

MEMO# 34311

October 13, 2022

SEC Staff Issues FAQ Relating to Investment Adviser Considerations of DEI Factors

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TO: ICI Members
Diversity and Inclusion Committee
ESG Advisory Group
Investment Advisers Committee
SEC Rules Committee SUBJECTS: ESG
Fund Governance
Investment Advisers RE: SEC Staff Issues FAQ Relating to Investment Adviser Considerations of DEI Factors

Today, the SEC staff issued an FAQ relating to investment adviser considerations of diversity, equity and inclusion (DEI) factors in the selection or recommendation of other investment advisers.[\[1\]](#) The FAQ states that, under its fiduciary duty, an investment adviser may consider a variety of factors, including, but not limited to, DEI factors, in selecting or recommending other investment advisers, provided that the use of such factors is consistent with a client's objectives, the scope of the relationship, and the adviser's disclosures.

The FAQ is related to July 2021 recommendations from the Asset Management Advisory Committee (AMAC).[\[2\]](#) In its July 2021 report, among other findings and recommendations, AMAC found that fiduciaries often use 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. Based on this finding, AMAC recommended that the Commission provide guidance to clarify that a wide variety of factors may be considered by fiduciaries in their selection of asset management firms.

Commissioners Crenshaw and Lizárraga also released a statement on the FAQ this morning.[\[3\]](#) In their statement, Commissioners Crenshaw and Lizárraga noted that the purpose of the AMAC recommendations "was to shine light on potential discrimination and barriers to women and minorities in the industry, and to provide transparency around diversity practices and data, which carry considerable weight with investors." The

Commissioners further noted that the AMAC report was focused on disclosure, "not on mandating any business decisions or practices by SEC registrants." Commissioners Crenshaw and Lizárraga stated that, "[w]hile today's FAQ is a step in the right direction, we believe all of the recommendations laid out in the AMAC report deserve our prompt consideration."

Erica Evans
Assistant General Counsel

Notes

[1] SEC Staff FAQ Relating to Investment Adviser Consideration of DEI Factors (Oct. 13, 2022), available at <https://www.sec.gov/tm/staff-faq-relating-investment-adviser-consideration-dei-factors#ftn1>.

[2] See SEC Asset Management Advisory Committee, Report and Recommendations on Diversity and Inclusion in the Asset Management Industry (July 7, 2021), available at <https://www.sec.gov/files/spotlight/amac/amac-report-recommendations-diversity-inclusion-asset-management-industry.pdf>. See also ICI Memorandum No. 33679 regarding the AMAC recommendation here: <https://www.ici.org/memo33679>.

[3] Statement on Staff's FAQ Relating to Investment Adviser Considerations of DEI Factors, SEC Commissioners Caroline A. Crenshaw and Jaime Lizárraga (Oct. 13, 2022), available at https://www.sec.gov/news/statement/crenshaw-lizarraga-dei-factors-20221013?utm_medium=email&utm_source=govdelivery.