UNITED STATES SECURITIES AND EXCHANGE COMMISSION

MEETING OF THE ASSET MANAGEMENT
ADVISORY COMMITTEE

Via Webex Video Teleconference

Friday, March 19, 2021

100 F Street NE
Washington, D.C.
PARTICIPANTS:

Securities and Exchange Commission:
- Allison Herren Lee, Acting Chair (via pre-recorded video)
- 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
- Scoot Draeger
- Michael Durbin
- Gilbert Garcia
- Paul Greff
- Neesha Hathi
- Adeel Jivraj
- Ryan Ludt
- Susan McGee
- Jeffrey Prak

PARTICIPANTS(CONT.):

AMAC Members(cont.):
- Erik Sirri
- Aye Soe
- Ross Stevens
- Rama Subramaniam
- John Suydam
- Russ Wermers
- Alex Glass (non-voting)
- Joe Savage (non-voting)

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Chairman Bernard: Good morning. This is Ed Bernard, I'm Chairman of the Asset Management Advisory Committee, and welcome to our March 19th, 2021 meeting. At this time, I'd like to call the meeting to order. I'll note that we have a quorum. This is obviously a virtual meeting on Webex. We've done sound checks to ensure all can hear. If there are any problems, please send a private chat to the meeting's host.

As we open the meeting, I'd like to thank Commissioners Peirce, Roisman and Crenshaw for their attendance today. I also wanted to take this opportunity to express thanks on behalf of the entire AMAC for your support of our work and your engagement with the Committee and otherwise. You've each provided both great advice and support, as has acting Chair Lee.

She is at the last minute unable to be with us today, but she has graciously pre-recorded her remarks. So if we could please play her remarks now, I would be grateful. Thank you.

(Pre-recorded remarks of SEC Chair Allison Lee)

MS. LEE: I want to welcome everyone that's joining us virtually today for the first 2021 meeting of the Asset Management Advisory Committee. Unfortunately, I can't participate live today because of our conflicting international meeting, but I'm very much looking forward to learning about today's panel discussions.

I want to thank the tremendous efforts of the staff, including acting Director Sara Ten Siethoff, Rachel Loko, Christian Broadbent, Jay Williamson, Olawale Oriola, and Emily Rowland. I also want to thank the Managing Executive Office and our Office of Information and Technology.

Considerable time and effort has been spent behind the scenes to prepare for this meeting by the Commission and the staff and those efforts are greatly appreciated.

Also, I know it's been said before at these meetings, but I want to reiterate my appreciation for all of the contributions of our Chair Ed Bernard and the members of this Committee. This Commission and subcommittee members have been thoughtfully working on some of the most complex issues facing the asset management industry today. It's more important than ever that we continue to engage with stakeholders on these questions so that ultimately we can effectively shape our regulatory regime to best serve the needs of the investing public.

As we kick off the 2021 cycle, we find ourselves still in a virtual environment with all of the challenges that presents. The AMAC has tackled many of the critical operational and market volatility issues connected to the pandemic in 2020 and we need to incorporate all the lessons learned from 2020 to inform our policy choices going forward.

That brings me to today's agenda. Today, the AMAC focuses on the work of the three subcommittees: ESG, Diversity and Inclusion, and Private Investments.

The ESG Subcommittee will feature an issuer panel and the questions that are confronting operating companies about how to consider, classify and score ESG metrics are quickly evolving and they're useful as a key piece of the equation as the Commission considers how to effectively advance disclosure in this space. So I'm looking forward to that. Ultimately, consistent, comparable and reliable issuer disclosure is going to be critical for asset managers too as they implement their investment strategies and provide disclosures to their own clients.

At our last meeting, the Diversity and Inclusion panel provided historic information about minority and female-owned asset management firms and the particular obstacles that these communities face in accessing money management opportunities. That discussion highlighted that diverse managers perform on par with, if not better than, their peers. So really, the question becomes how do we unlock that potential in the marketplace so that ultimately investors receive the best services available. As with the ESG metrics, the panel also made clear that the market does not have adequate information about the diversity of companies, advisors, work forces, including those in management.

Transparency is foundational in our securities laws and we will want to carefully evaluate possible improvements in this area. So I look forward to hearing about potential recommendations from this Subcommittee on some of these key questions.

And lastly, the Private Investments Subcommittee continues its work today in exploring whether or how it may be appropriate to expand access for investors to alternative investment vehicles in private markets. This Subcommittee last found inconclusive evidence that private equity investments provide better returns than the public markets and it's now evaluating the performance of other types of alternative investments.
I've long had concerns about the growing disparities between our public and private markets and the lack of transparency that we have in private markets. Further, the potential for excessive fees and complex conflicts of interest are additional areas of concern that are implicated in the expansion of regulated freedom of access to alternative investments.

The robust disclosures that are provided in public markets promote informed decision-making and accountability and these should be guiding principles as we consider how retail investors can best access the capital markets.

So I very much appreciate the continued engagement of the AMAC on these and other issues as the asset management landscape continues to evolve. And I look forward to today's discussions. So with that, thank you again, and I will turn it back over to Ed.

CHAIRMAN BERNARD: We're grateful for that -- those introductory remarks. That was a great overview of the day. Some of my remarks later may be almost a little redundant, but that was very helpful.

Commissioner Peirce, did you have anything you wanted to offer?

COMMISSIONER PEIRCE: Yes. Thanks, Ed, and good morning to everyone. It's always a pleasure to welcome the hard-working volunteers of AMAC back to the Commission even if it's just virtually.

I want to reiterate Chair Lee's thanks to the Division of Investment Management for their work in keeping AMAC's wheels turning.

We're now well into the new year, but in some respects 2021 is looking a lot like 2020. We continue to interact with each other via Brady Bunch-like squares on our computer screens and hope that Zoom will accept our assertions that we're not robots that my fire hydrant and crosswalk-spotting skills have never been sharper.

The challenges though of remote workplaces and the other consequences of the COVID-related lockdown that asset managers face have not changed either. And despite these hurdles, asset managers have continued to serve their clients with a commendable professionalism and commitment.

Today's meeting also continues the themes of last year's meetings. I take nothing away from the work that the three subcommittees that will be presenting and that the Committee will be discussing today. But I've begun to wonder whether AMAC is as broadly focused as it could be on the range of critical issues confronting asset managers. With one or two exceptions, AMAC's agenda over the past year, including today's, has been dominated by just three issues: ESG, Diversity and Inclusion and Private Investments. All important topics and I very much appreciate your work on them.

But when you speak to your coworkers, clients and others in the industry, what are other topics of discussion? What else is causing concern among asset managers? What are they saying about issues such as managing their clients' portfolios in a zero rate environment, the promises and perils of new technologies, the balance between client convenience and cybersecurity risks, challenges of returning to in-person work, the need for modernizing custody, cross-trading and other Commission rules, implications of state privacy laws among retail or trusts in trading individual stocks, a potential shortening of the settlement cycle, industry concentration, money market funds, digital assets, the SPAC trends, and equity and fixed income market structures. This list is certainly not exhaustive or offered in any particular order of priority, but the point is that we need your input on a whole range of issues.

As described on the SEC's website, AMAC has an important role to play in assisting the Commission to identify trends and developments affecting investors and market participants. It's crucial, therefore, that the Committee embrace a wide variety of topics that we need to hear about as we formulate our regulatory and policy priorities. I hope that as we discuss the Committee's agenda for 2021 this afternoon, you will ensure that it's broad, yet manageable. I'm confident that the creative minds that make up the Committee will come together to build on its impressive work and provide additional insights on a host of important matters that we've not yet explored.

I know that one of the reasons for the limited issue sets is that you've opted for depth over breadth. I appreciate the care you're taking on difficult issues. On ESG, for example, you've brought in an excellent panel today to continue last meeting's discussion. The December ESG conversation unearthed an important tension between the fact that issuers already have to disclose material risk and the calls for special ESG disclosure requirements. To get to broad ESG disclosure mandates for issuers, we have to re-imagine materiality. But re-imagining materiality is the same thing as tossing it in favor of a more malleable new edition. Materiality has served us well and undermining it to accommodate ESG will harm investors.

I reiterate a point that I've made before. I'm happy to consider new SEC mandates for specific metrics
that are likely to be material to every issuer and every 
industry. ESG standards, however, continue to be talked 
of in broad strokes that obfuscate the immaterial nature 
of many of the specific underlying disclosures. Although 
I certainly understand the impetus for asking for 
mandated issuer disclosures, I urge the Committee to 
rethink the wisdom of recommending that we embark on a 
program to write standards for a set of issues nobody 
can define. They are not akin to accounting standards 
which serve a clear, time-tested, universally understood 
objective. Having the SEC build a GAAP-like edifice 
around ESG standards would give investors a false sense 
of confidence in standards that are subjective, 
shifting, and sometimes even senseless. 
Thank you for encouraging us to be frank with 
you and I look forward to your frank discussion in 
return. Thank you. 

VOICE: Ed, you are on mute. 

CHAIRMAN BERNARD: Let me try that again. 

Thank you, Commissioner Peirce. 

And Commissioner Roisman, now over to you. 

It's bad when the Chair messes up the mute button. 

COMMISSIONER ROISMAN: It happens. It already 
happened to me too much today. So good morning, 
everyone. Thank you, Ed and members of the Committee 
not only for your work but for the thoughtful process 
that you've undertaken to develop recommendations for 
the Commission. 

AMAC's approach has been methodical, iterative 
and transparent. And while it may not yield quick 
results and it might demand increased time and attention 
from each of you, I believe that you make your final 
recommendations more comprehensive and useful. 

Today, I look forward to hearing two new 
potential recommendations including the Diversity and 
Inclusions Subcommittee's ideas for how the Commission 
can help advance diversity and inclusion in the asset 
management industry. I'm especially interested in 
whether our securities laws or rules inadvertently 
create barriers to achieving this goal and what we can 
do to overcome it. 

From the Private Investment Subcommittee, I 
look forward to learning how we should think about 
increasing retail investors' access to opportunities in 
private markets. Over the past year, we've seen retail 
investors embrace trends such as SPAC investments and 
day trading. While some will always want to go it alone 
in their search for growth opportunities, I'm interested 
in how professional managers can provide more guided 
access. 

I'll focus the remainder of my remarks on ESG 
and participation of the ESG Subcommittee's panel to 
discuss their preliminary recommendation. Many thanks 
to Ed and the Subcommittee for engaging with me and my 
team over the past several months. 

Before I go through several questions, I'd 
like to pose for the panel, let me express my hope that 
today's atmosphere will foster an open-minded dialogue 
about the substance of the Subcommittee's 
recommendation. As we all know, ESG is a topic that can 
feel polarizing. I've heard from some who are inclined 
to question the propriety of SEC regulation in this area 
but they fear the reputational risk of being painted as 
anti-climate, anti-social justice or other shades of 
immoral if they were to do so publicly. On the flip 
side, opponents of this agency's intervention sometimes 
offer rationales for action that are entirely outside 
the realm of securities law. 

A letter I recently received in my office 
avovated for mandatory ESG disclosures admitted by 
saying, quote, "There is no Planet B." In this forum, I 
feel confident we all recognize that we are 
fundamentally discussing questions about the SEC's 
authority as a regulator and whether this agency's 
intervention is appropriate to those problems people 
have identified in our markets. 

With that said, I'm happy to hear from our 
expert Committee members today and welcome new panelists 
to join the conversation. I'll start with my questions 
for those panelists who represent asset managers. How 
would you gauge what investors are looking for when it 
comes to ESG products particularly whether their 
objectives fall outside risk/return alone? To the 
extent you are focusing on maximizing returns, what E, 
S, and G information specifically do you believe you 
need from issuers and why? How is this information 
related to valuing investment targets and portfolio 
companies? 

Next, how are you currently seeking out this 
information today? I know BlackRock has been vocal 
about pressing for TCFD disclosures. Some managers 
request SASB information, others take a totally 
different approach. How do you choose? How have 
European opinions factored into this decision-making? 
And to the extent that you're looking to increase 
comparability in issuers' disclosure, why is this 
important? In other contexts, we do not demand perfect 
comparability across all categories of material 
information. 

The next question is for all panelists and our
moderator. The Subcommittee contemplates that the SEC rely on a third-party standard setter to identify what information is material. How should the SEC oversee such a third party? And should we extend our oversight further? For example, to ESG and its providers and ESG rating agencies.

The remainder of my questions are for those panelists who represent public companies. The bulk of the obligations in the Subcommittee's preliminary recommendation would fall on your shoulders. How could this burden be mitigated for companies who are working to provide ESG information? I understand that liability is a concern, and there may be others. What are ways these costs could be reduced?

While I'm nowhere near the end of my questions, I'm going to stop here for now. I look forward to the discussion today and encourage everyone to consider sharing your views in the public comment file with the acting Chair recently opened on these topics.

Finally, as I've said every time, my door is open to anyone who wants to discuss these matters directly with me and I really appreciate all the work that this Committee has done and I look forward to today's discussions.

Thank you, Ed.

CHAIRMAN BERNARD: Thanks very much.

COMMISSIONER CRENSHAW: Good morning, and as always, thank you for your time, dedication and thoughtfulness on the important asset management issues that affect investors and market integrity. We really appreciate it and your thoughts are invaluable. And thank you also, as some of my colleagues have said, to the staff of the Division of Investment Management for all your hard work on making sure that the process is running smoothly.

To the Asset Management Advisory Committee, I commend you on your continuing work on the issues related to ESG, private securities and diversity and inclusion. These are extremely important issues and I'm looking forward to the discussions today.

And as you all know, there has been a lot of discussion about ESG of late. So today's agenda, which includes a discussion about the ESG Subcommittee's recommendation, is very timely. I've said it before and I'll say it again, that investors are using ESG-related information to make investment decisions and allocate capital more than ever before. They are increasingly looking for sustainable investments -- albeit, investors have different thoughts about what sustainability means -- and how ESG information informs their investment decisions.

