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Summary of SEC's March 19 AMAC Meeting

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March 23, 2021 TO: ICI Members
ESG Advisory Group
ESG Task Force
SEC Rules Committee SUBJECTS: ESG RE: Summary of SEC's March 19 AMAC Meeting

The SEC's Asset Management Advisory Committee (AMAC) met on March 19. The agenda[1] covered discussions of: (1) the ESG Subcommittee, including a panel discussion on that Subcommittee's potential recommendations of December 1, 2020;[2] (2) the Diversity & Inclusion and Private Investments Subcommittees, including potential recommendations from those Subcommittees; and (3) AMAC's agenda for 2021. A summary of the Commissioners' opening statements, the subcommittee reports, and plans for two new subcommittees is provided below.

Commissioner Statements

The meeting opened with statements from Acting Chair Allison Herren Lee and the Commissioners. Chair Lee said that AMAC's discussions about environmental, social, and governance (ESG) will form a key piece of how the SEC considers new regulation in this space.[3] Chair Lee stated that the market does not have adequate information about companies' diversity metrics and expressed concerns about the potential disparities between public and private markets.

Commissioner Hester Peirce encouraged AMAC to pursue a broader range of issues this year.[4] She noted that the ESG conversation at the previous AMAC meeting unearthed an important tension between the fact that issuers already have to disclose material risks and the calls for special ESG disclosure requirements. She stated that "[m]ateriality has served us well, and undermining it to accommodate ESG will harm investors." She called on AMAC to "rethink the wisdom of recommending that we embark on a program to write standards for a set of issues nobody can define." She noted that ESG standards are not akin to accounting standards, which serve a clear, time-tested, universally understood objective and that having the SEC build a "GAAP-like edifice around ESG standards would give investors a false sense of confidence in standards that are subjective, shifting, and sometimes even senseless."

Commissioner Elad Roisman raised several questions for the ESG panel to consider.[5] He asked the asset managers to consider the following:

- How have you gauged what investors are looking for when it comes to ESG products? How do you design and market products tailored to investors' interests?
- To the extent you are focusing on minimizing risk and achieving high returns, what E, S, and G information specifically do you believe you need from issuers, and why? How is this information related to valuing potential targets for investment and valuing portfolio companies on an ongoing basis?
- I would like to understand how asset managers are currently seeking out this information. I know some request companies provide SASB or TCFD disclosures, or they seek the information in a different manner. How do you choose which approach to take?
- How have European disclosure mandates, such as the Sustainable Finance Disclosure Regulation, factored into this decision-making?
- To the extent that you are looking to increase comparability of issuers' disclosure, why is this important in the case of ESG? In other contexts, we do not demand perfect comparability across all categories of material information.

For the panelists representing public companies, he asked:

- How could the burden be mitigated for companies who are working with investors to provide them with ESG information?
- I understand that liability is one concern, and there may be others. Were the SEC to require new ESG disclosures, should we consider allowing them to be furnished rather than filed? Should we consider a safe harbor, dependent on particular conditions such as the presence of cautionary language?

He also noted that the subcommittee's preliminary recommendation contemplates that the SEC rely on a third-party standard setter to identify what information is material and asked:

- How should the SEC oversee such a third party? Should we extend our oversight further, for example, to ESG-index providers and ESG-rating agencies, since so many "ESG" funds and investment products are derivative of their work?

Commissioner Crenshaw supported the creation of a consistent, comparable ESG disclosure framework and asked AMAC to consider evaluating securities lending practices, including as they relate to proxy voting.

ESG Subcommittee Panel Discussion

The ESG Subcommittee had presented for consideration several preliminary recommendations at the December 2020 AMAC meeting, including recommendations relating to mandatory disclosure by corporate issuers of material ESG risks. AMAC did not vote on the recommendations and directed the Subcommittee to engage with issuers. The March 19, 2021 meeting included a panel of issuers and investors providing their perspectives on mandatory disclosure by corporate issuers.[6] The comments of each panelist are provided below.[7]

Marisa Buchanan, JPMorgan Chase & Co.: She recommended that disclosure be designed to provide investors and lenders with information to make decisions and discouraged consideration of mandatory disclosures intended to address broader policies. She suggested balancing a principles-based approach with prescriptive elements and to consider specific types of data relevant to specific industries.

Jill Blickstein, American Airlines: She noted that American Airlines has been reporting greenhouse gas emissions information for several years. It has begun to report under the Task Force on Climate-related Financial Disclosures (TCFD) and Sustainability Accounting Standards Board (SASB). They turned to outside experts for help with some of the TCFD's climate-related scenarios. They found the process of developing the reports to be a good business strategy tool that facilitated engagement and discussions regarding risks. She agreed that it is important to balance qualitative disclosure with quantitative disclosure. She observed that safety systems are important to them and that the SASB standards address safety metrics in a useful way.

Yafit Cohn, The Travelers Companies, Inc.: She outlined five principles to keep in mind: (1) stay focused on value rather than values; (2) any disclosure needs to be material, as defined by the Supreme Court; (3) disclosure should be principles-based, not prescriptive; (4) there should be a safe harbor to mitigate the risks of frivolous lawsuits; and (5) any requirement should go through the Administrative Procedures Act, with notice and comment.

