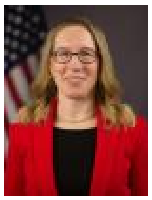
Speech

Remarks at Meeting of the SEC Investor Advisory Committee



Commissioner Hester M. Peirce

Washington D.C.

Sept. 21, 2023

Thank you, Christopher [Mirabile]. And good morning to all of you. Thank you, Committee members and panelists, for your participation in this first in-person Investor Advisory Committee meeting since 2019.

I look forward to today's meeting and particularly commend the Committee for keeping the agenda relatively lean to allow for a fuller exploration of the issues. The resulting additional time allotted for discussion should allow us to hear more from Committee members than has been possible at past meetings. While I am sure pre-meeting discussions are lively, the Commission and the investing public are not privy to them.

The private market has become a primary source for capital, so I am eager to hear today's panels on Regulation D and accredited investors. These topics are central to the Commission's mission to facilitate capital formation, but they are also central to the Commission's investor protection mission. Enhanced access to private capital is a positive development not only for companies, but for investors. Having a robust private market contributes to the health of our economy, and we should not look to impose public-market-style regulations on private markets. We instead should look for ways to reduce the costs companies face in going and staying public.[1] Many investors have access only to the public markets, a problem that could be addressed by increasing opportunities for retail funds to access private investments. Additionally, as the second panel will consider, the Commission could expand the definition of accredited investor. For me, this issue touches on fundamental liberty concerns; part of protecting investors is protecting their right to invest. In the spirit of expanding the accredited definition, the Commission stated that it "may designate qualifying professional certifications, designations, and other credentials by order," a possibility this Committee might want to explore.[2]

Turning to the two draft recommendations the Committee will consider today, I have a number of questions:

<u>Human Capital Management Disclosure Recommendation</u>

1. Are investors the only audience of the disclosures being recommended? If not, which specific disclosures are tied to financial materiality, the touchstone for investor-oriented disclosures? Will other constituencies benefit from these disclosures at the cost of investors?
2. Principles-based standards are designed to accommodate a varied issuer population. Would it even be possible for the Commission to draft uniform, prescriptive human capital disclosure requirements that would elicit material information regardless of a company's size, industry, location, and any other distinct human capital challenges?
3. Would the recommended disclosures risk giving investors false confidence in the accuracy, consistency, and comparability of human capital information?
4. Why do we need a new rule just three years after the Commission's adoption of human capital disclosures[3] and before FASB issues its final disaggregation rule?[4] If anything additional is needed, would guidance regarding the existing rule be better than a new rule?

5. Do we risk requiring disclosures that only larger companies could afford, perhaps because they already make similar disclosures? How should the Commission scale these disclosures for smaller companies? What kind of human capital information is most costly for companies to track?
6. The draft recommendation expresses an interest in disclosures related to “gender, race/ethnicity, age, disability, and/or other [important] categories.”[5] Are there constitutional or other legal concerns with requiring such information to be disclosed publicly? How would this information be financially material?
7. How can the Commission avoid drafting rules that would have the effect of micromanaging public companies’ human capital decisions, rather than simply eliciting disclosure?

Open-End Fund Liquidity Risk Management and Swing Pricing

1. Does the Commission’s proposal address a problem that needs solving, or would the Commission’s attention better be directed toward other matters?
2. The draft recommendation urges the Commission to “revisit its economic analysis to incorporate the comprehensive information commenters provided on the costs and benefits of swing pricing and hard close.” Which features of the rule will be most costly for retail investors?
3. The draft recommendation encourages the Commission to “further examine anti-dilution alternatives such as liquidity fees and conduct a robust cost-benefit analysis.” Because, as the Committee notes, “most commenters did not focus on these alternatives,” the Commission needs additional public input to design such an alternative. Do you have any preliminary thoughts as to which, if any, alternative might be most useful for us to explore?
4. I echo the Committee’s call in the third part of the draft recommendation for the Commission to tie “any requirements to observed risks.” What risks to investors have Committee members observed?

Thank you again to all who have made today’s meeting possible, with special thanks to Cristina [Martin Firvida], Marc Sharma, Adam Anicich, and the Commission’s wonderful facilities staff, which enabled this in-person meeting to happen.

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[1] *See, e.g.,* Commissioner Mark T. Uyeda, *Remarks at the “Going Public in the 2020s” Conference*, SEC (Mar. 3, 2023), https://www.sec.gov/news/speech/uyeda-remarks-going-public-conference-030323.

[2] *Accredited Investor Definition*, 85 FR 64234, 64241 (Oct. 9, 2020), https://www.federalregister.gov/documents/2020/10/09/2020-19189/accredited-investor-definition#:~:text=The%20final%20rules%20are%20tailored,the%20economy%20that%20disproportionately%20create (“As proposed, the final amendment provides that the Commission may designate qualifying professional certifications, designations, and other credentials by order, with such designation to be based upon consideration of all the facts pertaining to a particular certification, designation, or credential. Also as proposed, the final amendment includes a nonexclusive list of attributes that the Commission will consider in determining which professional certifications and designations or other credentials qualify a natural person for accredited investor status.”).

[3] *Modernization of Regulation S-K Items 101, 103, and 105*, 85 FR 63726 (Oct. 8, 2020), https://www.federalregister.gov/documents/2020/10/08/2020-19182/modernization-of-regulation-s-k-items-101-103-and-105.

[4] *Financial Accounting Foundation, Proposed Accounting Standards Update*, FASB In Focus (July 31, 2023), https://www.fasb.org/page/PageContent?pageId=/news-media/fasbinfocus/fif-income-statement-reporting-comprehensive-income-expense-disaggregation-disclosures-subtopic-220-40-disaggregation-of-income-statement-expenses.html&bcpath=tff.

[5] *Id.* at 2, n.7.