbor notice requirement for a traditional ADP safe harbor plan relying on safe harbor nonelective contributions. However, it does not eliminate the ACP advance safe harbor notice requirements for a traditional ACP safe harbor plan that satisfies the safe harbor nonelective contribution requirements. For example, if a plan satisfies the traditional safe harbor using safe harbor nonelective contributions, but also provides non-safe harbor matching contributions structured to satisfy ACP safe harbor requirements (and, thereby, not required to satisfy the ACP test), then the plan must satisfy the ACP safe harbor notice requirements of Section 401(m)(1)(A) of the Internal Revenue Code (Code). Alternatively, if the matching contributions under such a plan are not intended to satisfy ACP safe harbor requirements (and, therefore, are required to satisfy ACP testing), then the plan need not satisfy the ACP safe harbor notice requirements.

### QACA Safe Harbor Plans

The SECURE Act eliminates both the advance ADP and advance ACP safe harbor notice requirements for a QACA safe harbor plan relying on safe harbor nonelective contributions. The result is different for a QACA ACP safe harbor plan than for a traditional ACP safe harbor plan because Code Section 401(m)(1) specifically requires a traditional ACP

safe harbor plan to satisfy the ADP safe harbor notice requirements for a traditional ADP safe harbor plan, but Code Section 401(m)(12)(A) merely requires a QACA ACP safe harbor plan to satisfy the requirements to be a QACA safe harbor plan.

Prior to the SECURE Act changes, all ADP and ACP safe harbor plans had to provide an advance safe harbor notice. Now, only safe harbor plans relying on safe harbor matching contributions and traditional safe harbor plans relying on safe harbor nonelective contributions with non-safe harbor matching contributions intended to satisfy ACP safe harbor requirements must provide an advance safe harbor notice.

## New Rules for Establishing a Safe Harbor Nonelective

### Contribution Plan Midyear

The SECURE Act changes the rules for establishing certain safe harbor nonelective contribution plans midyear. It provides that a 401(k) or 403(b) plan may be amended for plan years beginning after December 31, 2019 to provide for safe harbor nonelective contributions after the start of a plan year, effective as of the first day of the plan year, but only if the plan did not provide safe harbor matching contributions at any time during the plan year. The amendment must be adopted before the 30th day prior to the close of the plan year, unless a safe harbor nonelective contribution of at least 4% of employee compensation is provided, in which case the amendment must be adopted before the last day for distributing excess highly compensated employee contributions based on ADP test results for the plan year (i.e., before the last day of the following plan year). Notice 2020-86 clarifies that these rules apply to establish a QACA relying on safe harbor nonelective contributions or a traditional safe harbor plan relying on safe harbor nonelective contributions that either has no matching contributions or will ACP test its matching contributions.

Prior to this change, a “contingent notice” had to be provided by including in the advance safe harbor notice a statement that the plan may be amended during the plan year to include safe harbor nonelective contributions and that, if amended, a “follow-up notice” regarding the formula would be provided no later than 30 days before the last day of the plan year. For those plans no longer required to provide an advance safe harbor notice (as described in the prior section), the contingent notice and follow-up notice rules no longer apply. However, the contingent notice and follow-up notice rules continue to apply to establish a traditional safe harbor plan relying on safe harbor nonelective contributions that provides matching contributions structured to satisfy the ACP safe harbor and are not intended to be subject to ACP testing.

## Notice for Midyear Reduction or Suspension of Safe Harbor Contributions

Notice 2020-86 clarifies that, despite the SECURE Act changes, an ADP/ACP safe harbor plan that is amended to reduce or suspend future safe harbor contributions during a plan year must provide to each eligible employee a notice that explains the:



- Consequences of the amendment;
- Procedures for changing deferral elections and, if applicable, Roth contribution and non-Roth after-tax contribution elections; and
- Effective date of the amendment.

Unless the reduction or suspension is due to the employer operating at an economic loss, a safe harbor plan that is required to provide a safe harbor notice in advance of the plan year must include a statement that the plan may be amended during the plan year to reduce or suspend the safe harbor contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of such an amendment to reduce or suspend safe harbor contributions.

Whether or not a safe harbor plan is required to provide an advance safe harbor notice under the SECURE Act changes, a reduction or

suspension of safe harbor contributions cannot be effective earlier than the later of the date the amendment to reduce or suspend safe harbor contributions is adopted or 30 days after notice of such amendment is provided. Eligible employees must be given a reasonable opportunity after receipt of the notice prior to the reduction or suspension to change their deferral (including any Roth contribution) elections and, if applicable, their non-Roth after-tax contribution elections. The plan must be operated in compliance with safe harbor requirements until amended, and the plan must also be amended to provide that it will satisfy the ADP test (401(k) plans) and ACP test (401(k) and 403(b) plans) using the current year testing method for the entire plan year in which the reduction or suspension occurs.

Aon's Retirement Legal Consulting & Compliance consultants are available to assist plan sponsors in understanding how these updated rules may apply to their plans and administration.

## Final DOL Regulations on ESG Investment Issues

by John Van Duzer



On November 13, 2020, the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) published final regulations addressing “environmental, social and corporate governance” (ESG) investments. The regulations replace the proposed regulations issued in June 2020 and represent the latest chapter in a series of developments on this topic, going back to at least 1994. The continuing developments reflect a tension between Republican and Democratic administrations, each of which generally has somewhat different perspectives on this topic, as further described below. It’s possible that there may be additional developments on this topic yet to come, in light of the recent change to a Democratic administration.

One of the key themes of these regulations is the emphasis on “pecuniary factors”—in other words, plan fiduciaries need to be most concerned about those factors that are expected to have a material

effect on the risk and/or return of an investment; the role of ESG factors (if and to the extent those ESG factors are non-pecuniary factors) should be minimized. This theme is consistent with prior guidance from Republican administrations, but somewhat at odds with 1994 and 2015 guidance issued during Democratic administrations. The Preamble to the regulations expresses concern about the growing emphasis on ESG factors (at least as perceived by EBSA). The EBSA is concerned about the focus on ESG factors, particularly in light of the Employee Retirement Income Security Act of 1974 (ERISA) fiduciary requirement to administer plans for the exclusive benefit of participants and their beneficiaries. The final regulations completely eliminate all references to ESG factors by name, in part because of possible confusion with, and distinctions between, other terminology sometimes used (such as “economically targeted investing” or “sustainable and responsible investing”). Instead,

the regulations now focus on whether a factor is “pecuniary,” although EBSA does admit that at least some ESG factors may at times be classified as pecuniary/factors, rather than non-financial factors.