The Commission's role is to facilitate material disclosure to investors. But these disclosures need to be meaningful. That's particularly important for ESG-related disclosures as they are too often inconsistent and incomparable. What we should be working toward is a clear disclosure regime that yields consistent, comparable, reliable, and understandable ESG disclosures to investors. By improving these disclosures, issuers will be able to stay competitive and to attract investors. Moreover, investors will have greater transparency into whether and how an investment fund or an asset manager approaches the ESG factors important to them.

The ESG Committee has recommended that the Commission require the adoption of standards for ESG disclosure. As you discuss the recommendation today, I'm interested in hearing from you specifically what information should be disclosed about issuers and investment products. What information can and should be quantified and disclosed through metrics. What standards do you think we should use, and why.

I also encourage you to think about the questions outlined in acting Chair Lee's recent request for public comment on climate disclosures as well as your thoughts about any S&G-related risks that should be subject to mandatory disclosure and whether you think metric-based disclosure standards and requirements should vary by industry.

Beyond ESG, as you think about the 2021 agenda, I'd also appreciate hearing the Committee's views on other important topics affecting asset management. I'm interested in many topics and I'll just briefly mention two here today. First, securities lending. As the index fund market has grown, so too has the market for securities lending. Securities lending can generate additional income for funds and their investors but it can also expose funds and their investors to certain risks, including the risk that the borrower may default. I'm interested to know whether funds operate with sufficient safeguards to mitigate those risks. On what basis do fund sponsors determine the split of revenue generated by securities lending, and are those decisions made in the funds' and investors' best interest.

I'm also interest in AMAC's views on the so-called lending proxy voting tradeoff. In 2019, the Commission issued guidance encouraging funds to take
into account opportunity costs of share lending when
making voting decisions. Prior to that, funds would
recall shares they loaned when material items were on
the ballot, to ensure the voting would occur. Following
the 2019 guidance, research has shown that funds
significantly increased their share lending at the
expense of proxy voting. If this dynamic continues,
what are the implications for shareholder democracy, for
corporate governance and corporate stewardship? What,
if anything, should the Commission be thinking about in
this space?

And one final proxy-related voting issue that
I would appreciate hearing the Committee's insights on
is the effectiveness of Form N-PX. I welcome any
recommendations for revising the form to make it more
effective. A Form N-PX was adopted to provide fund
investors more information and greater transparency into
how funds vote on shareholders' behalf. But the form
has resulted in perhaps a lengthy, dense and non-
standardized and sometimes difficult to understand
disclosures which may not be as useful to investors as
they could be. So I'm interested in knowing how could
Form N-PX be updated to make it more useful for
investors. Should the Commission revisit its never-
acted-upon proposed rule that sought to implement a

provision of Dodd-Frank by requiring certain
institutional investors to report their votes on
executive compensation on Form N-PX? Are there other
issues, such as ESG-related proxy voting that investors
would appreciate having included in Form N-PX
disclosures?

I look forward to the panels and the
discussions today. Thank you again for your commitment
and the dedication to these extremely important issues.

CHAIRMAN BERNARD: Thank you, Commissioner
Crenshaw.

I'll now turn to acting Director of Investment
Management, Sarah Ten Siethoff. We're grateful for your
support already provided and I think you wanted to share
a few thoughts as well.

MS. SIETHOFF: Thank you, Ed. Good morning
and welcome to the first meeting of the year for the
Asset Management Advisory Committee.

Before I start, I want to remind everyone that
all of my remarks today will only be on behalf of myself
and not on behalf of the Commission, the Commissioners,
or the rest of the staff.

About a year ago, the COVID-19 pandemic forced
all of us into a telework posture with the professional
and personal challenges it entailed. The AMAC had its
first and only meeting in person in January 2020. Ever
since, it has met virtually. I'd like to take this
opportunity to thank all the AMAC members for continuing
throughout this time to conduct productive and
insightful discussions and for bringing your unique
perspective to the staff and the Commission in these
trying circumstances.

In the upcoming year, the Committee will
advance the discussions initiated in its first year. I
also understand it will undertake new work on timely
subjects through two new subcommittees on the evolution
of advice and the challenges of smaller advisors and
fund managers. I anticipate learning more in the months
to come as these subcommittees bring their diversity
points to bear on these important topics.

Turning to the agenda, today's meeting will
continue AMAC's tradition of bringing forth thoughtful
exchanges. I'm looking forward to hearing the continued
dialogue on the ESG Committee and the Private Fund
Committee's potential recommendations as well as updates
from the Diversity and Inclusion Subcommittee.

I would like to thank acting Chair Lee and the
Commissioners for their participation today. My thanks
also to Ed for your leadership and all the subcommittee
leaders and committee members for your contribution.
input from the full AMAC, I and acting Director Sarah
Ten Siethoff and her staff, we've added two additional
subcommittees to lead our work through 2021. They will
address the evolution of advice and the challenges of
smaller advisors and fund managers. I'm really grateful
to Neesha Hathi and Scot Draeger respectively, for
agreeing to chair these subcommittees as well as the
AMAC members who've agreed to join those work streams.
We'll hear more about that this afternoon.

So for today's agenda, I'll let each
subcommittee chair introduce their session and I'll give
just a brief overview of the day, some of which you've
already heard.

This morning, we'll first hear from our ESG
Subcommittee. You'll recall during our December
meeting, we had a lively discussion about this group's
draft of potential recommendations. From that
discussion, the Subcommittee concluded it would be
helpful to hear a range of views from issuers and
investors before finalizing this recommendation. And
they have a truly great group of speakers to provide
that input today.

After a brief break, our Diversity and
Inclusion Subcommittee will update us on their work and
seek our input for the next phase of their work.

And after a lunch break, we'll come back
together at 1:00 for our discussion led by our Private
Investments Subcommittee. They'll share some input on
some additional asset classes and discuss the design
principles that are likely to form the core of their
potential recommendations.

So I hope the entire Committee will engage
both teams with questions and comments and, as always,
we welcome input and questions from the Commissioners as
well.

In our final session, as I mentioned, Neesha,
and Scot will preview how their teams plan to work,
approach their work on evolution of advice and smaller
advisors and fund managers. They too will be looking for
any initial input you may have to shape their work.

And at the end of the day, as has become our
practice, we'll seek reactions to today and input from
the Committee with quick remarks around the table in our
lightning round.

I think I'll skip the housekeeping because
we've all been well briefed and we've been doing this
for awhile. So with that, I think I'll just pause to see
if there are any questions.

(Brief pause.)

CHAIRMAN BERNARD: I see no hands. And if
not, I'll turn it over to Aye Soe for the first session
and we got it in right at 9:29, Aye, so you got your
time.

MS. SOE: Thank you, Ed. Before we begin, I'd
like to thank the Commissioners, the staff at the
Division of Investment Management and the AMAC ESG
Subcommittee members and also Committee Chair Ed Bernard
and Michelle Beck for all the support and guidance.

As Ed mentioned, in December 2020, we began
drafting potential recommendations to the Commission to
ensure comparable and consistent disclosures of material
ESG risks by issuers. So today, we've put together an
expert panel of corporate issuers as well as asset
managers. The panel will focus on standards by which
corporate issuers disclose material ESG risk, whether
reporting ESG risk should be principle-based or rules-
based, and what frameworks exist to assess materiality.
And the discussion today will no doubt guide the ESG
Subcommittee final recommendation to the Commission.

A little bit on the format. The first four
panelists will provide their thoughts as corporate
issuers, ten minutes each, and then we'll have Q&A for
20 minutes and then the final two panelists, the asset
managers, will speak ten minutes each followed by ten
minutes of Q&A.

So with that, I'm going to hand it over to
Marisa Buchanan from JPMorgan. Thank you.

MS. BUCHANAN: Thank you very much, Aye, and
thank you, Ed, and thank you to the SEC and the
Commissioners for hosting us today and giving us the
opportunity to have this important conversation.

So, I'm Marisa Buchanan, I'm the Global Head
of Sustainability for JPMorgan Chase and I run an
enterprise-wide sustainability strategy team for the
firm. I also lead our work on ESG disclosures and a
significant amount of stakeholder and shareholder
engagement on these topics. So we've really been at
this in our discussions around ESG disclosure for years,
including through our service on the Task Force on
Climate-Related Financial Disclosures.

So, you know, today, I wanted to share some
reflections and considerations that I would encourage
AMAC and the SEC to keep in mind as it thinks about this
issue of ESG disclosure. Again, you know, these
reflections are informed principally by our work as a
issuer and as a provider of disclosures. But, you know,
we are also a company that operates in a space that
consumes disclosures and so my perspective on this is
equally shaped by both.

I'll start by saying that we at JPMorgan have
been publishing a significant amount of information on ESG topics for a number of years. We've been publishing a dedicated ESG report for the past six years, which is informed by the disclosure recommendations of the Global Reporting Initiative as well as SASB and also the Task Force on Climate-Related Financial Disclosures. We published our first dedicated TCFD report in 2019. I'll say I think we have a great foundation with the voluntary disclosure frameworks that exist today and encourage certainly any approach (indecipherable) leverage. I think a really good foundation exists.

So, I'll start by saying when it comes to ESG disclosure.

One, I think it's really important to be clear and specific about what we mean when we say ESG.

Actually many different issues, sometimes people use ESG interchangeably with climate and other issues, and so I think it's really important to be intentional and specific about what it is when we think about what's included in ESG.

Two, I think it's really important to be clear about what we're striving for when it comes to disclosure. You know, I'll just take the TCFD as one example. You know, the TCFD came about really on the premise that financial market participants did not have adequate information about climate-related risks and opportunities in order to make informed lending and investment decisions. Now that's different from a desire to consume the information for other purposes.

You know, I think it's really important to distinguish between investors' needs when it comes to things like information to inform understanding of things like risk management versus information that's desired for other purposes. For example, things like sustainable product creation and for the SEC to think about how the differences in these objectives might inform the Commission's approach to thinking about disclosure.

I'll also add that from our perspective, it's really important that disclosure is fit for purpose. In other words, that it is designed to provide lenders and investors with the right information that allows them to make informed decisions. You know, I think we have increasingly observed that conversations around mandatory ESG disclosure is increasingly discussed as it is able to achieve broader public policy change and that is something that we would encourage caution about.

Third, and I guess some of the Commissioners touched on this in their opening remarks, it's really important to consider specifically what kind of ESG data and information is needed by investors. You know, from our experience, we think there is a lot of value in an approach that balances principles-based add-ins with some prescriptive standards. We've seen that emerge in many voluntary frameworks today and also where quantity of information is balanced by sufficient and appropriate qualitative discussion. I think this was actually one of the beauties of the TCFD's approach. You know, it has a basic level of consistency that is appropriate but it is really designed to be tailored for use by individual companies. From our experience, there are no two companies that are alike when it comes to ESG and, you know, making sure that companies have some flexibility to determine what is material or relevant to them, or important to their respective stakeholders, is really important.

Similarly, I'll also just say -- and I know we have some other panelists who are going to speak about some of their industry-specific work around disclosure and specifically Edison Electric Institute, and it's really important for the Commission to think about, you know, the specific types of data and information that are relevant to individual industries.

Certainly what a bank would disclose is going to be very different from an electric power company, from, you know, a cement company, a gas company and it is really important to think about specifically what are the data and metrics that are relevant and appropriate for those respective industries.

And then lastly, I will leave you all with one final thought that I increasingly think about a lot. In that I think there's value in exploring how to approach mandatory disclosure when it comes to issues where there is significant uncertainty. And climate, I think is one important example. So we know, for example, that scientifically if climate change continues unabated, there will be significant negative global impacts.

However, I think it's fair to say that there is generally a fair amount of uncertainty about how climate impacts, both physical impacts and well as transition-related impacts, which I really think of as how is society going to respond to the growing threat of climate change with things like policy and regulation.

You know, in some cases, companies may be reluctant to disclose information about how they might be impacted, not because they don't want to, but because there is a fair amount of uncertainty over how some of these issues may impact them. And there is caution around, you know, putting out disclosure that really puts a stake in the ground when frankly a lot of these impacts and factors can change over time.
So I really encourage the SEC to think about how to address some of these really important issues around uncertainty in the context of issues like climate change when it comes to thinking about an approach to mandatory disclosure.

So with that, I will pass it back to Aye and really look forward to hearing the other panelists' remarks and to the discussion a little bit later. Thank you.

MS. SOE: Thank you, Marisa, that was very thoughtful.

Next, we have Jill Blickstein with American Airlines. So Jill, over to you.

MS. BLICKSTEIN: Thank you, Aye, and thank you for the invitation to join you today and for the opportunity to present our perspective.

I'm the head of ESG at American Airlines. I lead our ESG reporting, our engagement with the raters and rankers and the development of our climate strategy.

Just by way of background, we've been reporting on our greenhouse gas emissions for many years and in the last few years took the step of getting those verified. We've also for many years made disclosures on our other material ESG lists related importantly to safety, workforce demographics, DEI, and other issues.

And we've been looking to best practices both inside our own industry and obviously outside, and looking for trends so that we could get ahead of those.

In early 2020, we decided to take a more focused approach. We've been I think piling a lot of information into our reporting and we decided to take a more focused approach because we heard from investors that they want a clearer picture really of where we stand and the progress we're making. And we were looking at the different standards and about different voluntary frameworks and that was the same time that Larry Fink put out his 2020 letter to CEOs where he made the case for both this combination of TCFD and SASB. So TCFD obviously to provide this detail on climate and SASB really to cover all the other important ESG issues.

Obviously as an airline, we're in a hard-to-abate sector. We know that we have to be part of the solution to climate change. We know that our stakeholders expect us to come to the table with a thoughtful and comprehensive discussion of how climate change is going to affect our business. And obviously, we're also in a very competitive industry and we saw an opportunity through our disclosures to take a leadership position.

So first, just to talk about the experience as a first user of TCFD. I would say that, first of all, I would view it really as a journey. So we've done this the first time, but I think -- I would expect over time -- it's relatively complex -- I would expect over time that it's going to improve and so I just think there's a lot to learn there and it does strike me as being qualitatively very different from, for example, financial disclosures where there's already been a lot of learning and the standards are incredibly clear.