Richard F. McMahon, Jr., Edison Electric Institute: He stated that the energy sector developed its own template for ESG/sustainability reporting, which is aligned with the TCFD framework and has been in place for four years. He shared some lessons learned from that effort, which include: (1) ESG is an evolving concept; (2) all ESG information is not financially material; (3) more information is not necessarily better. He encouraged the SEC to build on current frameworks and cautioned it to be mindful of the costs associated with gathering and validating data. He also observed that, after the template was adopted and used, the variance among ESG ratings for specific companies declined.

Sandy Boss, BlackRock: She stated that BlackRock's view is that climate risk is an investment risk and that they ask companies to report how they are addressing the transition to net zero emissions and information based on the TCFD framework and SASB standards. She would like to see the SEC work with international counterparts to help shape the outcome. She agreed to the need to balance principles-based disclosures with metrics and that a safe harbor would be beneficial, especially during the early days for disclosure. She stated that it is important to maintain a level playing field between public and private companies. Regarding investment products, she stated that there is an important opportunity to provide more consist descriptions to help ensure investors are informed but does not believe that a change to the names rule is needed; rather, ICI's framework for fund descriptions works well.[8]

Carolina San Martin, Wellington Management: She noted that they have found that industry-specific information works well (such as safety metrics for oil and gas industry) but that some information, such as diversity in the workforce and on the board, is cross-industry. She noted that mandatory disclosure can promote consistency and accuracy of reported information. She observed that all disclosures are subject to anti-fraud provisions and recommended that a safe harbor apply to forward-looking statements. She stated there is merit to combining qualitative and quantitative disclosures. She also noted the distinction between the EU taxonomy, which is designed to drive capital to sustainability goals, and a US approach, which should be about getting the right information to investors.

Diversity & Inclusion Subcommittee Reports

The subcommittee plans to submit recommendations for consideration at the June 2021AMAC meeting and outlined the following possible recommendations for SEC action:

1. Elevate diversity and inclusion as a core value and material factor for all SEC activities.
2. Issue a policy statement discouraging the use of certain standards that has the effect of excluding smaller, diverse firms for consideration for advisory services.
3. Require more demographic data on ownership, boards, officers, and workforces of registered investment advisers on Form ADV.
4. Require advisers that operate as consultants to include on Form ADV more information about the adviser recommendation process.
5. Ensure pay-to-play rules continue to limit the influence of money in the manager selection process; and
6. Establish a process for individuals to bring complaints about discriminatory practices to the SEC, for transmittal to the appropriate government agency.

Private Investments Subcommittee Report

The subcommittee discussion[9] included consideration of the following principles for giving investors greater access to private funds:

- Liquidity of investments;
- Diversification;
- Institutional investor participation;
- Disclosure of fees, risks and conflicts;
- Avoiding excessive risks and fees;
- Aligning adviser compensation with investor interests;
- Chaperoned access; and
- Investor choice.

The subcommittee also discussed the following potential private investment access options for retail investors:

- Registered exchange-traded closed-end funds
- Tender offer or interval funds
- Target-date funds
- Registered funds of private funds

The discussions of these options included consideration of allowing a closed-end fund to hold more than 15% limit of its portfolio assets in private funds; allowing closed-end funds that invest in private funds to list and create a secondary market; and allowing target date funds to hold more than 15% of their portfolio net assets in private investments.[10]

2021 Agenda

AMAC is creating two new subcommittees. The first will focus on the evolution of advice and be chaired by Neesha Hathi of Charles Schwab Corp. The second will focus on small funds and advisers and be chaired by Scot Draeger of R.M. Davis Inc.

Annette Capretta
Associate General Counsel

endnotes

[1] The agenda is *available at* https://www.sec.gov/news/press-release/2021-47.

[2] For a summary of the December 1, 2020 meeting and the ESG Subcommittee's preliminary recommendations, *see* ICI Memorandum No. 33085, *available at* https://www.ici.org/my_ici/memorandum/memo33085.

[3] For a summary of the SEC's recent ESG-related actions, *see* https://www.sec.gov/sec-response-climate-and-esg-risks-and-opportunities.

[4] *See* Commissioner Hester M. Peirce Public Statement (Mar. 19, 2021), *available at* https://www.sec.gov/news/public-statement/peirce-amac-remarks-031921.

[5] *See* Commissioner Elad L. Roisman, *An Honest Conversation about ESG Regulation* (Mar. 19, 20201), *available at* https://www.sec.gov/news/speech/roisman-amac-2021-03-19?utm_medium=email&utm_source=govdelivery.

[6] It is unclear when the Subcommittee will present recommendations for a full committee vote and the content of any such recommendations.

[7] The biographies of the panelists are *available at* https://www.sec.gov/files/amac-031921-panelist-bios.pdf.

[8] *See* ICI, *Funds' Use of ESG Integration and Sustainable Investing Strategies: An Introduction* (July 2020), *available at* https://www.ici.org/pdf/20_ppr_esg_integration.pdf.

[9] The subcommittee's slide presentation is *available at* https://www.sec.gov/files/amac-031921-private-investments-slides.pdf.

[10] For additional background on these issues, *see* Letter from Susan Olson, General Counsel, ICI to Vanessa Countryman, Secretary, SEC (Sept. 24, 2019), *available at* https://www.sec.gov/comments/s7-08-19/s70819-6190597-192465.pdf.