Prior DOL guidance (including the recent proposed regulations) recognized the possibility that two alternative investments may appear to be economically indistinguishable, and in that situation, a fiduciary might “break the tie” by relying on a non-pecuniary (e.g., an ESG) factor. However, the current Preamble suggests a change in this position; the DOL now states that in analyzing two investment options, an ERISA fiduciary will seldom find “ties” that justify the use of non-pecuniary factors in making an investment decision. Accordingly, the Preamble cautions that, in the case of a fiduciary who does wish to apply a “tie-breaker” concept, the fiduciary should document why it believes pecuniary factors were not sufficient to differentiate and choose among the investments.

Note that the EBSA regulations specifically apply to “participant-directed” or “self-directed” plans (as well as to other types of retirement plans). So, a plan fiduciary who is assembling, choosing, or modifying an investment menu for choices by the plan participants must evaluate the designated investment alternatives on the menu based solely on pecuniary factors. Investment return should not be sacrificed, and the fiduciary should not take on additional investment risk to promote non-pecuniary objectives or goals.

Note that the new regulations do not apply to brokerage windows, self-directed brokerage accounts, or similar plan arrangements. However, the DOL cautions that the general ERISA principles of loyalty and prudence *do* apply to these types of investment alternatives and must be taken into account. The regulations include special treatment for qualified default investment alternatives (QDIAs), which provide investments for participants who do not make affirmative elections.

## Proxy Voting and Shareholder Rights—Final Fiduciary Rules

by Tom Meagher



As reported in the [Third Quarter 2020](#) issue of our *Quarterly Update*, the Department of Labor (DOL) published a proposed rule intended to clarify a fiduciary’s duties under the Employee Retirement Income Security Act of 1974 (ERISA) relating to the voting of proxies. On December 16, 2020, the DOL published final regulations in the Federal Register to address the application of a fiduciary’s obligation to act prudently and for the exclusive benefit of participants and beneficiaries with respect to the exercise of shareholder rights and proxy voting under ERISA.

The final rule includes a list of principles that fiduciaries must comply with when making decisions on exercising shareholder rights and proxy voting: The primary goal of the new rule is to ensure that fiduciaries do not subordinate the interests of the participants and

The final regulations generally became effective as of January 12, 2021, 60 days after those same regulations were published in the Federal Register. However, the final regulations need only apply to investments and investment decisions made after this January effective date. Investments made prior to the effective date are apparently not subject to these new regulations, assuming those investments complied with ERISA and existing DOL guidance in effect at the time when the prior investment decisions were made. The DOL also notes that a fiduciary has a continuing responsibility to monitor whether to continue the ongoing investments of the plan.

Finally, to the extent that the regulations require a plan fiduciary to replace a QDIA, the regulations permit a delayed April 30, 2022 effective date. This delayed effective date recognizes the additional complications involved with changing a plan’s QDIA, along with the fact that the selection of an investment fund as a QDIA is not analogous to merely offering participants an additional investment alternative as part of a broader investment lineup. However, EBSA believes that few existing plans will be affected by this delayed QDIA effective date.

This article is intended to provide a high-level review of these new regulations. The regulations include a very lengthy and detailed Preamble, which includes an extensive discussion of the various issues. Readers who wish to ensure compliance with the new regulations, and/or make changes to their investments or investment policies to reflect the new regulations, are encouraged to contact Aon’s Investment or Retirement Legal Consulting & Compliance consultants to obtain a more complete understanding of the regulations and new requirements.

beneficiaries in their retirement income or financial benefits under the plan to any non-pecuniary objective or promote non-pecuniary benefits or goals unrelated to the financial interests of the plan’s participants and beneficiaries.

The final rule generally takes effect on January 15, 2021, with delayed applicability dates for certain provisions relating to a fiduciary’s review of material facts relating to a proxy vote, maintenance of records of proxy votes, and the review of proxy advisor and pooled investment vehicle voting policies.

A summary of some of the more important features of the final rule follows.

### **Fiduciary Rule—General Proxy Voting and Exercise of**

**Shareholder Rights.** In the final rule, the DOL notes that the fiduciary duty to manage shareholder rights and proxy voting does not require

the voting of every proxy or the exercise of every shareholder right. However, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must: (i) act solely in accordance with the economic interest of the plan and its participants and beneficiaries; (ii) consider any costs involved; (iii) not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any non-pecuniary objective, or promote non-pecuniary benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries; (iv) evaluate material facts that form the basis for any particular proxy vote or other exercise of shareholder rights; (v) maintain records on proxy voting activities and other exercises of shareholder rights; and (vi) exercise prudence and diligence in the selection and monitoring of persons, if any, selected to advise or otherwise assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services.

**Fiduciary Rule—Duty to Monitor Delegation of Proxy Voting or Exercise of Shareholder Rights.** When the plan fiduciaries delegate authority to vote proxies or exercise shareholder rights to an investment manager or a proxy voting firm or other person who performs advisory services as to the voting of proxies, a responsible plan fiduciary is required to prudently monitor the proxy voting activities of such investment manager or proxy advisory firm and determine whether such activities are consistent with the ERISA regulations. It is noteworthy that a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the plan fiduciary's obligations under ERISA.

**Fiduciary Rule—Safe Harbor Available.** The final rule does not establish minimum requirements or the exclusive means for a plan fiduciary to satisfy its proxy voting and shareholder right responsibilities. Nonetheless, a plan fiduciary may adopt either or both of the following policies as a safe harbor with respect to decisions on whether to vote proxies, recognizing that the fiduciary does retain certain ongoing fiduciary responsibilities: (1) a policy to limit voting resources to particular types of proposals that the fiduciary has prudently determined are substantially related to the issuer's business activities or are expected to have a material effect on the value of the investment (e.g., certain merger and acquisition transactions requiring a shareholder vote); or (ii) a policy of refraining from voting on proposals or particular types of proposals when the plan's holding in a single issuer relative to the plan's total investment assets is below a quantitative threshold that the fiduciary prudently determines, considering its percentage ownership of the issuer and other relevant factors, is sufficiently small that the matter being voted upon is not expected to have a material effect on the investment performance of the plan's portfolio (or investment performance of assets under management in the case of an investment manager) (e.g., where the value of the plan's share ownership is sufficiently small as to not be materially impacted by the event).

#### **Fiduciary Rule—Additional Requirements**

- **Selection of Third Parties to Handle Proxy Voting.** Plan fiduciaries will be expected to assess the qualifications of any person to whom proxy voting and related shareholder responsibilities are to be delegated. If a fiduciary determines that the recommendations and other activities of such person are not being carried out in a manner consistent with those policies and/or guidelines or that conflicts exist, then the fiduciary will be expected to take appropriate action in response.