I would also note that, at least for us, there were pieces of TCFD that we could not do on our own, so we did have to turn to expert advice, particularly with regard to the climate scenarios themselves. Those require specialized knowledge that we don't have. I understand that maybe companies might be able to invest in that kind of expertise to bring that in-house, that would probably not be us. So, there's an interesting dynamic that happens when you're actually relying on the economic -- on the analysis of people outside your own company and I think in that sense, that's different from -- even from our other ESG disclosures.

I would also note that I was a little surprised and happy to see there was a benefit to doing -- to engaging on TCFD that I didn't really expect. In that it allowed us to engage with leaders across the company, particularly on the discussion of both the physical risk to our physical assets but also on the transition we're expecting even more so. And this -- we were doing this analysis during COVID when, you know, I was a little daunted by the idea of going to people and saying that we needed to disclose this and we needed to have a conversation. But instead, what I found was that people really wanted to engage on this question. They wanted to think about the risks and how we were going to prepare for them. And so in that sense, I think it's really a great business strategy tool. And I think in that sense it really did meet with, as Marisa described, what TCFD's goal was, was to -- is to make sure that the companies really are prepared well on the issue of climate and that they're thinking about it the right way, comprehensively, and deeply. And again to my earlier point, I think that does make it -- that's going to evolve to where we're well into the recovery from COVID and will be able to even engage with more leaders across the company.

You know, we did our -- our first take on the TCFD was a qualitative approach and so we haven't done the quantitative approach. I think as we discuss mandatory disclosures, I think the idea that we would boil something like TCFD or climate risk down to a
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<td>single number or a single set of numbers. I think, you know, I would worry about false precision, and as Marisa said, there's a lot of uncertainty about climate change and there's certainly a lot of uncertainty when you're looking out to 2050 or beyond. And we just really want to be cognizant of that. That's something else that we think about quite a bit.</td>
<td>opportunities that could impact the company's ability to create shareholder value over time, has been usurped by a broad variety of special interest groups to advance interests unrelated to shareholder value. Those groups are increasingly calling upon corporations to solve complex societal issues that have historically been within the purview of a democratically elected government. But public companies are stewards of shareholder capital. Corporate decision-making must be grounded in whether the decision will increase shareholder value over time, recognizing that creating long-term shareholder value requires the company to also take care of its customers, communities and employees. Moreover, given the divided country we now live in, politicizing the role of the corporation will inevitably alienate not only a large portion of the company's customer base, but a significant percentage of the company's workforce as well. In a polarized world, all employees should be comfortable bringing their whole selves to work. That is a key pillar of sustainability, in my view. But paradoxically, the politicization of both ESG and the role of the corporation weakens this pillar and ultimately makes the corporation less sustainable over time. The SEC should be sensitive to these concerns</td>
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<td>I would also mention -- so we also disclosed using the SASB framework for airlines. And there, I really appreciated that a lot of the times the disclosure frameworks are so generic and so broad and it's hard to fit -- the airline business itself is very specific and in particular, for example, our safety systems are crucial to us and they are very specific and tailored to our industry. And what was nice about the SASB disclosure framework is it really does address our safety management systems in a very specific way. And so again, I think that pairing of TCFD, that sort of accommodates the uncertainty around the climate issues in particular, but then SASB that is a little more specific, has a few more defined metrics but also does allow you to give a discussion like that. That made for a very nice package I think for us to disclose on. And I think Marisa's point about balancing the quantitative and the qualitative is really important. You want to be able to have the chance to disclose and talk about how you're thinking about these issues that are very complex. And thank you again for the opportunity. And with that, I'll turn it back to Aye.</td>
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<td>Next, we have Yafit Cohn with The Travelers Group. So Yafit, I will turn it over to you. We're doing quite well on time, Ed. MS. COHN: Great. Good morning and thank you for inviting me to participate in today's discussion. I serve as the Chief Sustainability Officer of The Travelers Companies. As many of you know, I provided remarks on the topic of ESG disclosure to the SEC's Investor Advisory Committee in December of 2018. Today, I'd like to expand upon those remarks which are still very relevant today, by offering five fundamental principles that I believe should be kept front of mind as the SEC considers how to approach ESG disclosure and as this Committee formulates its recommendations to the Commission. One, stay focused on value rather than values. When I spoke before the IAC two years ago, I shared that the term ESG, which refers to the risks and and tread carefully to ensure that it does not promulgate disclosure requirements that are divorced from shareholder value or have the unintended consequence of politicizing the corporation. The SEC should remain close to the purpose of the Securities Exchange Act of 1934 and the SEC's own mission; namely, to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation. It is that purpose and that mission that has made the U.S. capital markets the envy of the world. I fear that straying from that mandate and using the securities disclosure regime to achieve environmental, social and political goals that are not tied to creating shareholder value could potentially harm the everyday investors that the Commission is tasked with protecting, put American public companies at a global competitive disadvantage and make it less attractive for companies to list in U.S. markets at a time when the number of listed companies is historically low, undermine the almost universal public confidence that the Commission has benefitted from over many decades, and over the longer term unintentionally weaken democracy since a very small group of like-minded individuals would be in a position to impact social change on a mass level without the benefit of debate or the checks and balances</td>
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that are built into our democratic framework.

I think we all need to pause and think deeply about the potential impact on our democratic structure if the corporation is used to engineer social change.

Two, as a corollary to that principle, any new disclosure requirement needs to be rooted in materiality as defined by the U.S. Supreme Court. In the Court's view, an omitted fact is material if there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available. Importantly, the fact that some individuals or investment firms are expressing interest in a particular policy area or are requesting certain information does not in itself render that information material, nor does the fact that corporations have been increasingly disclosing that information on a voluntary basis. Materiality, as the Court has defined it, is the bedrock of the SEC's well-established disclosure regime. It has served both issuers and investors well for almost a century, and in my view is one of the foundational characteristics that has resulted in the U.S. capital markets being widely recognized as the most efficient in the world.

Notwithstanding the current focus on issues now labeled ESG, there is nothing unique about ESG information that requires deviation from the objective materiality standard that defines the parameters of mandated issuer disclosure. Additionally, if materiality considerations are weakened, I believe we risk the information overload that Justice Thurgood Marshall warned about in TSC Industries and that the Commission has been concerned about over the years. Ultimately, a diluted or inappropriate standard of materiality could result in less effective disclosure to the detriment of investors.

Three, any disclosure requirements should be principles-based, not prescriptive. Having spearheaded the sustainability reporting process at Travelers for several years and making sense of all the noise out there on ESG, the concept of having a single blueprint to work from is truly enticing. But throughout these years, it's also become clear to me that there's no one right way to produce sustainability reporting.

Notwithstanding the complexity in the current ESG landscape and the confusion resulting from having different disclosure frameworks, we appreciated the flexibility to determine how to tell our company's value creation story in a way that we thought was most appropriate and effective for our company and most meaningful for our investors.

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As with other disclosures, company management is in the best position to determine what is material to its company given the company's industry and its specific facts and circumstances. ESG disclosures should not be treated any differently than other disclosures.

I'm afraid that given the unique characteristics of each company, even within the same industry, it's not possible or advisable to come up with one uniform approach that would be right for all companies as it relates to environmental, social and governance issues.

Given the very nature of ESG, to be meaningful, any new rules adopted by the SEC must at a minimum contain enough flexibility to recognize industry-specific differences.

In addition, if the Commission adopts mandated ESG reporting beyond the reporting already required today, this disclosure framework should allow for management discretion in determining which ESG factors and metrics are material to their company.

Four, ESG disclosure requirements should be accompanied by safe harbor to mitigate the risk of frivolous lawsuits. Liability protections are needed, not because public companies do not have adequate controls over their reporting, but because history has taught us that in our litigious society, corporations are regularly targeted with meritless suits imposing undue burdens on companies and unnecessary costs on shareholders.

Five, any disclosure requirements must go through the regulatory process per the Administrative Procedures Act. There has been some speculation that the SEC may rely on existing ESG frameworks or standards created by unregulated entities. I would find it deeply troubling if the SEC were to adopt the recommendations of any unregulated body without the benefits of the public notice and comment process of the heart of our regulatory regime. I would also be concerned that putting the Commission imprimatur on the standards crafted by unregulated entities would allow those entities to make modifications to their standards outside of a regulatory process, essentially anointing them as de facto regulators.

With these guiding principles in mind, I am confident that this Commission – that this Committee will arrive at the right recommendations and that the Commission's approach will serve issuers and investors well.

Thank you.

MS. SOE: Thank you, Yafit, that was very
Good morning and nice to see you all. Thank you for inviting me today. I'm Richard McMahon, Senior Vice President for Energy Supply and Finance for the Edison Electric Institute. I'm here today representing America's investor-owned electric companies and the AGA Gas Association. EEI is a trade association of America's investor-owned electric companies and the AGA represents America's investor-owned gas companies.

We applaud the Commission and this Committee for addressing these important ESG issues. We are the most capital-intensive industry and have raised and spent more than $140 billion of CAPEX in 2020 and more than a trillion dollars of CAPEX over the last decade. So we're in the capital markets daily. Our members are large publicly-traded companies on the New York Stock Exchange and NASDAQ. Also our CAPEX has directly and indirectly created millions of well-paying jobs, almost entirely in the United States.

Our members are leading the transition to a lower carbon energy economy. In fact, EEI member companies have reduced carbon emissions by 45 percent compared to 2005 levels and are on pace for further reductions, 50 percent by 2030, 80 percent by 2050. And many of our members have pledged to reach net zero by 2050. The methane emissions best practices that AGA has helped reduce methane from U.S. natural gas distribution by 73 percent since 1990.

I'm here today because our industry believes in the importance of ESG disclosures. The investor-owned utility industry is the only sector to have developed and implemented a sector-wide voluntary ESG template. The template has been in use for four years and we're about to release version three. What makes our template unique is that it was developed with and for investors. Through ongoing collaboration, we made changes to the template based on evolving investor feedback and evolving ESG informational needs. In fact, our members meet twice per year with a significant number of institutional investors, lenders, financial institutions both before and after proxy season to assess purifying our ESG template.

We've also invited policymakers -- NGOs, proxy advisory firms, rating agencies, ESG raters, SASB, TCFD and many others to participate in our process. We want input and transparency.

I want to spend some time today on lessons learned because I believe that these will be helpful to the SEC as it considers ESG disclosures.

First, ESG is an evolving concept. When we started our ESG template more than four years ago, environment was a capital E and the S and G factors were less the focus for investors. Over time, the governance factors became much more important to investors. We expanded the template to address investor interest in cyber governance since that governance issue was the issue of most importance to our investors. Most recently, diversity, equity and inclusiveness issues under the social aspect have come to the fore for investors. So we're advancing those in our template under the DEI issues as well.

In fact, our industry has a very strong and evolving under-told story on cyber governance and DEI issues. So these changes are welcome. For instance, electric utilities lead all other industries in terms of CEO gender diversity with 23 percent of our companies led by women CEOs compared to just seven percent for the Fortune 500.

Again, I'm sure that other ESG issues will emerge and evolve in the future. So that's why we recommend a flexible and principles-based approach to allow these and future changes to ESG, which is an evolving concept. Also, other industries, as has been mentioned, for other industries, the E, the S, and the G factors will have different weightings among investors and there are different issues to consider. For example, for clothing manufacturers with overseas operations, the S issue of child labor is important. For our industry, it has nothing to do with our business. So the take-away is that ESG disclosure, to be effective, it cannot be a one-size-fits-all proposition. This leads to my next lesson learned.

All ESG information isn't financially material for financial reporting purposes. As the SEC and the Commission well know, there can be differences between information of longer-term strategic importance to companies and investors and what is financially material for SEC reporting purposes. To those advocates that say all ESG information is financially material and therefore belongs in the SEC filings, we disagree. Our experience has been that even within the utility sector, a relatively homogeneous industry, the different ESG factors may become financially material for different companies at different points. Or in some cases, some ESG factors, you know, may never be material.
for SEC reporting purposes. It may be interesting to
two or two interest groups but for investors, who are
the purpose of this SEC reporting, the information
simply is not going to impact investment decisions.
But that isn’t to say that ESG information
isn’t important enough to efficiently and transparently
communicate to investors. That is precisely why our
industry leaned into ESG by creating our template.
The third lesson learned for us is that more
ESG information isn’t necessarily better information.
Investors insisted that our template present information
in a concise, clear and comparable way. Although we’re
implementing version three of the EEI ESG template, the
reporting template hasn’t grown much. Why? Because
investors have set as one of the highest priorities that
the template stay concise, like a dashboard of ESG
information they want to see. That’s why we feel that
the template has hit the mark for investors, especially
compared to some of the reporting templates that include
countless questions or require dozens of pages of
information not really relevant to investors.
Over time, I expect some ESG information
currently in the template will drop out as it becomes of
less interest to the investors, and other information
will be added.

The template focuses on two qualitative and
four quantitative factors. It is aligned with TCFD. In
our experience, investors are interested in practical
information they can use to assess ESG and climate risk.
For instance, the template allows our members to
describe their forward trajectory under electric --
their fleet transition as it transitions from cleaner forms of
generation. However, there are other derivative forms
of climate transaction disclosures that rely on complex
and forward estimates and analysis of macro economic
growth, climate impacts and estimates of scope 1, 2 and
3 carbon emissions and are more likely to be inaccurate
in our view and tend to be focused on climate-related
risks exclusively. For our sector, we believe the
response to climate change presents opportunities as
well, such as the increased electrification of
transportation.
Given the complexity and the potential for
inaccuracy, imagine how a retail investor would react to
all of this type of information. As we consider
climate-related ESG disclosures, keep in mind the
primary purpose of financial disclosure is to provide
investors with timely, accurate and complete information
they need to make confident and informed investment
decisions. We’re committed to that.

