UNITED STATES SECURITIES AND EXCHANGE COMMISSION

MEETING OF THE SECURITIES AND EXCHANGE COMMISSION

ASSET MANAGEMENT ADVISORY COMMITTEE

Tuesday, July 7, 2021

11:00 a.m.

Via Video Teleconference

Diversified Reporting Services, Inc.

(202) 467-9200

PARTICIPANTS:
Gary Gensler, SEC Chairman
Allison Herren Lee, Commissioner
Caroline Crenshaw, Commissioner
Hester Peirce, Commissioner
Elad Roisman, Commissioner
Sarah ten Siethoff, Acting Director, Division of Investment Management

AMAC Members
Edward Bernard, Committee Chairman
John Bajkowski
Jane Carten
Scot Draeger
Michael Durbin
Gilbert Garcia
Paul Greff
Rich Hall
Susan McGee
Jeffrey Ptak
Erik Sirri
Aye Soe
Rama Subramaniam
John Suydam
Russ Wermers

PARTICIPANTS (CONT'D):
Joe Savage (non-voting)
Renee LaRoche-Morris

C O N T E N T S

P R O C E E D I N G S

CALL TO ORDER AND OPENING REMARKS

CHAIRMAN BERNARD: Good morning. My name is Ed Bernard. I'm Chair of the Asset Management Advisory Committee of the SEC. I'd like to call this meeting to order. I'll note that we have a quorum. This is obviously a virtual meeting on Webex. We've done a sound check to ensure all can hear. If there are any problems among the committee members and participants, please send a private chat to the meeting host.

As we open the meeting I'd like to welcome Chair Gensler and thank him and Commissioners Peirce, Roisman, Lee and Crenshaw for joining us today. Chair Gensler, I believe you wanted to make a few remarks.

CHAIRMAN GENSLER: Thank you for the introduction. I enjoyed meeting with you I think it was a week or two ago, Ed, and it's good to meet the whole committee for the first time. I see each of my fellow commissioners. It's good to be with you all in this advisory panel. I'm grateful for all of your time and willingness to give us advice, to give the five of us advice on the asset management industry, and I look forward to hearing the readouts from the various subcommittees on environmental, social governance, investing, diversity and inclusion, private investments, a lot of really important topics for the five-member commission and to the American public.

I wanted to share some thoughts on these topics, in particular on bonds that hold themselves out to the public as investing with an emphasis on sustainability and also on the diversity in the asset management industry, so I think two of the number of topics you're reporting on.

First, on sustainability, I'd like to just discuss a little bit about fund disclosure and fund name. The basic idea for me is truth in advertising. We've seen a growing number of funds market themselves as green or sustainable or low carbon and so on, and while the estimated size of this sector varies one estimate says there may be 800 registered investment companies with approximately $3 trillion of so-called ESG assets last year. Now, again, there's a lot of different estimates. Suffice it to say, though, there's hundreds of funds and potentially trillions of dollars under management in this space.

So what information stands behind the claims of a fund being green or sustainable or some other similar name? When I think about these questions, I can't help but be reminded about walking down the aisle of a grocery store and seeing a product that said, “fat

free milk.” What does “fat free” mean? Well, in that case at least, you can look at some objective figures like grams of fat which are decaled in the nutritional labels, and everything. In investing, funds often disclose objective metrics as well.

A high-yield bond fund, for instance, tends to disclose things like the summaries of its underlying bond credit ratings or interest rates that denote the spread that they get. Investors get a window into the criteria used by the asset manager for the fund and the data that underlines a name. When it comes to sustainability related investing, though, there's currently a huge range of what asset managers might mean by certain terms for what criteria they use.

Some of these funds screen out certain industries like fossil fuels or tobacco or nuclear energy, and the like, so they're kind of screening defined. Other funds make assertions about the greenhouse gas emissions and sustainability of their underlying asset. Some funds involve human judgements about the kinds of investments that would do best under various scenarios; for instance, net zero economy. Otherwise might track and outside index. So it's a wide range here, and many funds that use terms like “green” or “sustainable” even though those terms have a little

less objective meaning maybe than fat free milk, still those labels say something to investors.

And so which data and criteria are asset managers using to ensure they're meeting investors' targets because ultimately it's about the investors, the working families, the pension funds that are investing in these funds. And so that what are fund managers saying when they're marketing themselves with these various terms? I think investors should be able to drill down and see what's under the hood of these funds.

As there's not a standardized meeting of these sustainability related terms I've asked staff to consider recommendations to our five-member commission about whether fund managers should disclose the criteria and the underlying data they use to meet the criteria. Now, this work takes place in concert with what the SEC is also taking up and staff is looking at around public company disclosure, around climate risk disclosure and human capital disclosure.

On a related note, as the asset management industry has evolved the use of third-party service providers has grown. (Distorted audio) company for tools such as ratings which often makes sustainability related claims as well. This raises a number of questions I've asked staff about the data

underpinning those assertions, whether those service providers are providing investment advice and what advisors' responsibilities are with respect to their services in this field.

And while many of these issues apply to funds with sustainability related investments I've also asked staff to take a holistic look at naming conventions. Now, it's not new. Naming conventions were taken up a long time ago, but a fund name is one of the first pieces of information that investors see. If a fund name suggests a certain investment focus, investors expect investment in that area. Congress first took this up actually in passing the Investment Company Act of 1940 and included some provisions right then 80 years ago about naming conventions.

Our agency last updated naming conventions in a broader sense in 2001 under the Names Rule, but a lot has obviously happened in the 20 years since. For example, one aspect of the Names Rule distinct from 20 years ago says that if a fund's name suggests a particular investment type, the fund must invest at least 80 percent of the value of its assets in that investment type. Now, that 80 percent pertains to investment types as distinguished from investment strategies. I've asked staff whether that distinction between investment type and strategy is relevant today as maybe when it was put in place.

To me it may well be a distinction without a meaningful difference. Regardless of the kind of fund, I believe investors benefit from seeing the criteria and data underlying the broad strategies and decisions. Together I think updates to fund disclosure and naming conventions could bring needed transparency to the asset management industry particularly in light of the significant growth in the sustainability area. This gets to the heart of the SEC's mission to protect investors but also our mission to facilitate capital formation and the efficiency of that capital formation.

Next just a few comments as I know you're reporting on diversity and inclusion. As your committee reports, the asset management industry has a lot of work to do to increase racial and gender diversity. Your subcommittee's recommendations note that women and people of color, and I quote your own report, “remain dramatically under representative at the board, senior management levels, within asset management firms and fund complexes as well as fund ownership level.”

This committee has recommended -- your committee has recommended transparency as a key first step in improving diversity inclusion practices, so I've

asked the SEC staff to consider ways that we might enhance that transparency. For example, this could include requiring disclosure of aggregated demographic information about an advisor's employees, its owners. It also could include information about an advisor's diversity inclusion practices as in its selection of other advisors.

I look forward, obviously, to the subcommittee and the full committee's thoughts. Beyond those topics you're discussing today our unified agenda published last month touches on a range of other asset management areas from money market reform potentially to private funds, proxy voting and the like, and over time I look forward to hearing your thoughts. I encourage you all to be active participants as we take up potentially rule-writing, to be active participants through your committee or just through the comment process because investors really rely on funds, collective investment vehicles for their retirement savings and for their well-being in the economy. So I thank you.

CHAIRMAN BERNARD: Thank you very much, Chairman Gensler. Commissioner Peirce.

COMMISSIONER PEIRCE: Thank you, Ed, and thank you to all the hard-working members of the committee and to today's panelists. I'm 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'm eager to work on the regulatory side to ensure that nothing in the rule books is preventing asset managers from using technology for their clients' benefit.

Speaking of regulatory barriers, the interim report of the Subcommittee on Private Investment helped me identify some ways in which current rules or staff work is done prevent retail investors from getting diversified access to private investments. I look forward to the discussion of potential recommendation 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 Subcommittee. 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 can 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 to cover the wide range of issues many of which are not objectively quantifiable and comparable across issuers.

With respect to the draft recommendations, an interim step is 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 as the standard setters raises concern.

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 market with 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 private markets making it easier for founders to raise money, to the 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 that they know of opportunities in the sector and rethinking criteria that are used in hiring financial professionals and asset managers to ensure that we're 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 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 Fourth 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're 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're each of us human and hence flawed, but that doesn't 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 pursuant of an ideal.

Several years ago a friend in an offhand observation noted that I don't look like an American. I've pondered that comment many sometimes since then. Nobody looks like an American. The whole point is that you can't tell by looking at someone whether he's an American. Being American isn't about what you look like, where your forebears came from or how recently they came.

A Venezuelan immigrant who got naturalized last week is as American as the Zambian who got naturalized ten years ago, the child of Haitian and Yemeni immigrants, 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're a wonderful amalgamation of all the 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 classification for the asset management industry. Adding such classifications to a new set of government rules main not promote the unity that 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 mandates might emphasize?

I'd 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's 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 firm statements regarding the racial, ethnic and gender makeup of the firm? What are the consequences if the firm's statements prove to be incorrect? What are the implications for the SEC in setting disclosure mandates based on the draft 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 was “discriminating under the guise of fulfilling one's fiduciary duty”? Finally, I urge the committee to think about the wording of the recommendations and accompanying discussion some of which seem 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 or 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 look at 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.

CHAIRMAN BERNARD: Thank you, Commissioner Peirce. Commissioner Roisman.

COMMISSIONER ROISMAN: Good morning, and thank you, Ed. The agenda today is full to say the least, including recommendations from two subcommittees, a briefing from another and a panel on a new topic area for the committee involving technology and its influence on investment advice. Many thanks to our chairman, Ed Bernard, the members of each of these subcommittees and all the incredible members of AMAC for your continuing work. I hope you don't get tired of me saying how much I appreciate all the work you do for this committee and for the Commission and the public. We all benefit from it.

I look forward to the discussion of each of the agenda items today, including the recommendations you will present. The committee's approach to make recommendations has been methodical, iterative, transparent and engaging. I've learned a lot from each of your meetings as well as from my own discussions with subcommittees and individual members. We've devoted extensive study, deliberation and consideration to each of these recommendations, and we will all benefit from them as the Commission continues its work on these

issues.

Indeed, I'm confident that each of these recommendations will inform and help our staff consider new approaches to the important market needs you've identified and help the Commission address them for the benefit of investors and all market participants. Thank you again, and I look forward to today's discussion.

CHAIRMAN BERNARD: Thank you, Commissioner Roisman. Commissioner Lee.

COMMISSIONER LEE: Thank you. Good morning, and thanks to all of you for participating in the meeting today. This is an ambitious agenda, and I look forward to hearing from each of the subcommittees as well as the panel on technology-enabled personalization in the asset management space. I'll be very brief this morning. I just want to offer a few thoughts on some of the agenda items.

First, I am deeply impressed with the work of the Subcommittee on Diversity and Inclusion and the seriousness of purpose with which you're exploring the nature and the causes of the lack of diversity in the asset management community. The entire proposed recommendation is extremely well done. I'm especially impressed with two specific points. One, the thoughtful discussion of the Commission's role in promoting greater

transparency around diversity and inclusion among our registrants to ensure that our disclosure rules promote the public interest while providing investors with the decision-useful information that they need.

And two, I'm very interested in the data that you gathered and your analysis indicating that discrimination against diverse managers may be essentially coded into these diligence checklists through the use of items such as minimum AUM and track record. I query whether these kinds of items should be looked at or weighed differently in a thorough analysis that takes into account all the relevant factors. I don't regard it so much as a question about motivation to discriminate but rather the effects of these checklists.

This is exactly the kind of information that fiduciaries need to be made aware of in order to ensure that they can meet their duties to investors. So I look forward to hearing more about the subcommittee's full recommendation today, and should it pass I hope the Commission will give it serious consideration.

Next, I understand that the ESG Subcommittee intends to make a series of recommendations to the Commission relating to both issuer disclosure of the issue metrics and the regulation of funds and other

investment products that purport to pursue an ESG strategy. First, I really want to thank the subcommittee for its work and its focus on this issue. I'll note a question that I have with respect to the potential recommendation relating to issuer disclosure.

There's a fairly broad consensus that any regime must provide investors with consistent, comparable and reliable information on which to make investment and voting decisions, and currently, of course, issue disclosure occurs on a largely ad hoc basis and voluntary with inadequate consistency or comparability within or across industries and inadequate assurance regarding the reliability of any information that's disclosed.

As currently written, the recommendation is for the Commission to encourage issuers to adopt a third-party disclosure framework for ESG metrics or explain why they haven't done so, and I have preliminary concerns that such an approach will not address the core inadequacies of the current landscape. So the question I hope to hear from the subcommittee later is how such an approach may achieve the three overarching goals of consistency, comparability and reliability.

And as a final note I look forward from hearing to today's panelists on the role of technology and delivering personalized advice and service to clients. We all know technology has transformed the business of asset management in the provision of investment advice over the past couple of decades all while lowering costs and broadening investor access to professional management. As the space continues to evolve I think it's critical that robo-advisers and others who incorporate elements of automation into their services remain mindful of their fiduciary obligation to clients.

These clients rely on advisors to provide personalized advice that takes into account their specific current information situation, their risk tolerance, their future goals among other things. So I'm eager to learn more about how advisors can leverage technology to ensure that clients get the benefit of truly personalized advice. And so with that let me just say thanks to Ed Bernard for your leadership of the committee and to all the committees members and panelists today for the work you're doing on behalf of the public. We really all benefit greatly from your efforts, and I look forward to the conversation.

CHAIRMAN BERNARD: Thanks very much, Commissioner Lee. Commissioner Crenshaw.

COMMISSIONER CRENSHAW: Good morning. Thank

you, Ed, and thank you all for the time, thoughtfulness and energy that you bring to your work on this committee, and thank you to the staff of the Commission as well for doing the same.

I was pleased to see that today's agenda includes recommendations relating to diversity and inclusion and ESG. As I have said before the work of these subcommittees is both important and timely. And I agree with the subcommittee that the quantitative data that you've gathered on the lack of diversity inclusion is startling. The statistics set forth in the recommendation make a compelling case for action, and I'd like to highlight just some of the statistics that you have put in the report as you set to work today.

Roughly 1 percent of the 70 trillion in global financial assets under management are managed by minority-owned or women-owned funds. The percentage of ownership interest by women and people of color in asset management firms is disproportionately low by any and every objective measure. Women and people of color are dramatically underrepresented at the board and senior management levels within asset management firms and fund complexes as well.

In your findings, you note diverse asset managers' investment performance is equal to or greater

than performance by firms that lack diversity in ownership and senior leadership, and the report also finds that the Commission has a role to play in promoting diversity and inclusion in the asset management industry, and I wholeheartedly agree. And I appreciate that you've outlined enhancements to our disclosure regime that could promote greater diversity inclusion in the asset management industry.

As Commissioner Lee noted, I'd be interested in hearing more about potential Commission or staff guidance that could discourage discrimination by fiduciaries. It's critical that the Commission continue to work to identify and dismantle barriers that directly or indirectly result in discrimination. So thank you for the representation, and I'm looking for to the discussion.

On ESG, I agree with the subcommittee that there is an unmistakable market demand for ESG oriented investments, and there is also a demand for ESG related disclosures. I've said it before, and I will say it again. Investors are using ESG related metrics to make investment decisions and to allocate capital more than ever, and the question for the Commission as the ESG Subcommittee has identified is how to ensure that ESG related disclosures are consistent and comparable.

So I won't belabor this point, but again as Commissioner Lee mentioned I will be really interested in the subcommittee's view given the recommendation how do we ensure that the disclosures are consistent, comparable, high quality and decision useful. And I look forward to hearing more about how the Commission can achieve that end.

I'm also looking forward to hearing the committee's ideas regarding private investment. Private markets have increased in size over the years, as we all know. The amount of capital raised via exempt offerings outpaces the amount raised in public markets. One concern I have is that there is enough visibility into the private markets. I want to understand exactly what the benefits, risks and costs of investing in the private markets are, and I want to see the data behind those benefits, those risks and those costs. So something I would be interested in here more about is what information about the private markets do you think is missing?

Finally, I'll add that I'm looking forward to the panel discussion on technology-enabled personalization. As we think about investment experiences in today's world we would absolutely be missing a piece if we did not think about the role of technology-enabled investor interfaces and consider the lines between personalization, recommendations and advice. Technology can certainly be used in ways that benefit investors, but it can also result in costs or harm to end-users, and I think recent events from this year have demonstrated that we need to better understand the different ways technology is being utilized so that we can respond appropriately.

You identified some of the key questions here during your last meeting. How does personalization of help or guidance change the definition of "investment advice"? What are the risks and opportunities associated with AI-driven personalization? And particularly, what does personalization -- or when, rather, does personalization become a recommendation that is subject to Regulation Best Interest? I think we also need to understand the incentives at play for entities rendering the technology-enabled personalization and also the reasons investors are turning to such products.

So with that I look forward to the discussion today, and thank you again for your commitment and dedication to all of these. Again a very deep agenda here, but thank you all again for your time on these important issues.

CHAIRMAN BERNARD: Thank you, Commissioner Crenshaw, and to all of the commissioners. Now I'll turn to Acting Director of Investment Management, Sarah ten Siethoff. We're very grateful to the support you and your team have already provided, and I believe you wanted to share a few thoughts this morning as well.

MS. TEN SIETHOFF: Great. Thank you, Ed, and good morning and welcome to this meeting of the Asset Management Advisory Committee. Before I start I'll just mention that I'm speaking today only for myself and not for the Commission, commissioners or the staff.

Since its last meeting in March, the AMAC has focused on fulfilling its continued mission to advise the Commission on timely issues affecting the asset management industry. I'm looking forward to hearing today for updates from the Private Investments Subcommittee including on potential recommendations and particularly on the promising panel of the Evolution of Advice and Technology-Enabled Personalization. I'm also anticipating useful insight from the recommendations of the ESG Subcommittee and the Diversity and Inclusion Subcommittee that will be considered today.

I would like to take the opportunity today in these remarks to thank two AMAC members who are ending their service, Neesha Hathi and Alex Glass. In

particular, Neesha has been industrial to her work at the committee as she led Operations Subcommittee last year and also had undertaken the co-chair of the Subcommittee on the Evolution of Advice. I'm thankful to both of you for your time and dedication to this committee.

I'd also like to thank Chair Gensler and the commissioners for their participation today and to Ed for his leadership and to all the subcommittee leaders and committee members for their contribution. I'd also like to thank the staff here who have put in a lot of work behind the scenes to make this meeting possible, in particular Christian Broadbent, Jay Williamson, Wale' Oriola and Lee Roland and other Division staff continuing to work tirelessly to support the committee. Thank you also to the Division's Managing Executives Office and the Commission's Office of Information Technology for enabling all of us to come together virtually today. And with that, Ed, I turn it back to you and look forward to the discussion.

CHAIRMAN BERNARD: Great. Thank you very much. Let me offer a few quick notes for AMAC updates. One, Sarah has just advised so I'll be quicker that I do want to also thank Neesha Hathi and Alex Glass for their service. And Neesha, as Sarah mentioned, had

taken on leadership of several initiatives. And I want to add to that my thanks to Mike Durbin, who has taken the baton from Neesha to lead the Subcommittee on the Evolution of Advice.

Now I'll turn to today's agenda, and I'll let each subcommittee chair introduce their sessions. For now I'll just provide a brief overview of the day. In our first two sessions, we'll discuss final relations to AMAC from Diversity Inclusion and the ESG subcommittees with the expectation of taking a vote for approval at the end of each respective discussion.

After lunch, we'll come back together at 1:30 Eastern for a discussion led by our Private Investment Subcommittee. They'll share a summary of findings of their work and a detailed outline of the recommendations they're developing in anticipation of a final discussion and approval at our next meeting. And as you've heard, in our final session, the Evolution of Advice Subcommittee will present a panel of four industry leaders that build upon the insights we heard in our Technology and Advice panel last year.

Our other new subcommittee focused on the issues for smaller advisors is already hard at work, and they'll present to the full AMAC at our next meeting. Finally, at the end of the day, as become our practice we'll seek brief reactions to the day and input from the committee with quick remarks around the table on what we've come to know as our lightning round.

So I know we're a little bit tight on time at this point, but I think we'll make it up during the day, and given the importance of today's first sessions I thought I would offer just a few thoughts especially as relates those first two.

First, I'd note that all the panel speakers and AMAC discussions led by these groups in our meetings over the last year are part of the record of AMAC any and all of which can serve as a reference for the Commission as and when it takes up work on these issues. AMAC chose to delve rather deeply into some important and complex issues. I believe that record is robust, thorough and balanced encompassing voices from numerous points of view on each of these areas of focus.