- **Monitoring of Third Parties to Whom Proxy Voting Responsibilities Have Been Delegated.** Plan fiduciaries are required to periodically review proxy voting policies of third parties to determine whether such activities are consistent with the final rule. (The DOL modified the proposed rule to remove the specific two-year requirement and provided a general requirement for periodic review of such voting policies. The DOL noted that general industry practice is to review investment policy statements approximately every two years and expects that fiduciaries will review proxy voting policies with roughly the same frequency.)

- **Pooled Investment Vehicles Holding ERISA Plan Assets.** In the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. Such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and the final rule, and require participating plans to accept the investment manager's investment policy statement, including any proxy voting policy, before they are allowed to invest. In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and the final fiduciary rules before deciding to retain the investment manager.

- **Maintain Proxy Voting Records.** The final rule requires fiduciaries to evaluate material facts that form the basis for any particular proxy vote or other exercise of shareholder rights and to maintain records on proxy voting activities and other exercises of shareholder rights. In general, the extent of the documentation needed to satisfy the monitoring obligation will depend on individual circumstances, including the subject of the proxy voting and its potential economic impact on the plan's investment. (The DOL noted that while the provision does not contain a specific documentation requirement, an SEC rule requires investment advisers registered with the SEC under the Investment Advisers Act of 1940 to maintain a record of each proxy vote cast on behalf of a client and certain related documents.)

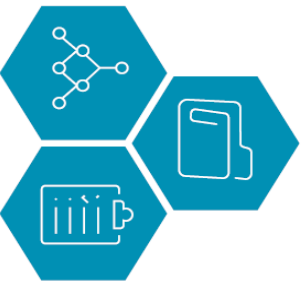
- **Mutual Funds and Pass-Through Voting.** As also noted in our prior article, the final rule would not apply to a mutual fund's exercise of shareholder rights with respect to the stock it holds because ERISA does not generally govern the management of

mutual fund assets. In addition, the final rule does not apply to voting, tender, and similar rights that are passed through to plan participants and beneficiaries, as may be the case for company stock or mutual fund shares in a participant-directed individual account plan, such as a 401(k) plan or employee stock ownership plan.

Aon's team of investment and legal consulting professionals are available to assist plan fiduciaries in evaluating their existing policies and related processes with respect to voting proxies and the exercise of shareholder rights.

## Avoid Pitfalls—Ensure Regulatory Compliance

by Linda M. Lee



2021 is upon us and a time to remind plan sponsors of the importance of reviewing their plan administration and qualified plan documents to maintain compliance. As in prior years, Aon continues to publish annual updates on plan limits, key compliance factors, and required year-end amendments as they relate to defined benefit (DB) and defined contribution (DC) plans.

legal obligations, many of which have important deadlines. Aon's annual Compliance Calendar provides plan sponsors and other interested parties with significant IRS, Department of Labor, and other federal regulatory agency due dates and deadlines for benefit-related compliance obligations. This calendar is designed to help plan sponsors maintain compliance with these due dates for critical deadlines.

Following is an overview of the topics addressed in the 2021 Compliance Calendar:

**2021 Benefits Limits.** The Internal Revenue Service (IRS) announced the annual dollar limitations for pension and other retirement-related plans—including limits on the amount of contributions that may be made to DC plans, the annual amount that can be paid from DB plans, and the amount of compensation that can be used while calculating benefits. The limits are adjusted for price and wage inflation and general law changes. Qualified retirement plan administration *must be adapted annually* to remain compliant. Following is a brief overview—some items remained the same for 2021; a few others were increased:

- Timing of participant communications and notices (e.g., summaries of material modifications, pension benefit statements, and summaries of benefits and coverage);
- Changes to health plan reporting obligations;
- Plan contribution due dates;
- Filing dates for IRS forms (e.g., Forms W-2 and 1099-R); and
- Plan-level deadlines that may be affected by COVID-19 relief for 2021.

The Aon 2021 Compliance Calendar helps promote timely disclosure and compliance with related filing obligations and helps avoid civil monetary penalties for violations under the Employee Retirement Income Security Act of 1974. Click [here](#) to download your complimentary copy of the 2021 Compliance Calendar.

### Additional Guidance for Plan Sponsors—2021 Plan Document

**Considerations.** Sponsors of individually designed tax-qualified retirement plans should review recent developments and other regulatory guidance that may impact their DB and DC plans' operations. To assist with this effort, Aon prepared a summary highlighting some key considerations:

- Discretionary amendments for DB and DC plans, resulting from recent announcements and/or tax law changes, including plan amendments to address changes made by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) or the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that generally must be adopted by the end of the 2022 plan year;
- Discretionary amendments to consider when terminating DB plans;

	2021	2020
Employee Elective Deferral Limit (Code §402(g)(1))	\$19,500	\$19,500
DC Plan Annual Addition Limit (Code §415)	\$58,000	\$57,000
DB Plan Annual Addition Limit (Code §415)	\$230,000	\$230,000
Annual Compensation Cap (Code §401(a)(17))	\$290,000	\$285,000
HCE Pay Threshold (Code §414(g))	\$130,000	\$130,000
Catch-up Contribution Limits (Code §§401(k) and 403(b))	\$6,500	\$6,500

Click [here](#) to download your copy of Aon's annual, comprehensive report that includes all dollar limitations for 2021.

**Aon's 2021 Compliance Calendar.** Plan sponsors must keep their retirement and health and welfare plans compliant with all relevant

- Other discretionary amendments and considerations due to recent litigation, and
- A summary of actuarial equivalent class action cases.

Aon's Retirement Legal Consulting & Compliance consultants will be pleased to discuss the extent to which recent developments summarized in regulatory guidance and case law developments may

apply to or affect your qualified plan. To the extent that we can be helpful, our consultants are also available to assist with a more detailed review of your current qualified plan documents and evaluate whether those documents are updated for all applicable law, regulatory, and other administrative changes.

Click [here](#) to download a copy of the plan guidance.

## Case Highlights Challenges in Recovery of Overpayments

by Hitz Burton



A recent decision by the Sixth Circuit Court of Appeals in *Zirbel v. Ford Motor Co.* (November 16, 2020) illustrates some of the challenges retirement plans face when they seek the return of overpayments from plan participants, beneficiaries, or alternate payees. Although the court held for Ford Motor Co., the decision should put plan sponsors and their plan fiduciaries on notice as to how to protect themselves from possible participant defenses to return of an overpayment.

In *Zirbel*, the Ford retirement plan overpaid an alternate payee by \$243,000. Four years after the overpayment, the plan sought to recover the erroneous payment. Zirbel raised a number of legal theories for why she should not have to return the funds paid in error, including that the funds were no longer specifically identifiable because of gifts made to children, taxes paid, and the commingling of the funds into her banking and brokerage accounts. In rejecting her arguments, the court noted that in seeking a return

of the overpayment the plan fiduciaries were (1) acting in accordance with authorizing language in the plan document; and (2) that the simple commingling of funds into banking or investment accounts was not sufficient to overcome the equitable claims of the plan on such funds under the Employee Retirement Income Security Act of 1974.