For issuer companies without a safe harbor
provision, there’s also less risk in the ability to
provide more robust information about climate transition
outside the SEC documents.
One caution before I leave this topic -- and I
think it was mentioned before by some of the other
panelists -- gathering and validating the ESG
information can entail significant cost. This should be
considered by the SEC as it addresses this issue.
In conclusion, the experiences of our members
suggest that the most helpful disclosures by publicly-
traded companies are the product of direct discussions
between investors and industries that are providing a
flexible and evolving framework. We encourage the
Commission to build upon these successful approaches as
it addresses ESG disclosures and I welcome your
questions and look forward to discussing these things
with you.
Thank you very much.
MS. SOE: Thank you, Richard.
We're actually quite good on time, so we have
about 20 minutes for questions and answers. I have some
questions for the rest of the AMAC members, so please go
ahead.
CHAIRMAN BERNARD: I'll see if I see any hands
and if not, Aye, you can ask a question to get us
started. I'm trying to cover two pages here. Why don't
you go ahead and get us started, Aye.
MS. SOE: Sure. I wanted to go back to the
last point you made, Richard, and that was around the
cost that, you know, it entails for issuers. And I want
to get a better sense as to -- you know, and this is
something that, Jill, you mentioned too, with American
Airlines, you had to go out and get a climate, you know,
specialist to advise you on the climate scenarios.
So I want to have a little bit more sense as
to the costs that are entailed for a large corporation
versus a smaller, and what is your take on that. So
maybe the question is for both of you guys. Not a
specific number but the burden, you know, that it
entails on the -- depending on the size of the
corporation.
MR. McMATH: Okay, well, thank you for the
question. I'll start with our industry. I think from
our perspective when we started this initiative over
four years ago, we thought that the investors would
perhaps require more information from us and we were
very forthcoming and we offered a lot of different
information. And, you know, kind of the feedback we got
was, you know, eliminate things, keep it short, present
it in a dashboard sort of a format. I think that's one aspect and I think one of the advantages of having sector-specific in these sorts of templates involved is that it helps to streamline the type of information that's involved and also it sort of simplifies the process for the issuer companies in terms of gathering that information.

Having said that, if you look at some of the discussion around the types of climate disclosures that could be made, they're extremely -- in some cases, extremely complex and costly because they rely on economic modeling. Not just modeling of your own industry and your own company but also macro-economic modeling of broader societal impacts. And then they also look at different levels of, you know emission levels for example. You know, scope 1 emission levels, the direct emissions from your company, but also scope 2 and 3 emissions, and in the case of scope 3 emissions, those are very hard to accurately compute and there's a lot of potential for double counting or more.

So the more you get into the sort of really difficult and detailed modeling beyond just what the corporation itself is, you know, producing in terms of - - our template, for example, provides a field where they can talk about their emissions of carbon and things like

that, direct emissions. But the more you get into the detailed modeling and go beyond the corporation to these macro discussions, the more difficult it gets,

particularly when you're talking about trying to model things such as how does the impact of an individual corporation impact global temperatures, and things like that. It can get very expensive.

MR. McMAHON: Can I ask a follow-up question?

MR. McMAHON: Sure.

MR. STEVENS: So, I don't know anything about climate modeling, but I do a lot of investment management quantitative modeling through something called backtest where you look at historical forecasts and see how they did in the future.

I know that people have been modeling the climate since the '60s or '70s and making forecasts 10, 20, 30 years ahead of the '80s and '90s. Given your answer, just talking about some of the challenges of modeling in general, have there been any backtests done or anybody checked the old climate models to see if their forecasts of what's occurred were true and accurate and if that's a guide towards sort of the standard error bars about future models. Like is there any fidelity in the signals?

MR. McMAHON: That's an interesting question and I'm not an expert on climate modeling. I have to say that. But what I will say about our template is that one of the big advantages of the template is that we know the emissions that we're reporting are consistent and are filed with other regulatory bodies. And I think one of the big advantages of sort of sticking to that aspect of what the company is actually doing is that it creates the opportunity to not just sort of model forward, but also to kind of have a consistent look across an industry. And I think that was one of the biggest advantages -- or one of the advantages that came from our template, is that we wanted people that were looking at the industry, investors, to be able to make an apples-to-apples comparison when they were looking at things such as carbon emissions.

So I think that -- what I do know is that the sort of science around climate modeling is evolving and the further that you get away from your primary emissions and you go down that path of secondary and tertiary impacts, the more expensive it is and the harder it is to do accurately.

MR. STEVENS: Thank you.

CHAIRMAN BERNARD: If I could, Aye. So this question may be premature because maybe it's better placed after the investors speak as well but I'm going to take a crack at it with our issuers.

First of all, I would comment without predicting what the outcome will be from the Subcommittee, on which I'm ex-officio, I think in most of their discussions to date, what we've heard is that they are in fact anchored to current standards of materiality and not seeking to, you know, tweak something that's so fundamental. And that will obviously depend on the circumstances of the company and allows you to sort of look at this from that context.

But as I think of this, the SEC serves the whole ecosystem around investment -- issuers, investors.

And the context I'm getting to is you've got professional investors and then you've got, you know, mutual fund investors. There's hundreds of billions of dollars going to ESG funds, I'm not going to take us down -- let's stay above the fray of that means different things to different people. But it clearly is an interest, clearly people are investing in ways that suggests that they think some of these issues are important. So let me finally get to a question here.

If one stays anchored to the bedrock of materiality -- and part of the rationale for not having too tight a standard here is they're just not well-
defined yet. You may not agree with my assumption here.

If it's better than worse that five years from now, ten
years from now, actually there's greater clarity around
what standards might be in different contexts. So, for
example, I would look at governance which is not
particularly quantitative, but over time with a lot of
effort, I would say we've got some of the best
governance in the world in U.S. issuers.

So I'd love to hear from the issuers how they
think we could get to a better place where companies
within given industries start to align around a narrower
set of standards, if not prescriptive, to provide
greater clarity. How does one trod that progress along
without prematurely requiring something that may not yet
be adequately defined?

MS. COHN: I'm happy to weigh in on that.

I actually think it is premature to even think
about prescriptive requirements at this point. And as
you mentioned, materiality is, you know, still required.
Anything that's material to a company, whether or not
it's categorized as ESG needs to be disclosed. I'll
give you two reasons why, to my mind, any prescriptive
requirements really don't make sense here.

I actually don't think, as some of the
panelists said, that there is any analogy here to

financial information. I don't think that these issues
can necessarily be as precisely measured as perhaps many
accounting issues. And I think even where they are
quantifiable, there's so much context that's needed
around these issues. And just to throw out an example,
think about a ratio which is a relatively new
requirement that is clearly calculable but if you look
at the SEC's release it itself clearly acknowledged that
precise comparability across companies, you know, may
not be relevant and could generate potentially
misleading interpretations or conclusions.

And the other point, and I think this was
mentioned as well, is that in historic terms, yes, these
are very new fields. I think we need to proceed with
cautious. I think we need to give it time. I think we
need to learn more over time. And I think ESG in itself
just suggests or requires, I should say, a certain level
of humility, particularly when we're hearing different
things from different investors. We have investors
telling us that they don't know yet what they're
going to do with certain information. And to throw out
an example, we've been asked for EEO-1 information. In
our regular engagements with investors, we had asked on
more than one occasion what's going to be done with that
information and we were told by several large
institutions investors that they just don't know yet.

So I think at this point, it really makes
sense to wait it out and continue to be rooted in our
current disclosure regime and see how it all develops
over time.

MS. BUCHANAN: So I'll share some thoughts
because, Ed, your question is a really important one.
I actually think over the years there has been
a growing amount of sort of convergence on the issue of
community around using a sort of smaller subset of
voluntary frameworks. And I think of it as -- you know,
at JPMorgan we sort of pull what we think is relevant
from key industry frameworks, again like SASB and the
TCFD and GRI. Again recognizing that I think it's hard
to find sort of one framework that is fit for a purpose
for every single company out there. It's really up to
the company to determine, you know, what material or
relevant in the context of what their investors or their
stakeholders are asking for in response to those
concerns.

So I do think, you know, and as Richard
indicated, there has been a sort of growing push, you
know, between companies and investors to try to hone in
on the things that are most relevant recognizing that,
you know, most investors don't want necessarily

companies going out there and, you know, spending
inordinate amounts of money to publish information that
frankly they're not going to use. So again, figuring
out what most matters is important.

Now there's one question that I think about
that I would encourage others to think about, which is
if every single company disclosed all of the information
currently recommended by standards like TCFD, SASB and
GRI, would investors have all the information that they
want. Or is there some gap that still exists. I
haven't actually heard a sort of clear answer to that
question and I think that is something that is probably
worth investigating further as the Commission considers,
you know, what approach it potentially takes to
mandatory disclosure.

CHAIRMAN BERNARD: Thank you both. Other
questions? Oh, I'm sorry -- Scot.

MR. DRAEGER: Thank you, Ed and thank you to
all the speakers. I very much appreciate the diversity
in perspectives.

I have a question for the issuers really which
is at the high altitude that some of the speakers
identified, particularly Ms. Cohn. And it's a question
as it relates to materiality. Twenty years ago when I
was worked for Arthur Levin, he once made this

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7. effort, I would say we've got some of the best
governance in the world in U.S. issuers.
8. So I'd love to hear from the issuers how they
9. think we could get to a better place where companies
10. within given industries start to align around a narrower
11. set of standards, if not prescriptive, to provide
greater clarity. How does one trod that progress along
12. without prematurely requiring something that may not yet
13. be adequately defined?
14. MS. COHN: I'm happy to weigh in on that.
15. I actually think it is premature to even think
16. about prescriptive requirements at this point. And as
17. you mentioned, materiality is, you know, still required.
18. Anything that's material to a company, whether or not
19. it's categorized as ESG needs to be disclosed. I'll
give you two reasons why, to my mind, any prescriptive
20. requirements really don't make sense here.
21. I actually don't think, as some of the
22. panelists said, that there is any analogy here to

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1. financial information. I don't think that these issues
can necessarily be as precisely measured as perhaps many
accounting issues. And I think even where they are
quantifiable, there's so much context that's needed
around these issues. And just to throw out an example,
think about a ratio which is a relatively new
requirement that is clearly calculable but if you look
at the SEC's release it itself clearly acknowledged that
precise comparability across companies, you know, may
not be relevant and could generate potentially
misleading interpretations or conclusions.

And the other point, and I think this was
mentioned as well, is that in historic terms, yes, these
are very new fields. I think we need to proceed with
cautious. I think we need to give it time. I think we
need to learn more over time. And I think ESG in itself
just suggests or requires, I should say, a certain level
of humility, particularly when we're hearing different
things from different investors. We have investors
telling us that they don't know yet what they're
going to do with certain information. And to throw out
an example, we've been asked for EEO-1 information. In
our regular engagements with investors, we had asked on
more than one occasion what's going to be done with that
information and we were told by several large

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1. institutional investors that they just don't know yet.
2. So I think at this point, it really makes
3. sense to wait it out and continue to be rooted in our
4. current disclosure regime and see how it all develops
5. over time.
6. MS. BUCHANAN: So I'll share some thoughts
7. because, Ed, your question is a really important one.
8. I actually think over the years there has been
9. a growing amount of sort of convergence on the issue of
10. community around using a sort of smaller subset of
11. voluntary frameworks. And I think of it as -- you know,
at JPMorgan we sort of pull what we think is relevant
from key industry frameworks, again like SASB and the
12. TCFD and GRI. Again recognizing that I think it's hard
to find sort of one framework that is fit for a purpose
13. for every single company out there. It's really up to
14. the company to determine, you know, what material or
15. relevant in the context of what their investors or their
16. stakeholders are asking for in response to those
17. concerns.
18. So I do think, you know, and as Richard
19. indicated, there has been a sort of growing push, you
20. know, between companies and investors to try to hone in
21. on the things that are most relevant recognizing that,
you know, most investors don't want necessarily

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1. companies going out there and, you know, spending
2. inordinate amounts of money to publish information that
3. frankly they're not going to use. So again, figuring
4. out what most matters is important.
5. Now there's one question that I think about
6. that I would encourage others to think about, which is
7. if every single company disclosed all of the information
currently recommended by standards like TCFD, SASB and
8. GRI, would investors have all the information that they
9. want. Or is there some gap that still exists. I
10. haven't actually heard a sort of clear answer to that
11. question and I think that is something that is probably
12. worth investigating further as the Commission considers,
you know, what approach it potentially takes to
13. mandatory disclosure.
14. CHAIRMAN BERNARD: Thank you both. Other
15. questions? Oh, I'm sorry -- Scot.
16. MR. DRAEGER: Thank you, Ed and thank you to
17. all the speakers. I very much appreciate the diversity
18. in perspectives.
19. I have a question for the issuers really which
20. is at the high altitude that some of the speakers
21. identified, particularly Ms. Cohn. And it's a question
22. as it relates to materiality. Twenty years ago when I
23. was worked for Arthur Levin, he once made this
incredibly humble statement that -- it was -- he said,
"Scot, investors will let us know and the markets know
what they consider to be material and important to their
investor decisions -- investment decisions." And there
was so much humility in that, I really appreciated it,
and it's something that I've been reminded of recently.
I spend a lot of my days with just retail clients and I
almost never have someone coming in saying is this going
to get me alpha. That's investment banking speak. But
I do have an endless number of people coming in and
asking can you help me become educated on how to combine
my interest in value and values.

So, you know, I guess I'm curious as to -- I
mean, Ms. Cohn, I really appreciate your perspective, it
was really well-articulated. But I'm interested from
the full panel of issuer representatives, is there --
what is the level of embracement that in the day and age
that we're in, there's a qualitative level of
materiality for many ordinary investors in not having
these two principles segregated. So that is my
question, just trying to understand where the community
is on that issue generally speaking at a high altitude.