Today, as we've discussed, we'll discuss final reports on recommendations from Diversity Inclusion and ESG. I'm hopeful we'll approve both. At that time, they will become the recommendations of AMAC and of course become part of the overall record. The Private Investment Subcommittee we'll address at the next meeting for formal approval.

Now, I've participated as an ex-officio member

in most of the subcommittee meetings and in the drafting for each of these teams and believe strongly that they've been both thorough and balanced in their work and very exclusive in their consideration of differing views. They've also reached out to additional AMAC members to seek reactions and input trying to spread that activity around AMAC membership.

SEC staff have also reviewed drafts and provided technical input not to shape the recommendations of AMAC, which is an independent committee, but in an effort to help each subcommittee convey its intended meaning as clearly and accurately as possible. In our discussions of the recommendations from both Diversity Inclusion and the ESG Subcommittees, I hope you'll engage to raise any final questions and comments as part of the record, but I also hope we can minimize the temptation to engage in sentence-level editing of the recommendations themselves at this late stage, and I'll ask for votes on the recommendations as a whole in each case.

(Distorted audio) recognize that if and when the Commission elects to take up these issues for further action there will be still more input, analysis and debate. I hope and expect our recommendations will be incorporated as part of that, but they're part of a

process as is the entire record created by all our meetings. So each committee will provide an overview of its reports and recommendations, and as a preamble to that I offer only a few thoughts for Diverse Inclusion and ESG, and I'll withhold on Private Investments until next meeting when they come with final recommendations.

Both of these subcommittees have anchored their recommendations in the core authority of the SEC relating to disclosure, materiality and public interest. Both are addressing issues for which views on materiality and public interest are actively evolving in real time, and I believe they have done so in a way that thoughtfully balances disparate views and arrives at a core set of recommendations that are on the right side of change.

I'd note that even as we meet today the SEC has very recently received scores of letters from industry participants in response to requests for input on potential measures relating to climate change. While those letters certainly speak to a key current issue within ESG I'd remind you that the ESG Subcommittee's work was much broader than that one issue. Acknowledging that ESG is not monolithic but should be viewed as E, S and G separately and that there are myriad factors under each category at varying stages of

maturity and perceived importance, the committee developed a broad principle based recommendations to be applied as individual factors within E, S and G come to the fore.

In short, I believe each subcommittee with input from the full AMAC has led great work on our behalf, and I hope you'll join me today in endorsing their work and adopting it as the recommendations of AMAC. So with that let me refresh everyone on some quick housekeeping.

If you run into any technical problems, please send a private chat to the meeting host. Will each manager on status when you're not speaking please ensure that you're muted. When ready to speak, don't forget to unmute, and please keep video on when we're live. When we vote, I'll ask all voting members to unmute and then ask for ayes, nays and abstentions. I'll take a pause to see if there are any questions now, and if not I'll turn it over to Gilbert Garcia to begin with Diversity Inclusion.

Gilbert, I recognize we're about ten minutes behind, and I'm hoping that maybe you can pick up five, and the next group can pick up five, but I'm confident we'll pick it up during the day. So Gilbert, over to you. Thanks very much.

RECOMMENDATIONS OF THE DIVERSITY AND INCLUSION SUBCOMMITTEE

MR. GARCIA: Understood and thank you, Ed. So first of all, my name is Gilbert Garcia, and I'm the chairman of the Diversity Inclusion Subcommittee here, and I want to thank Chairman Gensler and all the commissioners for this incredible opportunity and this incredible platform to talk about these issues. I also want to thank past Commissioner Stein and Clayton, past Chairman Clayton, for also giving me this incredible opportunity and given this topic such importance.

I want to thank Ed Bernard for giving me great latitude. I want to thank Robert Marchman for really being a voice of reason. I really want to thank Scot Draeger and Paul Greff who were at all the meetings. They worked very hard on all this material. And I really want to thank the SEC staff, particularly Christian Broadbent because he also was very, very patient with me in this process. And so thank you to all of those people.

I'm going to have three or four opening comments, and then I'm going to turn it over to Mr. Scot Draeger, who will go through our recommendations. I'll have two or three closing comments, and then I'll turn it back over to the head of our committee, Mr. Ed

Bernard, who will facilitate Q and A and who will facilitate the vote on the proposal.

So my comments. First and foremost, I've mentioned before how difficult talking about diversity can be. There's a lot of word choices we often use again categorizing people, things like “colors.” I mean, it's something that's not natural for us, and these things, frankly, have gone on almost from the beginning of this country, categorizing people. And I just want to sensitize people to for however difficult it might be to talk about it imagine how it is for the diverse people to actually live it, to live in this country as a diverse individual when we are reminded of that all the time most of the time in a very negative context.

Now, our proposal today represents hundreds of hours of time, everything from testimony, people who did incredible studies, the reading of studies, the drafting, all of these things, but please also know that part of the testimony reflects really hundreds of years of life experiences that people have had that has shaped their comments that they brought forward to this AMAC committee and to the Diversity and Inclusion Subcommittee.

And some of those experiences they shared were

positive, but some were not. But we're here today. We've done the research, and now we're here to take action. But beyond today's action, beyond the Subcommittee of Diversity and Inclusion, beyond AMAC, beyond all these things I really encourage the SEC and I really implore the SEC to really look at diversity inclusion not as an item but as a core value that permeates everything in the SEC inside and out, everything in the SEC.

So with that I'm going to now turn it over to Mr. Scot Draeger, who will go through our actual recommendations. Scot.

MR. DRAEGER: Yeah. Thank you, Gilbert, and thank you to Chair Gensler, Commissioners Peirce, Roisman, Lee and Crenshaw and again to the SEC staff and to our fearless leader, Ed Bernard, who has been a terrific source of wisdom and judgement.

So I'm going to start by providing a short background on the focus of this subcommittee's work and the education that we received in the course of our work. Then I'll turn to an overview of the recommendations themselves before some short conclusory comments by Gilbert, Q and A and a vote (distorted audio) the AMAC.

So with respect to focus of the subcommittee

and the AMAC, we (distorted audio) the committee the following actions. We studied the current state of diversity and inclusion in the industry as well as the impact of the lack of diversity and inclusion within our industry. We sought to gain an informed perspective on investor interest in diversity matters specifically as it pertains to the selection of asset management firms and investment products.

We considered investors' need that they shared with us for transparency regarding matters of diversity and the ease or challenge associated with access to reliable disclosure on the same. And ultimately, we considered whether Commission action in this area would benefit the investing public, the industry-at-large and the public markets.

As the subcommittee's work progressed over the last year a refined focus was made to identify areas where increased transparency on matters of diversity and inclusion would have specific and discernible benefit relative to investors' description of what is material to their selection of investment advisors and funds. We remain dedicated to focusing recommendations on matters that are directly germane to the Commission's mission, which we understand to include investor protection, market fairness and encouragement of a market

environment that's worthy of public trust.
Now a brief description of what we learned in the process. I just described our focus and our mission. So the AMAC during this last year has gathered and studied data and convened panels of experts in public forums, as Gilbert said, behind the scenes, hundreds of hours as well. The quantitative data on the lack of diversity and inclusion, the qualitative human side of experiences shared by women and people of color in the industry and independently the call by investors for more transparency on diversity were all independently and collectively compelling.
There are four areas of what we learned. The first, which some commissioners have already hit on, are statistics are startling, and they tell a clear story. So according to objective sources such as the U.S. GAO, of the 70 trillion in global financial assets under management across the universe that we all live in less than 1 percent is managed by minority-owned or women-owned firms. Independent from AUM across the industry percentages of ownership interest by women and people of color remain startlingly and disproportionately low, and by any objective measure women and people of color are also dramatically underrepresented at the board, senior management and employment levels within asset management

firms and fund complexes.
The second thing we learned was that active discrimination exists and remains a barrier for minority and women owned firms. Credible and effective sources once again (distorted audio) recent studies by Harvard Business School, Stanford Business School and others find widespread gender and racial bias in the decisions by those in positions making asset and asset manager decisions and selections particularly in the institutional markets.
Credible studies also show that artificial barriers that do not advance the interests of investors have been in some cases constructed and are being utilized as a guise under the fiduciary considerations in a way that have a direct or indirect result of excluding most diverse firms. We also learned that performance myths were dispelled. These effective and credible sources that testified demonstrate that investment performance of diverse firms is equal to or greater than that of firms that lack diversity.
Finally, our education affirmed a clear and direct link between the Commission's mission and investor calls for transparency and diversity and inclusion in our asset management industry. Our education highlighted both a clear public interest in

diversity in our industry and the extent to which advisors' commitment to diversity is considered material to the decision of those selecting and retaining SEC registered investment advisors and the funds that they manage. Our work has also highlighted a lack of current transparency easily available on these matters.
So now shifting to our recommendation, our education was the foundation for the recommendations. One important point is that you will notice that a conscious decision was made to target or limit recommendations to disclosure or sunlight and areas worthy of Commission study. We make no recommendations that would mandate any business decisions or any business practice on the part of any SEC registrant.
Our first set of recommendations includes three disclosure recommendations. The first is transparency of diversity within the advisory firm. We recommended that the Commission require enhanced disclosure in SEC filings by advisors particularly in Form ADV to provide transparency on issues of gender, racial diversity in the workforce, officer ranks and ownership ranks of advisory firms.
The second recommendation is at the fund board level and fund advisor diversity. We recommend the Commission require enhanced disclosure in SEC filings

for investment companies, particular Form N-1A, to provide transparency on gender and racial diversity at the fund board level as well as that of the workforce officer ranks and ownership ranks.
Third and our final disclosure recommendation is transparency in business practices for consultants who recommend investment advisors and investment funds. We recommend that the Commission enhance disclosure in SEC filings made by investment advisors who serve as consultants for the institutional market to include disclosure on whether and to what extent the registrant's policies include diverse asset management firms in the pool of those considered or selected.
In addition to such enhanced disclosure, the AMAC and the subcommittee believe it's imperative that institutional investors have confidence that they are receiving unbiased recommendations from their consultants, and therefore we encourage the SEC to assess the adequacy industrywide of conflicts of interest disclosure by registered investment advisors who serve primarily as consultants in the institutional market in making recommendations on the selection of investment advisors.
We believe that ensuring complete and prominent disclosure of all economic benefits that a

consultant or any of its affiliates receive for money managers recommended is worthy of reinforcement. In the context of our disclosure recommendations, I want to share that we focused on why change is needed and what change may be most appropriate and impactful at a policy level in consideration of aligning investor interest, industry sentiment and the Commission's mission. There are many details to be worked out, of course, such as some of those raised by Commissioner Peirce.

We leave the how or the details of the exact scope of the disclosure, the location of where it would reside, so on, and so forth, to the very capable SEC staff.

Our second set of recommendations includes suggestions for Commission or staff guidance and study. Regarding guidance, the record created through our work evidence is that many fiduciaries use a narrow diligence checklist of exclusionary factors such as minimum AUM and minimum length of performance track record that have a direct or indirect impact of eliminating nearly all asset management firms owned by women and people of color from consideration in the selection process.

These checklists are deployed by investment consultants who themselves are SEC registered investment advisors in their process of recommending advisors to

institutional investors. We believe factors such as AUM and how long a firm have been in business are certainly appropriate criteria along with many other objective and subjective criteria. However, when they are each applied as independent and dispositive exclusionary hurdles, the impact is highly discriminatory. We don't believe it's in the best interest of investors to have nearly all diverse managers filtered out in consideration by an inappropriately limited set of fiduciary considerations.

We believe investors, the industry and the public markets would benefit from Commission or staff guidance that clarifies that a wide variety of factors may be considered by fiduciaries in their selection of asset management firms and that importantly fulfillment of one’s fiduciary duty in this context does not require automatic exclusion of asset managers who are newer to the industry or do not have a certainly level of AUM.

Regarding our recommendation on staff study, we recommend that the SEC staff further study the influence of political contributions on asset allocation particularly in the institutional markets. Our education has raised some interesting inquiries regarding a link between diversity and inclusion work and the pay to play rules and the manner in which they

currently operate.

We believe it's universally accepted that investment advisors should be prohibited from making political contributions which may inappropriately influence the award of investment advisory contracts, and certainly this subcommittee and I believe the AMAC affirms that view. However, experts who provided public statements and reports raised concerns that contributions made by industry organized Political Action Committees, or PACs, at a level of sponsorship where few if any diverse managers or their owners contribute may be used to influence the allocation of government, municipal and institutional assets.

In short, experts convened by the AMAC credibly questioned whether the current pay to play rules and legal regime inadvertently allow for the opportunity for PAC contributions to influence asset manager selection which seemed to us contrary to the spirit of the pay to play rules. We believe a host of complicated issues are imbedded here including, among other things, First Amendment issues and considerations, the adequacy and the scope of nuances of the existing pay to play rules and the extent to which securities laws and election laws intersect, overlap, compete against or complement one another.

At the same time, we know ironically and technically that a small campaign contribution but one exceeding the arguably outdated de minimis standards by the owner of a small diverse asset management firm supporting a candidate for governor, let's say, would exclude that firm from responding to Requests For Proposals for government bodies even where that governor may have little or no connection to the selection of the advisory firm.

In short, while specific changes in the regulations in this area are best left to the SEC staff's expertise our work in education raised some interesting questions that are worthy of study by the Commission staff. It has been ten years, as we understand it, since the Commission performed a deep dive on pay to play area. We feel this recommendation that the Commission engage in a study of how the industry practices have evolved is overdue and could produce meaningful insights.

Finally, our final recommendation suggests that the Commission be a resource for managing reports of discriminatory practices. To be very clear, we fully appreciate that it is outside the Commission's mission or mandate to become a center for redressing complaints related to discriminatory employment or contracting processes in our industry. However, in order to ensure that complaints are directed to an appropriate forum for public redress outside of the Commission, we recommend that the Commission establish a centralized and uniform practice for directing reporting parties who contact the SEC to an office or government agency outside the SEC which is designed and more appropriately equipped to investigate any valid complaints.

In addition, we recommend the Commission catalog and maintain records associated with such complaints, and we also recommend that the Commission consider publishing a list of resources on its website for victims of discriminatory practice in the industry. In other words, just be a resourceful point of information.

In conclusion, as our work progressed over the last year the data and the record (distorted audio) the broad investor in market interest and diversity disclosure by asset management firms. In following where the record took us, we would find our focus to identified areas where increased transparency on matters of diversity and inclusion would have specific benefit relative to investors' description of what's material to their selection of advisors and funds.

AMAC's recommendations (distorted audio)

exclusively on matters germane only to the (distorted audio) Commission's mission which we hope continues always to include investor protection, market fairness and encouragement of market involvement that's worthy of public trust. Before we open to Q and A and vote I want to thank the number of you, the AMAC members, who thoughtfully reviewed and provided detailed comments just ahead of this session, Eric, Mike, Ross, Susan, Renee and (distorted audio). Those comments will result in a few tweaks to language (distorted audio) but thankfully, do not impact the formal recommendations at all.

As Ed provided at the outset, I appreciate members conveying these detailed comments ahead of the meeting so we don't get bogged down in a sentence-level discussion in today's meeting, which is more appropriately a policy forum. With that I'm going to turn it back to Gilbert for any conclusory remarks on the recommendations and then Ed to you to open it up to any questions, comments and a vote.

MR. GARICA: Thank you, Scott. This is probably the most important vote that many of us will ever cast. We have a chance to do something that's positive for the investment community, something that's material and in the public interest, but more

importantly we have a chance to do something really profound for the nation as a whole, to do something to change the course of the wealth inequality gap that is growing to extraordinary levels here in this country.

And I know in the future our kids will ask us, our grandkids will ask us some day when they look back at this time period of history, this incredible moment, this renaissance of humanity and equality, and they'll look back and say when that was going on what did we do. And I think we want to be able to say to them we did the right thing. Thank you very much. Mr. Ed Bernard, I turn to you.

CHAIRMAN BERNARD: Thank you both for that excellent summary and for all the work that you all in the subcommittee did to get to this point. I would now welcome comments, questions, any discussion whatsoever from the committee or the commissioners.

(No response.)

CHAIRMAN BERNARD: Sounds like you all were pretty complete in your expression of views. Any questions or comments? Great. Well, then I'm happy to move to a vote. What I'm going to ask everyone to do in a moment is just unmute yourself. I think we can do this in a fairly simple fashion. I think we have 16 voting members present. By the bylaws, we need a

majority. So I will ask for ayes, nays and any abstentions, and we'll see where we are.

So with that if everyone who is a voting member would please unmute. All those in favor of the recommendations in their entirety recognizing that Scot said based on some inputs there's a few tweaks to clarify language but nothing that changes the recommendations per se. So would all those in favor please say aye.

(Chorus of ayes)

CHAIRMAN BERNARD: Any opposed please say nay.

(No response.)

CHAIRMAN BERNARD: And any abstentions?

(No response.)

CHAIRMAN BERNARD: Great. Well, we have adopted those recommendations. They now become the recommendations of the full AMAC to the Commission. Thank you again to Gilbert, Scot and Paul for all of your work. And with that, actually, I guess we will turn to you, Aye. We've made up the lost time, and we're doing great here. So Aye if you would pick up for the ESG Subcommittee. Thanks very much.

RECOMMENDATIONS OF THE ESG SUBCOMMITTEE

MS. SOE: Thanks, Ed. Good morning, good afternoon everyone. My name is Aye Soe, and it's been a pleasure to be a part of the ESG Subcommittee. Before we begin I'd like to first thank the Commissioners and, obviously, the AMAC Chair, Ed, for his leadership and the SEC staff. In particular, I'd like to thank Christian Broadbent for the tireless support -- and his team for the tireless support and the guidance provided to the subcommittee as we crafted through these recommendations. Christian, we're very thankful to you and your team.

First we will provide some background on the process that the ESG Subcommittee undertook, and then we'll turn it over to Jeff Ptak to articulate the AMAC rationale and then before coming back to the recommendations. As Ed noted in his opening statement, the subcommittee explored all available literature, spoke with the fellow AMAC members and also interviewed practitioners from the asset management industry, other industry groups as well as third-party service providers. Our goal was to be thorough, methodical and iterative in our approach to recommendations.

So for example, in October 2020 last year, the subcommittee held two panel sessions for the subcommittee members. The first session was on the issue of disclosure of ESG risk, and the second focused on investment product disclosure. As you all know, at

the last March 2021 meeting, we held a panel focused specifically on e-issuer disclosures, and both corporate issuers and the investment managers participated bringing both supply and demand side views of ESG data.

We divided our work into five workstreams, and as we worked through those workstreams what became apparent was that issuer disclosure is the starting point for ESG matters, particularly comparability and consistency of ESG issuer disclosures. Secondly, as ESG investment products proliferate and large amount of capital flow into to those products as we saw in 2020, we find that the need for alignment of ESG products with corresponding terminology. Therefore, the subcommittee merged three of the workstreams to create recommendations regarding investment product disclosure, and one of the workstreams contributes to the recommendations for issuer disclosure and the workstream to provide observation around ESG performance measurement. With that I'm going to turn over to Jeff to articulate the rationale and our approach to our recommendations. Jeff.

MR. PTAK: Thanks, Aye. Good morning, good morning everyone. I'm going to present the rationale that's behind our recommendations. In summarizing the rationale behind AMAC's recommendations, it's important

to keep in mind what ESG is and more to the point what it isn't, and I'll build on some remarks that you heard Ed make in his opening comments; namely, that ESG isn't monolithic. It encompasses E, S and G individually and together.

Within the E S and G factors, the importance of subfactors to investors can vary by type of business and industry. It can also vary by those investors' preferences or how they perceive materiality, and measurement of these factors and subfactors can vary or might not yet be possible. While it's true that some factors are further along than others, governance, for instance, has been actively deliberated for years, best practices for defining, weighting and measuring material, environmental and social matters is still being debated and honed.

Notwithstanding this interpretations of public interest and materiality haven't been static. Indeed, as markets and investor interest have evolved these interpretations have been adapted to meet the demands of the dynamic capital markets to which they've been applied. Against that backdrop AMAC believes the SEC ought to consider the significance that investors have come to attach to ESG. While investors' motivations can certainly be debated there tend to be three broad

reasons why investors have made ESG a focus, and I'll summarize each one of those reasons.

The first is performance. The debate over performance is still largely unsettled, yet some have cited the relationship between ESG and performance as a factor in investors' rising interest in such strategies. In short, a subset of investors is seeking ESG for performance related reasons.