The *Zirbel* decision provides instructive guidance to plan sponsors, including the importance of plan language authorizing fiduciaries to seek to recover overpayments when they occur. Additionally, timing can be critical. To hopefully avoid or limit these types of situations, plan fiduciaries should consider establishing additional procedural protections that are in place well in advance of processing certain “high-risk” transactions like lump sums or other accelerated payments and QDRO assignments that split an accrued benefit (or account balance) between a participant and an alternate payee. Other regular, periodic checks on recent plan distributions may be helpful as well. While not specifically raised by Zirbel as a defense to having to make repayment to the Ford plan, the court also expressed sympathy for potential tax complications arising from overpayment errors such as where the passage of time since the distribution prevents the payee from filing an amended return.

Aon's Retirement Legal Consulting & Compliance consultants are well versed on the types of procedural protections that a plan sponsor and fiduciary charged with oversight for a qualified plan should consider, including suggesting specific plan language as well as additional reservation of rights language that can be added to a summary plan description or benefit election materials to put participants and other beneficiaries on notice if they knowingly or otherwise receive overpayments from a qualified plan.

# Final Plan Loan Rollover Regulations Provide Expected Relief

by Dan Schwallie



The Internal Revenue Service (IRS) and Department of the Treasury released final plan loan rollover offset regulations on December 7, 2020. The final regulations adopt verbatim the proposed regulations published in the Federal Register on August 20, 2020—as previously covered in the [Fourth Quarter 2020](#) issue of our *Quarterly Update*—with the exception of the applicability date of the final regulations. The final regulations apply to plan loan offset amounts, including qualified plan loan offset (QPLO) amounts, treated as distributed on or after January 1, 2021. However, taxpayers (including a filer of an IRS Form 1099-R) may choose to apply the final regulations to amounts treated as distributed on or after August 20, 2020.

Determining whether a plan loan offset amount is a QPLO amount is important to correctly report a plan loan offset amount as a QPLO

amount using Code M in box 7 of Form 1099-R. If the plan loan offset amount is not a QPLO amount, the offset should still be reported as an actual distribution, but without Code M in box 7 (nor should Code L be used, which is for a deemed distribution). The one-year anniversary rule of the regulations is intended to assist plan administrators by providing a bright-line rule for determining whether a plan loan offset amount following a severance from employment is a QPLO amount.

There are multiple tax reporting situations that can arise with respect to the treatment of plan loans. The interaction of loan defaults, deemed distributions, plan loan offsets, and QPLOs can be complicated and confusing, and their interaction depends in large part on how the provisions of a plan are drafted to deal with them.

Aon's Retirement Legal Consulting & Compliance consultants are available to assist plan sponsors in understanding how these concepts interact and how to administratively comply with these final regulations.

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## Tax-Free Employer Payment of Student Loans Extended Until 2026

by Dan Schwallie



The Taxpayer Certainty and Disaster Tax Relief Act of 2020, which was enacted on December 27, 2020 as part of the Consolidated Appropriations Act of 2021, extends the ability of employers to exclude employer-paid student loan assistance from employee income. As reported in the [Second Quarter 2020](#) issue of our *Quarterly Update*, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) modified Section 127 of the Internal Revenue Code (Code) to add employer-paid student loan assistance to the employer educational assistance that can be excluded from employee income, but only through the end of 2020. The extension of the income exclusion applies to the payment by an employer made after December 31, 2020 and before January 1, 2026, whether paid to the employee or to a lender, of principal or interest on any qualified education loan (as defined in Code Section 221(d)(1)) incurred by the employee for the employee's education.

Code Section 127 provides an annual exclusion of up to \$5,250 of employer educational assistance per employee from the employee's

income for federal income tax purposes. The \$5,250 annual cap applies to the combined amount of employer educational assistance and employer-paid student loan repayments for an employee. Code Section 127 employer assistance is not available to an employee's spouse, children, or other dependents. Interest paid by the employer cannot be deducted from the employee's federal taxable income under the student loan interest deduction. As required by Code Section 127, such a program must be administered under a written plan for the exclusive benefit of the employer's employees and not discriminate in favor of highly compensated employees. Reasonable notice of the availability and terms of the program must be provided to eligible employees, and the program must not provide a choice between the assistance and other remuneration includible in gross income.

Aon's Retirement Legal Consulting & Compliance consultants are available to assist plan sponsors in understanding the implications of these changes, drafting any required plan documents, and complying with the new rules.

# Remote Notarization and Electronic Submissions Becoming a New Normal

by Linda M. Lee



The lingering shutdown and social distancing mandates throughout the country continue to bring about new challenges for employers, but at the same time afford employers opportunities to find more efficient and effective processes. This is especially true as they apply to retirement plan administration. As reported in the [Third Quarter 2020](#) issue of our *Quarterly Update*, the Internal Revenue Service (IRS)

provided temporary relief from the requirement that a plan representative or notary be “physically present” while witnessing the signature of a participant, or the consent of a spouse if required, with respect to a benefit election. That relief was set to expire as of December 31, 2020.

In recognizing the continued dilemma during this pandemic, the IRS has extended this remote authorization relief. For the period from January 1, 2021 through June 30, 2021, IRS Notice 2021-03 continues to allow a notary to witness consent to a retirement plan election via live audio-video technology that meets the notary requirements of the applicable state or to be witnessed by a plan representative using a live audio-video technology that meets specific requirements.

The IRS Notice also includes a request for comments regarding whether relief from the physical presence requirement should be made

permanent and, if made permanent, what, if any, procedural safeguards are necessary to reduce the risk of fraud, spousal coercion, or other abuse in the absence of a physical presence requirement. Any permanent change to the physical presence requirement would be subject to further regulatory notice and would include a time period for plan sponsors and other parties to comment on the proposed guidance.

As an important reminder, plan sponsors that self-administer the participant and spousal consent requirements should also consider the relief’s impact on plan representatives who typically witness signatures. Please reach out to your Aon consultant for further assistance.

In other ongoing efforts by the IRS to improve efficiency, the IRS will be permitting determination letter applications as to the qualified status of a retirement plan upon its termination (IRS Form 5310) to transition to electronic filing via the pay.gov website. Revenue Procedure 2021-4, issued on January 4, 2021, updates the submission process as follows:

- Prior to April 6, 2021, it’s “business as usual” with plan sponsors required to submit paper copies of the Form 5310 application;
  - Between April 6, 2021 and before August 1, 2021, plan sponsors have the option to submit the Form 5310 application on paper or electronically via pay.gov; and
  - Beginning August 1, 2021, paper submissions will no longer be accepted; plan sponsors must submit the Form 5310 application electronically via pay.gov, including payment for the user fee.
- Aon’s Retirement Legal Consulting & Compliance consultants have significant experience in assisting clients with these matters, while continually navigating the myriad of challenging IRS rules and procedures.