CHAIRMAN BERNARD: Anybody want to take a
swing at that?
MS. BLICKSTEIN: If I -- it's Jill. If I
understand the question correctly, I think -- I mean to
be frank, we haven't had a huge amount of interest
necessarily from investors or I should say maybe now
we're starting to see more interest from investors in
climate -- particularly in climate. I think where we see
the combine of the value and values question really
coming from our leadership, is that's how -- they see
that as core, they see running the company well, taking
care of team members, taking care of customers, taking
care of the planet as core to how they're running the
company. So it's less pressure from investors maybe and
more just from -- coming from internally and how we want
to be viewed and really how we want our team members to
view us. So, there's -- it's pertaining to your employee
base as well.

The other thing I would say is, you know, we
do get all this pressure from the ESG raters and rankers
who want so much information disclosed. Really it almost
seems like an unending stream of asks and very specific
questions. So, you know, and we're doing all of that ESG
rater and ranker stuff alongside the disclosures. And
sometimes it makes the disclosures frankly seem much
simpler than, you know, all the time we have to spend on
the issue rater and ranker question. In some ways, I'd
love to -- it would be great if as the SEC thinks about
these issues, the idea of establishing some kind of set
of standards for that might give us some relief from the
other side of the house where we could just answer
questionnaires, you know, all day long.

I hope that helps.

MR. McMAdHON: And let me just add from the
utility perspective and our experience in having created
this template, having that ongoing interaction with
investors is hugely valuable because we want our
template to be laser focused on their needs first and
foremost. And when you have that focus and you sort of
separate that -- and again, our industry has
institutional investors but we also have retail
investors. We used to have a lot more than we do now
but we need to kind of keep our disclosures with them in
mind as well because there are retail investors and they
need to understand the disclosure. So, you know, that
input in terms of keeping the template concise and clear
and be able to compare across sectors is very, very
valuable and it's different sometimes, as you mentioned,
Jill, from the input we get from the rest of the ESG
ecosphere.

We definitely see a difference there and in
many cases when we discuss new issues, and you talked
about sort of the evolution of the issues, we'll
important to reinforce that investors are not a homogeneous group, they're very diverse, as diverse as the issuers represented in front of you today and so I think -- you know, I know there's been an ongoing discussion about to what extent can the industry come up with the one framework to rule them all. I think that is probably a stretch and my advice would be to aim for something more like an 80/20 rule where you're focused on the vast majority of investors that have a core interest in information that really connects back to risk management and value creation and that will always continue to (audio disruption) investors around, you know, what additional -- might not be mandatory. But what initial, you know, disclosure would be useful for companies to provide to meet those other investor and stakeholder expectations.

MS. COHN: I completely agree with all of that. I was just going to say that there is a greater and greater understanding across the corporate community that they cannot -- the corporations cannot create shareholder value over time if they don't take into account the needs of their other stakeholders. And I think that investors do continue to engage with us on those topics. Just like Marisa mentioned, we do engage with a significant portion of our investor base every single year on those issues and we continue to improve upon those disclosures. And I think that at Travelers we do have an understanding that it behooves us to create shared value where we're creating shareholder value and at the same time doing good for our communities, our customers and our employees.

At the same time, to get to the initial question, I don't think that necessarily means that any of that information is material and I don't think that any -- that means that all of the information that we're providing on a voluntary basis is necessarily material.

CHAIRMAN BERNARD: Neesh.

MS. HATHI: Yeah, I have a different question actually maybe for Richard. I'm not familiar with the dashboard, the template that you all created in the industry, but since you've been doing it for a few years, I'm curious have you benchmarked at all what that -- because, you know, one of the debates is the burden on issuers. Have you benchmarked at all what that looked like for the folks that -- for the firms that participate in the creation of this template, whether it's from a resource perspective, dollars perspective, any sort of benchmarking of what that burden actually was?

MR. McMAHON: Yeah. I think that, you know, in terms of the issuer burden, the feedback we got from our members is that it's been extremely helpful, not just in terms of, you know, making -- streamlining their disclosures. And they're also, in terms of for example, the ESG raters that are out there, when we started this one of the real challenges was that many of these raters were just plucking data from anywhere. And there was a tremendous amount -- you know, you could be -- I don't want to put any names out there, but by ESG rate 1 you could be an A and ESG rater 2, same company, a C minus, simply because they're just grabbing data from all sorts of different places.

So, I identify the most important information in making a clear, concise and having everybody put it in the same way, that has really reduced the standard deviation of returns on those ratings. So that's one aspect that's been very positive.

And, you know, I think in addition to that, it has helped our companies really focus on providing that information in a concise way. I'll start by saying most of our companies were producing 70, 80, 90 page sustainability reports and the feedback we got from investors was that's very nice, but we don't use it at all. Because we do not have time to go through that report and hunt and peck for the things we're looking for. So, it's been -- you know, many of them still produce those reports but by pulling the information up into the template at the front of those reports, which many of them do, it's helped on the investor relations side in terms of questions that are coming in, and in terms of making -- you know, having the right information being looked at by those other entities out there.

The other thing I'll say is that, you know, in terms of proxy initiatives, we've also seen a dramatic reduction of proxy initiatives around things like climate studies and things along those lines. You know, three or four or five years ago, there were 50-plus proxy initiatives around those issues and getting a reasonable number of votes. And we've seen hardly any of those since the template has been in place. And we look at those very carefully because, as I said, we get a lot of feedback from investors and the banks and all of our financiers, but those are another good area to sort of say what are some emerging issues or maybe where there's informational gaps that we can address. So that has helped us identify those things and then we take them to our group, our -- we bring our member companies together, our investors and all of those other entities that I mentioned, and have discussions about it and...
determine the best way to address it. But again, normally in those discussions, it's usually we say we can give you these five things and they say, no, no, just give us the one thing, that's good enough. And we end up doing that, or discussing it in a qualitative way.

So that's been the way that we sort of benchmark it, not only in terms of the cost savings but also in terms of, you know, the manifestation of things such as the issuer ratings and what we see in the proxy statements.

CHAIRMAN BERNARD: I don't want to stop the momentum of a great discussion, but I'm wondering if we should bring the investors into the mix.

MS. SOE: I agree because all that makes really good segue into how asset managers are consuming the issue of disclosures. So with that, I'm going to kick off the next set of panelists and we're going to start with Sandra Boss from BlackRock. Thank you.

MS. BOSS: Hi, This is Sandy Boss. I am the head of Global Investment Stewardship for BlackRock. Thank you so much to the SEC, the Commissioners and the AMAC for having me here today. I'm responsible for engaging with the companies that we invest in on behalf of our clients. We seek to promote sound governance, sustainable business practices and we also oversee the proxy voting that BlackRock does.

I'd like to start with why this is an important discussion for investors. It is very much a firm investment conviction that climate risk is investment risk. We really believe that all investors need to understand how companies are addressing risk and opportunities associated with climate change and the net zero transition. This is essential to our fiduciary responsibility. These issues have really significant impact on our clients' long-term returns.

There's a fundamental reallocation of capital underway. In the past year, we've actually seen flows to ESG-oriented strategy more than doubling. And our clients tell us that by 2025 they will actually double their allocation to ESG-oriented strategies.

So what we're seeing is that a company's ability to manage climate risk in particular as well as other sustainability-related issues is actually really differentiating long-term performance. So we've actually seen winners and losers in the same sector differentiated by as much as seven points of returns. And this, you know, extrapolates to the whole market. So in our revised capital market assumptions, which are the foundation of what we do, we actually believe over the long term that a good transition to a low-carbon economy is actually worth about 25 cumulative percentage points in gains over the course of the next 20 years. So this is very fundamental to value in terms of how we're managing money for our clients.

We then think why should the SEC engage on this. This is very much a pivotal opportunity for the SEC to be a leader in this area working toward global consistent and we think that it would be beneficial for them to be mandatory disclosure standards. You know, if we think about the incredible amount of investment that does need to happen in the course of the transition to a net zero economy, that can't happen without mobilizing private capital. And the good news is that that mobilization of capital has started but we do know that much more needs to be done. And without clarity in sustainability reporting, we won't be able to be maximally efficient as investors in moving money in the direction that we think is most beneficial for our clients' long-term returns.

You know, we've already heard from the companies today. It is difficult struggling with different climate and sustainability-related frameworks and it's also difficult right now for the investors who are trying to be, you know protected from green washing in the context of not being able to understand what different investment products are promising.

So let me start with corporate disclosures first. And there, you know, I think as has been mentioned, you know, we've asked companies to disclose using TCFD and also to disclose using the SASB metrics. And specifically now what we're asking is that companies would disclose what their business plan is for how they intend to align with a below-two degree celsius global warming scenario, how they will align with the net zero by 2050.

But I also think it's important to mention that this is not just about climate, from our perspective. So we like SASB because they provide globally relevant decision usable standards on a range of industry-specific sustainability metrics. So if we think about some companies replenishment of natural capital, whether it's water, whether it's biodiversity, forests, these can be equally important to how they're managing their carbon emissions.

Similarly for other businesses, maybe a human capital intensive business, how they manage their treatment of their stakeholders, particularly marginalized groups, can be an extremely important part of their long-term valuation.
I should emphasize we are interested in the risks that are material to investors which is why we do like SASB as well as TCFD, but we do recognize that what is material can change and it can move very quickly. And hence, there we like the idea of something that is flexible but we see the benefit of beginning to lean in.

So what it would look like from our perspective, we'd love to see full implementation of TCFD recommendations. So that's all four pillars, all eleven recommendations, their supplemental guidance for specific sectors. In particular, we're interested in pillar four metrics and targets. You know, we'd like to see companies disclosing scope 1, 2 and for carbon-intensive scope 3 emissions. We also expect companies to disclose short-, medium- and long-term targets for GHG emission reduction.

And what we're also looking for is -- and this is what TCFD gets us -- sustainability risk to be well embedded in corporate governance, risk management and corporate strategy and capital expenditure. You know, as investors, we are relying on boards and management to make the long-term difficult decisions to set the strategic direction. That's not for us to do, but we want to understand what the companies are doing.

Ideally when we are looking for climate scenario analysis, you know, it's going to be embedded in a standard scenario like the IEA sustainable development scenario. And we love it when we can see targets that are science-based.

With that said, you know, we know how hard this is because we actually make these disclosures too. So BlackRock actually does -- we did our first TCFD report, we disclosed against all four pillars, all eleven recommendations and the asset manager additional guidance. We did detailed scenario analysis and we are soon to produce our scope 3 disclosures at the portfolio level. We've already disclosed all of our firm metrics and targets for scope 1, 2 and corporate scope 3. But we'll now put out our emissions for the investment portfolio as well as targets associated with how we'd like to see that come down over time. So we're definitely sensitive to the fact that this is challenged and we do try to eat our own cooking.

I guess the challenge that we have as investors is that even though TCFD has emerged as a standard, it's still really got a long way to go before we are able to use it consistently across companies. So, you know, for example, only 40 percent of the companies in the Russell 4000 actually disclose on all four TCFD pillars. Right now you're looking at sort of the top 1000 most carbon-intensive companies and 300 of them don't have any forward-looking targets. So it is actually really difficult to see the kind of information that we need to enable us to construct products that actually consider different companies and how they can fit in.

If we look at other metrics, you know, SASB has grown a lot and we're very heartened by the work that the private standard setters are doing coming together. So we've got five of them working together, there's a new initiative by the IFRS Foundation to try to put together a sustainability standard board which we actually think would be ideal but it will take time. And you know, right now, there is still kind of an alphabet soup the companies have to swing through to deal with, you know, what exactly do investors want.

So when we think about what could the SEC do, we would love to see the SEC coming in, working with international regulators to be able to shape the global outcome, to be a leader in this space. Ideally, we would agree with everyone who has spoken about the need to balance principles with metrics. This is early, we don't want to be rigid. So, for example, while we do think TCFD could use more guidance on metrics, we think the basic principles-based approach that has been taken is very logical and the qualitative information is incredibly important. We also think the SEC should aim to be proportional so we recognize that whatever the SEC decides to do, we've got a lot of different size of issuers here, lot of different sectors, and absolutely respect the point about safe harbor. This is new information, it's not easy for issuers to be putting it together, so we think that should be a best efforts basis, especially in these early days.

I also think it would be interesting for the SEC to think about how to keep a level playing field between public and private companies. That hasn't been mentioned yet but in fact if you think about if we have a world in which only listed companies are making these disclosures, that may be problematic because we don't want to see a world where all carbon intensity sort of migrates to the private sector. So the SEC could think about, you know, powers over private funds under Form PF, possibly including sustainability metrics on bond disclosures and then obviously central banks stress testing, considering climate-stress tests can be a really valuable part of understanding your bank lending and how that is going to a carbon intensive business.

Let me just take a few minutes to turn to our perspective on products, because you know, we all talked...
First of all, we do think that there's a really important opportunity to provide more consistent descriptions of the features and qualities of products to help the investor community and, you know, the end user of products be better informed. Right now, we don't think is sort of a change-the-names rule type of a situation. I think that mechanism works fine and this is still a reasonably dynamic area. But we definitely at BlackRock like the ICI framework so the framework that puts three categories of funds -- you now, ESG exclusionary investing, ESG inclusionary investing and impact investing. We think that framework works quite well, or something like it. And it's worth noting that I think there has been a very effective technique implemented in Europe which is the sustainable finance disclosure requirement. So Article 6 products, they're not sustainable; Article 8 promoting ESG characteristics; and Article 9, those that promote sustainability as an objective. We are hearing right now all of our clients who have EMEA funds, EMEA footprints, saying they want to move toward Article 8 activities which are making a contribution to greenness, some activities which are pure green, there'll be some which are neutral and some which are inherently, you know, more brown, not aligned with Paris. But we think it's important that if the SEC chooses to think about these products, an activity naming conventions, we see a real opportunity to make sure that all the shades of green investing can be invested in because most of the companies today that will be making the transition to a net zero world, those companies are the biggest companies that today are carbon intensive. So this is - it's not possible for the world just to invest in happy pure green activities. There's a really important need to manage that transition. So I'll conclude by saying we actually think there's a huge opportunity for the SEC to get involved first in the corporate disclosure side and on the product naming and/or descriptor side, and both are really valuable opportunities to help investors and help our clients ultimately so that we're able to, you know, invest in their long-term future because that's ultimately the reason that we're around. So I'll stop there.