The second reason is market interest. Whether for performance or other reasons the market has clearly taken an interest in ESG as evidenced by sizeable asset flows to funds and other vehicles that at least consider ESG factors as part of their strategy.

The third reason, regulatory activity and professional standards. Regulators and other authorities have issued a bevy of new policy initiatives in recent years. In addition, multiple frameworks and standards for disclosing material ESG matters (distorted audio). This proliferation of regulations and standards has focused investors on ESG for a prosaic reason. They have to navigate this maze to determine what constitutes best practices.

These reasons -- performance, market interest and regulatory activity -- informed AMAC's conclusion that some market participants hold a view that material

ESG matters play a role in capital formation, capital allocation and risk return expectations. To these market participants the lack of clear, consistent and comparable issuer disclosure of material ESG matters is a call to action, not inaction. This, in turn, spurred AMAC's initial recommendations which urge mandated adoption of third-party standards that are frameworks for disclosing material ESG matters.

Since that time, as you heard Aye allude to, AMAC has received additional perspectives from issuers and investment managers. All shared a desire for consistent and comparable issuer disclosure of material ESG matters, but they also identified challenges to achieving that goal in the near future citing the still evolving state of ESG metrics and a lack of consensus regarding the materiality of certain ESG matters such as social issues.

After considering these viewpoints, AMAC concluded it was premature to broadly recommend specific mandated disclosure of material ESG matters through SEC rulemaking or required adoption of third-party standards. Nevertheless, AMAC believes there is a pressing need for the SEC to effect a process for enhancing the quality, consistency and comparability of ESG disclosures that issuers make to investors.

As those metrics attained widespread adoption and acceptance the SEC could revisit whether to provide more specific guidance codified in principles based regulation founded on the same notions of materiality that have underpinned disclosure practices issuers have followed through the years.

Turning to investment products, by which we mean manage investment products such as mutual funds, ETFs and the like, AMAC finds that ESG investment products are not significantly different than traditional products. However, there is less publicly-available data to support performance, measurement and validation of ESG related features. AMAC considered the still evolving nature of ESG investing and the potential for more proscriptive rulemaking to impede development of approaches to measuring and validating ESG strategies.

Accordingly, AMAC's recommendations to improve investment product disclosure or transparency are to provide best practice guidance rather than mandate specific approaches. In that spirit, AMAC recommends that ESG investment products describe and prioritize their objectives to indicate, for instance, whether risk/return objectives are a higher or lower priority than non-risk/return objectives. The AMAC recommends

that a suggested best practice be the adoption of the terminology developed by the cross industry group that served in the Investment Company Institute ESG Working Group.

In concluding, I want to thank Aye Soe for ably leading our subcommittee. Thanks also to Aye's predecessor in that role, Michelle Beck, the SEC staff for their unstinting support and counsel, and finally AMAC Chair Ed Bernard for his steady hand and wisdom throughout this process. With that I'll go ahead and turn things back to Aye.

MS. SOE: Thanks Jeff. A lot of the work was set forth by Michelle Beck, who was my predecessor, and Jeff laying the foundation. So we were able to carry on smoothly. I'm going to turn over to the recommendations. With respect to issuer disclosures, AMAC is recommending two. First, the AMAC recommends that the SEC take meaningful steps to foster meaningful, consistent and comparable disclosure of material ESG matters by issuer.

The SEC shall encourage issuers to adopt a framework for disclosing material ESG matters and to provide an explanation if no disclosure framework is adopted. So when it comes to these frameworks, these frameworks could include, one, those developed by third-

party standard setting organizations or those developed by an industry group dedicated to ensuring consistent comparable disclosure of material ESG matters. And then if the issuer elects not to adopt a disclosure framework, then the issuer should disclose an explanation why it chose not to do so.

I want to note that this recommendation does not contemplate revising the materiality standard requirement. Rather, this recommendation acknowledges that ESG is a still much evolving concept, and therefore issuers' determination on materiality and definition of material ESG matters can vary. This approach will afford issuers some flexibility to determine and refine an appropriate disclosure framework. We see that many third-party disclosure frameworks and the standards that underpin them are continuing to evolve.

Therefore, the recommendation recognizes that in some cases industry developed disclosure framework might be more appropriate and suitable than third-party ESG disclosure framework.

The second recommendation that AMAC is making is that AMAC recommends the SEC accelerate a study of third-party ESG disclosure framework for the disclosure of material ESG matters and acquire relevant subject matter expertise to assess how frameworks could play a more authoritative role in the near future. We believe this will demonstrate SEC's commitment to harmonizing the way in which issuers determine what constitutes a material ESG matter and conveying that information to investors.

In addition, we also believe that this action will provide a roadmap for potential establishment of a standard setting body to develop ESG disclosure standards. Consistent applications of those standards by issuers can be enforced by the SEC much like the enforcement of the U.S. GAAP accounting standards developed by the FASB.

We are also making two recommendations with respect to investment product disclosure. The first is that AMAC recommends the SEC should suggest best practices to enhance ESG investment product disclosure including aligning the terminology developed by the ICI ESG working group with clear description of each product strategy and investment priorities as well as description of nonfinancial objectives such as environmental impact or adherence to religious requirements.

The AMAC in our process finds that integration of ESG factors into investment process by funds varies quite substantially. For this reason, the SEC should

recommend to the industry best practices for ESG product disclosure to foster comparability. We believe that this consistency could be achieved by adopting broad terminology that classifies ESG investment strategies such as the one developed by the ICI ESG working group into one or more of the following categories, whether the fund is inclusionary, exclusionary or impact.

Further, we also believe that adoption of terminology also aligns well with the EU Sustainable Financial Disclosure Regulation, or SFDR, proposed by the European Commission.

The second recommendation with respect to investment product disclosure is around shareholder voting. The AMAC recommends the SEC should suggest best practices for investment products to describe each product's plan approach to share ownership activities in the Statement of Additional Information and any notable recent ownership activities outside of proxy voting in shareholder voting. Investors in these ESG products and other investment products will benefit from clear consistent statements regarding how ownership responsibilities are carried out by the product.

While the AMAC believes the reporting of proxy voting is already well regulated other ownership responsibilities especially if they're significant to

product strategy should be noted.

Lastly, with respect to performance measurement, the AMAC found that there is a wide range of research concerning how ESG factors affect performance, and there isn't a clear picture of ESG on performance. So we explored whether we should do any action with respect to performance reporting, but what we find is that the SEC already requires a number of elements in fund performance disclosure. We did not find that ESG should be treated any differently than other fund objectives or strategies with respect to performance disclosure.

The one key component that we want to note is existing rules regarding the requirement to be benchmarked against a broad market index and to allow funds to determine whether it is appropriate to use a secondary or more tailored index. The AMAC believes for a number of ESG products a secondary ESG benchmark could give investors important information and will be desirable. With that I will wrap up the recommendations and turn over to Ed to open up any questions or comments.

CHAIRMAN BERNARD: Great. Thank you both. That was an excellent summary and presentation. Is there any discussions, any additional comments or

questions from anyone on the committee or from commissioners?

MS. MCGEE: Ed, I would like to make a quick comment. Very pleased and very supportive of the subcommittee. This was a very educational process as to the complexity of this area and how much has already been accomplished but how much work needs to be done. And I'm very much in favor of the principles based approach recommendation, that tried and true standard that the SEC has always relied on is that materiality drives disclosure and that as a financial regulator the SEC is not setting public policy.

And if at all possible on these industry designed -- the frameworks and the benchmarks if at all possible to get some type of framework that's based on industry input I think would lead to a healthier more robust set of frameworks just like the recommendation on the fund products is coming from the -- is recommending the ICI terminology, which is based on a really healthy input of industry. So those are my comments. Thank you, Subcommittee, for your work.

CHAIRMAN BERNARD: Thanks for that, Susan. I don't know if Aye or Jeff want to comment on that. I will say that I think some of Jeff's comments relating to -- or maybe it was Aye, ensuring that the proper knowledge and expertise is brought to bear on any process I think would broadly address what you've raised, which I think is a great point. Gilbert.

MR. GARICA: Thank you, Ed. I think this is great work. This is such a complex issue, and it's just so vast, and I wholeheartedly support it. I just hope as it evolves -- the Chairman had it great when he said truth in advertising. In the past, I've made comments at meetings about how can you have an ESG fund if you score so poorly with ESG yourself. Just keep that in mind. I think if there's a way on the truth in advertising also as it relates to diversity on the board level, things of that nature, will be very helpful. But I wholeheartedly support it.

CHAIRMAN BERNARD: I agree with that, and I'm happy to say I think the recommendations you've made will create a lot of progress toward that particularly in conjunction with these. Any other questions or comments? Can I just sort of get a general sense? Are people ready to vote just nodding heads? Okay. If you would all unmute, we'll do it just like we did last time.

All those in favor of approving the recommendations in their entirety -- I think there's a couple sentences just like with the other that Aye needs

to clean up, the committee needs to clean up, but no substance will change. So with that all those in favor please say aye.

(Chorus of ayes.)

CHAIRMAN BERNARD: Any opposed say no.

(No response.)

CHAIRMAN BERNARD: And any abstentions please acknowledge.

(No response.)

CHAIRMAN BERNARD: Okay. Great. So we have now passed that as well. We've gone from being a little behind to being well ahead. I'm going to quickly ask you, Rama one question about this. So looking well forward in our agenda, at 2:15 we're scheduled to have four CEOs present to us. I don't think we should presume that we can accelerate that panel, that we're going to have to work with that being at 2:15. We were originally scheduled to hear Rama's subcommittee's report at 1:30 with a half hour lunch break.

I'm happy to give us an hour lunch break, and we'll come back at 1:30 unless, Rama, if you are feeling tight on time we can certainly come back at 1:15 or 1:20. What's your pleasure?

MR. SUBRAMANIAM: I think we're fine to start. I mean, I plan to talk for about 25 minutes leaving 20

minutes for comments and questions which seems from the previous two panels like plenty of time. So I think we're fine.

CHAIRMAN BERNARD: Okay. Great. Then what will happen now is we will give everyone time away from screens. I've got about 12:25 in the East. We will come back on at 1:30 in the East. For those watching on sec.gov, if you want to stay logged in you'll see a holding screen from now until then, and we will start back at 1:30 promptly.

With that once again my thanks to the Diversity Inclusion and ESG Subcommittees for your work and to all of AMAC for your ongoing discussion across many meetings and ultimate support today. So we'll see everybody back here at 1:30. I'm going to encourage you to stay logged in and just turn off your screen and your sound so that we have no problems with connectivity coming back. And committee members, please come back at about 1:25 so we know we're all present before we open up. Thanks so much.

(Whereupon, at 12:24 p.m., luncheon recess was taken.)

A F T E R N O O N S E S S I O N

CHAIRMAN BERNARD: It appears we're already live, so let's get going. Now we'll turn to the Private

Investment Subcommittee. Rama will kick us off with that. Thanks, Rama.

UPDATE FROM THE PRIVATE INVESTMENTS SUBCOMMITTEE AND DISCUSSION OF POTENTIAL RECOMMENDATIONS

MR. SUBRAMANIAM: Thank you, Ed. Thank you, Chairman Gensler, SEC Commissioners, Chairman Ed Bernard for the opportunity for the Private Investment Subcommittee to present our interim report which summarizes our findings and discusses the framework for our final recommendations, our so called design principles. I also want to thank Christian Broadbent and his team at the SEC for their patience and their feedback to our various reports and papers that we've submitted to date as well as my subcommittee members who have been working behind the scenes. I'm the only one that will be talking today, but there are a bunch of people on the subcommittee that have provided input and prepared slides.

The agenda for today aims to justify the case for providing retail investors with wider access to private investments whilst ensuring they have sufficient protection. To get to the point, we undertook the following areas of work over the last 16 months which we will summarize today. We looked at the asset management landscape and focused on the demand and supply side drivers particularly in respect of retail investors. We looked at three classes of private investments, but before that looked at whether private and public investments even be compared on a like-for-like basis.

We investigated what access retail investors have to private investments currently as we as what the key requirements are for nonretail investors to access a full spectrum of private investments to really understand where the legal and regulatory bottlenecks are. And lastly, we considered how to balance wider access to private investments with sufficient investor protection, our so-called design principles which have been refined since we first reviewed them in a prior meeting.

We do have some specific recommendations that will be in our final paper and not covered today. Prior to submitting our final report with those recommendations as well as all of the backup data around the comments we'll be making today, we wanted to provide this interim report and gather feedback from the Committee. As mentioned, I plan to speak for about 25 minutes allowing 20 minutes or so for comment and questions.

So first, looking at the asset management and registered investment company landscape, we've discussed

some of this, but to --

CHAIRMAN BERNARD: Rama, did you want to share a screen, or are you just going to go with notes?

MR. SUBRAMANIAM: Oh, sorry. Good point. I thought I was sharing a screen.

CHAIRMAN BERNARD: No worries.

MR. SUBRAMANIAM: Okay. That screen should be coming through. Are you seeing slide 4?

CHAIRMAN BERNARD: Yup. Industry growth. Looks good, thanks.

MR. SUBRAMANIAM: Great. Thank you, Ed. Apologies. So starting with the U.S. asset management industry, the asset management industry growth over the last two decades has surpassed inflation and GDP at around 5 and a half percent compounded growth compared to about 2 to 2.2 percent for GDP and inflation and stands at about 45 trillion at the end of 2019. At the end of May 2021, registered investment companies held a vast majority of those assets, around 30 trillion, with mutual funds by far the highest contributor with around $24.4 trillion each year so at about 5 trillion.

The number of mutual funds has actually stayed relatively flat over the last decade and a half to two decades with around 9,000 funds. Assets have clearly grown in line with the asset management industry and in

line with the increased market capitalization of public U.S. equities. ETFs have grown explosively over the same period from around 200 funds managing 0.3 trillion in 2005 to around over 2,000 funds now managing over 5 trillion, but you'll note that ETFs are still less than one quarter mutual fund assets under management.

Importantly, mutual funds and ETFs primary exposure by assets under management is to U.S. listed companies at approximately 40 percent for mutual funds and 30 percent for ETFs at the end of 2020, and within this asset management industry, we see retail investors and self-directed retirement assets becoming an increasingly larger part of the overall AUM. Retirement assets we see a falloff in defined benefit plans being offered by anything other than government entities and many defined benefit plans moving into the payout phase of their life.

We see employer-defined contribution plans remaining relatively static at about 8 to 9 percent of the overall retirement assets, and so we see a growing asset management industry. We see that skewing retail, and we saw that as well in one of our first presentations by Michael Goldstein. I think our first presentation he mentioned the same thing, and we see underlying exposure through ETFs and mutual funds still

being largely to U.S. equity markets.

So what does that equity market look like, the so called supply side? When you look at U.S. public equity market capitalization, you see total capitalization growing approximately in line with the asset management industry from about 17 trillion in 2005 to around 50 trillion currently. Against this, however, the number of public companies has been reducing even before the period that we're looking at from a peak of around 8,000 in the mid-1990s to a bit over 4,000 currently.

In addition, there has been a growing concentration of the largest companies, primarily in the tech sector. The S&P 500 top ten companies account for one third of the value of the index being a market capitalization index.

So putting that together, we see a growing demand for investment choice from all investors. We see a skew towards retailed investors demanding product. You could argue there's a greater choice for retail investors in terms of tailoring exposure through various ETFs that cater for any flavor that you like. However, exposure of ETFs and mutual funds is still primarily to the U.S. public equity markets, and that market in turn is becoming increasingly concentrated particularly when you use market capitalization indices such as the S&P 500 and Nasdaq 100.

We then turn to look at some private investments, but before that we looked at the ability to compare private and public investments. Our conclusion on that was that actually it's impossible to do an exact like-for-like comparison, and that's because private investments have a few different characteristics. First of all, investments are often made in stages. Capital calls occur over multiple years. Cash flows from private investments cannot be reinvested in the same investment. You need to find alternative investments. And private investments do not trade in the secondary market, and therefore they don't have market prices associated with them.

This makes the calculation of investment returns difficult to compare fully and on a like-for-like basis with public market returns. A range of return measures have evolved over time to ameliorate these issues, but none are perfect. I don't intend to go through these again, but we discuss IRR, multiple of money and public market equivalent. In fact, I think we discussed four versions of public market equivalent back in our September 16, 2020, update. I invite people to revisit those for some of the limitations of those

measures.

Knowing that we couldn't compare things on a like-for-like basis but there were some measures that helped, we decided to look at three areas of private investments -- private equity, private debt and private real estate. We spent most of our time on private equity as it just seemed to be a natural area with rich data as well as focus from several academics.

We had a panel on September 16 that was quite lively with industry participants as well as two academics, Ludovic Phalippou, Ludo as he's known, and Josh Lerner. After reviewing the evidence and hearing from the experts our conclusions were that there is evidence for private equity fund returns being similar to or better than returns from public equities with some evidence of diversification.

We found that private equity managers tend to display a higher dispersion of return compared to public market managers. We found that there was a compression in spreads of private investments over public investments potentially driven by a lower interest rate environment as well as a lower illiquidity premium being demanded or being able to be demanded for by investors.

We do note that private equity like most private investments is a high fee product involving both

management fees and incentive fees, but we like investors have focused on -- or like investors should focused on the net returns after fees in coming to these conclusions, and provided as adequate and comparable disclosure we believe that high fees in themselves should not prevent investment provided investors have the ability to understand those fees and compare.

As a result, we concluded that private equity funds have the potential to offer return and some diversification benefits to retail investors. However, there is some difficulty in measuring and reporting returns on a comparable basis, and coupled with the potentially higher fees associated with PE investments these are important considerations in deciding whether and how to expand retail access to pooled PE investments.

Next we looked at private debt. We used data provided primarily by Hamilton Lane and Cambridge Partners and reviewed data for long periods up to 30 years. We looked at senior debt, subordinated or mezzanine debt and opportunistic or distressed debt. These tended to be the typical categorizations of private debt investments. As with PE funds, return comparisons to public indices can be difficult particularly when those indices are different high-yield

indices chosen by the consultants as well as the issue with inflows and outflows from a private fund compared to a public investment.

Notwithstanding that we concluded that private debt funds appear to outperform public debt indices over the medium and longer horizons. Over shorter horizons private debt funds have recently underperformed public indices. I'm not sure we have a good explanation for that, but that's what the data showed.

The last category of private investments we looked at was private real estate. Real estate is generally classified into the following subcategories -- core, core plus, value add and opportunistic. Really that ranges from fully tenant to income-producing high-quality assets in the core area moving to ground-up developments and vacant property in the opportunistic area.

What was interesting and is obvious once you say it is that with real estate you have both the retail investment vehicle, REITs, that can invest in exactly at same illiquid real estate that private real estate funds invest in. Liquidity is provided through the trading of the REITs as a secondary market is created. It's obvious when you say it, but that's an interesting fact to bear in mind when we talk about our design principles, and one of the comments that comes up quite often is liquidity, and what you do about liquidity for retail investors.

Having said that, we know that most REITs tend to invest in core and core plus properties. We believe that this is because those REITs are trying to maintain their REIT tax status and have to distribute substantially all of their income and therefore tend to invest in higher quality cash flow producing assets within the core and core plus areas. Private real estate funds are unconstrained by this tax requirement and therefore invest across the spectrum including value add and opportunistic investments.

Looking at the return data, we looked at data -- the data doesn't go back as far as in REITs -- up to a ten-year period. Generally, over a three- five- and ten-year period private real estate investments outperform public REIT indices, but once again you have the issue about are you comparing like for like when what we said is public REITs do tend to focus more in the core and core plus area whereas private funds are across the spectrum through to the value add and opportunistic classes.

In looking at the one-year returns, the shorter-term returns, we found significant

overperformance from private real estate funds but this was up to September 30, 2020, and we suspect that that could be driven through the fact that REIT returns are derived from public-traded prices of REITs, and over March, April, May at the height of the pandemic we saw a liquidity squeeze, and we saw certain prices for many securities, including REIT securities, get compressed, and in the case of REITs it diverged from the underlying net asset value whereas private funds continued to value their assets in the same way that they did, which probably had less sensitivity to the pandemic situation.

After looking at different asset classes and their returns, we really wanted to understand what access retail investors have right now to private investments, and what are the sort of key regulatory and legal bottlenecks to wider access. In terms of current access to investments, we believe there are three many areas notwithstanding there are four bullet points here that retail investors have access to private investments, firstly in open-end mutual funds and then in closed-end funds which include interval and tender offer funds and lastly in some exempt securities issuances by issuers.

