

MEMO# 33679

July 8, 2021

SEC's AMAC Meeting: Diversity and Inclusion Recommendations

[33679]

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TO: ICI Members
Investment Company Directors
Diversity and Inclusion Committee
ESG Advisory Group
Investment Advisers Committee
SEC Rules Committee SUBJECTS: Disclosure
ESG
Fund Governance
Investment Advisers RE: SEC's AMAC Meeting: Diversity and Inclusion Recommendations

On July 7, the SEC Asset Management Advisory Committee (AMAC) unanimously approved recommendations from its Subcommittee on Diversity and Inclusion to promote diversity and inclusion in the asset management industry.[\[1\]](#) The subcommittee has been examining the current state of diversity and inclusion in the asset management industry, disclosure and transparency practices, and the benefits of diversity to the public. The subcommittee specifically focused whether increased transparency on matters of diversity and inclusion would be material or beneficial to investors in their selection of investment advisers and investment funds.

The subcommittee's recommendations include:

- Enhanced disclosure of diversity in adviser and fund leadership and staff,
- SEC guidance to clarify that a wide variety of factors may be considered by fiduciaries in selecting asset managers,
- SEC staff review of the impact of the Advisers Act Pay-to-Play rule[\[2\]](#) on diversity and inclusion, and
- Creation of a centralized and uniform process for reporting discriminatory practices.

In remarks before the AMAC meeting, SEC Chair Gary Gensler stated that he has asked SEC staff to consider ways to enhance transparency about diversity and inclusion in the asset management industry, including by disclosure of aggregate demographic information about an adviser's employees and managers and the process an adviser uses to select other advisers.[\[3\]](#)

Highlights from the subcommittee's recommendations and from the remarks of Chair Gensler and Commissioners Peirce, Lee, and Crenshaw^[4] are provided below.

Key Findings from the Study of Diversity and Inclusion

The Diversity and Inclusion subcommittee presented quantitative and qualitative evidence that it gathered in its study of diversity and inclusion. Overall, women and people of color remain underrepresented at the board and senior management levels within asset management firms and fund complexes. One statistic, which was echoed by Commissioner Crenshaw in her remarks, is that of the \$70 trillion in global financial assets under management, less than 1% are managed by minority-owned or women-owned firms. Other prominent findings include:

- Investment performance by diverse asset managers is equal to or greater than the investment performance of firms that lack diversity in ownership and senior leadership.
- Asset or asset manager allocation decisions made for governments, universities, charities, foundations, and other institutional investors may demote the benefits of more diverse firms due to the criteria used to make those decisions, such as length of track record of an adviser.
- There is increasing acceptance that the public interest includes promoting diverse perspectives, the diversity of those with access to capital, fair competition for allocation of capital, and diversity at the ownership level within the industry.
- The type of information that is material to investors has evolved alongside the evolution of the public interest. Information about the presence or absence of gender and racial diversity within a firm or fund's workforce, officer ranks, ownership ranks, boards, and business practices is increasingly accepted as a material consideration in the selection an investment adviser or a fund managed by the advisory firm.

Subcommittee Recommendations

The subcommittee presented several recommendations for increased disclosure about diversity and areas for potential SEC guidance and further study, all of which were adopted by the AMAC. Subcommittee member Scot Draeger of R. M. Davis, Inc., stated that the subcommittee consciously decided to limit its recommendations to areas discussed below and did not extend their recommendations to address business decisions.

Disclosure Recommendations:

Regarding disclosure and transparency, the subcommittee made the following recommendations:

- Requiring enhanced disclosure by investment advisers in Form ADV on gender and racial diversity in the workforce, officer ranks, and ownership ranks of advisory firms.
- Requiring enhanced disclosure by investment companies in Form N-1A on gender and racial diversity on the fund board(s) of each fund, as well as gender and racial diversity in the workforce, officer ranks, and ownership ranks of advisory and subadvisory firms employed by each investment company registrant.
- Requiring SEC-registered investment advisers who serve as either asset allocators or consultants for asset aggregators to provide disclosure on their policies to include diverse asset management firms in the pool of those firms considered or selected. Further, the subcommittee recommended that OCIE examine the adequacy of conflict-of-interest disclosures by registered investment advisers who serve primarily as consultants to institutional investors in making recommendations on the selection of

investment advisers and funds.