MS. SOE: Thank you, that was very helpful. Next we have Carolina San Martin from Wellington Management. Thank you. MS. SAN MARTIN: Yes, hello. Thank you all for the opportunity to be here today and share our perspectives from Wellington. I'm Carolina San Martin, I lead our ESG research team at Wellington. And to set the context for my comments, I thought it might be helpful to describe how we approach ESP research at Wellington. Our fiduciary duty to clients is our north star. We see ESG research as an investment research capability that we can use to drive better investment decisions and help us deliver on our firm's mission to drive excellence for our clients and meet their return objectives. The first tenet of our ESG integration philosophy is a belief that material environmental, social and governance issues are strategic business issues that can impact financial performance. We take an investment-led bottom up approach to ESG analysis, putting the issues in the context of the investment thesis. Again, all to drive better investment decisions for our clients.

And as we've honed our process, we have found an industry-specific approach to be best suited to meet this objective. As analysts, we're looking at different data points across different industries to assess what we believe to be material in each one. For example, when assessing a bank, we look at its net promoter score to evaluate how customer relationships may impact the bank's ability to grow its market share. And we compare employee engagement surveys to assess if a company is better positioned than its competitors to attract and retain top talent, which we believe is a key ingredient for long term success in the industry.

Conversely, when we assess an oil and gas company, we look at employee and contractor injury rates...
to assess whether the strength of a company's safety culture can help it avoid accidents and operational disruption, and perpetuate its social license to operate.

Some topics are relevant to our assessment across industries. For example, given the empirical evidence showing the benefits of diversity, we look at workforce and board diversity data to understand whether companies are taking advantage of the breadth of talent available to them and whether they may be more or less subject to group think in decision-making.

Thanks to our research operation with the Woodwell Climate Research Center, we've also identified physical climate risk to be increasingly material across industries. And I'll come back to this more in a moment.

Like many investors, given our focus on materiality, we have looked to frameworks like SASB and TCFD as emerging market standards that help companies articulate to their investors better quality information about real sustainability topics that are or will be material to their business. However, given these frameworks are not mandated, adoption has been mixed and inconsistent. And that means that while we recognize the need to consider material sustainability issues in order to best serve our clients, we still lack the information that we need to do this properly. Which brings us to the subject of this panel, ESG disclosure standards.

We agree with the ESG Subcommittee's potential recommendations that the SEC should require the adoption of standards by which corporate issuers disclose material ESG risks. In our view, clear standards will provide investors not just more information for its own sake but better information on the issues that we care about. And this is where the concept of materiality is important.

As others have pointed out the materiality standard is already reflected in the existing disclosure rules, but what is missing is specific guidance on what is material for each industry and how companies should make these disclosures to their investors. And in the absence of guidance or mandatory disclosure, the market has done its best to sort things out as investors' desire for sustainability data has increased. But the lack of standardization among the solutions that have proliferated has resulted in a status quo that is costly and inefficient for both issuers and investors alike. And is also failing to provide investors with the information that we need to best serve our clients. We

The current ESG disclosure landscape is fragmented, complex and costly for both investors and issuers and we understand the incredible burden that companies are facing, given the multiple and often bespoke asks for sustainability information. Mandatory disclosure may seem onerous but if done with a focus on what is material, keeping in mind what we're trying to achieve for investors and what is practical for issuers, it could provide certainty and efficiency that is sorely lacking today.

There also seems to be some confusion about the expected quality of corporate disclosures and a perception that if it's not mandated or conveyed in an SEC filing, that it may not be subject to the same anti-fraud obligation. And as we understand it, all disclosures are subject to the same standard, whether they're in an SEC filing, a sustainability report or a company's website. So we believe that requiring the adoption of disclosure standards would address some of this confusion as well and ensure the integrity of the information that issuers are providing to the market.

When it comes to meeting the demand for more forward looking information, we encourage the SEC to consider establishing safe harbor protection as others have mentioned. That would allow companies to provide the information while mitigating litigation risk concerns. And as part of the effort to create an effective ESG disclosure system, we also encourage the SEC to ensure private companies are held to the same standard. Otherwise, companies looking to avoid accountability for their performance on key sustainability issues may be incentivized to avoid public listing.

Global coordination with existing frameworks will be crucial to avoid the creation of parallel disclosure frameworks that could serve to exacerbate the current challenges rather than address them. Ultimately a global solution is needed, for two reasons. First, as investors, we are investing across global capital markets. We need information that is comparable across all of our portfolio companies. And second, we recognize that our portfolio companies are global too. They face global risks, often have global supply chains and they're looking to investors globally to meet their funding needs.

We encourage the SEC to leverage the work already accomplished by standard setters, even if existing frameworks aren't adopted wholesale. And given
that ESG disclosure standards are still being developed by financial market regulators around the globe, this moment in time provides a unique opportunity for the SEC to coordinate with other jurisdictions and drive harmonization of standards. This would benefit both issuers and investors here in the U.S. We recognize that harmonization would be challenging, especially when it comes to bridging the gap between reporting on sustainability topics deemed to be financially material to investors and those that reflect an issuer's impact on economy and society. And to bridge this gap, we have found the concept of nested materiality to be compelling because it acknowledges that materiality could be a dynamic concept over time where a company's impact on stakeholders, broadly defined, may evolve to become financially material to a company.

Greenhouse gas disclosure for high emitting companies is a great example of this. While emission disclosure was first deemed to reflect a company's impact on society, as policies have moved to price this externality in many jurisdictions, greenhouse gas disclosure increasingly helps us measure direct financial impacts. For example, in the form of a carbon tax, bringing it squarely into the realm of financially material sustainability disclosure.

We also believe there's merit to combining quantitative disclosure metrics with principles-based qualitative disclosure to meet the goal of providing consistent and comparable information while also creating a bridge between past performance and strategies to address material issues in the future. To provide a practical example of this from our work on energy companies and tying it back to existing frameworks, SASB includes greenhouse gas emissions in its framework for oil and gas and provides a specific methodology for calculating this figure. Adoption of this standard would provide a comparable starting point to assess current emissions management across companies. However, it doesn't tell us anything about a company's emissions management plans for the future or its strategy to remain resilient in the face of the energy transition. And this is where the TCFD framework has been helpful. It provides a forward looking view of a company's strategies and how they may or may not evolve in the future.

While any framework should address the broad array of material ESG issues, I want to close briefly to climate. Through our research collaboration with the Woodwell Climate Research Center, we've been able to quantify the anticipated physical impact of a changing climate and connect that to the investments we're making on behalf of our clients. The data is telling us that the physical impacts of climate change will continue to affect multiple sectors, geographies and assets in the U.S. and globally. We see various ways that physical climate risks could have a material impact on a company's business. For example, through changes in demand for goods and services, depending on the changing resilience of finances of customers, through rising expenditures required to build resilience, or through logistics, supply chain, or inventory disruptions. There are key benefits for issuers of doing the work to assess these potential impacts and assure their investors that they're taking these risks seriously. The CFTC's report released last fall, Managing Climate Risk of the U.S. Financial System, includes a full chapter on disclosure which we see as a strong guide for what is needed. And absent disclosure, investors may presume that a company is unprepared for climate-related risks which would lead to erosion of confidence in management, stock price volatility and higher cost of capital.

So I'll wrap it up there. Thank you again for the opportunity to participate today and share our perspective.
securities. So by developing these categories and
somewhat inadvertently directing capital toward that,
are we also exposing investors to asset price volatility
or any asset price, you know, inflation or assets
inflation. You know what I'm saying. So yeah, that was
my question.

MS. BOSS: I'll take that one first. I think
it's a legitimate concern about the way that the market
is operating today, which is absent transparency we are
seeing these pure green bubbles and that is I think
quite problematic. And it's one of the reasons that we
like the ICI taxonomy, but we're less comfortable with,
as proposed, the original EU taxonomy not because we
didn't (audio disruption) the pure green, but we do
think the value of having investment options that are
clearly pointed at the transition, which is the real
economy, that is where investment is today, is
incredibly important. So I think you're right that if
the SEC chooses to create a taxonomy, it needs to be
mindful of, you know, the various degrees, but we
actually think it would help avoid the situation of too
much capital as it were divesting from significant
portions of the real economy and moving in the direction
decision of only pure green because they can be certain that that
fulfills their objectives. So maybe over to Carolina if

you'd like to add to that.

MS. SAN MARTIN: Sure. I'd just make the
distinction between the taxonomy the way it is being
implemented in the EU, which is really designed with the
intention to drive capital differently toward these
sustainability goals and I think that's different from
the conversation that we're having today which is really
how can we provide investors investing across the market
with more reliable comparable information on the issues
that we think are key across the full spectrum of
material issues.

So I'd say maybe separating those could be
helpful for the discussion.

CHAIRMAN BERNARD: Gilbert, did I see your
hand?

MR. GARCIA: Yes, thank you, Ed.
I'm going to be talking about diversity and
inclusion in a moment, so this is a question to the
panelists which is what obligations do the implementers
of ESG strategies in the marketplace have to score
highly themselves on D&I issues?

MS. BOSS: I'm certainly willing to take that
one on. I think we assume that that is our
responsibility like any large corporation, that we
should aspire to the highest standards and there are
ways in which we have done so. But you know, we need to
keep doing more as a company. So I think we've already
released our EEO-1 data, we try to be as transparent as
possible in our SASB metrics around diversity and
inclusion. So I do think that in anything that we're
doing as an investment manager we need to be cognizant
of the importance of walking the talk, not just asking
other companies to do it. And I think D&I is no
exception to that.

MR. GARCIA: Well, let me just follow with --
and I'm not saying this for everybody, but if you want
to take it, that's great. I think disclosure is great
but what obligation is there to score high? In other
words, disclosure data is great but to really have
significant representation of women and minorities in
senior roles in the company.

MS. BOSS: I mean, I think that those are very
important goals and I think that we and all corporations
are going to be increasingly held accountable to that. I
suspect everyone on the call would agree that that is
something that is unavoidable and that's why we set
goals and, you know, try to meet them, 30 percent senior
managers as women. So these are the kind of objectives
that we hold very seriously.

MS. SAN MARTIN: I would echo that. I think
hearing different perspectives. It has not been uniform and I think those are the best kind of learning dialogues that you can have.

Thank you, I have a question for the asset managers here which is, you know, I think you've -- I think I have a pretty good idea from both sides of what they're looking for in terms of the broad strokes, but what really I'm trying to better understand from the asset management side is what particular pieces of information within the current standards that you guys are referencing, whether it's the TCFD or the SASB, that you think should cut across all companies? And for example, I think, Sandy, you talked about you guys doing your own TCFD analysis, you do your own SASB analysis, you put that out there. But I don't -- I'm just curious to know, for example, is greenhouse gas emissions something that you would be looking at for asset managers that are publicly traded? Is that an area that you think would be relevant or material to investors. And I understand your point, it's helpful for you guys to understand the entire scope of companies' greenhouse gas emissions. And I still get the idea that it's both public and private, I think that's a very important piece of the conversation I hadn't really delved into much and I'd love to hear more on that, but can you explain, you know, what are some of the things, inputs, that you think are universal, because that's our standards, that would apply to all companies that would help you determine valuation.

MS. BOSS: I think right now greenhouse gas emissions has become universally relevant for large carbon intensive companies. For many small companies, it's a tiny number and that's for you to decide where you would draw the line. But we do think, whether it's financial services, financed emissions, whether it's an industrial company, utility company, an energy company, these are very - that's relevant across and largely because clients are increasingly asking us to construct investment portfolios that are aligned toward a net zero by 2050 world and that means that any company that's in that portfolio, we need to understand what is their transition pathway.

When it comes then to SASB, one of the reasons that we like SASB is because it's very different industry-by-industry. So what a BlackRock would release in SASB is very different from what, you know, American Airlines has put into their SASB report. And the reason that that's more relevant - it's valuable for two reasons. One is as people have discussed, you know, the raters and rankers, if they have access to better data, it will obviously improve the quality of the scores, which then become inputs into products that we form, but then fundamental investors -- and this is something that Carolina spoke about -- when they're actually evaluating a sector strategy, being able to see how companies compare on, you know, let's say it's the beverage industry, water usage, you know, use of other ingredients but also treatment of their employees. Those are very important considerations as they begin to form product bundles or select individual companies. So we do think there's greenhouse gas and then other sustainability metrics go into a more industry-specific set of columns.

COMMISSIONER ROISMAN: So it sounds like there are inputs that investors are rallying around, but it's not necessarily applicable to all companies in the sense that that's important. I think you differentiated between financials and large carbon emission, like that's an important factor for you guys in determining valuation.

And to your point also, you know, not all companies -- there are small companies that may not -- it might not be relevant for your ultimate analysis.

So, okay, that is helpful. But to the extent that people have ideas in terms of line items, in terms of factors that you guys have or information and inputs that your currently use or think are important for you guys in terms of valuation, I really do hope people provide that in the comment file. That's the best way for us to actually see where the rubber meets the road on this. But again, thank you so much for this fantastic panel. Thanks to all the panelists and thanks for a great job moderating it.

MS. SOE: Thank you.

CHAIRMAN BERNARD: Great. Thank you. If there are no more, I do want to -- the Committee has a long day ahead, so I'm going to try and give us a quick break. So let me add my thanks to the panelists. This was really terrific, we're grateful to you for your time today and your time in preparation.

And with that, it's 11:02, we'll try and be back at 11:10. Those of you watching the webcast, you'll just see a holding screen and then we'll be back on at 11:10 to talk about diversity and inclusion. Thank you all so much.

(A short recess was taken.)