Starting with open-end mutual funds, open-end mutual funds which provide daily liquidity are able to

hold a portion of their assets in illiquid investments. It's up to 15 percent, and that comes from Rule 22e-4 of the Investment Company Act. Open-end mutual funds that avail themselves of this restriction often hold a much lower proportion of their assets in illiquid investments. Generally around 5 percent is what we believe.

We don't believe that this is a good way for retail investors to have private investment access for two reasons. I don't know is most retail investors would have no idea what private or illiquid investments a liquid mutual fund holds. And secondly, it's virtually impossible if not impossible to measure the performance of those private investments with an open-end mutual fund versus liquid investments.

Closed-end funds do not provide daily liquidity and seem more set up and more ideal for holding private investments, but closed-end funds which include integral and tender offer funds are currently restricted to holding no more than 15 percent of their assets in private funds under SEC staff interpretation. If they chose to hold more than 15 percent of their assets in private funds, they're limiting to offering the fund only to accredited investors.

Interval and tender offer funds are slightly

more flexible versions of closed-end funds in that they can set up redemptions. Interval funds offer redemptions at predetermined periods, normally quarterly, and up to a predetermined amount, normally 5 percent, but that could be as high as 25 percent. There are only around 70 active interval funds currently with 35 billion of total assets and an additional 34 in registration, so there's some momentum around interval funds.

The largest interval fund, the ACAP Strategic Fund, accounts for about 30 percent of total AUM but appears to hold virtually all of its assets in public market equity securities. Apart from the accredited investor requirement when a closed-end fund holds more than 15 percent in private funds another important constraint is if the closed-end fund either invests in private funds that charge an incentive fee or themselves charges an incentive fee, they require investors to be qualified clients.

We'll touch on both of those criteria in a minute, but suffice to say that because of this criteria, either the accredited investor criteria because they invested more than 15 percent in private funds or because they inherit or charge incentive fees, the qualified client requirement, these funds even though they're registered investment companies generally are not available to most retail investors.

The last category of exempt securities for retail investors allow retail investors to invest directly primarily in small offerings and under sort of crowdfunding exemptions. We would argue that these are potentially more risky propositions. They tend to be more startup companies. They tend to be investment in one company and therefore are not ideal for providing a diversified exposure to private investments.

So therefore we concluded while there are some methods for retail investors to gain access to private investments these are either diluted in a liquid vehicle or high exposures via close-end funds, but there are still some issues around access because of the accredited investor and qualified client requirements. As such, broad access us really not available to retail investors.

Picking up on a couple of those terms that we use, it's important that we think to understand what the choke points are right now for wider access. We touched on accredited investor, so the accredited investor requirement or threshold is really a net worth or income test, a net worth of about a million dollars, income of 200,000 individually or 300,000 jointly as well as

recently an extension to professional certifications. It comes into play primarily in the closed-end fund space where a closed-end fund wants to invest more than 15 percent in private funds.

I know there was actually some legislation introduced last week by a democrat and a republican to remove this requirement. I know the SEC has been looking at it themselves. It also comes into play for investment in private funds for exemptions from the Investment Company Act, but it's limited to pools of no more than 100 investors, so called 3(c)(1) exemption.

A qualified client applies where any investment advisor is looking to charge an incentive fee and therefore applies in most private fund scenarios where incentive fee or so called carrier in a typical 2 and 20 structure that comes into play, but that's actually a higher in my view threshold, at least financial threshold, than accredited investor. It requires a million dollars under management with the advisor -- I think that's been indexed slightly recently -- or 2 million of assets under management.

And then probably more importantly and something we haven't touched on is that most larger private funds depend on a 3(c)(7) exemption of the Investment Company Act rather than a 3(c)(1) so they're

not limited to 100 investors, and that requires qualified purchasers with 5 million or more of investments for the natural person, a very high threshold. To put that in context about 2 percent of households probably meet the qualified purchaser threshold, and about 13 percent of households meet the accredited investor threshold.

And so whilst we believe that the current regulatory landscape allows for some investment into private investments even through a registered investment company these thresholds for accredited investor and qualified clients make it largely inaccessible, and for private funds, the higher qualified purchaser threshold means virtually all retail investors don't qualify for private funds.

And so overall, you know, we believe the returns from private investments are whilst not easily comparable we find support for the returns being slightly to somewhat better than comparable public market investments. We believe they offer some diversification benefits. We acknowledged the higher dispersion of returns and therefore diversification becomes important when we talk about our design principles and that the current legal and regulatory framework means that whilst there are some retail

investment vehicles that can invest in private investments these make up a very small portion of the AUM because you still run into the qualified client and accredited investor issues.

And with that in mind, we thought about the design principles of how we responsibly look at widening retail investor access to private investment and strike a balance between investor protection and wider access. And we've previewed this before. We've really distilled this down to four design principles. As we said, we do have some specific recommendations that we'll follow off the back of this.

The first one is liquidity. I think at the outset it's important to state that private investments are illiquid, and you can't really square that circle. The reason I spent a bit more time on the REIT situation is that one of the ways you can try and deal with it is to create a secondary market, make closed-end funds, for example, that invest in private funds have them be able to list and create a secondary market in the same way that REITs create a secondary market in REIT securities even though the underlying real estate investments are illiquid.

And therefore, investment structures that offer limited redemption rights and secondary market

Page 82

trading ought to be encouraged. We acknowledge that you can have situations where the traded price is at a discount to the underlying net asset value, but you see that with REITs now, and we saw it even with ETFs in times of stress. I think we had a session on that with fixed income ETFs.

Probably our most important design principle is chaperoned access. We acknowledge that retail investors shouldn't be just set loose and invest on the same basis as institutional investors. We believe they should be chaperoned. One of the key ways we think we can do it and a lot of our precise or specific recommendations are actually using the current registered investment company framework that has a raft of investor protections and disclosure rules.

We have, however, highlighted that within the current framework there are a couple of key impediments around accredited investor and qualified client that will need to be dealt with, and we're going to pick that up in some of our specific recommendations. Chaperone access could potentially also be achieved in other ways or in conjunction. One of the ways we discuss is to have retail investors only invest in funds that have substantial institutional investor participation. Some of the feedback we got on that was, well, institutional

Page 83

investors might not like that or want that, but we think the registered investment company framework is probably the key area to focus on as the way to get retail investors wider access.

We believe diversification is important. We've touched on this. We believe that diversification through a portfolio of investments in different private funds or private fund of funds can help reduce potential performance dispersion, something that we highlighted, as well as volatility as compared to have more concentrated private investments.

We don't think that diversification of having an investment where there is some small portion of private investment which you don't understand that you can't track and measure is ideal maybe with the exception of a target date, or something like that, but generally for retail investors we think they should focus on having a diversified pool of private investments and then having a portfolio which includes private as well as liquid investments to deal with their liquidity needs. Clearly, mandating or even monitoring that may not be feasible, but it is a design principle that we think is important to state.

And lastly, disclosure. We believe in a registered investment company framework. There is

Page 84

already quite a lot of disclosure. We want to look at that a bit more and see whether there's any specific recommendations there, but regardless of the method used we believe that access to private investments must include standardized disclosure offering information particularly with respect to performance, risk and fees.

And I think even when we had Ludo, who I think we'd all agree is a bear on private investments, on private equity, his closing remarks on the panel were something I think a lot of us remember. And he said, "Actually, if private equity has standardized disclosure using kind of the mutual fund model which has been built up over 20 years, actually, yeah, I don't have a problem with it." So I found that comment quite telling. So we think disclosure is a very important disclosure that allows comparability of key measures in private investments.

So that's the summary of what we've been doing over the last 16 months. It probably tells you that obviously we are in favor of widening investments into a chaperoned access, and we do have some specific recommendations primarily around using the registered investment company, which we believe is a very robust framework already, removing some of the bottlenecks there that we see or we perceive is the way to move

Page 85

forward with responsibly providing wider access to private investments. That concludes my comments, and I welcome any questions and comments from the rest of the committee.

CHAIRMAN BERNARD: Rama, if you can un-share your screen, then I'll be able to see people raising hands. Thanks. First of all, thank you for that excellent summary and to the group for -- I mean, I think it's self-evident this is a very complex area, and the group has done a lot of deep research and thought in consideration of all this. So thank you for that. Any questions, comments? Renee.

MS. LAROCHE MORRIS: Rama, a quick question. When we think about the retail investors and even when it's a little bit more sophisticated, a lot of them are, you know, really self-directed. And when we think about providing more access to the private markets that will require, in my opinion, the need for an advisor of some sort, and do those advisors have access to the type of investments that we're talking about here, and how does this sort of shift the way the retail investor approaches their service model?

MR. SUBRAMANIAM: So in the registered investment company framework -- and by the way, I would ask any of the other subcommittee members to please chime in if they have any further comments as well. So in the registered investment company framework, you do have that sort of advisor set up, so that's why we think it's ideal.

So right now in a closed-end fund, for example, yeah, an investment advisor had access to private funds. We presume that they have sufficient skills or will call upon the skillset that the need to analyze those investments. The issue right now seems to be the fact that if they choose to go and invest in private investments they're limited to 15 percent otherwise you hit the accredited investor requirement. So we think that investment advisor model, you know, with some caveats and modifications is probably the best form of chaperoned access.

The sort of caveats and modifications would be, hey, why have we got this 15 percent limit on private funds when you've got the investment advisor there? Isn't there sufficient disclosure? Isn't there sufficient protection?

The other area having with having an investment advisor is it does introduce at layer of fees. So how do you deal with that? Right now they have to be independent, but can you have a situation or can you deal with that issue and balance with the fees

where if you're a large private equity firm with many funds can the advisor be affiliated with the fund provided the advisor can show that the average fees paid by the retail investor are no more than what's paid by institutional investors?

Not quite the question you asked, but we think -- that's why we think the registered investment company model with the advisor is actually the way to go.

CHAIRMAN BERNARD: Other questions or comments?

MS. SOE: Thanks, Rama. I know I shared a little bit with you when we chatted one-on-one, too, and I think my comment will be you noted that mandating or monitoring of overall portfolio diversification may not be feasible. I do recognize the challenges. That said I think it will be highly desirable because looking at 2008 financial crisis or even March, April of last year when everything goes down and correlation goes to one no matter how well diversified your portfolio may be stresses do appear in all corners of the asset classes and the investment portfolios.

And I have a little bit of a bias where I do think private equity funds have a very high -- have exposure to small cap and not correlated with other asset classes and particularly the small cap. So I'll

be very interested to see what kind of guardrails can be put in terms of monitoring the overall portfolio diversification just because everything tends to go to one under stresses.

MR. SAVAGE: So Rama, maybe I can speak up a little bit here. I think those are very good points, and I agree with you that a retail investor should not put the bulk of her investments or even a substantial portion of her investments in one private fund, or something like that, or private fund of funds for risk reasons, and I think we did point that in the design principles. That's one element of it. And I think that's something the SEC will think about how to handle.

Clearly, if it comes to an intermediary where the intermediary makes a recommendation they're going to be subject to either a fiduciary duty or the Best Interest Standard under are Reg BI, but there have been other ways they've limited exposure. Like in the crowdfunding rule, there's a percentage limit on how much a retail investor can put in based on her or her income or assets. So those are factors that the SEC may want to think about.

CHAIRMAN BERNARD: Scot, I think you also had your hand up, and then Russ.

MR. DRAEGER: Yeah. Thanks Ed. First, Rama,

Joe and others, outstanding job. Just as last time I think the design principles are incredibly thoughtful. I mean, your last point, Rama, was really important and one from our discussion of earlier like if the Blackstones of the world want access to a broader scope of retirement plans beyond pensions then part of the cost of entry is kind of some form of assurance that that market is not going to get substandard share class relative to fees, performance or anything else. And so I think that was part of your original dialogue on marrying the co-investment between the institutional market and the closer to retail market.

I really love the idea of using the RIC structure because a lot of the -- some of the chaperoning will end up being done by ERISA plan fiduciaries or, you know, 401(k) plan fiduciaries, and through the decades they've already been educated on how to digest and wade through the RIC disclosure regime. And so to the extent that we can move this asset class into a type of regime that those fiduciaries are already used to wading through I think that will be a very helpful facilitation of the access in the chaperoning process. But once again just thank you for your work. Really outstanding.

CHAIRMAN BERNARD: Thanks. Russ.

MR. WERMERS: Yeah. Thanks, Rama. Great work with your committee, of course. Rama, you and I talked yesterday a bit, but I thought of one other thing I forgot to ask you yesterday or forgot to bring up, I guess. Endowments and pensions embrace private equity, you know, the Swensen Model, and so on, and they have -- I would assume they have all the same problems that Ludo alluded to, fee control, maybe some liquidity concerns, and things like this.

But I'm just wondering did your committee deliberate over what it is that's different about mutual funds, for example, and endowments and pensions that drives this lack of use or the so far unattractiveness of private investments? Is it just the daily liquidity requirement? Is it also the professional management that we just don't have enough good private asset professional managers out in the marketplace in the RIC space, or is it that endowments and pensions can use their bulk and their heft to drive down fees? Do you have any thoughts about those?

MR. SUBRAMANIAM: John Suydam probably has some thoughts. I mean, my view is, you know, just focusing on the registered investment company space -- I'll let John talk about the institutional investors -- I think the impediments on, you know, the limits of how

much you can invest, and if you're a liquid fund, 15 percent often a lot less. If you're a closed-end fund, you run into the accredited investor and qualified client limits, limits on the way you can market that and how widely you can market that. So I think that is a big issue.

People are looking at the accredited investor because it's an SEC staff position, but I think they also need to look at the qualified client bit, because I think they go hand in hand. John Suydam, do you have a view on the institutional --

MR. SUYDAM: I agree with you completely Rama. I think it's much more the impediments to doing it than anything else. There's just not an ease of allowing retail investors into these type of products at this point, so the easier course is just to work with institutional clients because there's a tried and true path to do it. I think that's the main issue.

CHAIRMAN BERNARD: And if I could just add from experience at a large firm that had lots of RICs and did in fact invest in private investments to some extent, particularly in smaller cap funds, it's as simple as the requirements for daily liquidity and daily NAV.

Obviously, you have to have a whole valuation

process for securities that aren't treated, and that's pretty well understood. It's very rigorous. But nevertheless if it becomes too big a part of a fund, it becomes difficult to meet the requirements of a traditional RIC, which is why I think what the committee is doing looking at these -- in my view, looking at RIC as a structure that provides a lot of protections that may not exist around privates but finding a way to do that that overcome some of these impediments, I think the subcommittee is on the right track.

I also think we had a couple comments this morning about looking at what and why, and some of the how we'll have to leave to the SEC staff. This one is going to get into some really technical considerations, and I dare say we'll see what the group comes back with in September, but I think it's going to be directional, and then the SEC is going to have to sort out exactly how you make the pieces work.

MR. SUYDAM: Just to respond to one of the other comments on diversification it's something that I think we as a committee thought very important, but it was also diversification across -- as we've seen there are a lot of asset categories within the private markets. It's not just private equity. It's private debt. It's real estate. It's opportunistic. And

frankly, getting diversification across the product set is we think as important as getting diversification across managers.

CHAIRMAN BERNARD: Susan.

MS. MCGEE: Rama and John, do you envision if we proceed with recommending this type of design principles, and the SEC adopts it, do you envision maybe a bifurcation of these types of products that are available so when you add a structure, regulatory structure to a vehicle to allow protections for the retail, will it drive some of these large pools of money elsewhere because they can negotiate whatever terms they want typically? And so do you see a bifurcation of these types of private vehicles?

MR. SUBRAMANIAM: So I think from the end of your -- when you first said “bifurcation,” I thought you meant having retail and maybe a super retail sort of category, but I don't think that was it. I think you were saying more because retail can invest now in private investments and you've got institutional investors you create two separate markets, and I don't know whether you were then inferring that retail might end up paying more than institutional investors.

MS. MCGEE: Maybe so, or maybe, you know, some of the desire -- it seems like to me the desire to open up private investment to retail because retail investments have done relatively well. So is the idea here to share some of the performance opportunities to the retail market?

So my question is, yeah, will there be a bifurcation of these private products that are available? So you've got your big retail investors that can negotiate down prices, and then you've got retail coming into private investments that have a little bit higher fee structure, so you're still going to have over the long-term maybe a performance differential that might negate some of the reasons for allowing retail into this area. Just curious your thoughts on that.

MR. SUBRAMANIAM: Yeah. I have a couple of thoughts. I think John and other people on the subcommittee might have thoughts as well. So I think if you use, you know, a RIC structure and the manager has, you know, certain fiduciary obligations, I think it helps with that. A, they have probably more bargaining power because they're acting on behalf of a lot of investors. It's not individual retail investors sort of coming to them. B, they are experienced and sophisticated. But it doesn't necessarily fully preclude that.

One of the ways that institutional investors

-- the fee structure as far as I know on private has been relatively inflexible. You'd think even with the bargaining power of large institutions the fee structure would have compressed like it has in some other areas, but it hasn't really. It's largely been a 2 and 20 structure in private equity.

There have been some other ways that institutional investors get overall better returns, and that's through sort of co-investments, you know, where they co-invest without the carrier and the management fee as well as invest through a fund. When you look at that together with the fund performance, you know, there might be some differences, but I think that's gets into the details of how it's implemented.

I think fundamentally with a registered investment company structure you do have a fiduciary that's acting on behalf of large pools of retail money that should place them in a similar position to an institutional investor. I don't know, John Suydam, whether you've got a view on that

MR. SUYDAM: Yeah, a little bit. I think there actually has been some fee compression due to scales of economy. As funds have gotten bigger, the 2 and 20 and particularly the 2 has come down. But yeah, we have wrestled a little bit with it could be

performance diverge, and that's one of the things you wrestle with in kind of the fund to funds. If you've got a manager managing the fund, you've got kind of a, you know, potentially a double fee structure because you're paying fees at the underlying funds but then also a fee at the consolidating fund that's doing the allocation to different funds.

But there are probably ways that that might mitigate as well if you have, you know, potentially, as Rama mentioned before, an affiliated manager. Maybe that fees comes down dramatically, and you get your verification by ensuring that the underlying funds that they invest in are done at a fee structure that is comparable to what institutional investors would pay. Frankly, I think a lot of this would depend on how much uptick you got and the market power of these closed-end funds, you know, once they get to a certain scale.

MR. BAJKOWSKI: One additional consideration that's been given is whether or not you would invest in pools of managed funds that actually have material investor participation as well. So would mandating potentially requiring a minimum institutional investment as well as a possible way to help keep from getting, I guess, into bad funds?

CHAIRMAN BERNARD: If I can be forgiven a left

field metaphor, this feels to me like a bridge being built from two sides of a river. On the one side, you've got providers who would like to make their services available to a broader audience, and on the other side, as the committee has pointed out, there's demand from a broader audience to have access to these products, and this bridge can't quite come together over the river because of structural impediments.

My expectation is that the committee can find a path, and the SEC takes the further steps to actually sort out how to make it happen. Essentially, you'll create the opportunity for innovation to solve some of the issues you're talking about in terms of how do we actually match up the right pricing and the right products with the right clients obviously all subject to disclosure and rules, and so forth. But right now the impediments are such that there's sort of not scope for that innovation to occur. Is that fair, John, based on your experience from that side of it?

MR. SUYDAM: I think that's a great explanation, yes.

CHAIRMAN BERNARD: So with that, and I didn't mean to say -- let me just say we're at time, but if we've got one other comment or question this was a great discussion and I dare say will be helpful to Rama and his team in finalizing their recommendations. Anything else before I turn it to the next panel? I'm not seeing anything.

So with that since I was feeling compressed for time earlier this morning let me just reiterate -- I won't go through the script I had for myself, but reiterate my thanks to Neesha Hathi for her prior work on the committee, including leading up to and getting this next group going and to Mike for taking the baton.

So we're next going to have our first presentation. It actually follows one that we did in a different context about technology advice last year. But the first panel presentation from our new Committee on the Evolution of Advice. And with that, Mike, I'll just turn it over to you. And we've got 90 minutes for this, folks. We'll go to about 3:45.

EVOLUTION OF ADVICE: TECHNOLOGY-ENABLED PERSONALIZATION

MR. DURBIN: Thank you very much, Ed. I hope everyone had a light lunch given where we fall in the agenda, but on behalf of my subcommittee partners, Jeff Ptak, Joe Savage, Erik Sirri and in fact Neesha Hathi, I'd just like to thank Commission leadership, senior staff of the Division of Investment Management and all of you our fellow AMAC members for the opportunity to present our panelists and to facilitate this discussion

this afternoon.

