

MEMO# 33678

July 8, 2021

SEC's AMAC Meeting on ESG: Chair Gensler and Commissioner Statements and Committee Recommendations

[33678]

July 8, 2021

TO: ICI Members

ICI Global Members

ESG Advisory Group

ESG Task Force

SEC Rules Committee SUBJECTS: Disclosure

ESG RE: SEC's AMAC Meeting on ESG: Chair Gensler and Commissioner Statements and Committee Recommendations

The Asset Management Advisory Committee (AMAC) voted unanimously on July 7 to approve several recommendations that AMAC's ESG Subcommittee (Subcommittee), which were discussed at both the AMAC's December 2020 and March 2021 meetings.[\[1\]](#) The recommendations were intended to enhance the transparency of ESG-related data and disclosure for fund investors. Chair Gensler and each of the Commissioners delivered opening remarks, salient points of each are summarized immediately below followed by a summary of AMAC's recommendations.

Chair Gensler

Chair Gensler provided his views on fund disclosure and fund names and pointed out that for "sustainability-related investing, ... there's currently a huge range of what asset managers might mean by certain terms or what criteria they use."[\[2\]](#) He questioned the data and criteria asset managers that market themselves as sustainable or green are using "to ensure they're meeting investors' targets." He also asserted that "investors should be able to drill down to see what's under the hood of these funds" and noted that a high yield bond fund discloses "things like summaries of the underlying bonds' credit ratings and interest rates ... [which gives] investors a window into the criteria used by the asset managers for the fund, and the data that underlies the name."

Chair Gensler also stated that given the lack of "a standardized meaning of ... sustainability-related terms, I've asked staff to consider recommendations about whether

fund managers should disclose the criteria and underlying data they use... and this work is taking place in concert with the agency's ongoing efforts to update the public company disclosure regimes on climate risk and human capital."

He also pointed out that third-party service providers "offer tools such as ratings which often make sustainability-related claims" and asked "what data underpins those claims, whether those service providers are providing investment advice, and what advisers' responsibilities are with respect to their use of such services?"

Chair Gensler further remarked that he has asked the staff to take a holistic look at naming conventions beyond sustainable funds, including whether the current distinction "between investment type [which requires funds to have an 80% investment policy] and strategy is still relevant [stating that] ... it may well be a distinction without a meaningful difference."

Commissioner Peirce

Commissioner Peirce urged AMAC, in its discussion of the ESG recommendations related to issuer disclosures to,

think further about how differences between financial reporting and ESG reporting could make a FASB-like standard-setting entity for ESG unworkable and imprudent, even in the longer term. Financial reporting lends itself to concrete, objective, comparable metrics. ESG standard-setting, by contrast, as the draft recommendation acknowledges, is a much more fluid project that covers a wide range of issues, many of which are not objectively quantifiable and comparable across issuers. With respect to the draft recommendations' interim step of requiring issuers to choose a third-party disclosure framework or explain why they are not doing so, please consider whether the consequent power—both financial and regulatory—of these standard-setters raises concerns.[\[3\]](#)

Commissioner Lee and Commissioner Crenshaw

Neither Commissioner Lee nor Commissioner Crenshaw issued public statements. Commissioner Lee, in oral remarks, raised concerns regarding the ESG Subcommittee's recommendation for the Commission to encourage, but not mandate, issuers to adopt a third-party disclosure framework, questioning how this approach will achieve consistency, comparability, and reliability regarding ESG disclosures. Commissioner Crenshaw asked how the Commission can ensure ESG-related disclosures are consistent and comparable.

AMAC's ESG Subcommittee Recommendations

Issuer Disclosure

The Subcommittee noted that issuers already are required to disclose material risks, and therefore it did not recommend changes to the regulatory framework, but rather the adoption of standards to guide those disclosures. It further recommended that the Commission take steps to foster issuers disclosing meaningful, consistent, and comparable disclosure of material ESG matters by encouraging them to adopt a framework for disclosing material ESG matters and to provide an explanation if no disclosure framework is adopted. In addition, the Subcommittee recommended that the Commission initiate a study of third-party ESG frameworks for the disclosure of material ESG matters to assess whether the frameworks could play a more authoritative role in the future.

Investment Product Disclosure

The Subcommittee recommended that the Commission suggest best practices to enhance ESG investment product disclosure, including:

- alignment with the terminology developed by the ICI's ESG Working Group;^[4] and
- a clear description of each product's strategy and investment priorities, including a description of non-financial objectives such as environmental impact or adherence to religious requirements.

In addition, the Subcommittee recommended that the SEC suggest best practices for investment products to describe each product's planned approach to share ownership activities in the Statement of Additional Information, and any notable recent ownership activities in shareholder reports (other than proxy voting, which is reported in Form N-PX).^[5]

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

endnotes

^[1] See ICI Memorandum Nos. 33085 (February 4, 2021) *available at* <https://www.ici.org/memo33085> and at <https://www.ici.org/memo33344> (March 23, 2021).

The full text of the recommendations and accompanying commentary is available on the SEC's website at <https://www.sec.gov/files/amac-recommendations-esg-subcommittee-070721.pdf>. A transcript of the meeting will be available in a few weeks on the SEC's website at <https://www.sec.gov/page/asset-management-advisory-committee>. The AMAC also unanimously approved recommendations from the Diversity and Inclusion Subcommittee, which are summarized here <https://www.ici.org/memo33679>.

^[2] Chair Gary Gensler, Prepared Remarks before the Asset Management Advisory Committee (July 7, 2021), *available at* <https://www.sec.gov/news/public-statement/gensler-amac-2021-07-07>

^[3] Commissioner Hester Peirce, Remarks at Asset Management Advisory Committee Meeting (July 7, 2021), *available at* <https://www.sec.gov/news/public-statement/peirce-amac-remarks-070721>

^[4] Funds' Use of Integration and Sustainable Investment Strategies: An Introduction (July 2020), *available at* https://www.ici.org/system/files/attachments/20_ppr_esg_integration.pdf

^[5] Form N-PX is the form used by registered management investment companies to annually report proxy votes.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.