

Remarks at Asset Management Advisory Committee Meeting



Commissioner Hester M. Peirce

July 7, 2021

Thank you, Ed [Bernard]. Thank you to all the hard-working Committee members and today's panelists. I am looking forward to the discussion this afternoon about technology-enabled personalization, which offers the asset management industry a powerful new tool to serve investors better. I am eager to work on the regulatory side to ensure that nothing in the rulebooks is preventing asset managers from using technology for their clients' benefit. Speaking of regulatory barriers, the Interim Report of the Subcommittee on Private Investments helpfully identifies some ways in which current rules or staff rules of thumb prevent retail investors from getting diversified access to private investments. I look forward to the discussion of potential recommendations in light of the Design Principles laid out in the report.

Today's meeting will begin with discussion of draft recommendations from the ESG and Diversity and Inclusion Subcommittees. I would urge the Committee, 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.

The Diversity and Inclusion Subcommittee's draft recommendations relate to a goal that all of us share—ensuring that our capital markets serve and are welcoming workplaces for all Americans. We all need to join forces to bring more Americans into the markets as investors building nest eggs, entrepreneurs building businesses, and financial professionals building careers. Concrete steps we can take include making it easier for investors with wisdom, but not wealth, to participate in the private markets; making it easier for founders to raise money through crowdfunding and micro-offerings; educating our youth about investing and opportunities to build careers in finance; reaching out to groups that are not participating in our capital markets to ensure they know of opportunities in the sector; and rethinking criteria that are used in hiring financial professionals and asset managers to ensure that we are not inadvertently shutting the door on talent. The draft recommendations recognize the latter issue, including by urging institutional investors to think critically about the necessity for the requirements they impose when they hire asset managers and urging us to take a fresh look at our pay-to-play rules.

The draft recommendations, however, also raise a number of concerns. We celebrated July 4th this weekend, which is always a time for me to reflect on why I love our country. One of the top reasons is that this country is made up of people whose roots go back to every corner of the world. We are united not by external

characteristics, but by an internal commitment to the dignity of every individual, her freedom to make the choices that are best for her and her family, and the truth that all people are created equal. Do we sometimes fall short—painfully short—of that ideal? Yes, of course we do. We are, each of us, human and hence flawed, but that does not stop us as a people from continuing to strive to achieve the noble aspirations of our founding documents and principles. We remain a uniquely wonderful place to which millions struggle and sacrifice to come precisely because we are bound together in pursuit of an ideal. Several years ago, a friend, in an offhand observation, noted that I do not look like an American. I have pondered that comment many times since then. Nobody *looks* like an American. The whole point is that you cannot tell by looking at someone whether he is an American. Being American is not about what you look like, where your forebears came from, or how recently they came. The Venezuelan immigrant who got naturalized last week is as American as the Zambian immigrant who got naturalized ten years ago; the child of Haitian and Yemeni immigrants; the grandchild of Ghanaian, Israeli, Russian, and Korean immigrants; the great-great grandchild of Chinese, Ethiopian, Finnish, Irish, and Mexican immigrants; or someone whose family, regardless of its ethnicity, has been here for centuries. We are a wonderful amalgamation of all the looks, ethnicities, and cultures in the world.

So with that long preface, I urge the Committee to think carefully about the draft recommendations' focus on government-mandated diversity classifications for the asset management industry. Adding such classifications to a new set of government rules may not promote the unity we prize as Americans. Would such classifications disempower, rather than empower, people? What if, for example, an African-American woman who owns an asset management firm prefers to be identified by her Wharton finance degree and her deep knowledge of fixed-income markets rather than her ethnicity or gender, the characteristics the recommended SEC disclosure mandate might emphasize?

I also ask the Committee to work through some of the practical issues that would arise were we to adopt such mandates. How should the SEC define diversity, a point that is not clear in the proposed recommendation? How would the American with Chinese, Ethiopian, Finnish, Irish, and Mexican roots be categorized? What should an asset manager do if an employee or board member prefers not to identify her ethnicity or gender? How, if at all, can the Commission verify the accuracy of firms' statements regarding the racial, ethnic, and gender make-up of the firm? What are the consequences if the firms' statements prove to be incorrect? What are the implications for the SEC in setting disclosure mandates based on the draft's determinations that materiality and public interest have evolved? If we require the recommended disclosures, what principle limits other disclosures the Commission can mandate? How would the Commission go about deciding whether an asset manager, in the words of the draft recommendation, was "discriminat[ing] under the 'guise' of fulfilling one's fiduciary duty"?

Finally, I urge the Committee to think carefully about the wording of the recommendations and accompanying discussion, some of which seems to foreclose debate. I urge the Committee 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. Men and women of good conscience should be able to come to this discussion with a multitude of ideas and impressions, without fear of recrimination. Unfortunately, the document as submitted largely shuts down such a free sharing of ideas with statements declaring that those with differing views are "on the wrong side of history," or that asset managers' diligence checklists are motivated by discriminatory, rather than fiduciary, intent. Again, good intentions animate the production of this report, but an opportunity has been missed to elicit the full range of approaches for the fantastic opportunity we have to expand the talent pool from which the asset management industry draws. I hope that AMAC will continue to be open to further exploration of possible solutions and points of view. Thank you, and I look forward to the discussions today.