CHAIRMAN BERNARD: Welcome back, everyone. At this point, for the next hour, we're going to turn to our Diversity and Inclusion and Asset
Management Subcommittee for an update on their work and to have discussion and dialogue to get input from you as they proceed to the next phase.

And so with that, I'll turn it over to you, Gilbert.

MR. GARCIA: Thank you, Chairman Bernard.

I'm going to first have a few comments and then I'm going to read our progress report, which is really an accumulation of almost 14 months of local testimony, lots of written material, lots of research, and lots of meetings. So I hope you'll find it quite interesting and I hope it'll be very thought-provoking.

I will then ask my fellow Subcommittee members, when I conclude the reading of the progress report, if they have any comments they want to share, as they were critical members to this progress report. And then I'll see if any of the Commissioners have any comments and then after that, I'll turn it over to Chairman Bernard, who will then facilitate the Q&A and then will facilitate the closing comments by everybody.

So, as far as the opening comments go, this is a pretty big moment for me. And when I was a young Latino in Corpus Christi, I would dream of moments like this. And diversity and inclusion, which I will now refer to just as D&I to make it easy, can be a very difficult topic. It often makes people uncomfortable to talk about it. Many of the words used to describe it can be unsettling or make people feel uncomfortable. So people generally want to avoid the topic altogether. But in these times, we just can't avoid it any more. We must talk about it.

And I know that people come with different backgrounds and those different backgrounds like shapes their views on this topic. As for me, I've never been in any D&I training or anything like that. Or, you could say I've been through the most incredible D&I training because I'm a Latino. And you could say that I've been living D&I my entire life. And as Lady Gaga says, "Well, I was born this way." And oftentimes, even in the business industry, even today, I'm reminded that I'm a Latino and not always in a positive way. And I'm going to share just one story with you. So I hope everybody today will have an open mind and try to imagine, when you hear my progress report, try to imagine hearing them through my ears. And when you think about these issues, try to imagine them, seeing these issues through my eyes or the eyes and eyes of another young Latino or Latina somewhere in this nation or another person of color.

And so again, the D&I Committee --
color or minorities as well as women, in my comments. Now today, D&I is at the forefront of discussions and initiatives as the vast income inequality developing in our country has clearly led to disparities in wealth and unequal access to many things, basic things like healthcare, unequal access to education and the like. One of our D&I speakers, Mr. John Rogers, the Chairman and CEO and CIO of Ariel Investments, he cited data from the Federal Reserve of St. Louis, which showed that between 1992 and 2016, a time of great prosperity in this country, college-educated whites saw their wealth increase 96 percent, while at the same time, college-educated blacks over this same time period saw their wealth decline 10 percent. So you can see the enormous disparity. It should be no surprise that this country is now experiencing great division and even social unrest because when you have great income inequality, that's what history teaches us that the result will be. As we move closer to our formal recommendations, which will be at our next meeting in June, our approach here is to focus on presenting ideas for consideration and not to focus here on the implementation. And of course, we leave all the possible implementation to you, Commissioners, and the great and capable SEC staff, many who we have worked with quite closely. The potential areas of recommendation on which we are focused would create transparency on the lack of diversity and even barriers that have been constructed for minorities in the financial services industries. And the resulting awareness created would greatly and positively impact the diversity in the asset management industry and may even help set a new course to accelerate the closing of the income inequality gap in our nation. We will also focus on business practices that are preventing diverse firms from reaching their full potential, whether it's through unconscious bias or conscious bias, or of course is a polite way to say racism. Diversity has now reached the Oval Office as President Biden recently signed an Executive Order on racial equity and he said, quote, "We need to make the issue of racial equity not just an issue for any one department. It has to be the business of the entire government. Every White House component and every agency will be involved in this work because advancing equity has to be everyone's job." Unquote. Thus, it is now policy for all agencies to elevate D&I to be the material objective and a priority as it relates to their respective spheres of influence.

The President's Executive Order seems clear and now is a great time to act. As another panelist, Mr Bob Greene, the President of the NAIC said, quote, "Diversity doesn't just happen. SEC, do what you do in every field, issue guidance on diversity the same way that you issue guidance on other critical things like cybersecurity, the same way that you issue guidance on tax control. There is a body of knowledge that could be shared on your letterhead that would be powerful in the marketplace." Unquote.

On our journey, we held three panels, testimony from industry leaders in the financial industry, allocators of assets, all kinds of different components of this ecosystem. And we started with data. And the reason we started with data is because we recognized that you've got to have some type of baseline to really draw a conclusion. And a lot of us in this industry are so data-driven. But everyone must realize limited and it's limited as many have been unwilling to disclose information, or some may not have tracked such information in the past.

One key area that would benefit from increased transparency and would move the needle is in the investment consulting industry. To be clear, not all investment consultants are alike. To be clear, the investment consultants I refer to are themselves SEC-registered investment advisors over whom the SEC has clear jurisdiction. They are the allocators of the asset management industry and they are the gate-keepers that choose money managers for many institutional investors, whether it be pension funds, foundations, endowments, or the like. Most consultants lack diversity. And what's even more important, depending upon your point of view, more troubling, is some receive economic benefit from the very managers that they recommend without complete public disclosure.

Now as background, Pensions & Investments magazine, which I'll refer to now as P&I, publishes an annual list of the largest consultants. And according to the 2020 report, the largest consultants which are just under 100 advise 42.7 trillion in assets -- that's trillion with a "t". The concentration of assets is notable, as the largest ten advise 36 trillion or over 85 percent market share. So ten, 85 percent. The largest 20 have 94 percent market share. Likewise the concentration of assets in the asset management industry is similar. I'll just give an
example. I happen to be a bond manager, so I'm going to
look at domestic fixed income. According to P&L, as of
December 31st, 2019, there we 148 active old-fashioned
domestic fixed income money managers in high quality.
And they have approximately 2.18 trillion in assets in
that category. That's not their total assets, assets in
this bucket. The largest ten have 69 percent market
share. The largest 20 have 84. So you can already see
a closed system where the largest consultants appear to
be recommending the largest money managers.

But here's the issue. If consultants only
recommend the largest managers, there is little to no
opportunity for increasing opportunities for diverse
firms in this industry. By their nature, at this point
in the industry's evolution, diverse firms, minority-
owned firms, women-owned firms, are still in the
entrepreneurial stage of development. By failing to
cast a wide net, these consultants may even be missing
market opportunities because studies show that minority
tests, diverse firms, women-owned firms, perform as well
if not better than non-minority firms. Ironically,
investment consultants always hide behind their
fiduciary duty to avoid consideration of diverse-owned
firms by setting arbitrary standards, things like length
of track record, firm AUM and other factors that

directly or indirectly excludes nearly all of them, all
the diverse firms. Remember, at some point in time when
a firm started, even the largest of firms, they didn't
have a track record, they didn't have many assets under
management at one time.

It may be possible for the Commission to
reframe this conversation so that trustees, directors,
consultants and other fiduciaries need not draw
arbitrary lines to fulfil their fiduciary duty. A more
thoughtful approach is possible, one that does not have
the immediate impact of exclusion. Likewise, their
clients need the transparency of any economic benefit
received to ensure they're getting unbiased advice. SEC
Chairwoman Lee has stated before in a speech that
including diversity, quote -- quote, "including
diversity is not only worthwhile, it is imperative."
Close quote.

In our first panel, we heard from Mr. Robert
Raben, the founder and President of the Raben Group.
Robert launched the Diverse Asset Management Initiative
five years ago. It is a straightforward effort to focus
on D&I in the asset management industry. Now his firm
does straightforward diversity campaigns for all kinds
of NGOs and so they felt quite natural to take this on.
His presence was powerful, his language was incredible
and he shared that quote, "In asset management -- and I
find this to be true at the most elite levels -- the
conventional wisdom is that diversity is irrelevant."
Unquote.

He went further and he said that he
experienced, quote, "absolute, abject, pervasive,
unrelenting bias" -- unquote -- in the consulting
industry. Once again, Robert is referring to SEC-
registered investment advisory firms who serve in the
role of making recommendations to asset allocation,
manager to managers or fund to fund, to the tune of 47 -
- almost -- 42, 45 -- the number is so big, it's almost
unfathomable -- trillion dollars of assets.

He also runs an annual diversity survey of
investment consulting firms and he's been doing it now
for three years. But he stated, quote, "Two-thirds of
the firms won't even answer the questions about whether
or not they employ people of color or women. They
simply don't care," Unquote.

Now this should be no surprise, as the SEC's
own diversity survey, which is voluntary, went out when
it first started recently to 1367 regulated entities of
which only 69 even bothered to answer.

One of our panelists, Ruby Munoz Dang, a
partner here at my firm, said, quote, "SEC requirements

are important to getting the transparency of data that
is needed. If it is on a voluntary basis, you're not
going to get any data. It's that simple." Unquote.

Nevertheless, one would expect a survey from the
regulator to those they regulate, you would just think
that you would get better than a five percent response
rate. Maybe Robert Raben is right, that they simply must
not care.

Now coincidently, yesterday at the House
Financial Services Subcommittee hearing on diversity in
the asset management industry, Congresswoman Joyce Beatty
announced that she would introduce the Diversity Data
Accountability Act, which would require all regulated
financial entities to share their diversity data with
regulators. I made the case it should just be public
information. Transparency is good. Additionally,
Congresswoman Maxine Waters, the Chairwoman of the
Committee, and Congresswoman Joyce Beatty, Chair of the
Subcommittee on Diversity and Inclusion, they sent
requests to the nation's 31 largest investment firms.
They, those firms, represent 400 billion or more of
assets under management. And they asked them for data
on their diversity and inclusion. Let's see the
results.

Now the Washington Post reported that 69
percent of the U.S. population are either women or
people of color, minorities. So in a system, like our
financial ecosystem, where 69 percent of the population
are unable to reach their full potential because of
institutional barriers to entry or outright bias, it is
clear that that talent is not being fully realized to
the detriment of the entire investing public, and the
country as a whole. Talent in the diverse community is
undeniable. Just look at the diversity amongst our SEC
Commissioners. It's undeniable, including in the asset
management industry.

Another speaker at one of our panels was Mr.
Juan Martinez, the CEO of the Knight Foundation. Now
Mr. Martinez presented research that was conducted by
the Bella Research Group in 2017 and again in 2019. The
studies looked at what percentage of assets were managed
by diverse-owned firms within the U.S.-based asset
management field. The 2017 results showed of the 71.4
trillion in assets, only 1.1 percent were managed by
diverse firms. The 2019 results were really no better.
The number went from 1.1 to 1.3. What was interesting,
the research also revealed -- and it's in the report and
for those listening I hope you -- all the things are in
the record, we'll see if you read it. But the results
also revealed that diverse managers performed on par
with non-diverse firms and in many cases, especially on
the extreme, out-performed mainstream firms. That's not
a surprise to me, living D&I because we have often felt
in the minority community that we have to be better
than.

Our second panel included asset allocators,
while our third panel focused on industry leaders. The
universal themes were clear and they came up over and
over and central to the need for increased transparency
in disclosure.

Again, it is difficult to even obtain
information. For those unwilling to provide information
another panelist, Illinois Treasurer Michael Frerichs
said, quote, "We can only assume this refusal is
embedded in either embarrassment or deceit.
Embarrassment, as corporate leaders know the numbers do
not reflect their stated commitments to reduce barriers
of entry into the workforce, promotional opportunities
and leadership positions. Deceit, as corporate leaders
know the public pressure to promote unrealized diversity
goals is a hollow effort without an enforcement
mechanism. Without an enforcement mechanism, if it's
just voluntary, you're not going to see results."
Now the purpose of today’s D&I discussion is
to share the direction of the Subcommittee, to share
with you where we are headed with potential
recommendations and to seek input from all the AMAC
members as well as the Commissioners as a reality check.
Now some recommendations that I’ll be reading may
stretch the scope of the SEC’s authority. Nevertheless,
we wanted to offer them as concrete ways to improve
diversity in the asset management industry as well as
ensuring that investors receive clear advice free of
conflicts of interest and ensuring that some of the
strong performing managers that happen to be diverse are
not overlooked.

So number one, the SEC did a wonderful job
with its first diversity and inclusion strategic plan
recently. It has several notable goals. While we are
considering to suggest a few extra goals, two in
particular. The first, that diversity and inclusion is
elevated to a core value and a material fact for
consideration throughout all SEC activities -- all SEC
activities.

The second, to promote business diversity
practices among SEC registrants.

Number two, the SEC issues guidance and
bulletins regularly for clarification or to address new
initiatives. We are considering a suggestion that the
SEC issue a policy statement clearly discouraging the
use of parameters for manager selection that have the
impact of exclusion of diverse-owned firms and that the
inclusion of diverse firms in a manager search even if
they manage less AUM or have a shorter track record is
not a violation of an entity's fiduciary duty. I'm
going to repeat that again because it's a mouthful. But
the whole point is if you include a diverse firm,
whether they're smaller or have a shorter track record,
you're not in violation of your fiduciary duty. In fact,
one could turn it around and one could suggest that
excluding all diverse firms for no other reason than
that they are diverse may be a violation of one's
fiduciary duty by eliminating some of the better
performing managers from consideration. The importance
of this cannot be overstated as many of the same
participants who foster and benefit from a closed
financial system often do so under the shield of
violating fiduciary duty.

Number three, one obvious area of likely
recommendation and one where the Commission has clear
authority will begin toward achieving more transparency
on diversity and related business practices through an
area where it seems the SEC has clear authority through
the ADV disclosures. We are likely to suggest requiring
additional demographic data of the workforce of SEC-
registered investment advisors, including transparency of ownership, transparency of workforce demographics. It needs to provide a clear window into both gender and racial diversity at four levels -- the ownership, the board, the officer and all employees -- not just the employees, but the decision-makers, the ownership, the board, the officer.

Also, number four, for SEC-registered advisors who operate as consultants, asset aggregators, and/or asset allocators, we are likely to recommend enhancing the ADV disclosure to provide sunlight -- provide sunlight -- on the consultant and selection process for RIAs with services and products including consulting on asset manager and/or fund selection, including managing of the funds and including services as manager or managers and including RIAs providing trustee services where trustee responsibilities include selecting other managers.