# Quarterly Roundup of Other New Developments

by Sandy Combs, Carollynn Kent, Teresa Kruse, Jan Raines, Sue Sinclair, and Beth Thatcher

## Are Nestle 401(k) Plan Participants Getting a “Sweet Deal”?

A recent lawsuit filed on behalf of the participants in the Nestle 401(k) Savings Plan (with almost 40,000 participants and approximately \$4.2 billion in assets) alleges that fiduciaries breached their fiduciary responsibilities by allowing the plan to pay unreasonable fees for recordkeeping and administrative services and managed account services. The lawsuit also alleges that there are certain services provided by Nestle, which could have been provided by the recordkeeper and that Nestle took payment from the plan to “cover” these services, which could be considered self-dealing and not in participants’ best interests, as required by the Employee Retirement Income Security Act (ERISA).

The complaint in the Nestle case states that fees can be requested from other service providers simply by providing the number of participants in a plan to competitor firms, and the plaintiffs’ complaint includes illustrations of other plans’ fees based on participant counts in an effort to make their point. However, in Aon’s opinion, this is a very simplistic view and Aon believes that, in order for recordkeeping and investment firms to provide a competitive fee, there are a number of factors that must be considered to truly understand all sources of revenue to be received by the service provider—number of participants, plan design features, services required, number of transactions, etc.—and whether such fees are reasonable for the services provided. Moreover, courts have held that a plan fiduciary need not select the least expensive service provider but must have a reasonable and prudent basis for any selection.

While the Nestle lawsuit raises a number of potential fiduciary issues that plan fiduciaries should be mindful of, additional fiduciary liability issues that could arise include the lack of managed account provider choices on recordkeeping platforms (typically only one or two, at most), which don’t allow much negotiating power or competitiveness regarding fees. Another fiduciary issue that could arise relates to situations where the recordkeeper and the managed account provider share revenue, and the amount of that shared revenue isn’t fully disclosed—creating another source of revenue for the recordkeeper. In addition, plan sponsors can provide certain services and receive payment of direct expenses for those services—but both the fees and services should be analyzed for reasonableness on an ongoing basis.

This case is in its early stages, and the court may conclude that Nestle’s fiduciaries have acted properly. Aon will continue to monitor and provide updates when available. Aon has defined contribution specialists that can assist in performing fee benchmarking analyses with a review of both services and fees, negotiating fees with service providers, and performing full requests for proposals, when it is appropriate to do so. *Guyes v. Nestle USA Inc.*, No. 1:20-cv-01560 (E.D. Wis. Oct. 29, 2020).

## Record Retention—Paper vs. Electronic: Who Will Win?

Under ERISA, plan sponsors have certain obligations to keep plan records—some for up to six years after filing and some indefinitely.

ERISA addresses saving paper copies of documents and issues some rules for electronic filing (however, in certain cases, these electronic rules are left up to the states). Sponsors should make sure that any paper documents are also kept electronically (in case of fire or other disaster), and that all electronic documents are backed up regularly, following appropriate privacy and cybersecurity standards. In terms of relying on original documents during this period of COVID-19, the Internal Revenue Service has recognized that professional signature services might be more appropriate to confirm actions taken, and that regulatory reliance on electronic copies is going to become more prevalent. It is important for plan sponsors and fiduciaries to develop processes for filing and retaining material documents, and certain ERISA attorneys have suggested formal written retention procedures updated and in place. Aon’s Fiduciary Consulting group and Retirement Legal Consulting & Compliance consultants can assist plan sponsors and fiduciaries to determine appropriate policies and procedures for record retention and organizing plan records.

## Divorcing Couples Unaware of QDRROs

The Retirement Equity Act of 1984 (REA) amended ERISA in an attempt to rectify its failure to recognize specific needs of spouses in the workforce. The REA provided spousal rights to retirement plan benefits and established a process where divorcing couples divide the participant’s retirement account balance or accrued benefit: the qualified domestic relations order (QDRO). In July 2020, the Government Accountability Office (GAO) issued a report after finding, based on sampling recordkeepers and large plan sponsors, that few divorcing couples applied for QDROs.

The GAO’s analysis found that while more than one-third of adults age 50 and older have been through a divorce, very few apply to their plan administrator for a QDRO. Between 2008 and 2016, approximately 18% of those who went through a divorce where retirement benefits were part of the couple’s assets lost a claim to their prior spouse’s benefits. Exclusion of a former spouse’s retirement savings during the dissolution of marital assets could directly result in income insecurity at retirement.

The report identified several obstacles related to QDRO claims. One of the most common problems is the legal and recordkeeper fees associated with QDROs where the cost of obtaining legal and/or administration services for either a divorce or to file a QDRO was high relative to the potential benefit received. Secondly, spouses may not disclose retirement savings to their partners and, therefore, they are not considered when developing the domestic relations order. Other QDROs were not processed because of incomplete or unclear information provided to either the plan administrator or the recordkeeper. Lastly, many former spouses are unaware that they may be entitled to their former partner’s retirement benefits and make no effort to pursue them.

The GAO offered several recommendations to the Department of Labor (DOL) to make QDROs more effective for all stakeholders



involved. These include a focused outreach to family law practitioners to provide them further support in assisting their clients, and the inclusion of a simple, easy-to-find checklist on the Employee Benefits Security Administration website that identifies the rights of an alternate payee (spouse) and the steps and information needed to file and process a QDRO. The GAO also called on the DOL to collect and study fee information related to QDROs.

As the DOL takes steps to provide information on its website, plan sponsors may also evaluate opportunities to expand participant assistance when changing benefits during significant life events like a divorce. Providing comprehensive health, retirement, and voluntary benefit information, such as legal aid, when participants are changing benefit elections are another tool to supporting employee retirement income security.

### **When the Hunter Becomes the Hunted (Schlichter is Sanctioned)**

Retirement plan lawsuits have been prevalent for over a decade and St. Louis-based law firm, Schlichter, Bogard & Denton (Schlichter), has been at the forefront of many of these lawsuits. These class action cases against retirement plan fiduciaries have alleged excessive fees, inappropriate or imprudent investments, and self-dealing, and many have resulted in settlements, with about one-third of the settlement proceeds going to the Schlichter law firm.

