

MEMO# 33774

September 16, 2021

DEI: SEC Chair Gensler Discusses Human Capital Disclosure and Diversity in Senate Committee Hearing

[33774]

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TO: Diversity and Inclusion Committee

ESG Advisory Group

ESG Task Force

Investment Advisers Committee

SEC Rules Committee RE: DEI: SEC Chair Gensler Discusses Human Capital Disclosure and Diversity in Senate Committee Hearing

Earlier this week, Securities and Exchange Commission Chair Gary Gensler testified before the Senate Banking, Housing, and Urban Affairs Committee as part of that committee's oversight of the SEC.[\[1\]](#) During the hearing, several senators and Chair Gensler discussed the SEC's anticipated proposal for issuer disclosure of human capital management,[\[2\]](#) as well as the SEC Asset Management Advisory Committee (AMAC) recommendations for promoting diversity and inclusion in the asset management industry.[\[3\]](#) Highlights of the senate questioning and Gensler testimony on these issues are presented below.

Human Capital / Workforce Disclosure for Issuers

- Senator Sherrod Brown of Ohio stated that there is "investor demand for essential information used to judge how companies treat and manage" workers. He supported the Senate's Workforce Investment Disclosure Act bill[\[4\]](#) as "good policy" to get companies to provide important information on how they pay and train and invest in their workers or outsource and subcontract their workers. He thought that transparency about human capital was a first step "to getting corporations and the biggest investors to behave better."
- Senator Mark Warner of Virginia thought that investors would like to see information about company employee retention, skills, and training. He also noted "when companies offload their workers as contractors, they're really not putting their money where their mouth is."
- Senator Pat Toomey of Pennsylvania expressed concern that Chair Gensler would use his leadership at the SEC to "to advance a liberal political agenda [and] ... pursue disclosures that are not financially material to the reporting company." Senator

Toomey provided examples of "mandatory disclosures on ... human capital [and] board and employee racial and gender identity." He reminded Chair Gensler that past SEC Chair Mary Jo White opposed using the SEC's disclosure powers for the purpose of "exerting societal pressure on companies."

- Chair Gensler stated that human capital is a key asset in investing in a company and analogized to his experience reviewing private offering memorandum descriptions of company workforces while working on Wall Street. He believed that the importance of this information has increased since that time "because it is so critical to the valuations of [a] company."
- Gensler said he asked SEC staff to make recommendations on human capital disclosure "on the issuer side," including regarding diversity and workforce statistics. Public feedback to any proposal will guide any final rulemaking.

SEC AMAC Recommendations and Asset Management Industry Diversity

- Senator Robert Menendez of New Jersey stated that "study after study has shown that greater diversity leads to greater profitability" and noted that the SEC AMAC "unanimously recommended that the SEC take ... actions to improve diversity in the [asset management] industry in a way that is aligned with the SEC's own diversity and inclusion goals and its mandate to protect investors and promote fair and open markets." He highlighted the recommendations for the SEC to enhance disclosure requirements on gender and racial diversity of advisory firms and to establish a procedure for the SEC to use when it receives reports of discriminatory practices. Senator Menendez opined that "[n]one of this is particularly difficult or controversial." He asked Chair Gensler to provide a pathway to acting on these "concrete steps."
- Senator Raphael Warnock of Georgia focused on diversity within the venture capital industry and on encouraging funds as investors to "to look outside of their traditional geographical areas for investment and opportunity."
- Chair Gensler stated that he has asked staff to look very closely at the AMAC recommendations, but with a full docket, he could not pinpoint a timeline for staff to make recommendations to the Commission. He noted that, with respect to disclosure of diversity in the venture capital industry, the SEC is taking a look at Form ADV.
- Chair Gensler also stated that the SEC is a "disclosure-based regime" and is thus focused on the types of disclosure that investors want to make their investment decisions.

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endnotes

[1] A webcast of the hearing is *available at* <https://www.banking.senate.gov/hearings/09/10/2021/oversight-of-the-us-securities-and-exchange-commission>.

[2] See SEC Spring 2021 Regulatory Agenda, *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F6

[4B67159C3A36E7556BD0FB872C8F](#). In addition to a proposal on Human Capital Management from the Division of Corporate Finance, the regulatory agenda includes another Division of Corporate Finance proposal on corporate board diversity.

[3] See ICI Memorandum No. 33679, *available at* <https://www.ici.org/memo33679>.

[4] See <https://www.congress.gov/bill/117th-congress/senate-bill/1815/all-info?r=29&s=1>.

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