

**Securities and Exchange Commission Investor Advisory Committee  
Minutes of May 17, 2010 Meeting<sup>1</sup>**

The Securities and Exchange Commission Investor Advisory Committee convened its fourth meeting at 9:00 a.m. on May 17, 2010, in the multipurpose room of the Securities and Exchange Commission's headquarters in Washington, D.C. The meeting lasted until approximately 3:50 p.m. (with a break for lunch) and was open to the public. Those present were:

**United States Securities and Exchange Commissioners**

Commissioner Luis A. Aguilar  
Commissioner Elisse Walter (attended in part)

**Advisory Committee Members**

Hye-Won Choi, Committee Co-Chair  
Richard (Mac) Hisey, Committee Co-Chair  
Jeff Brown  
Mercer Bullard  
Stephen Davis  
Adam Kanzer  
Mark Latham  
Barbara Roper  
Dallas Salisbury  
Kurt Schacht  
Damon Silvers  
Kurt Stocker  
Ann Yerger

**Official Observer**

Fred Joseph

**Advisory Committee Securities and Exchange Commission Staff**

Kayla Gillan, Designated Federal Official  
Brian Breheny  
Richard Ferlauto  
Susan Nash  
Lori Schock  
Owen Donley  
Zak May

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<sup>1</sup> A Webcast of the meeting and copies of materials distributed at the meeting are available at <http://www.sec.gov/spotlight/investoradvisorycommittee.shtml>.

## **OPENING REMARKS<sup>2</sup>**

Ms. Choi opened the meeting. Commissioner Aguilar welcomed members of the Committee and discussed future developments in financial regulation, including potential legislative changes and inquiries into the treatment of investors and the fairness and transparency of the existing market structure. He also encouraged members of the public to submit their comments to the Committee.

## **DISCUSSION WITH DR. DAN ARIELY**

Dr. Dan Ariely, a Professor of Psychology and Behavioral Economics at Duke University, discussed factors that influence investor decision-making from a behavioral perspective. He introduced several thought experiments and optical illusions to illustrate how perception can shape behavior and perpetuate mistakes despite an awareness of objective reality. Dr. Ariely identified three lessons to be learned from behavioral economics. First, individuals have many irrational tendencies. Second, individuals often do not perceive these irrational tendencies and are unaware of the extent to which conflicts of interest may influence behavior. Finally, because it is difficult for to perceive the influence of conflicts of interest, those conflicts can affect an individual's intuition. Dr. Ariely suggested that very little is known about financial decision-making, fiduciary responsibility, and the psychological dimension of the financial industry.

Following his presentation, a number of Committee members questioned Dr. Ariely briefly on subjects ranging from the role of investor emotion in financial planning, conflicts of interest in setting executive compensation, the influence of market power, framing decisions with respect to retirement investing, and the adequacy of financial product disclosure.

## **DISCUSSION WITH PANEL: MANDATORY ARBITRATION**

On behalf of the Investor as Purchaser Subcommittee, Mr. Bullard introduced a panel of experts to discuss mandatory arbitration. The panelists were Linda Fienberg, President of FINRA's Dispute Resolution Department; Jennifer Johnson, a securities law professor at Lewis & Clark Law School in Portland, Oregon; Barbara Black, a securities law professor and Director of the Corporate Law Center at the University of Cincinnati College of Law; and Patricia Cowart, Section Manager of the Retail Brokerage Litigation Section in Wells Fargo's Corporation Law Department.

Ms. Fienberg noted that FINRA administers the world's largest securities dispute resolution program. She described FINRA's arbitration process in detail, from the investor's filing of a claim to the issuance of an award. Ms. Cowart discussed the background of the mandatory nature of arbitrations and the laws governing arbitration clauses; panel selection; and substantive law guidance given to arbitrators. She emphasized the importance of allowing parties in arbitration to select their arbitrators and

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<sup>2</sup> For purposes of these minutes, descriptions of discussions have been grouped and listed *seriatim*, even though the discussions of different items overlapped on occasion.

indicated that a new rule submitted to the Commission would, if approved, improve the arbitrator selection process by expanding the list of arbitrators available for selection.

Ms. Johnson discussed whether FINRA arbitrators should be required to apply the law and whether they should provide written explanations for their awards. She argued that, although arbitrators are not bound by law under FINRA rules and are not trained in substantive law, in reality, arbitration claims are based on legal standards such as fraud, negligence, and control person liability. She asserted that FINRA arbitration materials are confusing: they state that arbitrators are not bound by the law, yet advise the parties to pay attention to legal arguments and to state law. Ms. Johnson also argued that FINRA's arbitration program could be improved by requiring arbitrators to provide a written explanation of their awards. She concluded that, while FINRA arbitration is procedurally fair and its rules transparent, it may not be substantively fair and its hearings are opaque.

Ms. Black offered that the FINRA arbitration process is fairer than other consumer arbitrations largely because of Commission oversight. She disagreed with Ms. Johnson on the role of substantive law in arbitrations. Ms. Black asserted that, from the investor's perspective, the advantage of securities arbitration is that it provides an equitable forum where arbitrators may be able to find a remedy for investors that is not fully supported by law. She also voiced her support for FINRA's current practice of providing procedural guidance to arbitrators with no instruction on substantive law, and counseled against requiring volunteer arbitrators to provide written explanations for their awards in light of the skill and care required to draft such statements.

Ms. Fienberg noted that, when FINRA previously proposed a rule to require that arbitration awards be explained, it received negative comments from both the industry, which was concerned about unfair explanations, and from investor lawyers, who worried that arbitrators would regard such explanations as precedential. She also indicated that FINRA currently requires that an award be explained if both parties request an explanation.