In a turn of the tables, Schlichter now finds itself on the other side of the decision to award damages to claimants. In the case of *Obeslo v. Great-West Capital Management*, Schlichter represented plaintiffs that had invested in Great-West funds through individual retirement accounts and employer-sponsored retirement plans. The claims alleged that the fees charged by the defendants violated the Investment Company Act. Sections of the Act prohibit fees that are “so disproportionately large that they bear no reasonable relationship to services rendered and could not have been the product of arm’s length bargaining.”

In deciding in favor of *Great-West* in the fiduciary breach litigation, U.S. District Judge Christine M. Arguello ruled on a motion for sanctions against the Schlichter law firm, citing a completely discredited expert witness, a lack of merit in the case, and an apparent manufactured case, that Schlichter “recklessly pursued their claims through trial,” and that the plaintiff’s attorneys would be personally liable for the defendants’ costs and expenses, up to \$1.5 million. *Obeslo v. Great-West Capital Mgmt., No. 16-cv-00230-CMA-SKC (D. Colo. Aug. 7, 2020)*.

### **Only Pay for What You Need**

While the catchy slogan “Only Pay for What You Need” is used by a national insurance chain to sell insurance, it also provides some powerful advice to plan fiduciaries when it comes to managing defined contribution plan fees. Initially, it is important to distinguish which party is actually paying fees—the plan (thereby the participants) or the employer sponsoring the plan. Plan fees paid by participants must be reasonable, and plan fiduciaries are responsible for making sure those fees are not only reasonable at a point in time, but that they remain reasonable. The process of ensuring fees and services are properly aligned and reasonable is, according to ERISA, a fiduciary act. Paying plan fees from corporate resources is not, as defined by ERISA, a fiduciary act, although sponsors will certainly want to negotiate the

most reasonable plan fees, and avoid any real, perceived, or potential conflicts of interest. Keep in mind that “fees” include those incurred for recordkeeping (including participant transaction fees), investment management, investment advisory, as well as for other third-party services, such as audit and legal counsel. The abundance of litigation against plan fiduciaries clearly demonstrates that litigators are looking for opportunities to accuse plan fiduciaries of not adequately addressing plan fees; much of the fiduciary breach litigation today concerns plan fees. How can plan fiduciaries fulfill their responsibility to ensure plan fees and services are reasonable? There are a variety of methods available, from a relatively simple benchmarking of fees against peer averages to a full-blown request for proposal. Regardless of which party is paying plan fees, fiduciaries have a responsibility to review, understand, and benchmark plan fees and services. Aon recommends a plan fee analysis at least every two to three years and can assist in helping plan fiduciaries determine what level of analysis is best to ensure that fiduciaries and their plan participants “only pay for what you need.”

### **Retirement Plan Litigation Update**

Retirement plan litigation has been prevalent over the past decade impacting corporate plan sponsors, financial institutions that are also plan sponsors, and universities sponsoring 403(b) plans. Defined contribution plan cases generally fall into the following three areas: inappropriate or imprudent investment choices; excessive fees; and self-dealing. Recently, several cases involving universities and other institutions have been dismissed (in full or in part) or settled, including cases involving the University of Pennsylvania (settled, undisclosed amount); Mutual of Omaha Insurance Co. (settled for \$6.7M); Reliance Trust (settled for \$39.8M and other remedies); and OSF HealthCare System (settled for \$25M and other remedies).

Plan sponsors seeking to reduce their litigation risk use a variety of strategies including improving their fiduciary process for plan governance, increasing the number of passive funds in their plans, and implementing better fee transparency.

### **New Retirement Plan Cases**

Retirement plan cases involving plan fiduciaries continue to be filed and, in many cases, proceed to trial. Although the list of recently filed cases is only illustrative and many of the defendants in these cases may ultimately prevail, it may be helpful to our readers to see the frequency of fiduciary liability claims involving target date funds and excessive fees. For example, recent cases involving target date funds have been brought against The Allstate Corporation and Coca-Cola Consolidated, Inc., while excessive fee cases (involving both administrative and investment fees) have been brought against plan fiduciaries at Biogen, Inc.; Altcor, Inc.; Trinet HR, Inc.; Duke Energy Corporation; Pentegra Retirement Services; MGM Resorts International; Barnabas Health, Inc.; and Insurance Services Office, Inc.

Aon will continue to track these cases, and others, as they develop. In response to this uptick in fiduciary litigation, Aon’s consultants have now been speaking with employers of all sizes who are considering participation in the Aon Pooled Employer Plan as an alternative to continuing exposure to these fiduciary liability lawsuits.

Please see the applicable Disclosures and Disclaimers on page [14](#).

# Aon's Retirement Legal Consulting & Compliance Consultants

<b>Tom Meagher</b> , Senior Partner/Practice Leader thomas.meagher@aon.com	<b>Clara Kim</b> , Associate Partner clara.kim@aon.com	<b>Jennifer Ross Berrian</b> , Partner jennifer.ross.berrian@aon.com
<b>David Alpert</b> , Partner david.alpert@aon.com	<b>Linda M. Lee</b> , Project Coordinator linda.lee.2@aon.com	<b>Dan Schwallie</b> , Associate Partner dan.schwallie@aon.com
<b>Hitz Burton</b> , Partner hitz.burton@aon.com	<b>Susan Motter</b> , Associate Partner susan.motter@aon.com	<b>John Van Duzer</b> , Associate Partner john.van.duzer@aon.com
<b>Elizabeth Groenewegen</b> , Associate Partner elizabeth.groenewegen@aon.com	<b>Beverly Rose</b> , Partner beverly.rose@aon.com	

## Guest Authors

Thank you to the following colleagues who contributed articles to this quarter's publication.

<b>Sandy Combs</b> , Consultant Aon Investments USA Inc. sandy.combs@aon.com	<b>Teresa J. Kruse</b> , Senior Consultant Aon Investments USA Inc. teresa.kruse@aon.com	<b>Sue Sinclair</b> , Senior Consultant Aon Investments USA Inc. sue.sinclair@aon.com
<b>Carolynn Kent</b> , Consultant Aon Investments USA Inc. carolynn.kent@aon.com	<b>Jan Raines</b> , Associate Partner Aon Investments USA Inc. jan.raines@aon.com	<b>Beth Thatcher</b> , Consultant Aon Investments USA Inc. beth.thatcher@aon.com

### About Aon

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.