I felt I would offer some very brief introductory remarks, maybe three minutes, and then quickly shift to our first panel. Amazingly, when we took up this topic before, as Ed referenced, that was a full year ago. Time flies. I just want to remind everyone of the context for the establishment of this subcommittee, and that context was, in fact, the basis of our invitation to our four panelists that we are going to allocate most of the time to this afternoon.

Technological advancements are increasingly enabling industry participants whether that's firms all the way down to individual advisors to provide highly personalized investing experiences in an increasingly automated and scalable way. A broad range of technologies can be applied to personalize various aspects of that traditional inverting process from financial planning to portfolio construction and management to ongoing client support, think behavioral support, which we'll talk about in a moment.

So if personalization can now be offered more broadly throughout the investing experience to enable more customized and potentially impactful services to investors, what implication does this have for the definition and delivery of investment advice and the

related responsibilities of advisors and their firms for delivering that advice? Are there opportunities to serve existing investors better or, in fact, serve new segments of savers or investors which are currently not being pursued due to current guidelines and/or regulations? And are there emerging personalized experiences that require additional guidance to ensure that investors are protected as innovation in our industry actually continues to accelerate?

So it's against that backdrop that we submit a few specific areas posed as questions that we as a broader AMAC may want to consider some of which will be addressed right here this afternoon through our panelists and then hopefully through the discussion that ensues with all of you but clearly will be the basis of the follow-up work for the balance of the year that we as a subcommittee an ultimately all of us as an AMAC will take on.

And I'm going to pose four questions, but think of them really as more candidate questions at this stage really posed in the interest of trying to narrow so that we can go deeper on what would otherwise be an extraordinary broad topic; that is, how does technology impact the future of the advice giving industry? So we ask questions in the spirit of trying to narrow, to hone

into area that are actionability with the desired impact.

So one, in that spirit, first question, how does the level of personalization of help or guidance impact whether it is, in fact, defined as investor advice? Two, what are the risks or opportunities associated with artificial intelligence or machine learning that drives increasing personalization? What we're trying to tee up there is with the increasing ubiquity of data particularly data around the end clients that are served we now use as an industry increasing applications of AI or ML through technologies platforms that can quickly learn about the end clients and guide them towards personalized actions or, in fact, personalized behaviors.

Three, does increased access to an investor's personal information change the responsibility or, in fact, obligation that the advisor has in taking that personal information into account in an advice recommendation? In that context, I think consumer data aggregation, the increasing ease with which investor household's complete asset and liability and transaction history can be brought together to an advisor even when that advisor historically has maybe only managed a more narrow sleeve of that household sort of asset side of the personal balance sheet.

And fourth and final, how does the trend towards personalization impact investors' ability to understand and evaluate the investment advice that they receive? Again by example, if you take the extreme of hyper personalization of portfolios for end clients it's going to be difficult to utilize the traditional methods of comparing outcome or performance that being I'm going to compare my performance of let's say a RIC to our prior topic against a known and standard benchmark. So how does that evolve when you take sort of the personalization thread to its extreme?

Again, as I referenced, these are just a few candidate questions to consider as this subcommittee and ultimately all of us refine the scope and dive deeper into the subject. So with that I'm going to pause, and I'm going to welcome our first two panelists, Ed O'Brien and Jay Lipman. We broke the afternoon into two panels of two each so that can have a Q and A with each of those pairs. We start with Ed and Jay.

Just briefly, their bios are in the sec.gov website. Ed is CEO of eMoney Advisor, a role he assumed in 2016 building on his more than 30 years of experience in serving up advisor-facing solutions whether technology solutions or investment solutions. eMoney is

a SAS based technology company with multiple offerings, but they're all built around a core of financial planning software.

And Jay is president and cofounder of Ethic, a technology driven sustainable asset manager. Ethic Technologies helps empower advisors and clients to have conversations regarding 19 different areas of sustainability and ultimately personalize passive direct index portfolios managed by Ethic. They are an investment advisor that incorporate their clients' unique impact, priorities and financial goals.

So I think I'm turning it over to Ed O'Brien first. Ed, thank you for joining. Take it away.

MR. O'BRIEN: Thanks, Mike, and thanks everyone for inviting myself along with the other panelists to provide some perspective on how we think technology is shaping the future of financial advice. I will go ahead and similar my screen, and I just want to confirm that folks will be able to see it. Is that working for everyone?

MR. DURBIN: Yup. That's good.

MR. O'BRIEN: Great. Great. Thank you. And trust me I only have a few prepared slides here. I think the format is each of us will take 10 or 15 minutes to talk a little bit about our domains again in

the context of helping to provide some insight or education around how technology can work for advisors in the advice (distorted audio) stack. We'll certainly leave room for questions but also open to take questions, I suppose, as we go.

As Mike said, I'm Ed O'Brien. I'm the CEO of eMoney Advisor. We are a pure SAS technology company providing what sometimes feels like a very narrow but a deep mandate around financial planning technology for advisors and helping advisors build better financial plans for their clients. Just a little bit of context on who we are because most folks don't really know who eMoney is, yet today we serve about 80,000 financial advisors and professionals mainly because we are a -- labeled solution that the advisor and the firm that use us imbed us within their own technology platform experience.

That said we serve advisors of all shapes and sizes from the smallest of the fee-only planners to the independent advisors and broker/dealers all the way to the largest financial institutions of the U.S. One thing that I would say all our clients all have in common is the desire to leverage technology in delivering planning led advice. Our technology is what helps advisors and firms find scale in the business of

providing financial plans to their clients.

While we've been around for over 20 years, again most people have never heard of us because we tend to operate as a pure B to B to C model our business is 100 percent pure SAS licensing. We don't subscribe to any other services where we get the (distorted audio) on transactions are sale of information. It's a pretty pure SAS business.

And just one note. While we are owned by Fidelity Investments we operate very independently. We have relationships with Fidelity and their brand of channels. It happens to be like any of our other client relationships that we have on similar types of clients. I'll emphasize that I'm going to do my best. The material that I put together today is intended to really give a perspective of some of the broad financial planning landscape.

A lot the data and experience happens to be eMoney, but what I'd say -- and I think Michael Kitces is on the panel as well, will tell us that there is at least 18 other financial technology companies that provide financial planning software, and that my strong bias is that for a financial professional that engages a client in a planning led advice model most of what I cover today will hold true regardless of what software they choose to use, the point being that the technology can help enable advisors to deliver more comprehensive, more dynamic financial plans and, in turn, deliver better outcomes for their client.

I think most of the panel would agree that the role of the financial advisor continues to evolve, and again I think Michael Kitces can provide even more insight on that. But with respect to financial planning, the proposition in concept is really simple. It's to help a client understand their goals, their time horizons and then balance that against things like their resources and their risk tolerance. It seems pretty simple at face value and that is until you start to really engage the client in the more deeper conversations, things that ultimately drive peace of mind and fulfillment for clients.

And with technology, to the degree that our mandate is to help automate as much of the commodity part of the stack or the lower part the value stack that is the goal of helping advisors and planners spend for time to engage clients on what's going to drive the most important outcomes to them. I think what we agree on, any of us that provide financial planning software to advisors these days, is that there is a large desire to get more plans to more people. That's a very consistent

theme that we hear, thus translated to the (distorted audio) scale and planning.

And so technologies like eMoney have helped advisors through financial planning to earlier stage clients, not just those that have accumulated wealth, and we think that that training will continue if not accelerate other the coming five years. The proof point is that although the number of financial advisors in the U.S. is pretty much flat or shrinking in some cases we tend to be focused on is that the underlying demand for professional financial advice continues to grow. Today 74 million U.S. households would like to have professional financial advice, yet the vast majority of the 300,000 or so advisors in the country focus on 27 million households.

If you do the math -- I'll do it for you -- it's roughly about 100 clients or households per advisor, and remember that not even all of those today have financial plans. So unless we all believe that there's going to be an amazing influx of talented advisors coming soon, maybe that's a panel conversation for another day, we believe that financial planning technologies helps scale professional advice to another 50 million households by first streamlining the financial planning process, making it really efficient

for advisors by saving time again on some of those lower end of the value stack processes and then, importantly, by using technology to driver deeper engagement with clients using dynamic and iterative process important because that is what ultimately will drive keeping a client on the right path to a better outcome. Simply producing a plan doesn't produce the results that everyone would like to see.

So I'm going to take just a couple minutes and walk you through how this could work today for most advisors. And again while I will talk about eMoney remember that this is a pretty common process or sort of set of capabilities that many planning platforms have. This is a way we think about comprehensive financial planning. As Mike talked about in his opening comments, things like aggregation are important because they drive a better understanding of the full picture for the advisor.

Done correctly an advisor will leverage tools like online factfinders, clients who files in automated aggregation to identify the (distorted audio). What does a client have today in importantly understanding things like both assets and liabilities? More and more important to understand both sides of the household balance sheet as more and more people come into a work

force carrying higher debt loads. It's important that you understand the whole picture as an advisor so that you can make the most appropriate recommendations in the plan.

Then the next part, moving to the right-hand side, is where the advisor engages the client around understanding goals and objectives, and it's just not to move up the value stack here. Advisors can use technology to help record the goals and importantly help prioritize the goals and start to establish what tradeoffs a client may be willing to make. The best advisors help clients sort through what are discretionary versus nondiscretionary needs and sometimes will drive really deep into what may be complicated family or even work relationships that impact how we think about prioritizing goals.

The great news is most advisors can do this pretty instantly with technologies, and the iteration through modeling the advisor and their client can end up with a design of a financial plan that's both realistic and achievable because at eMoney we have a saying that says an unfunded goal is just a dream. A dream is fine, of course, but it's best to know when everyone understands where is reality versus dreams in the advice relationship.

So once you've established that baseline we can move into the lower right-hand quadrant here. The advisor and the client can leverage technology to create scenarios that dynamically highlight how changes of financial behaviors, things like saving more, spending less, retiring earlier, adjusting risk tolerance. All things that are, you know, scenarios or what ifs can impact the extent to which the client can achieve those goals and objectives.

At eMoney, we have a tool that we call Decision Center. It is hands down the most used portion of our technology platform, and it's no surprise because it's the area of our platform that provides the most gratification to both advisors and their clients. It provides instant visual response to all of the what if questions that come up in an advice relationship, and this is perhaps the most powerful aspect of financial planning technology. It's not just creating the plan. It's being able to use that plan as sort of the guideposts that establish how do I stay on the path to driving the right outcomes.

Giving advisors and clients the tools to build confidence and transparency and the ability to deal with life's often unanticipated events and then supported by in the background things like Monte Carlo situations to

stress test these plans in the performance to provide a higher degree of confidence in the plan. Again, no surprise this is our most used technology. It is similar for other platforms out there.

To give you some sense of perspective, Decision Center alone has over 200,000 sessions by advisors each month, and that certainly has continued to accelerate especially given the landscape in 2020. It is through this iterative dynamic process that the advisor and the client develop a financial plan that accurately reflects the situation with a clear sight into achievable and proved outcomes. So my guess is if you sort of take away from this the idea that a static once-a-year process is a financial plan that's no longer true. Technology really helps align a financial plan with life's events.

I guess the question might be how do we sort of prove that our technology is helping advisors get better at driving efficiency and the right outcomes in client satisfaction? I'll leave you with just a few minutes of perspective on research that came out of our own efforts over 2020 and the early part of 2021. We did do a lot of field studies during the course of the pandemic.

And again, reminder what I'm showing here is

eMoney results. I happen to think that other financial planning technologies experience very similar findings. Top takeaway from a year like 2020 is that it underscored the need for technology in the financial planning and the planning (distorted audio) process. Advisors had strong gains in efficiency in parallel with strong gains in satisfaction. That's a real win/win when technology can provide both of those in parallel but perhaps most important was the engagement and satisfaction that clients experienced.

So seeing some of the top-level results out of a year like 2020 which forced more use of technology gives us all great hope that we can get more plans to more of those 50 million households that still want professional financial advice. I'm going to click just a minute or two here into some of the drivers of advisor efficiency and client satisfaction.

First, with respect to advisor efficiency, key drivers are using technology to more quickly develop and more importantly (distorted audio) and update financial plans. It's one thing when you build a financial plan and you've got some efficiency. It really becomes powerful and pays off when you're able to keep that financial plan sort of living alongside the life's changes that come with any client and being

really quick to be able to respond to the what if scenarios that every client may have. Can you think of a year more than 2020 where clients weren't asking what if multiple times along the way?

Often the biggest driver in creating a financial plan is the time that it takes to understand the goals and the desired outcome of the client. For a lot of advisors, very common that that can span multiple meetings and hours of conversations. So importantly, applying the right technology to automate other parts of the process, aggregation, getting the demographics from the CRM systems and not having to re key data, all of those things that provide low value allow the advisor to spend their time focused on building the right plan that drives peace of mind and fulfillment for their clients, which gets to satisfaction.

Importantly, what we found throughout the course of last year that clients are looking to not just have a financial plan but looking to engage with technology that makes it easy to see how they're doing and then very quickly get perspective on the what if questions. What if I lose my job? What if I decide that I need to retire early? What if one of my children has financial difficulties, and I need to step in? So these are all things that can really help bring that level of comfort to a client.

And then the other technologies are important here like aggregation, document faults, these add confidence, organization to people's financial lives which sometimes can feel sort of overwhelming and complicated. Simply by adding ways and tools to help organize them in a simpler way can add pretty high satisfaction. I think one of the best points we had last year was in the midst of a global pandemic our advisors responded to us letting us know that 93 percent of clients that had financial plans felt like they had a deeper, stronger relationship with their advisor than they did before the pandemic.

My last slide show sort of emphasize this because I'd like to think that there was something that eMoney did that was amazing and wonderful in 2020 that boosted these results. The simple fact is that it's not the case. I think 2020 was a year where advisors really had to embrace technology, and what we saw was a really good pick-up of advisors who started using technology more, especially in financial planning, and their clients found it very convenient to be able to engage in sort of a more digital format.

And so as it worked out just looking at these year-over-year results pretty impressive that the

technology worked well for both the advisors and their clients. So I'm going to pause there. I think I'll hand it off to Jay Lipman from Ethic who is going to occur the next 10 or 15 minutes, and then I believe we'll be open for questions.

MR. DURBIN: Thanks, Ed. Are you going to stop sharing?

MR. O'BRIEN: I will stop sharing.

MR. LIPMAN: Thank you so much for the transition over there. I'm just waiting for the ability to share, and then I will put up my presentation. And it is giving me a little bit of difficulty here. Bear with me. And I should be up. It is actually asking me to quit and come back in, which I do apologize for. I'm not sure why it's asking that unless someone on the SEC team, Christian or Daman wants to present for me, and I can speak to it. Nope. In which case I'll be back momentarily. Forgive me for the delay here.

MR. O'BRIEN: Eric, did you have something you wanted to say? Looks like we're back.

MR. LIPMAN: Eric was offering to share his screen.

CHAIRMAN BERNARD: I was just saying I'd share for him. Sorry.

MR. O'BRIEN: No worries, we'll get there.

Damon, please do let him back in.

MR. LIPMAN: Apologies, I am back with everyone now. Here we go. (Distorted audio) fantastic. Sorry. Thank you everyone for kindly welcoming me today, and Ed thank you for your wonderful presentation. I'm going to actually be making reference to a lot of the point that you made here with the value stack especially and the kind of evolution of advice and the transitions we've seen and the expectations that we are seeing for investors now.

To step back a moment from the presentation, what we'd actually like to focus on today is really the risks and opportunities of personalization. Obviously, as we increase the amount of personalization that is possible within a client's portfolio and we increase the amount of variables that can be taken into consideration to reflect what is actually unique to each individual client whether that is values based, whether that is unique to the idiosyncrasies of the financial considerations of the client that is going to increase complexity, and it's going to increase risk.

And so what we'd like to do today is really provide the context as to why we're seeing the demand for personalization increase, why we're seeing advisors want to talk about it more and then what we're actually

doing to hopefully mitigate some of that risk that is inherent when you increase those complexities in each portfolio that is ultimately unique to each client.

So in order to provide that context -- I am Jay Lipman, one of the three cofounders of Ethic. I'm president and chief compliance officer. To provide context on what it is that we do I think stepping back to why we founded the company is really important and hopefully valuable. When we did found the company five and a half, six years ago, it was for the purpose of really reflecting what it is that we wanted in a portfolio because we didn't believe that we could personalize our investments in a way that reflected what we really wanted, and as three different individuals we had three different individual investment profiles.

We had different values that we wanted to prioritize. We had different tax considerations. Three of us are immigrants, so we had idiosyncrasies related to that. And so we founded Ethic to ultimately allow for personalization to happen at greater scale while hopefully mitigating some of the risks that are inherent with personalization through technology and scalability. We're going to talk through that as we go through what it is that we actually do.

We are a technology-enabled sustainable asset manager that builds personalized portfolios that reflect an individual client's specific financial criteria and their values. Now, this can be somewhat varied, and the level of personalization within each of these portfolios can also be quite varied. On the financial consideration side, it is things like specific tax considerations, whether or not the client has an over allocation to a specific single name equity and is therefore looking to divert some exposure away from that within their portfolio.

And on the value side, it can be a client that is seeking generally a more sustainable value -- portfolio or a client that is really seeking to focus on a specific issue, whether it is climate oriented, human rights oriented or governance oriented.

Now, what is it that we actually do? What is really happening in pen to paper? We are an asset manager. We are managing money. We are registered. We create passive equity separately managed accounts. Now, these separately managed accounts are ultimately personalized based on the individual client's value set and optimized around those financial criteria. Now, the way that we do that, how we do that that is through a process called direct indexing where we're really seeking to create a clean passive equity exposure that

alliance with the index exposure a client already has.

We're not seeking to rebuild the client's allocation. We're not seeking to advise them as to the allocation they should have. We're simply seeking to optimize and personalize around the portfolio they already have so that they can feel like it is a more unique version of the exposure they're already comfortable with. Now, just transitioning, who do we do this for? Well, we do not do this individually with the end client. We are intermediary driven.

Our experience and our personal professional experience and our backgrounds is built in doing this for intermediaries, and that was really what we wanted to do when we founded Ethic was to enable intermediaries to have this conversation because a very important part of personalization is that it's not just the complexities of having a conversation about the ultimate investment product. It's not just the complexities inherent in building a financial product that is ultimately reflective of an end client's individual needs. It is actually the conversation around what those needs are and ultimately co-define those so that they can be translated into a portfolio that is also a significant difficulty.

And this conversation, the confidence around

that conversation, the confidence to have the ability to talk about specific sets of values, to go into those details when they're somewhat nuanced, sensitive and the ability to reestablish what the priorities are from the financial (distorted audio) means that the advisory community intermediaries, whether they are institutional networks or advisors means that we have focused on providing those intermediaries the ability to have that conversation.

So as you can see here, we focus on RIAs, multifamily offices, broker/dealers. We work with networks whether that's TAMPs, aggregators and on the institutional side. Again, we do this because we seek to provide those intermediaries the ability to have this conversation more confidently and then to ultimately build those investment strategies that reflect the increased complexities that come with that conversation.

Now, with more context on Ethic, we manage over a billion dollars. 100 percent of that billion dollars is aligned with 19 of the focus areas that we prioritize which are ranging from things like climate change, deforestation, human rights, corporate governance, financial system stability. It's really about reflecting what it is the client prioritize around the value sets as well as the financial criteria and

then personalizing that so all of the assets that we manage are ultimately personalized along any number of those criteria.

From the team perspective, we are a highly diverse team coming from many different countries. From a tracking perspective, as I said, we're over a billion dollars. We're over five years old, and then from the impact perspective we do seek to prioritize and reflect not just the most important issues that we believe but also the most important issues that we see clients carrying about and that we believe have an impact on the portfolio in the long-term.

Now, transitioning over the personalization of investment, one thing that we try to focus on is to Ed's point around the importance personalizing planning based on each individual that is ultimately being planned for we do believe that personalization of investments can actually be built on who the investor is, and this personalization the investment product can actually reflect that individual's specific priorities and their needs.

Now, to harken back to Ed's very actually somewhat more beautiful diagram than ours here that does reflect the value stack, obviously, we do focus on this transition or somewhat commoditization of what's happened in the industry in the last few decades where as you can see here the legacy expectation is that of money management.