Committee members questioned the panelists about mandatory arbitration and whether arbitrators should provide written explanations for their awards. Ms. Black stated that arbitration is a complicated process, and that measuring it against the requirements of a judicial proceeding is problematic. Commissioner Walter asked whether the majority of investors would continue to seek arbitration if it were optional instead of mandatory. Some of the panelists indicated that the average arbitration claim was \$100,000, and that investors with smaller claims would have no choice but to seek arbitration because of the expense associated with litigation. Ms. Fienberg expressed concern that, if the small claims came to arbitration while the larger claims were pursued in court, FINRA's arbitration forum would lose money as it relies on the filing fees and costs of the larger claims to fund its operations.

## **LUNCH BREAK**

## **DISCUSSION WITH STAFF: MONEY MARKET FUNDS AND NET ASSET VALUE**

Robert Plaze of the Division of Investment Management delivered a presentation on the net asset value (NAV) of money market funds. According to Mr. Plaze, a stable NAV has conditioned investors to believe that they are entitled to each dollar in their money market fund and has given investors an incentive to redeem at the first sign of trouble so as to avoid withdrawing money after a fund has broken the dollar. On the other hand, a floating NAV is problematic in that, first, it is uncertain whether investors would abandon money market funds, and if so, where they would allocate their money. Second, it is unclear how the transition away from a stable NAV would be accomplished. Third, it is uncertain how institutional funds would react. Finally, it is unclear how investors who have been conditioned to expect a stable NAV would respond to the daily fluctuations of a floating NAV. Mr. Plaze referred the Committee to a soon-to-be released report prepared by the Commission, the Treasury, the Federal Reserve, and the Commodity Futures Trading Commission that explains the risks in greater detail.

## **UPDATE AND RECOMMENDATION FROM INVESTOR EDUCATION SUBCOMMITTEE: PUBLIC SERVICE ANNOUNCEMENT CAMPAIGN**

Mr. Salisbury reviewed the recent work of the Subcommittee. He cited the SEC's launching of a new investor-based website aimed at increasing the agency's reach among individuals and noted the guidance issued by the SEC and the Department of Labor relating to target date and stable return funds. He then introduced for the Committee a proposed resolution relating to public service announcements (PSAs):

*As part of a broad investor education campaign, the Securities [and] Exchange Commission (SEC) should create made-for-TV 30 second public service announcements (PSAs) using celebrities to teach the general public about basic, vital personal finance topics. These PSAs would cover a wide range of topics, and would be released individually over the next few years.*

Mr. Salisbury discussed the merits of 10-second, 15-second, and 30-second PSAs. He noted that, unlike 30-second PSAs, 10- and 15-second PSAs do not compete with paid advertising. He also indicated that 10-second PSAs represented the easiest placement of free PSAs in prime time because they fit readily into the time slots scheduled by television networks for promotional announcements. He estimated that each 10- and 15-second PSA could be produced for approximately \$15,000. He envisioned the PSAs as communicating simple messages to increase general awareness of the resources available from the Commission and its investor website. Mr. Salisbury moved to adopt the proposal and a Committee member seconded it. Mr. Hisey then opened the matter for discussion.

In response to comments from the Committee, Mr. Salisbury agreed to amend the resolution in accordance with the suggestions of a number of Committee

members, including the suggestion to remove references to specific times and the use of celebrities. The recommendation was adopted, subject to “tweaking” by the SEC staff to reflect the conversation of the full Committee.

#### **DISCUSSION WITH INVESTOR AS OWNER SUBCOMMITTEE**

Ms. Choi facilitated the discussion. Mr. Davis reviewed the recent work of the Subcommittee and introduced Mr. Breheny of the Division of Corporation Finance, who provided an update on two items that the Committee previously had approved: a recommendation for staff interpretive guidance on Regulation FD; and a recommendation that the Commission examine the costs and benefits of requiring issuers to tag proxy voting and other matters in XBRL as part of the “proxy mechanics study” being conducted by several Divisions.

Mr. Davis then discussed the Subcommittee’s work plan on environmental, social, and governance (ESG) disclosure by public companies. He introduced Mr. Kanzer, who previewed the ESG experts invited to speak at the Subcommittee meeting scheduled for the following day. Ms. Yerger provided an update on corporate governance issues addressed in the financial reform legislation in Congress.

#### **CLOSING COMMENTS**

There was a brief discussion of potential agenda items for the next meeting and the possibility of holding that meeting outside of Washington, D.C. In response to a comment from Mr. Salisbury, Ms. Gillan provided an update of the efforts by the Commission and the CFTC with respect to the May 6, 2010 market break. After a brief discussion of the process of tracking comments submitted to the Committee or Subcommittees, and the possibility of scheduling Subcommittee meetings on the same day as Committee meetings, Mr. Hisey adjourned the meeting.

**CO-CHAIR CERTIFICATION**

I hereby certify the accuracy of this record of the proceedings of the Securities and Exchange Commission's Investor Advisory Committee.



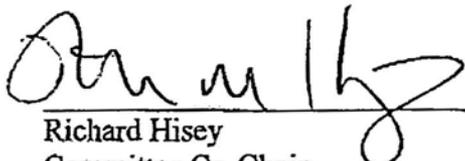
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Hye-Won Choi  
Committee Co-Chair

June 28, 2010  
Date

**CO-CHAIR CERTIFICATION**

I hereby certify the accuracy of this record of the proceedings of the Securities and Exchange Commission's Investor Advisory Committee.

  
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Richard Hisey  
Committee Co-Chair

7/14/10  
Date