Recommendations for SEC or Staff Guidance and Study:

- Based on their finding that fiduciaries use a narrow criteria, such as minimum AUM and minimum length of performance track record, in selecting advisers or investments for clients, which has the impact of eliminating many diverse asset management firms from consideration, the subcommittee recommended Commission guidance to clarify that a wide variety of factors may be considered by fiduciaries in their selection of asset management firms.
- The subcommittee also recommended further Commission study to understand whether the Advisers Act Pay-to-Play Rule may have created unintended consequences by preventing diverse asset management firms from competing for business from state and local government agencies. Specifically, the subcommittee considered whether larger, disproportionately nondiverse firms made political contributions through political action committees, which is not covered by the Pay-to-Play Rule, while smaller, more diverse firms made direct political contributions, thus being prevented from soliciting business from state and local government entities under that rule.

Recommendations for a Procedure for Managing Reports of Discriminatory Practices:

- Although acknowledging that it was beyond the SEC mission to redress industry discrimination complaints, the subcommittee recommended that the SEC provide resources to resolve the confusion over how and to whom to report discriminatory practices. Specifically, they recommended that the SEC establish a centralized and uniform practices for directing parties who contact the SEC to report discrimination to the appropriate government agency. In addition, it recommended that the SEC catalogue and maintain records associated with such complaints and publish a list of resources on its website for victims of discriminatory practices in the industry.

Remarks by Chair Gensler, SEC Commissioners, and Others

As noted above, Chair Gensler and other SEC Commissioners provided remarks on the subcommittee findings and recommendations. Highlights include:

- Chair Gensler noted "the asset management industry has a lot of work to do to increase racial and gender diversity." In addition, as discussed above, Chair Gensler he has asked SEC staff to consider ways to enhance transparency about diversity and inclusion practices in the asset management industry.
- Commissioner Hester Peirce provided "concrete steps" that, in her view, would bring more Americans into the markets, including expanding access to private markets, simplifying crowdfunding, and providing education about investing and careers in finance.[\[5\]](#) She raised concerns, however, about the subcommittee's recommendation that would institute government-mandated diversity classifications for the asset management industry, giving rise to practical questions about defining diversity. Other practical issues arising from the recommendations include how to verify the accuracy of diversity disclosures or enforce consequences of incorrect disclosures. She urged the AMAC to seek out diverse ideas about how to make the asset management industry work better and be a better place to work for all Americans.
- Commissioner Allison Herren Lee stated in unpublished remarks that the proposed recommendations on diversity and inclusion were well done, particularly regarding

registrant transparency and drawing attention to the discriminatory impact that fiduciaries' checklists may have in selecting asset managers.

- Commissioner Caroline Crenshaw said in unpublished remarks that the quantitative data on the lack of diversity and inclusion in the industry was startling. She particularly focused on underrepresentation at the board and leadership levels and echoed the subcommittee's findings that diverse asset managers had equal or superior performance results to other asset managers.

Bridget Farrell
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endnotes

[1] See SEC Asset Management Advisory Committee - Subcommittee on Diversity and Inclusion, Recommendations for Consideration by the AMAC (July 7, 2021), available at <https://www.sec.gov/files/amac-recommendations-di-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 approved recommendations from the ESG Subcommittee, which are summarized in ICI Memorandum No. 33678, available at <https://www.ici.org/memo33678>.

[2] Investment Advisers Act Rule 206(4)-5.

[3] See 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>.

[4] Commissioner Roisman provided general welcoming remarks.

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