It's the investment management process that has become increasingly commoditized, and we've seen especially in the last decade a huge amount of popularity and success with planning software in achieving those goals. And as Ed said, what is the emerging expectation now? It is peace of mind, and it is fulfillment. We believe that through the personalization of investment products we can actually facilitate that rise up in the value stack that additional value being added to the end investor by enabling for personalization around the criteria that the client is ultimately going to feel enables them to really feel that fulfillment and that peace of mind.

And that can be things that mean increasing the personalization around their specific financial considerations but also around the specific values that they prioritize. And as I'd mentioned with regards to that top level fulfillment around leaving a legacy a lot of this can be personalizing around what that family prioritizes, what they share as a value set amongst the different generations and helping them codify that and the advisory community that we service. It's really

about them feeling confident having that conversation around those issues and ultimately giving that client that additional value of feeling that peace of mind and that fulfillment.

Now, within the context of the entirety of the process here, we do enable the wealth management conversation, the experience that the end advisor ultimately engages with as well as the asset management component, which means that we do a full 360 of helping to identify which clients are going to be a fit for this, which issues they're going to be prioritizing, which criteria we're going to be focusing on all the way through to the product creation, trading and portfolio management all the way back through the wealth management component, which is reengaging with what's actually in the portfolio, providing that ongoing reporting, that engagement and that transparency because it must be a 360 degree process.

The end client must feel as though they are being represented and that the portfolio has ultimately been reflective of what it is that they care about, and then ultimately once the portfolio is invested they must feel that is actually representative of that once it's gone through the trading process.

So to go through that in the step by step,

obviously, the identification of clients means ultimately defining which clients are going to be a fit for personalization. This may not be something that every client needs, and this may not be something that each advisor wants to go through with each of their clients because they may have a simpler investment profile. They may not want to have their values reflected, and really identifying that is going to mean that personalization and the complexities that it offers aren't actually being applied to clients that don't need it.

Then on the client suitability side, it's actually understanding exactly who would be suitable for it but also what their references are. Are they just seeking a cleaner portfolio that they believe reflects a generality of sustainable principles or values along principles, or are they seeking to really dive into a specific issue like corporate governance, like financial system stability, like human rights? So understanding those criteria as well as gathering the investment profile information about their tax considerations because of the tax optimization and whether or not they have things like overexposure to specific single-name equities that they don't want the continued exposure of in the rest of their portfolio through their index

investments.

Now, as we transition from that wealth management side into the asset management side we look at product creation. What we're trying to do here is to ultimately create that passive equity exposure that reflects the investment profile, that reflects the information that has been gathered in that suitability and that preference gathering process. But very importantly here this is being done for many different portfolios, so the product creation must imbed a lot of that information and continue that information in perpetuity, which means that it must be stored. We can then trade and execute on those portfolios, but again this is where additional complexity is introduced because each of these portfolios has differences.

And so the processing of that trading must seek to mitigate a lot of the various transitions of information because it is not one easy effort that is being transacted multiple times. It is a basket of in some cases hundreds of securities to reflect the end client's priorities.

And then finally and I think very importantly the portfolio management. Once the portfolio is traded and executed it does not sit static. We want to ensure that the information in the portfolio, the priorities of the portfolio continue to reflect what it is that that client has deemed a priority in perpetuity, which means that the portfolio must continue to be monitored and managed and ensure that it is in line with the priorities of the personalized criteria that was set in stages one and two.

And now finally transitioning to point 6, which is the ongoing report of the engagement, it's going back to the experiential side. What is the client engaging with as it relates to what's actually in their portfolio? Is it actually aligned with the initial criteria that they set? And very importantly, if it is a portfolio that has prioritized values alignment, what is the impact that is being had or what is the impact that they believe should be had, and is that being provided to them in a translatable engaging manner?

At Ethic, we provide this to impact reporting that seeks to translate that impact through equivalences in a language that all of us can understand such as the amount of carbon equivalence that's been saved in a portfolio that's divested from fossil fuels, for example, or differences in the gender pay gap as an example.

MR. DURBIN: It's Mike. Sorry to interrupt. To preserve some time for Q and A would you mind going

to your two conversations pages maybe.

MR. LIPMAN: Yes.

MR. DURBIN: And we can see if there's questions from AMAC members or others. Thank you.

MR. LIPMAN: Absolutely. So just to transition beyond this, we've actually talked about a lot of this, the most important here is just transparency, auditability, interpretability, scalability and adaptability to ensure that we are maintaining what the client has set in the initial phases, that the data being used is the most pertinent data and that the risk models are also reflecting what the client is seeking from index exposure.

And then from the consideration side looking at the customer experience, understanding what new applications of data or standards for use of information should be considered as more personal data is actually becoming increasingly available, especially social media data, what details or types of information would be most useful to investors in assessing and comparing personalized investments, including traditional products and then finally how can investors assess their personalized choices over time.

How are these things going to evolve other time, and what is the relationship going to continue to

look like between the advisor and the individual investor as they seek to change those things and as they seek to evolve? And one of the most important conversations here is that so many of these considerations do change. They do evolve. What is the process and the mechanism like to ensure that that evolution is being captured appropriately and scalably?

And finally, as we look at the customer experience in the product and technology side from product creation, trading to portfolio management, how can regulators promote transparency into the creation of personalized investment portfolios without stifling innovation? How can we really ensure that transparency is maintained through the investment process from defining the issue all the way through to reporting? And then finally what reporting might asset managers for personalized investment products differ for other investments?

So I will wrap it there. Apologies for running a little bit over time there, Mike, but open to questions here.

CHAIRMAN BERNARD: And if you can stop sharing your screen, then Mike will be able to see where the questions are coming from, or I will. Mike, you want me to call on folks?

MR. DURBIN: Sure. Go ahead, Ed.

CHAIRMAN BERNARD: Erik.

MR. SIRRI: I had a question about the ability of the kind of technology you're talking about to help down-market people, people who have limited means. Should we think about the kind of -- maybe personalization isn't the most important aspect of it but the ability to engage in planning for these people. How important or how useful is technology in reaching farther down into the lower net worth people so they can get help on problems like savings diversification, the importance those kind of goals?

MR. O'BRIEN: I'm happy to take that, Erik. To answer your question it's critical because just from the data we showed you it's pretty clear that a 100 percent in-person advice model is not going to get to all the households that can benefit from some sort of advice. We have our own technology that we call Incentive which is all done through an app, and what it intends to do is to help drive those behaviors much earlier in life the biggest one being how do you sort of balance spending versus savings, and making those right decisions earlier in life is the biggest lever that most American households have at their disposal.

If we can get more people with the right behaviors, the right tradeoffs earlier in life that gives us a lot of room to work with in the decades leading up to retirement. And so yeah, it's mission critical. More technology is what's going to enable us to get more people with the right behaviors.

CHAIRMAN BERNARD: Jane.

MS. TEN SIETHOFF: Thank you for your presentations both of you. I think definitely technology has a role to play for mass affluent, for people less than mass affluent, and I think we've all seen a few things. The gamification of trading hopefully can all be part of the gamification of financial literacy which maybe should have come first but didn't necessarily.

And then the other, I guess, comment that I had and for -- I imagine that most, you know, in the high 90 percentages of people feel like their advisors have done a fantastic job while the market has really run up. I think that, you know, we would be naive to assume that it's based on technology and have to admit that our jobs have been easier because of the market conditions.

MR. O'BRIEN: Yeah. I absolutely agree. The one thing that I would point out is we do see that there is a distinct difference between clients that have

financial plans and those that don't even with respect to the interactions that they have with their advisor. When we looked at last March and April, the mark to markets had set back quite a bit. We noticed that clients that had financial plans with their advisors were not calling anywhere near as frequently as clients that --

MS. TEN SIETHOFF: Yeah.

MR. O'BRIEN: A lot of it speaks to those what if questions, and if you can answer them easily, which, you know, probably maybe to try to put it in perspective, if you know that yeah, the market's down, and that's unfortunate, but I'm going to be okay that feels a lot different than I really don't know how I'm going to do.

MS. TEN SIETHOFF: Yeah. Gotcha. Definitely agree with you there. Yeah.

CHAIRMAN BERNARD: Any others? Rama.

MR. SUBRAMANIAM: Thanks Ed and Jay for your presentations. I had, I guess, two questions, one for Ed. Is the purpose of these panels just to get us up the information curve on technology in the advice area, or were there specific issues we were looking to tackle? And then a question for both Jay and Ed. I think technology is great. I work at a technology firm. I

think more technology is great. It's always about the controls around it and making sure the information is being used appropriately, et cetera. But technology enabling personalization is a theme everywhere. That's what's happening in life.

I'm just interested in terms of the demographic uptake, and I suspect there might be a difference between what Ed does and what Jay does. Is it younger people sort of rising and making money as opposed to sort of the older bears like myself? Just curious on the uptake for this. Do you see this sort of growing more as sort of more technology savvy, more socially conscious generations come into wealth? Maybe Ed. I didn't get the context for the agenda whether this was just for us to get up to speed on the issues.

MR. O'BRIEN: Purely educational cycle. I hoped to fill that niche there. I think it was to help demonstrate how through technology like financial planning advisors can both scale their business to become more personalized and also sort of meet the needs to a growing demand for advice out there.

CHAIRMAN BERNARD: And actually, if I can just clarify, and I may turn your question into a slightly different one, Rama, and then you can both respond on the demographics if you like, because I think part of

his question may have been directed at this Ed, not that Ed. To me this is a combination of educational and provocative. Technology innovation is incredibly rapid, and sort of the question of where is that -- what's the direction of X technology as applied to investing to personalization, and so forth, and to what extent is regulation able to keep up with it? And do we find some gaps where we might offer some recommendations to the Commission on how to stay current with what's going on and, basically, fulfill their dual mission of supporting innovation and at the same time protecting investors in markets? So that's my take on it.

So I guess what I could ask to Ed O'Brien and Jay is in what you're doing and the new capabilities you develop whether you occasionally find yourself scratching your head saying I wonder how exactly regulation, current regulations apply to this, and if so what some of those examples might be. And then Mike, I'm aware that we probably need to switch to the second panel pretty quickly here. So I'll let us give us away.

MR. LIPMAN: So to Rama's point about the demographics, I think that we've actually been quite pleasantly surprised honestly that his hasn't been as focused on the younger demographic as we may have initially anticipated when we did start the business to focus more on sustainable (distorted audio). As we've branched out to work with more and more advisors, especially in a geographically diverse sense -- we work across the country, not just on the coast -- we have been pleasantly surprised to see this uptick from honestly a pretty wide array of demographics from an agent perspective as well as from a natural affluence perspective, all the way from the mass affluent all the way through to the ultra-high net worth.

One reason for that is that advisors have just realized that as things do become increasingly commoditized on the investment management side this is a means of really engaging with the client in a deeper capacity from understanding what their values are and helping them look for a more differentiated product that can really reflect their specific needs. It may take more time, but it is, I think, what they may believe to be of a higher value add.

And then the second, to Ed's question on the regulatory front, I think that the most important part about any kind of personalization I think continues to have to be transparency either on the input or the output, transparency insofar as on the input side understanding what is the data that's being utilized for financial considerations but also on the ESG side. I

know that this isn't the ESG panel, so I won't go into too much about that, but there is a lot of conversation about that separately. But really having transparency is about what those inputs are.

And then on the output, what is the portfolio that's actually been created? Is it being monitored and managed in a way that is aligned with the initial criteria that's being set and not just for the first three months or six months but in perpetuity as the portfolios continue to revolve and as the needs of the client continue to evolve. Ed, over to you.

MR. O'BRIEN: Thanks, Jay. So first, for financial planning with respect to demographic. We serve the advisor, so oftentimes it depends on the advisor's business model. And what would be interesting we do see a great uptick of financial planning being adopted by younger advisors, which means they're typically getting to even earlier-stage clients. So we see it across the board, and I do think sort of back to this idea of financial planning does not mean the same thing to every client.

If it's earlier stage trying to really drive the right behaviors and habits, it's more spending time around things like budgeting and spending versus savings versus some of the higher end of the wealth spectrum

versus to be more generational or tax planning. Financial planning sort of works on both ends, but I would say because the adoption of financial planning on newer advisors we are seeing very, very healthy growth in that segment.

The second part is of course we stay very close to changes in the regulatory environment especially with things like data aggregation. We play a key role in helping advisors aggregate data to make the process of financial planning more robust. For us, our business model is simple. We don't get engaged in selling to third parties. It sort of simplifies our lives that way.

The one area that is sort of newer we have many advisors who come to us and say, “Hey, can you actually just create the financial plan for us?” So we do have services where we are a separate entity that is a registered advisor that helps the advisor create the financial plan. We will never deliver the plan to the client. That's the advisor's job. But we do help them create a better plan. We do help coach them on the conversations that advisors should have.

So yeah, we always have to stay close to what the regulatory environment is trending because we have lots of the data from clients on helping them sort of

get more plans to more people.

CHAIRMAN BERNARD: Great. Thanks. Mike, I'm going to hand it back to you. I'm guessing you need to transition.

MR. DURBIN: Let's transition. Thank you both, Jay and Ed, and thank you for the questions everyone. I'm going to speed intro to preserve some time. Next two panelists, Dan Egan and Michael Kitces. Dan is vice president of Behavioral Finance and Investing at Betterment. Dan and his team uses behavioral science to help people make better financial investment decisions with technology, so a good segue from the prior panel.

And Michael Kitces wears a number of critical hats in and around the financial planning and investment advisory industry. He's a serial entrepreneur and true thought leader for the future of financial planning and really helping making financial advisors better and more successful. He's a prolific podcaster, influencer, writer but also cofounder of the XY Planning Network, Advice Pay and several other organizations.

So I don't know to whom I'm turning it over first, Michael or Dan, but one of you take it away, please.

CHAIRMAN BERNARD: You good, Dan?

MR. EGAN: Yeah. I'm happy to do it. I can that will actually free us up because I don't have a presentation, which means I'm going to speak quickly, and we'll end up with more time coming out of the curve. So quick intro if you're not familiar. Betterment was sort of the first independent advisor. We've been around since 2010. We are a registered investment advisor. Today we have more than 600,000 clients. We're managing over 30 billion in assets. We have no minimum balance.

We serve clients through brokerage accounts, taxable IRAs, HSAs, trusts, and we also have three lines of business. So we have a directed consumer business which you are probably most familiar with the website. We also have a advisor platform business, Betterment for Advisors. We're independent financial advisors. CFPs, et cetera, can use our technology for their firm to serve their clients.

We also have a 401(k) line of business, Betterment for Business, which operates a small- and medium-size 401(k) for those who want it, serving I believe over 5,000 firms today. And in addition to that we're mostly known for the technology side of things. We do actually have a set of human CFPs, Certified Financial Planners, on staff who directly serve

Betterment clients through a premium offering either a la carte where they pay for, sort of, two hours of advisor time because they have a specific issue or on an ongoing basis.

A couple of things that I thought was worth touching point on. I think it's a great topic, and the questions are there. We could obviously spend hours chatting through it. I want to get to more of questions and a discussion. Things I want to highlight is that number one digital advice, I'm obviously very bullish on it. I've been for a long time now. It has a lot of these unexpected fringe benefits. Obviously, it's cheap. We'll get to that. That means it's more (distorted audio). It's very consistent and coherent. Nothing happens inside of a computer that somebody did not program at some point, and that means that it's very consistent in its inputs and outputs. And that allows us to know what advice is given when and how.

And the sort of stuff we're talking about now, personalization, is exciting because it's another frontier for us to lead into. There is both more hype about it that isn't true in terms of personalization and AI. There are certain companies, Twitter, social media, YouTube where it's used to keep you engaged with it in a way that we really have not gotten a handle around yet

as an advisor because our aims are not just to keep you on our page as long as possible, but it also offers this ability to test and track if specific messaging is effective.

Are we actually motivating people to take the advice and execute on it that we said so? Is there disparate impact amongst different groups that we are giving the advice to? Does this hit older men differently than it hits younger women just as a very simple thing? Sometimes you might see it actually backfiring amongst specific groups.

There was a great study that was done on 401(k) savings advice that found that talking to people about what their peers were doing, basically, backfired in some cases and caused people to save less. So that ability to track and see the impact at a broad base upon both large groups of people, the median investor as well as specific subgroups you might be specifically worried about and do that in evidence based fashion is an unexpected strength to it.

And of course I think it was Erik Sirri who mentioned is this the way that we have to go in order to get good advice, good fiduciary advice in the hands of more Americans, and I think the answer is just fundamentally yes. I'm not going to put words in his

mouth, but I remember sitting down with Michael years ago and trying to run through, like, how many people could a CFP actually search, like hours in the day, amount of time just to speak with them on the phone, et cetera. And we don't have enough CFPs in the country.

And luckily, the advice that a lot of people in the country need is not necessarily the most complicated stuff that a CFP needs to spend a lot of time on. It's around motivating for saving, spending, debt management, not just the advice itself but the doing, getting people to hear the advice and act upon it such that their outcomes are going to be better. So it’s less idiosyncratic, more scalable, more the sort of thing that a digital advice solution really works for.

The last point I think is kind of interesting from in an -- point of view is the economic incentives that the players have. So just as a reference point Betterment charges 25 basis points, so that's 25 cents for every $100 that we manage for our clients per year. We have skin in the game there but from the point of view of if clients don't save anything we're not going to be earning any more money, and if client's money doesn't grow in the market, we're not going to be earning any more money.

There's pros and cons to that, but I think that it's sort of one of the good reference points to cite this is how a lot of people do it, and there are some nice inbuilt issues there that if we move away from that or if there are other incentives that an advisor is going to get paid under, we need to look at exactly how those manifest.

The issue of personalization is interesting. I think that there is visible personalization than the end client would be aware of and could tell you about. One of the nice things I like to talk about in terms of the disclosure regime -- is to what degree would a client be able to tell you the things that were said in the disclosure as part of a business relationship? So if a client comes in and gets a recommendation for a 64-day stock portfolio, could they answer why? Like, what information did they give to their advisor (distorted audio) that was able to propagate into that recommendation? What is the other information that might come into play that would change that?

Generally speaking, we are going to say, “You told us that you wanted to put a house down payment six years from now, and this is how much you wanted to put down,” et cetera. It's kind of transparent and it's trackable to the person why they got a specific piece of advice. There's another kind of personalization which

is generally invisible to any given individual. You might consider like did we send a push verification at 8:15 in the morning or at 6:15 p.m. at night? Because that's when that person is most likely to actually click on it and follow it through regardless if it's just the same article that they happen to be reading.

They're not going to know that we're personalizing the execution and delivery at that point. That is definitely something that under the hood we can run randomized controlled tests on, et cetera, to make sure that the advice has more traction based upon the individual who we are trying to target it for.

One of the elements that I do think is worth touching on in this realm is that we all are -- I think there's lots of opportunities for regulation to lay groundwork for us to do things even better because we are as anyone concerned about how could we do this wrong? How could we do it in a way that a regulatory environment might be a little bit skeptical or have greater oversight of? There are lots of opportunities there that we should assess.

One of the ones that really comes to mind to bees what has been done in the 401(k) market with Safe Harbor type plans where within the constrained set of parameters that usually exist -- for those who don't

know, it's things like you are allowed to auto involve clients as long as you have a qualified investment alternative, as long as the enrollment rates are sensible, as long as highly compensated employees are not benefiting substantially more than others.

Those sorts of rules that are clear and allow for a large segment of the population to be well-served by a digital automatic solution there are kind of examples of that working very well that we would like to lean into and help to establish more on because that allows us to serve more people more effectively. And I'm going to pass it over to Michael. I hope I saved us some time. Thank you.

MR. KITCES: Awesome. Thank you, Dan. Let me get this queued up on my end as well. My thanks again to Neesha and Mike and everyone for the opportunity to join you today. As a few of you who know me know I'm a little bit of a storyteller, and so I actually want to start the discussion off with a little bit of broader history.

To me a lot of the challenge that we face in our environment are very much a function of the forces that were placed in the system over the past that kind of led us up to the point where things are the way they are for a particular reason, may or may not still be the

appropriate reasons today, but it is how we got here. And so I actually want to start the discussion today by dialing the clock back about 200 years ago to when one of the best paying jobs in the world was making socks. I kid you not.

In the early 1800s, most of the world's population were farmers, and not farmers as you would think of them today like harvest a bountiful crop to take to market. Most farming in the early 1800s was subsistence-level farming as in I hope we get enough potatoes to survive the winter. And in that environment there were only a very few people who ever had the opportunity to learn a skill, trade or profession of which one of the best paying jobs in the world was making socks and hosiery because nobles liked to buy fancy clothing, and they had all the money to spend.