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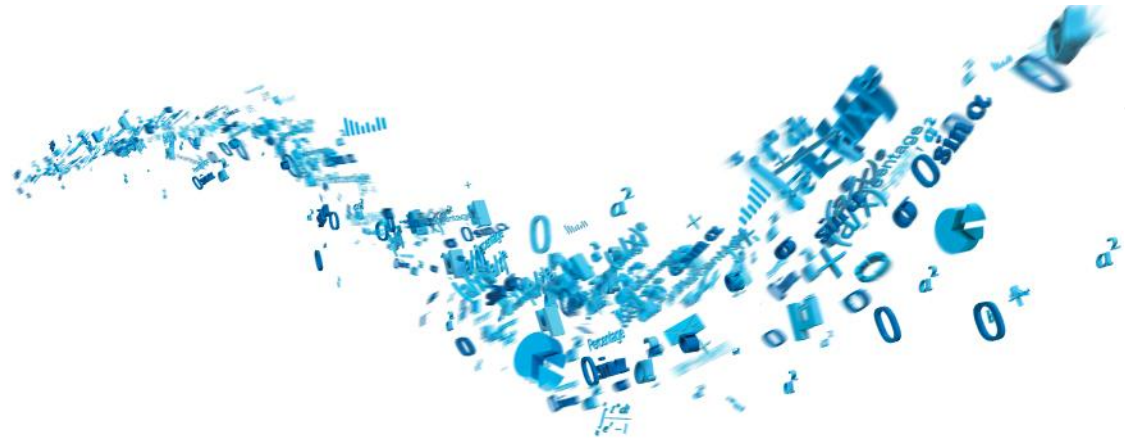
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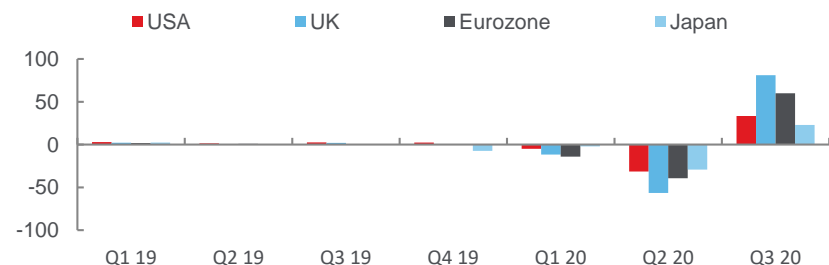
# Appendix

# Economic Highlights



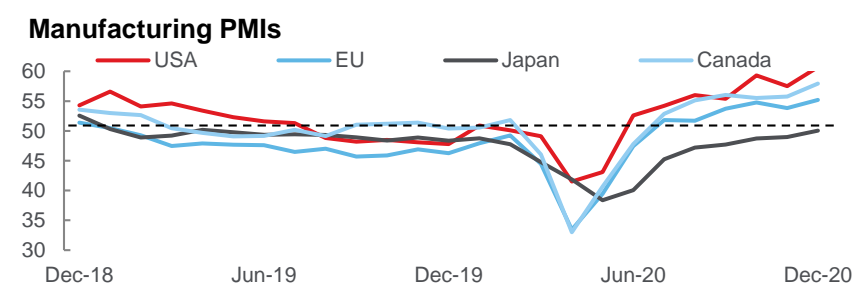
There was widespread cheer at the news that a number of vaccines had gained approval, sparking the biggest global immunization programme in history. However, supply bottlenecks have affected the early days of the roll-out at the same time as infections have been surging strongly across the world – this has now been exacerbated by the discovery of more infectious strains, making management even harder. Economic trends will continue to be hurt for as long as lockdowns are deemed necessary, which has continued negative implications for government finances – the hope is that the pandemic will end this year, but its impact will be much longer-lasting.

## Big rebounds in GDP in Q3...



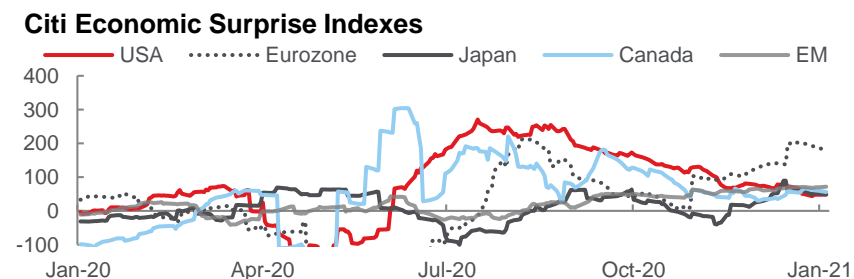
Source: Factset

## ...and PMIs into the end of the year have been improving



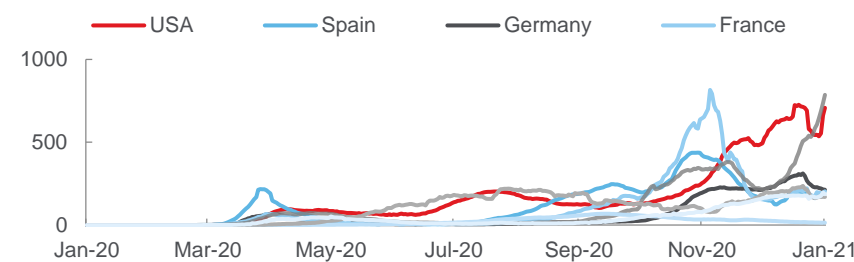
Source: Factset

## Economic data may be starting to disappoint the consensus



Source: Factset

## Covid infections are starting to surge once again



Source: Factset

\*Indices cannot be invested in directly. Unmanaged index returns assume reinvestment of any and all distributions and do not reflect fees or expenses. Past performance is no guarantee of future results.



# Economic Highlights

## USA

- An historic fall in GDP in Q2 was followed by an equally historic rebound in Q3 (33.4% annualized) as lockdowns were eased over the summer. However, as infections have surged once again, restrictions have also returned, implying renewed economic weakness into 2021.
- Before then, activity in most of Q4 has been relatively positive, with the ISM manufacturing index rising to 60.7 – the highest level since August 2018. However, the pace of job gains has been slowing. There was an addition of 336k jobs in November but a surprise decline of 140k in December. The unemployment rate also remains high at 6.7%.
- Meanwhile, the Democrat wins in the two Senate run-offs have greatly increased the chances of extra government stimulus, which will provide some degree of offset to the severe effects of the pandemic.
- The Fed reasserted its commitment to remain highly accommodative for a long period, implying continued yield curve control.

## EAFE

- The second virus wave intensified with the onset of winter months, prompting sharp lockdowns. This means that the economic recovery over the summer is likely to be short-lived. Meanwhile, the EU passed its €1.8trn budget and recovery package over the quarter and the ECB increased the size of its Pandemic Emergency Purchase Programme from €1.35trn to €1.85trn and extended it until March.
- In Japan, the economic hit from the pandemic was not as extreme as in other G7 countries but was still painful. There has been some degree of recovery since the initial wave and the country seems to be controlling the virus relatively well so far, although recent infections have raised concern.
- In the UK, a Brexit deal was finally agreed in the last few days before the New Year deadline, which will allow most manufactured goods to trade without tariffs but is still a relatively limited relationship. Meanwhile, the discovery of a new, highly infectious variant of the virus prompted increasing restrictions and threatened the already moderate recovery.