And so these weavers would sit in front of giant looms in front of their windows 10 to 12 hours a day six days a week resting only on the seventh making clothing. It was a very long and arduous day's work, but relative to subsistence level farming this was a good professional wage job. And it existed that way until the 18 teens there was a technology breakthrough of the era. Someone figured out how to make a wider frame lower easier to use version of one of these looms.

Page 146

It was so actually easy to use you could teach a child to do it, and that's exactly what they did.

Not exactly a high point for the era of child labor but it's one of our first recorded instances where skilled trained professionals were replaced by 12-year-olds using newfangled technology, and it led to an uprising where the weavers actually took sledge hammers to factories and destroyed the new looms in a literal attempt to halt the progress of technology.

And when the British soldiers show up and they said, “Who did this? Who led this uprising?” they said, “Don't shoot us. It was Ned Ludd, and he just left.” So what the historians have figured out in the aftermath is that Ned Ludd probably never actually existed. They're pretty sure now he was the pretend leader who just left because the real leaders were there and didn't want to get shop by the soldiers by the uprising. But it became known as the movement of the Luddites, and we often still use the term “Luddite” today as this label for when technology takes leaps forward, and there's a big backlash against it.

Now, the aftermath of the Luddite revolution was an interesting thing unto itself. If you look at cotton production and clothing manufacturing in the late 1700 and early 1800s, it was growing slowly and steadily

Page 147

with the world economy's growth. Didn't really change much in the 18 teens when the technology breakthrough happened in part because the sledgehammer destroyed all the looms. It took a few years to replace them and put them back into production again. But then in the 1820s the technology went into wide use and cotton production and clothing manufacturing nearly quadrupled.

In the subsequent decade, it nearly tripled again. Then it more than doubled again. Then it more than doubled again, and in the span of about 50 years cotton production and clothing manufacturing went up over 3,000 percent, and clothing became so inexpensive that for the first time in recorded human history the average person could buy their own clothes and didn't have to make it all themselves.

So these kind of exponential increases in technology actually happened to one industry after another through the late 1800s and early 1900s, and we know it collectively today as the industrial revolution, and it got to the point where we went from 200 years ago where 90 percent of the world's population were farmers to today where approximately 3 percent of the world population are farmers, and we need more than 10X the world population, and the other 87 percent all went on to do things that nobody could have dreamt of 200 years

Page 148

ago.

Now, I said all this as context because I think we're going through a very similar technology industrial revolution in the advice business over the past 50 years, and so I'm going to talk to you for the next few minutes a little bit of how that has evolved in our industry where technology itself has been a driving force. It's caused what I call the great convergence of industry channels, a crisis of differentiation for advisors and explosion of new business models and this ongoing focus in the client experience.

I'm going to focus mostly here about technology and the convergence of regulatory channels because that speaks very much to the theme of what I know we're dealing with here today. So to give a little bit more context to the advisor industry, if I dialed the clock back 40 or 50 years ago and I said show me a financial advisor of the 1970s and 1980s this was a financial advisor -- the stockbroker getting paid as much as $200 a trade in 1975 dollars to execute a trade for a big client.

Stock brokering was incredibly lucrative in part because when we went through the boom and bust of the Great Depression and we had an immense amount of volatility in trading commissions, one of the things

Page 149

that we did as the SEC and NASD were created was we regulated trading commissions. We put them on a fixed schedule, put the trading into a very narrow band. Good news got rid of commission gouging, a lot of bad behavior. Bad news got rid of all the innovation because there was no reason to compete on technology, efficiency and brokerage because you were legally barred from charging less even if you got more efficient about it.

So eventually we decided that had run its course. There was the big regulatory change in 1975. May Day came about. We deregulated the stock trading commissions. Wall Street freaked out, said it was going to be the end of the industry and the business. What ended up happening instead? Innovation showed up. An entrepreneur from Northern California right here Silicon Valley decided to create a technology firm to compete against human financial advisors. His name was Chuck Schwab. Schwab got founded the month after May Day of 1975. Ameritrade came a few months after that. The predecessor to Scottrade and E*Trade came thereafter, and stock trading commissions fell by 90 percent in 20 years, and all the stockbrokers went away.

To me that's fundamentally why the business model began to shift. Technology put the advisor business model out of business, but it didn't actually eliminate the advisor. We evolved and moved up the line. We said, well, anybody can sell you a stock now through a discount brokerage. I will find for you a great stock picker, and we went into the mutual fund business. Mutual funds in the decade that followed grew by 10X from half a trillion dollars to five trillion dollars driven by the shift in the financial advisor business model.

This was also the explosion of the independent broker/dealer because of course once you were selling independent mutual funds and not distributing securities directly through a New York investment bank you could be an independent broker/dealer. You didn't need an affiliation to the underwriting business. Huge growth cycle in the business. I would argue ultimately better value for consumers, selling to a professionally managed mutual fund was better than just whatever the stock of the day was from the boiler room offer, build bigger and better businesses until technology showed up again.

This was an article from Forbes in 2000. "Consider opening an account at a financial services organization with a so-called mutual fund supermarket. These programs allow no-load funds from different families to be bought and sold without transaction fees

while consolidating holdings in one statement."

So many of the technology companies that were there at the first boom were there at the second. This was the shift to online brokerage. And again, to keep it in context, about 99 percent of financial advisors earned 100 percent of their compensation from the load on a mutual fund, and a technology company launched a no-load platform. This was the beginning of the shift to the mutual fund model. We're seeing the tail end of it now, which is the structural shift from mutual funds to ETFs, but it began here. This is when advisor began to get dis-remediated out of the mutual fund business.

But while the mutual fund model is shifting, and that's no longer the -- value proposition. The advisor, we're still here. We evolved our businesses again. We said, well, anybody can sell you a mutual fund. I will create for you a diversified asset allocated portfolio. We went into the asset management business in full. If you look at the entry benchmarking studies back in 2000, the average independent RIA had $20 million under management and an assistant. By 2008 it was almost $100 million. By 2017, we were up to $180 million and a staff of five to nine.

It was another 10X growth cycle driven by a shift in the financial advisor business model because

technology killed the old one. And now to me we're simply at another one of these crossroads. It's bubbling through to the broker/dealer world. Broker/dealers now are generating more revenues from fees than commissions, which is astonishing to me when the regulatory sanctioned purpose of a broker/dealer is facilitating securities transactions, and it's the minority of their revenue because the entire model is in shift by the evolutionary forces of technology.

And now we're going through the cycle again. We talk about this in terms of robo advisor. I think this actually started with the TAMPs in the late 1990, the Turnkey Asset Management Platforms. It simply said if advisors are going to be in this centralized portfolio management business, why not just do it from one centralized platform? Why have 100 advisors build 100 portfolios when you can have one investment team build a great set of portfolios and have a hundred advisors all use the same thing. It's more scalable and efficient.

But in order to do that they needed technology to manage their models internally which led to the rise of rebalancing software in the mid-2000s. From there it went to consumers. Robo advisor took the same model management software and said you don't even need a

financial advisor. We can give the models to consumers directly and, frankly, did it with much better looking technology than what advisors had, but it was the same fundamental force, which was the technology started to package the models already. You didn't need a financial advisor to build it for you.

Now we're getting to the natural conclusion, which is many advisors today have model marketplace platforms. I can literally invest an entire client's portfolio with two clicks of a mouse button. The first click is the drop down menu to pick the model. The second click is to click the trade button to make it happen. Part of our business is to run research studies on the financial advisor community. We find the average financial advisor spends about 11 percent of their time on investment issues today. That's it.

Technology has almost entirely eliminated the investment activity from the business of the investment advisor. And so what's happening is once again we take all of these investment competencies that we had, they're shifting over to the robots, if you will, and the pressure on advisors becomes the same thing it always has been. What's the value you're going to add on top as we went from selling stocks to professionally managed mutual funds, from professionally managed mutual funds to diversified portfolios and from diversified portfolios to holistic advice that goes beyond the portfolio.

Each one is a transition driven by technology forces that move up advisors up the line, and what happens every time is advisors end up building on the technology that was supposed to replace them. Discount brokerage was supposed to kill advisors. Instead it became the independent broker/dealer platforms we build on. Internet was supposed to kill advisors. Instead we all run our businesses today on internet platforms. Robos were supposed to kill advisors, and instead the technology that empowers robo platforms is increasingly becoming an advisor tool in the intermediate.

Now, the significance of this from the regulatory perspective since I know that's what we're here to talk about today is driving what I call the great convergence of industry channels. So if I dial the clock back once more a hundred years ago to kind of the modern structure of the regulation of the advisory brokerage business, we had two separate channels to two separate functions.

On the one side where there's stockbrokers -- we called them stockjobbers back then, and stockjobbers essentially were responsible for capital formulation,

the purchasing of securities -- I should say the sale of securities in primary markets and the trading of securities in secondary markets. The original label of broker/dealer was extremely literal, and they hired stockjobbers whose job was to sell the consumer the stock.

If your primary business is underwriting for capital formation, someone has got to convince the investor to buy the thing. It's a sales job through and through, and that's why we had separate regulations for brokers tied to sales standards.

On the other side of the line were the people who manage portfolios. They either did it on a pool basis, what we know as the RIC structure, or they did it individually for clients, what became the registered investment advisor, and never twain did meet. Stockjobbers were sales jobs. They got paid commissions for sales. Investment advisors earn fees because they give advice.

Until the 1970s, and -- the moment that May Day came and it was clear that you couldn't earn ongoing revenue from brokerage because once you sold a client a mutual fund there was no more sale for several years. It's not like stock brokering where you can call the client every day with a new trade. The brokerage

industry needed a new model, and what we came up with was a fee-based model attached to mutual funds, what we know today as the 12b-1 fee, and for the first time the brokerage industry started getting ongoing fees for ongoing advice service without being registered for advice.

It accelerated in the 1990s when it became clear that the 12b-1 fee was shifting because mutual fund platforms were going online to supermarkets. The industry began to shift again. It started the move towards fee-based wrap accounts. We had the broker/dealer exception in 1999, the lawsuit that struck it down in 2007, the provisional guidance that came out afterwards, and a massive wholesale shift to the brokerage industry is the hybrid business of giving advice to the point that today if you ask an advisor off the street what they do the most common answer is you will hear, “I charge about 1 percent to give ongoing advice to my clients.”

And we know you make the distinction about whether that's a 1 percent fee-based wrap account, a 1 percent trail on a C share or a 1 percent advisory fee as an RIA. As far as we're concerned, advisor charges 1 percent. Client gets advice. Problem is they're being regulated by different structures. You have the same

business model existing across product distribution models and advice models and a lot of regulatory arbitrage and angst that's coming from people that do it from the wrong side of the line.

So as I view it from the regulatory issues perspective there's a couple of themes that I would encourage as you're looking at this discussion. The first and notwithstanding I appreciate the imitation in the context of the panel, but I don't think this is really actually a function of do we need new and different regulations for technology.

I could be a human that gets augmented by technology on my face. I can be a technology platform that has a bunch of humans programming it. Someone has to make the algorithms and program the expert systems, or I can sit next to my client with the technology.

All of them are intersections of humans and technology, and the more that these blur together the more you'll get to the point where I can either have a human who makes a piece of technology that gives the clients advice, or I can have a piece of technology that just scripts the advice, and the human being reads it, but there's no actual mental input from the human. They're literally reading the technology script as just a human output device, and all of the lines between technology and humans are going to continue to blur as I would argue they already have through all of these different cycles.

Every time the technology comes forward to disrupt advisor business it ends up being assimilated into the advisor business. You're now seeing that happen in real time with robos and advisor technology. Part of what we actually publish through our platform is a map of all the advisor technology. This is our current tracking map of just companies that compete in that B to B to C space the way that Jay's team does at Ethic and Ed and Mike do at eMoney.

There has been a massive explosive proliferation. All the ones that are shaded in light purple are newcomers in just the past year or two. This map has almost doubled in size in just the past five years, all technology that's built to augment advisors, but it creates the same dynamics of at some point the technology and the humans are so infused together that it's going to be almost impossible to separate them out, but it is absolutely a transformative force.

And so at least from my perspective the way that I'd encourage you to think about this from the regulatory perspective is that I ultimately see kind of four different tiers of services that emerge. One is

the pure education service. You're in the business of giving information. The consumer has to figure out whether the information is right. The second option is the transactional business. Classically, this was the brokerage business, the insurance agent business, the annuity agent business. I got a thing to buy. I got to figure out if it's the right thing for me, and you are expected to try to sell me something that is at least not unsuitable for my situation.

The third tier is when we go into the advice business. Advice is fundamentally different. If you are giving proper advice for a proper situation, there really should only be one correct recommendation for the situation if we have drilled down enough to the client's information. Now, often we can quite get every possible piece of information, and so if we give the advice to clients and they say, no, I don't want to take it, usually that means there is something else we didn't figure out, or they're not ready to actually make the change in their lives, but the nature of what the investor evaluates starts to be different because it's not a matter of whether this is correct information.

In fact, from a true expert giving advice, the consumer can't evaluate the quality of advice because it's too expert for them to know whether it's good

advice or not. That's why historically we have attached a very different standard once you cross the line from transactions to actual bona fide advice. That's where the regulatory burden shifts.

And I would argue we even have an additional tier above this when you get to, essentially, the management services, the execution, the doing, the delegation because at the point that hire a platform, whether it's a financial advisor as a human being or a technology platform to literally do it for me I'm not even monitoring it necessarily on an ongoing basis. I have a fundamental trust that they're going to be doing the right thing. I don't have the expertise to evaluate it, and I don't have the time to monitor it. If I did, I wouldn't be delegating it in all likelihood.

And so I would argue we even need perhaps a different thinking around what the standards are when a client actually goes into the delegation business versus just the advice business where they still have the choice to not implement the advice.

Relative to the industry today, though, because as Ed noted in particular there's so much interest in financial planning what you're seeing are people that are going from the historical transaction business into the advice business, but they're still

being regulated in the transactional channels as well as people that are in the advice business that are actually taking on a wholesale delegation but don't necessarily have any additional standards attached to the fact that no one is monitoring at that point and the additional complexes that come in with conflicts of interest when the client can't say no because they've already delegated the yes.

The other structural theme that I'd encourage the committee to be thinking about is that when the industry makes the shift from products to advice as we are there's a fundamental problem that as products get commoditized by technology -- I can buy almost anything off the internet if I just want the thing -- and I'm going for advice, almost by definition the nature of advice is that it transcends the product alone. The integrated elements of advice beyond the one product is what makes it more holistic advice and is where the demand is.

When you get holistic advice that goes beyond the product, though, you transcend what is almost an entirely product based regulatory structure that currently exists. So I could be regulated by investment regulators if I give investment products, insurance regulators if I give insurance products, banking regulators if I give banking products, credit regulators if I want to offering credit cards, other regulators if I'm offering tax or estate services, financial advisors that are getting increasingly holistic and now being subject to multiple umbrellas under this, or they go increasingly into the pure advice business, and they're regulated by none of them.

So one of the comments that Mike had made as he was introducing me, one of the hats that I wear is an organization called XY Planning Network specifically focused on giving financial planning for Gen X and Gen Y consumers. We've added almost 1,500 advisors and 1,350 RIAs in the past seven years and because the business is entirely focused on giving pure financial planning advice more than 95 percent of our advisors are state registered. They don't manage assets, so they will never appear on the federal regulatory radar screen.

And, in fact, if you look at total registration of state RIAs, XYPN alone is responsible for more than 100 percent of all of the growth of state RIAs in the past seven years or, in other words, state RIAs will be structurally in negative decline if it wasn't for the growth of fee for service financial planning business models that provide no product recommendations.

And while we're living in the context of human advisors who can now do these models because technology has made them so efficient they can go further down market and offer alternative models, but we're also an environment where if I wanted to start a standalone technology firm to do is this I could do it at the state level, and as long as I'm not actually selling any products I'm not subject to any federal regulator because the regulation only attaches to the products that are implemented and not the advice itself.

And so the ongoing holistic shift to advice to me is creating new regulatory gaps in the current structure, and in practice state securities regulators are becoming the net at the bottom that catches everything else that's slipping through with the caveat that not all states are interpreting that the same way, and so there's now an immense amount of variability in the regulation of financial planning at the state level all to me driven by business models that couldn't have existed 10 and 20 years ago because technology both made new advice -- possible, brought down the cost of advice and drove these shifts.

So with that I'm happy to open up and take questions as time permits, but I hope this is helpful food for thought.

CHAIRMAN BERNARD: Helpful indeed. Calls for questions, comments. Paul.

MR. GREFF: Yeah. So I'm curious. Even with the advance of technological advice have there been more failures that for a regulatory body they understand (distorted audio) outcomes are in order (distorted audio). So for (distorted audio) advice we know there are standards. There's been fraud. So we kind of know that range, and we know how to protect that. Has there been anything where there's been errors in the technology that give us a reason, or has it been flawless so that the first error all credibility is lost? And that's a different ballgame. Do you see what I'm saying?

MR. KITCES: I got some thoughts. Dan, how do you guys view this since -- you must live this fear.

MR. EGAN: Yeah. I am not aware of any case where execution was, like, a dramatic failure. The closest thing that I can think of is actually in the brokerage space in which the way a, like, brokerage app displayed things was incorrect from a U.S. point of view, from a user perception point of view, and very sadly, buddies are thinking that their accounts that they've been trading options they -- effectively, their net position was displayed suddenly incorrectly. They

believed that they had just lost a tremendous amount of money, that they were actually not just bankrupt, but they owed significant amounts of money, and one individual ended up committing suicide quite sadly because of that sort of how things worked displayed. That's more in the brokerage space.

In the advisory, the robo advisory space, the only things I can think of where there have been, like, failures or like disclosure failures I am unaware of anything actually sort of blowing up. Actually, one other thing I can -- it's just not robo advisor thing, which is Vanguard had a mutual fund that was meant to be a target date fund that was managed to a glide path, and they forgot to do it. They were lucky in that they forgot to de-risk it during a period where the market was going up, so there was no harm to the invested clients. So there's kind of no harm. There was an execution error, but it wasn't harmful to anybody. I'm not aware of any, like, technical errors.

MR. KITCES: So Paul, say from the advisor end we kind of live in where the technology functions what is ultimately as what Mike had described it, a B to B to C model, for better or worse, like, I feel like as the advisors we tend to feel this pressure to vet our technology vendors. In fact, CFP board literally put into their recent standards there's a due diligence obligation for CFP certificants to vet their own technology before they use it on that basis.

Now, I sort of look at this a few ways. On the one hand, once you get to the point where you're not just in the advice business, you're in the management business, I do think the standards arguably need to be higher as many folks have mentioned on this call. A lot of those that run the businesses that do this have a lot of controls in place for oversight, but clearly at some point someone will do this not well with not controls, so it raises I think good regulatory questions about what controls should be expected.

Once you're in the management business you run the risk that, you know, sort of to use the extreme like algorithms gone haywire -- can go haywire en masse at once. So if someone doesn't have controls in place, you can do harm at scale instead of doing personalization at scale. When you live at the advice layer, it different particularly when you're an advise layer that doesn't have any products because the extent of the damages for most people is, A, they don't have to take the advice.

B, the advisor is still at risk for the pure advice itself, and I can tell you when I look at this, like, from the XYPN perspective, we offer the E&O

insurance policy for the overwhelming majority of our advisors, so almost 1,500 advisors the majority of them use our E&O policy. We have only had one claim across the entire advisor base in seven years, and the claim was for an advisor who was doing a blend of advice business and management business, and he had a trader. It wasn't actually a claim related to the advice of the technology they were using. It was a good old-fashioned like fat-fingered a trade for a client in something that was very volatile.

So when you get out of the product business into the advice business not to say there aren't risks around regulation and errors, but it starts to look very different because the advisor intermediated still for better or worse I think very much feels that pressure because we know our liability is on the line if we use technology that doesn't do what it was supposed to do.

MR. SUYDAM: That's a fair enough answer. I appreciate it. I'm a bond guy, so I always would rather see a lot of blemishes so I know exactly what I'm getting. That's a fair answer. Thanks.

CHAIRMAN BERNARD: So I have a question, but I want to see if anyone else has one. We're going to run short on time. So just quick question for me, Mike, because I pretty strongly agree with the image you had

of the siloed structure across financial products and the regulatory structures that have grown around that product centric model. At some level, I thought of advice as sort of the point of integration that starts to bring those things together and holds some people accountable for how that's done.