## Emerging Markets

- The latest data from China has indicated an export sector that is in markedly better shape than many of its competitors. This has been driven by strong global demand for technology, components and medical equipment. As a result, the Chinese recovery from the pandemic has been strong so far.
- The picture in other emerging market nations is more mixed – the recoveries in Brazil, Turkey and Poland have been strong so far, for example, while India, Mexico and South Africa continue to struggle with weak activity due to lockdowns and falling confidence.
- Monetary policy has been loosened in many EM countries and fiscal stimulus measures have also been introduced in some. Whilst the near-term picture is one of uneven recovery, the medium-term concern will be rising government debt and issuance. Additionally, there are some early signs that supply chains outside of China may be altered, thus threatening some economies.
- As with the developed world, the outlook for EM countries is dependent both on outbreak management and global trade developments.



# View Guidance

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<p>Large under-performance expected with highest conviction</p>	<p>More under-performance or stronger conviction</p>	<p>More likely to underperform</p>	<p>Weak conviction or no view on relative performance</p>	<p>More likely to outperform</p>	<p>More outperformance or stronger conviction</p>	<p>Large outperformance expected with highest conviction</p>
<ul style="list-style-type: none"><li>• Target larger underweight</li><li>• Bring forward selling plans and defer SAA buying implementation</li><li>• Do not rebalance to target weight yet</li></ul>	<ul style="list-style-type: none"><li>• Target underweight</li><li>• Bring forward selling plans and defer SAA buying implementation</li><li>• Do not rebalance up to target weight yet</li></ul>	<ul style="list-style-type: none"><li>• Target small underweight to strategic weight</li><li>• Prefer to avoid buying and selling on strength</li><li>• Buying for SAA reasons fine, but add slowly or into weakness.</li><li>• Consider partial rather than full rebalancing</li></ul>	<ul style="list-style-type: none"><li>• Target benchmark or strategic weight</li><li>• Buying/ Selling both look ok coming from SAA changes or rebalancing</li></ul>	<ul style="list-style-type: none"><li>• Target small overweight to strategic weight</li><li>• Prefer to accumulate</li><li>• Selling for SAA reasons fine, but look to sell gradually</li><li>• Slow rebalancing moves back to benchmark weight</li></ul>	<ul style="list-style-type: none"><li>• Target overweight</li><li>• Bring forward buying plans and defer SAA selling implementation</li><li>• Do not rebalance down to target weight yet</li></ul>	<ul style="list-style-type: none"><li>• Target larger overweight</li><li>• Bring forward buying plans and defer SAA selling implementation</li><li>• Do not rebalance to target weight yet</li></ul>

# Appendix: Investment View Framework

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## Investment View

### Fundamental

Analyze the core economic and underlying drivers of an asset class. For example:

- Economic Growth
- Earnings Growth
- Default Risk

### Valuation

Establish if the asset class is cheap or expensive given our fundamental outlook. For Example:

- P/E Ratio
- Credit Spreads
- Yield Levels

### Market Awareness

Establish if near-term drivers for the asset class are positive or negative. For Example:

- Technical Indicators
- Sentiment Surveys
- Futures/Options Positioning

# Appendix: Index Definitions

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**MSCI All Country World Index** - A capitalization-weighted index of stocks representing approximately 46 developed and emerging countries, including the U.S. and Canadian markets.

**MSCI Emerging Markets Index** - A capitalization-weighted index of stocks representing 26 emerging country markets.

**MSCI US** - A market capitalization-weighted index that is designed to measure the equity market performance of stocks in the USA.

**JPM EMBI Global Diversified** – Comprised of dollar-denominated Brady bonds, traded loans and Eurobonds issued by emerging market sovereign and quasi-sovereign entities. The Diversified version limits the weights of the index countries by only including a specified portion of those countries' eligible current face amounts of debt outstanding, providing for a more even distribution of weights within the countries in the index.

**JPM GBI-EM Global Diversified** - Designed to provide a comprehensive measure of local currency denominated, fixed-rate, government debt issued in emerging markets.

**BofA Merrill Lynch High Yield** - A market capitalization-weighted index that tracks the performance of U.S. dollar-denominated, below investment grade corporate debt publicly issued in the U.S. domestic market.

**Trade weighted US Dollar (Federal Reserve)** - A weighted average of the foreign exchange value of the U.S. dollar against a broad index currencies that circulate widely outside the country of issue.

**VIX Index** – Tracks the market's expectation of 30-day volatility. It is constructed using the implied volatilities of a wide range of S&P 500 index options.

**MSCI World Index** - A free float-adjusted market capitalization weighted index that is designed to measure the equity market performance of developed markets, representing 24 developed market country indices.

**Russell 1000 Index** - An Index that measures the performance of the largest 1,000 stocks contained in the Russell 3000 Index.

**Russell 2000 Index** - An Index that measures the performance of the smallest 2,000 stocks contained in the Russell 3000 Index.

**MSCI EAFE Index** - A capitalization-weighted index of stocks representing 22 developed countries in Europe, Australia, Asia, and the Far East.

**HFRI Fund Weighted Composite Index** – The HFRI Fund Weighted Composite Index is a global, equal-weighted index of over 2,000 single-manager funds that report to HFR Database. Constituent funds report monthly net of all fees performance in US Dollar and have a minimum of \$50 Million under management or a twelve (12) month track record of active performance. The HFRI Fund Weighted Composite Index does not include Funds of Hedge Funds.

**S&P/LSTA Leveraged Loans Index** – The S&P/LSTA Leveraged Loan Index is the first index to track the investable senior loan market. This rules-based index consists of US loan facilities in the syndicated leveraged loan universe.

**Bloomberg Barclays Corporate Bond Index** - An unmanaged index considered representative of fixed-income obligations issued by U.S. corporates.

**Bloomberg Barclays Credit Index** - An unmanaged index considered representative of fixed-income obligations issued by U.S. corporate, specified foreign debentures, and secured notes.

**ML MOVE Index** - The Merrill Lynch Option Volatility Estimate (MOVE) Index is a yield curve weighted index of the normalized implied volatility on 1-month Treasury options which are weighted on the 2, 5, 10, and 30 year contracts

**ISM Purchasing Managers Index** - The PMI® is a composite index based on the diffusion indexes of five of the indexes with equal weights: New Orders (seasonally adjusted), Production (seasonally adjusted), Employment (seasonally adjusted), Supplier Deliveries (seasonally adjusted), and Inventories. Diffusion indexes have the properties of leading indicators and are convenient summary measures showing the prevailing direction of change and the scope of change.



## Appendix: Data Disclosures

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Chicago, IL 60601  
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