You point out some gaps, jurisdictional gaps, and so forth, federal and state. If we were to have a discussion about the future paradigm of regulation to protect investors, what kinds of design criteria or characteristics would you want to see in the conversation?

MR. KITCES: To me the most fundamental thing is literally the separation of products from advice. Once you attach the implementation of a product to advice with compensation attached to it you get a certain level of conflicts that becomes to me almost insurmountable just as someone that's lived in the business for 20 odd years.

When you get pure advice, you get a very different looking model. The moment the client doesn't like it they just stop paying. It's actually very easy to wind down. Like, products are high stakes because it's sold you often can't get out the thing. Advice sort of may be implementing some advice that wasn't good

for which you can still have resource. You're not tied up in anything. We champion monthly subscription model particularly. You don't like what your advisor is doing just fire them. You don't even have to, like, move money or sell anything or do anything else. Like, just stop paying for them when you think it's easy.

So if you think about it in terms of how severable is the relationship, advice relationships are very severable. Transactional relationships ultimately get kind of un-severable. Once you've attached into the product it's often difficult to get out of it, and there's a conflict of interest attached to advice that facilitates product implementation.

And so to me it really starts with just separating the two. Most of the regulatory issues to me that you're struggling with right now or at least that I see from the industry and kind of the consumer advocacy end are product firms migrating into the advice business because we did figure out a long time ago that advice is really good at selling product.

And so we originally had some fairly bright lines between that, just the nature of registered investment advisors and broker/dealers. I think 40 odd years of technology and industry evolution those lines have blurred in very, very small incremental fashion, so you've got to zoom the lens out to see the separation again. But to me it really just starts with the separation of products and advice.

Products were fine in silos because of the nature of product. If you just imagine a world where advice givers are only allowed to be compensated for advice and can't be compensated for product you actually end up resolving a number of conflicts and sticky challenges. In today's environment, you have a new set of challenges to deal with around the regulation of advice, including like who's to say what's good advice and bad advice. Where we have a pretty good investor framework for investment advice we don't have a lot of standards for all the other advice.

So how do you judge what was good advice and bad advice, and the lack of a standardization of accepted principles will be difficult, I think, in at least the early stages of that regulatory shift, but fundamentally, like, it's the separation of products and advice, and advice really lives in two layers of advice and delegated management, and products live in two layers, which is educational guidance and actual product solicitations.

CHAIRMAN BERNARD: That's very helpful. Mike, do you have a wrap-up or any final questions? We are a

little bit over time.

MR. DURBIN: No. That's it. In the interest of time none more from me. Thank you all, panelists, and fellow AMAC members. Good questions and discussion.

CHAIRMAN BERNARD: Thank you all very much panelists. We appreciate it. We're going to go into a quick wrap-up session that we've come to affectionately know as the lightening round before we close our meeting for the day. You're welcome to stay and join us, and you're welcome to drop off if that suits your schedule better.

SUMMARY AND DISCUSSION

CHAIRMAN BERNARD: So as we typically do, I'd like to go around the table one minute or less per person. Just what struck you today. Again, if what struck you happens to be the same as someone else that's okay because that helps us pick out themes and areas of emphasis. Last time I went top to bottom. I'm using the participant list, and it's alphabetized by first name. I'm going from bottom to top this time. So Susan McGee, you're up first.

MS. MCGEE: Thank you to our subcommittee members. You've worked very hard. This has been such a great journey. The ESG recommendation this morning just continued to highlight for me how complex this issue is,

and I thought that the memo came out articulating some of these issues in a very good manner. So congratulations to that panel.

I'm very hopeful because one of our former committee members, Michelle Beck, is at the SEC now, and I thought Michelle had some really great insights into this. So I'm very hopeful that she'll be able to contribute there at the SEC. Secondly, on the Private Investment panel, I really liked the design principles that you all put together. To me they were very concrete examples and something that might be easier to kind of get our arms around and make some more specific recommendations, so I really liked those design principles.

On the Technology and Advice panel, the speakers today -- and thank you, speakers, for joining us -- it seems to me like they're coming from firms that have well-defined business models, so the intersection of technology and advice may be easier to look at and assess and how it might overlay on these defined business models that have been operating for years.

I'm looking forward to maybe some insight from this group on other offerings outside there that might be a little bit more opaque or vague or maybe walking closer to the line of advice, and it seems like to me

that these are proliferating a little bit more in the last two, three years. So I would like some more information on that part of the market. So thank you all.

CHAIRMAN BERNARD: Great. Thank you. Scot Draeger.

MR. DRAEGER: Yeah. Thanks, Ed. First of all, thank you to everyone who did organizing today, Mike Durbin. Great group of panelists. Aye Soe, thank you so much for all the work on the recommendations. And Rama, I would just couple what Susan said. I really like the design principle framework. I feel like your group is ready for recommendations and actions and to not let the perfect be the enemy of the good and that you've already established the what and the why. And I think as Ed has said to our other subcommittees, allowing the SEC staff to figure out the how is okay. I think getting as defined as you have with the potential of using the RIC framework for a model, if you will, I think is good. So I would just emphasize I think you guys are on the edge of the end zone there as far as I can see. Thank you, Ed.

CHAIRMAN BERNARD: Great. Russ.

MR. WERMERS: All right. Well, Ed, I'm close to the end first name or last name, so here we go.

Always toward the end. Okay. So anyway, I had a really great time today. I learned a lot. Kudos to everybody. I'd like to echo what Scott just said about Rama's session. Plug forward. You have a really hard task. You've done a great job so far. Please keep moving. That is good stuff.

Michael at the end did a very great job, I think, of educating me on the drivers of robo advisor and human advice, and so on. Thank you for that. I think the one, I guess, statement or maybe comment I wanted to make is on the ESG issue. There is, of course, a chicken/egg problem here. If investment management companies do not demand ESG information then nobody will score them, and if nobody scores them, investment management companies may not demand that type of information.

So I think there's a role here for the SEC to start to push, and I think Chair Gensler I think annunciated this to some extent, a role for the SEC to push for more disclosure and move in the direction where some bodies that provide reputable ESG ratings advice or ratings information might come from. It's not going to happen all by itself. I'll stop there, Ed.

CHAIRMAN BERNARD: Great. Thank you. Rich Hall, are you still with us? Can't see the -- I think

he may have dropped off. Renee.

MS. LAROCHE MORRIS: I think it was really interesting across the D&I, ESG, Private Investment and the Technology conversation this was this consistent theme of access, transparency and evolution, and that's going to impact the investor, the advisor and the entire industry, and as those themes all converge the relationship between the investor and the advisor shifts, the demands on the advisor shift, and the technology facilitates all of it. And as we think about diversity making sure that a diverse set of investors and a diverse set of professionals get to participate in every aspect of the industry. It's about the lifecycle and the ecosystem.

So I see all these conversations really coming together and building on each other in many ways, and it's going to be interesting sort of how you tackle them, in what order you tackle them because it's all happening at the same time, and all the subjects and issues are really important. So I'm just thrilled with the conversation today. I think we have to look at some of the intersections and how we draw parallels where it's appropriate and how we think about sequencing the different developments.

CHAIRMAN BERNARD: Great. Thank you. Rama.

MR. SUBRAMANIAM: Thanks, Ed. Thanks for the comment, everybody, on the Private Investment Subcommittee. I'm inspired now to finalize the report after the other two votes. For me I guess two sort of main observations. With the sort of reports now that have been submitted and voted on, it's almost like -- I'm sure the subcommittee chair and everyone on the committee sort of exhaling, but I kind of wonder what's the next step. Like, how do you follow up on some of this stuff and try and move some of the things forward?

Because a lot of them are general recommendations in how we stay involved and try and help the SEC move the ball forward on them. So that's one general comment I think for both of those and will apply to us as well once we present the report. Is that the end it, or how do we keep staying involved?

On the technology, thing, I think it is fascinating. I'm a big fan of technology. I think it just naturally leads to more personalization. I'm not sure what the issues are that are going to come out of it but definitely a worthy topic. And I think it will be very rapid, and we'll look back, and it could be too late very quickly. So I think sort of getting on top of it and understanding it is great. I think, you know, generally supported from the use of technology. I think

it allows investors that didn't have access to more personalized advice or portfolios to be able to do that.

Obviously, the safeguards are kind of what we worry about and want to balance, and like everything else it's a balancing act but I think generally very supportive of technology allowing more people to access more personalized investment solutions.

CHAIRMAN BERNARD: Great. Thanks. Paul. Paul Greff.

MR. GREFF: Thanks, Ed. I just want to say it's been a thrill to work with Scot and Gilbert and Ed on the D&I Subcommittee, and I'm really proud of the recommendations we made. And I learned a ton from you guys, so I appreciate it. I do have a comment on the ESG front. I really think we need to keep moving. It's a monumental task to try to introduce some type of standardization and uniformity. I get that, but I really would like to see that we keep moving in the direction where there is some type of minimum level and some criteria that the investor knows that when they see an ESG product they know at a minimum what they're getting. So I'll just leave it at that. Thanks.

CHAIRMAN BERNARD: Great. Mike Durbin.

MR. DURBIN: Thank you, Ed and others. One, just congratulations to the D&I and ESG Subcommittees for getting to the point of the vote and in particular grateful to the AMAC for letting me be part of a record on the D&I vote that has such -- Gilbert, what's the word you said -- profound implications. So delighted to be part of that. Rama, great work on the AI update. I echo the other members that I think we're ready to move beyond that.

In fact, the design principles approach is something I think we should explore applying to the Technology and Advice Subcommittee as it increasingly gets its sea legs. You asked the right question. My words, not yours. You were more polite, like, wait, what are we doing here? And I think Ed Bernard said it well. There are companies, Susan, to your question, that increasingly are innovating closer to an edge case of where the innovation is getting close to the edge to where black and white regulation makes really clear what you can and cannot do.

We chose some panelists who aren't as close to the edge case. They were easier to get to accept our invitation as you might imagine than those that might be closer to the edge case, but really how do we continue to educate regulators and others such that it does not get in the way of innovation and helps democratize access to some of these solutions but works within a

framework that assures investor protection, et cetera, et cetera. I think a design principles approach to my fellow committee members might be a way to go, but we still clearly have work there, to do there to narrow the scope and make it actionable.

CHAIRMAN BERNARD: Great. Thanks. John Suydam.

MR. SUYDAM: Yeah. A couple of things. Rama, you did a great job. Thank you for pulling it all together and getting that organized. You did a wonderful job pulling it together. I guess the biggest thing I have as takeaway is on the ESG side where I think the proper balance was struck between disclosure and also the fact that disclosure is going to evolve based upon industry standards and people over the next couple of years, you know, kind of pulling it together because comparability is a wonderful and admirable goal, but comparability across things that can actually be compared within industry segments I think is very important, and it's detailed work that I think will need to be done over the next couple of years.

CHAIRMAN BERNARD: That's great. Thanks. John Bajkowski.

MR. BAJKOWSKI: Yeah. I want to applaud the ESG and Diversity panels for putting together just great

work as far as going forward on that, and it serves as a good model for us in the private investment area. Again, thank you, Rama, for capturing the sentiment of the panel and I think providing good movement going forward.

Probably the one thing that struck me towards the end was the interesting presentation by Michael Kitces, how he broke up the notion of the product versus advice area and how the technology kind of bridges that. It makes access to technology very democratic, but then you kind of get caught up as to what point is education advice, and what point in time are the products that they're being sold kind of pushing them in one direction versus another as far as regulatory impact.

So again I would -- type question that Mike's looking at. Those are probably helpful elements to consider as they go forward and try to kind of narrow down what they're going to be discussing. So looking forward to what you guys do in that area.

CHAIRMAN BERNARD: Great. Thank you. Joe Savage.

MR. SAVAGE: Thanks. Again I want to applaud the ESG and the D&I Subcommittees for a great job and for challenging us both. Both subcommittees have challenged us to rethink came is considered in the

public interest and what's material to investors. So I applaud them for that. On the last group, panel, it was a really a great presentation, a lot of food for thought. Michael Kitces I thought made a really interesting comment or certainly a comment I've heard before about silos regulations. Absolutely true. I actually occupy one of those silos, and it's -- you know, it's been a problem, or it's been, I guess, a characteristic of the U.S. financial system for at least a hundred years if not longer.

The one odd thing is the U.S. has arguably the strongest and most vibrant financial industry in the world, and yet we do have this really oddball regulatory system that most other countries don't have. And so you've got to wonder is that in spite of the oddball regulatory system we have here or because of it. I would say probably most of you would say in spite of, but I think it may be unintentionally because of these different industries I think in a way have challenged each other and increased the competition between each other that oddly enough may not have existed if it was all under one regulatory roof. So that's all I'm going to say.

CHAIRMAN BERNARD: That's an interesting observation. Jeff Ptak.

MR. PTAK: Yeah. So thanks to everybody for what I felt was a very fruitful day. Congratulations to Aye and Gilbert respectively leading the subcommittees that had their recommendations approved. Well done. And also great job Rama and Mike on taking concrete steps forward in your workstreams as well. It continues to be encouraging to see our different subcommittees approach their workstreams I think through a very practical lens focusing early on the issues that practitioners are grappling with.

These are vexing issues. I don't think that we've made it easy on ourselves necessarily taking on some of the issues that we have, but they are relevant, and they're very challenging to practitioners. And it's been encouraging to see the way each one of you have approached this, and I think that holds true for the private investments workstream and also the work that Mike is leading the charge on with respect to the future of advice. So I thought it was a productive day and glad to be part of it. Thanks.

CHAIRMAN BERNARD: Thanks. Jane.

MS. CARTEN: Yeah. I would say the education panels on private investments and technology-enabled financial advice were great and the recommendations brought forward from the D&I group and the ESG group.

Of course thanks to Aye and everyone on the ESG Subcommittee. I really appreciated the process we went through, the openness to change that everybody had and the ability to talk through some complex issues, and I think it showed -- I think both the D&I and ESG have showed the ability to really make that funnel of ideas work where we started with just everything in the universe and every dream but then had to funnel through, you know, the practical lens that Jeff was just talking about and come out with something that we could recommend that would be useful and of course knowing that the SEC has a crowd of different -- some committees that are going to be advising on these same issues.

So I think today was wonderful, and I really appreciate all the work that everybody has done to go into the meeting today.

CHAIRMAN BERNARD: Great. Thanks, Jane. Gilbert.

MR. GARICA: Thank you, Ed. First of all, I thought today was tremendous. I mean, I thought from beginning to end it was just fantastic, and I particularly want to thank my D&I Subcommittee members again, Paul and Scot, but I want to thank the whole AMAC for supporting the D&I issues, for being supportive when I spoke to some of you all. I really want to thank you

all individually. And Scot, I really want to thank you for taking my emotion and all that sort of stuff and really putting it in a very clear, succinct way in the document and very thoughtful to where it was all sort of stats and data. And I think that's what really was impressive for everyone.

My last comment, Ed, really relates to I'm anxious to see where we go from here. I'm anxious to see what the industry commentary is on both ESG and D&I and where we go. I'm hopeful that the new efforts that we're doing we'll be able to complete them within our time and our scope, and I'm just anxious to see where the SEC commissioners take it from here. And so I'm very hopeful and optimistic.

CHAIRMAN BERNARD: Great. Thank you. Erik Sirri. Did we lose Erik? Okay. Aye, you had to guess that if we were going in reverse order alphabetically by name you might be last.

MS. SOE: Yes. Thank you, Ed. I'm very, very pleased to see that the ESG recommendations and the D&I recommendations were voted. I really want to thank my ESG Subcommittee members Jane, Jeff and Rich because we went into this again very open-minded. We've even pivoted, you know, from December to now, but the entire time we remained very open-minded, listened to the

industry participants, the market participants, and I believe that we landed with the recommendations at a right place that struck the balance between not being too prescriptive and rules based and so maintaining that principles based aspect of rules but recognizing that ESG is incredibly an evolving field and leaving room for innovation.

So really happy and really pleased, and I want to really thank Christian Broadbent and the team. And I say this again because even last night at 11 p.m. he was emailing. So I really want to thank Christian for all his dedication.

On private investments, I do believe that, Rama, you're very, very close. You are almost at the finish line, and it's just about fine-tuning, and I am very supportive of the design principles framework and had a chance to really -- you know, saw the presentation ahead of time, so very supportive of how it was being crafted.

Evolution of Advice it was really and eye-opener, and I learned a lot, and I do think we are seeing technology being destructive in every industry, particularly in the asset management and financial services industry as well. So it's good to hear from various participants. I do want to note that we do hear that direct indexing is going to be the next big disruption especially to the asset management industry and particularly to the ETFs.

And I think personalization is great, but there is -- I do question what is the benefit of too much personalization for personalization's sake because personalization does come with higher cost at times. So that will be the only question that I have, and I'm eager to embark on this journey and learn. So those are my remarks.

CHAIRMAN BERNARD: Great. And Sarah, I'm going to save the last word for you in just a moment. I'm going to close with my comments really a thank you to all of you, to the subcommittees who completed their work with recommendations today and to those that are ongoing and really to the entire committee.

One of the things I sort of frequently marvel at is everyone on this committee has very big day jobs, and it's very obvious to me as I engage with all the subcommittees just how much time, thought, talent and energy you're committing to this. I know I'm grateful for it, and I believe the SEC is as well. I would also say the two sets of recommendations we approved today now join what -- we took a bit of a detour last year from our original agenda to talk about issues that came

to the fore as a result of the market reaction to COVID last spring, and so we've done some -- did some work on exchange-traded products and on operational issues that related to that, but we've also still got private investments and now evolution of advice and smaller advisors.

And I would remind all of you that actually if I go back to my notes, and I have extensive notes from input I sought from the whole group after our first meeting in January and again late in the year, we're, basically, working off the highest priorities that you all identified. So I think this group has done a great job of identifying a set of issues where we can add some value.

As I mentioned at the outset, you happened to choose some pretty deep and complex issues that required us to sort of drill deep as opposed to go broad and do lots of short lists of recommendations, but I think the results to date have been terrific. So thank you to you.

And I also -- several people have echoed this, but, boy, what the SEC staff does to support this group is just remarkable. So Christian Broadbent, Nina Kostyukovsky, Neil Lombardo, Robert Marchman, Wale' Oriola, Keri Riemer, Emily Roland, Jessica Shin and Jay

Williamson. I think Sarah knows this, but Sarah, they're doing great service to this committee, and we're very grateful. So with that I've left you a couple minutes. Do you have any parting words before we close.

MS. TEN SIETHOFF: I'll just say again thank you to really a huge range of thoughtful discussion and now two sets of recommendations for us to consider. We definitely will dig in on those, and again I'm looking forward to the continuing work that you have going forward. And I'll say I know many people commented already on the evolution of advice, and lots of food for thought there and really the interesting ideas that can come from taking a step back and looking at that evolution really from 30,000 foot when I know many of you spend your day to day looking at it, you know, right at the nitty gritty in front of you.

So I really appreciate that. I definitely heard a lot in the discussion today of that 30,000-foot perspective and look forward to a continuing discussion. So thank you again.

CHAIRMAN BERNARD: Thank you, Sarah, and thank you all. It's right at 4:15, which was our planned finish time after a very robust day. So thank you all. We will be back as soon as we're able. We'll have to check SEC calendars. I'm hoping for the next meeting to

be sort of the middle weeks of September, but I say that having not even begun to check calendars. So I have no idea if that's feasible. So in the meantime, everybody have a great summer. Thanks for your efforts, and I know the ongoing groups will continue to work throughout that period. And I think we'll sign off at this point. Thank you to all of you who hung in with us all day and attended on sec.gov. This adjourns the meeting.

(Whereupon, at 4:16 p.m., the meeting was adjourned.)

* * * * *

PROOFREADER'S CERTIFICATE

In The Matter of: ASSET MANAGEMENT ADVISORY COMMITTEE MEETING
Date: Wednesday, July 7, 2021
Location: Washington, D.C.

This is to certify that I, Maria E. Paulsen, (the undersigned), do hereby certify that the foregoing transcript is a complete, true and accurate transcription of all matters contained on the recorded proceedings of the investigative testimony.

7/14/2021
(Proofreader's Name) (Date)

REPORTER'S CERTIFICATE

I, Peter Shonerd, reporter, hereby certify that the foregoing transcript of 189 pages is a complete, true and accurate transcript of the testimony indicated, held on July 7, 2021 at Washington, D.C. in the matter of: ASSET MANAGEMENT ADVISORY COMMITTEE MEETING.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: 7/14/2021
Official Reporter:

A

D