Number five, pay-to-play. In the context of the Subcommittee's work, it included issues highlighted by the outside speakers -- and many have opined on this topic and many of their concerns were shared and these concerns have been raised over whether the conflicts of interest sought to be deferred have persisted throughout indirect mediums such as PACs and other avenues for political campaign contributions. Clearer guidance would be helpful to all including the investing public.

Thus, we are considering a recommendation that the Commission study whether modern political contribution practices have evolved to permissively do indirectly what the pay-to-play rules sought to prohibit directly. We may suggest a thorough review to see if the pay-to-play rules have achieved its objective of limiting the influence of money in the manager selection process. On the one hand, like elections at large, it appears more money from registrants is participating in the political process, not less.

Now there may be unintended consequences of the current scope of the SEC's pay-to-play rules. That is, contributions are no longer in the sunlight and fully transparent. Rather, contributions may be flowing, as I mentioned, through large company PACs and large lobby budgets. From just a limited review, we saw several registrants whose PAC and lobby expenditures total several million dollars per year.

Now no doubt, participating in the political process should be one's First Amendment rights. More importantly, by engaging with government officials, valuable input can be provided to assist with policy. But we should ensure that pay-to-play policies have not disadvantaged small firms and by extension, diverse firms who are over-represented in the universe of small firms. These smaller firms, they lack the resources to utilize large company PACs, to employ large lobby staff, or to even have a significant or really any internal legal department. Since wealth is so lacking in the diverse community relative to the wealth in the country, the review that we're talking about is important to ensure that the diverse community has not been inadvertently penalized from supporting and helping elect diverse public officials or public officials who seek greater diversity as a value. The review will also give a chance to consider any elements of the rules that might be outdated.

Number six, presently there is no avenue for companies or people to bring discriminatory business practice complaints. In other words, with employment people can turn to the EEOC, among other regulatory entities, for employment complaints, to seek relief. In housing, people can turn to HUD. But in the investment management business, where does a diverse firm turn when they are the victim of clear racist business practices?

And I mentioned I would tell you one story, and I will. Just a few years ago -- so I'm not talking 1990, I'm not even talking the early 2000s, I just mean a few years ago -- one of my partners and I were visiting a senior research analyst and a senior consultant at one of these ten largest consulting firms. After a very hostile and unprofessional meeting, which we have to put up with often, they told us directly -- directly -- that they would never recommend our firm to one of their clients for money management services. When they explained the reason, it had nothing to do with our performance nor our process nor our firm's stability nor our resource nor any other rational thing. They said they would never recommend our firm because we, quote, "have a problem with white men." Unquote. Since we, quote, "do not have enough white male partners and white male portfolio managers in our firm." Unquote.

Now imagine, if they feel that way towards our firm, we're an established, best in class, award-winning diverse firm, what do they think about the smaller new diverse firm? What chance can they ever have? No matter how good they are, no matter what their background is. If that consulting firm felt bold enough to say that to our face, imagine what they say behind closed doors when evaluating managers for recommendation to their clients. And I assure you their clients do not know that's part of their evaluation, whether or not we have white male partners or white male portfolio...
Where is one supposed to take that information to seek relief? So we may consider a suggestion that the SEC develop a forum for complaints to be shuttled through the SEC to other appropriate federal agencies. Now we appreciate that the SEC will not become the regulatory of employment practices, that's not what we're asking, or regulatory of contracting processes in our industry. However, for those who don't know where to turn, for those who might turn to something like the SEC's tip line for no other reason but they don't know where to turn. Developing the resources necessary to receive calls and send those complaining or discriminatory practices to the right forum is necessary and needed, even if it's another agency. But it would be helpful.

We are at an inflection point in history. On our last panel, Mr. Martin Cabrera, CEO of Cabrera Capital Markets said, quote, "This is a modern day civil rights movement that is taking place right now, what some of us refer to as a financial civil rights movement." Unquote.

Now diversity is an uncomfortable topic to discuss openly by definition. We've covered that. But with the growing population of minority communities it is clear that the future of our nation is intimately intertwined with the financial success, the educational success of the minority community. Now Congressman John Lewis said, quote, "When you see something that is not right, not just, not fair, you have a moral obligation to say something, to do something. Our children will ask 'what do you do, what did you say.'" Unquote.

All of us here on AMAC have an incredible opportunity. History is on our side, politics is on our side right now. We need to act so when our children ask us the question, when my son, when my daughters say, when all of this is going on, when they see the news in the future of what was going on today and they say to me what did you do, dad, what did we all do, we can tell them quite simply, we did the right thing.

That concludes my progress report. I'm now going to turn to my two Subcommittee fellow panelists -- excuse me -- fellow Subcommittee members, Paul Greff and then after that Scot Draeger, just to see if they have any comments they want to share and, of course, after that, I'll just see, Commissioners, if any of y'all would like to share any comments. And as a reminder, I'll be turning it over to Chairman Bernard to really quarterback this discussion. And again, I hope people will speak openly and freely. And again, I know it's a difficult topic.

So, Paul, anything you'd like to share?

MR. GREFF: Thanks, Gilbert.

I just want to say job well undone delivering that message and it's just been a real honor and a tremendous experience working with you and Scot and Ed on this important issue. So, thank you.

MR. GARCIA: My pleasure. Mr. Draeger, Scot Draeger. Anything, Scot?

MR. DRAEGER: Yes, Gilbert. Thank you so much for your passion and your work and your dedication to this critical area, Gilbert. It's been inspiring working with you.

You did a wonderful job of sharing some of the education that the Committee received that served as the foundation for the prospective recommendations.

I first have to say to the other committee members and the Commissioners and Commission staff, to know Gilbert the way that we've gotten to know him is to know that the passion heard in his voice reflects the weight that he feels on his shoulders to carry the hopes and the dreams of a diverse community aspiring to make progress and to help level the playing field of opportunity for those for whom additional barriers and biases have stood in the way of equal opportunity in our industry, the asset management industry. And I know we all feel that passion, Gilbert.

In service of that goal that you outlined, I just want to supplement a few of your comments, Gilbert, with a few additional considerations that I believe will tie that aspiration to the Commission's mission and help emphasize why it's directly germane to the Commission's work.

This exercise which has been so humbling has taught us a lot. So in addition to what Gilbert outlined, what have we learned? One thing we learned I believe that's a foundation for the recommendations is that the concept of public interest is evolving. Central to the Commission's work is the concept of public interest, appreciating where the Commission's mission overlaps with that public interest. We are in the midst of an evolution of the concept of public interest as that interest pertains to diversity in the asset management industry and of course in the global economy at large.

The education the Commission, the AMAC and our Subcommittee has received from leaders across federal and state government, the corporate community, the investing public and our own industry has raised
awareness and for most I believe created a full acceptance that diverse perspectives, diverse workforces, diversity of those who have access to capital, fair competition for allocation of capital, and growing the diversity in the ownership ranks within our industry are each increasingly accepted as being in the public interest. Personally as a white man who is an owner of an asset advisory firm in our industry and who has received the benefits associated with that privilege, I'm certain that I was not fully awake to some of these truths before we began this journey.

From the dedication of the Commission itself as seen through the recent Commission speeches and actions as well as the Commission’s appointments and the work of heroes within the Commission like Robert Marchman, it’s also clear that the Commission is interested in leaning into and not resisting this evolution of public interest. So we learned public interest is evolving. We also learned that the concept of materiality is evolving. You know, the quote I shared in the context of the environmental ESG discussion was one I originally planned for this and it was that humility that Arthur Levin expressed to me when he explained that “Scot, investors will let us know what’s important to them, what’s material to them.” And we need to listen.

Central for the Commission’s work obviously is the concept of materiality, as a critical consideration when calibrating what level of transparency and disclosure is in the public interest. In calibrating disclosure obligations, we know the Commission makes very thoughtful study of what a reasonable investor considers material in a variety of contexts. In the context of disclosures made by SEC-registered advisory firms in ADVs and otherwise, the question for the Commission is in today’s world, what information is considered material to an investor, institutional or retail, when deciding who to hire, retain or fire as an SEC-registered advisor, whether as a consultant, direct asset manager or through the funds they manage. Once again, we look to the education we received during the AMAC meetings with the panels that Gilbert so wonderfully put together as well as the many inputs coming from the investing community and the excellent data gathered by our own trade groups such as the IAA and the ICI. What we’ve learned is that the concept of materiality has evolved alongside the evolution of public interest and elevating diversity to a value that is worthy of consideration in the advisory selection process. It has become clear I believe for the investing public information about the presence or absence of gender and racial diversity within advisory firms’ workforces, officer ranks, ownership ranks and business practices is increasingly accepted as a material consideration in the selection and retention of advisory firms.

So given that our work and education has highlighted the shift in both public interest in diversity and the extent to which investors consider that diversity material, it serves as the foundation for recommendations that lie primarily in very much a sweet spot for the Commission, which is transparency and disclosure.

With that, I will end my comment, but I wanted to add those things, Gilbert, just to serve as a clear link between the goals that you’ve laid out and the work of the Commission itself.

MR. GARCIA: Thank you, Scot.

I’m now going to turn to Chairman Bernard to go ahead and launch us into the Q&A because I know we’ve got ten minutes or so. So, Ed, you want to take us from here?

CHAIRMAN BERNARD: Sure. Thank you, Gilbert, Paul and Scot. That was a very fulsome report. And it’s clearly important work and I would remind the Committee, as is true with all the Subcommittees’ work, as we get ever closer to final recommendations, we’ll ensure in our process that you have adequate time to review the details. Gilbert had a very powerful and lengthy message so there’s a lot there. You’ll certainly have time to review that.

But right now, I’d love to take this ten minutes we’ve got left with the Commissioners and the Committee, if anyone has questions or comments to help your understanding of what has been said and/or guide the Subcommittee as they continue their work. I’m looking for hands.

(No response.)

CHAIRMAN BERNARD: That’s great. Sounds like you (dropped audio).

MR. GARCIA: I know it’s uncomfortable, everybody, it’s a tough topic.

CHAIRMAN BERNARD: So, Gilbert, how do you think about how you (dropped audio).

MR. GARCIA: Ed, you cut off on me. I’m so sorry.

CHAIRMAN BERNARD: Oh, I’m sorry. I just -- I was wondering about how you think about how you move -- you and the Subcommittee move this work forward from
MR. GARCIA: Well, I think there's a lot of data that we're still trying to get and we want to, for lack of a better word, work with the staff on where things go; when we talk about changing the ADV, what do we mean, what would that look like. We want to put a little more meat on the bone. We want to give the community at large that may have watched this to opine, send in your remarks. And again, anyone who's on, I encourage you to send in any remarks, et cetera.

And then we'll be writing a very formal type report, Ed, that will go to all the AMAC members well in advance and that will give them some time to not only read it and digest it, but even some time for them to have more formal questions. So there'll be ample time before we vote in June. There still needs to be a little more meat on the bone.

CHAIRMAN BERNARD: Okay, that's great.

MR. JIVRAJ: Okay, thank you, Gilbert.

So Gilbert, you had mentioned the ADV disclosure, that you are going to potentially recommend, and I'm just curious, you know, I'm not sure how many investors actually go to ADV and look at the information reported on the ADV (dropped audio) investment decision.

how it would be helpful to have that (dropped audio) firm manage their money. But do you see external parties maybe utilizing that information to report out information? I'm just curious how you see the information would be helpful.

MR. GARCIA: Sure. And again, remember, things like whether or not a consultant receives money from a money manager they recommend, things like the ADV disclosures -- at the end of the day, it may not have an impact in changing behavior or things like that. So we're not making a judgment as much as we're just saying disclosure is necessary, so the public can at least be aware of some of the details. Now my own hunch is people will be very interested and my own hunch is market forces will intervene, whether it's through competitors saying well, look what we do versus what they do or whether it's other agencies that have an interest in promoting diversity to say here are some people that do it right, here are some people that need more work.

So I think the key is transparency is good, sunlight is good, and then the market forces will prevail appropriately and will respond appropriately. That's what I think, that's my hunch and that's my hope.

MR. JIVRAJ: That seems to make sense. I suppose once in the public, it could potentially change behavior, yes.

MR. GARCIA: And public is the key thing, that word, because in the survey -- and I understand the reason for the survey. When OMWI did the survey for the SEC, they did it with a lot of other entities. It was heroic just to get it together. But at the end of the day, it's really meant to be internal research for guidelines as opposed to changing any business behavior.

And the only way you're going to get business behavior changes is to make it public. That's the only way.

CHAIRMAN BERNARD: Susan, I think I saw your hand go up.

MS. McGEE: Thank you, Gilbert.

I see a theme for me in the last panel on ESG and this one on D&I and it is, for me, trying to balance -- are we using a regulatory agency to change public policy, public behavior. And I struggle with that balance. I understand the importance of D&I, I benefit to this day from D&I. I understand the importance of ESG. But I do struggle with using a regulatory framework to push initiatives like this.

Scot, your comment resonated with me and it's going to give me food for thought on materiality is evolving and public interest is evolving. I know that,

but materiality I think is more of a concept that would be more relevant to the SEC. So, I appreciate the comments today.

MR. GARCIA: Thank you, Susan.

If I could respond to that, Ed, or at least sort of maybe shed a little bit more light.

You know, the federal government has said that discrimination is illegal, whether one thinks it's immoral or unethical, but the bottom line it's certainly not legal. This is the only industry where somehow there's not a mechanism, a check and balance. So I don't see it as interfering in the mission of the SEC, I think it's in furtherance of the mission. And as it relates to the transparency of things, I just think the more information we can give informed investors the better off the market will be. And when you have again, 69 percent of the population, women and minorities that have these artificial barriers that are not able to succeed in this industry, I think you are inadvertently not providing the right service to the investment community, unless you subscribe to the theory that somehow those 69 percent are inferior, which I don't subscribe to. They're not. So the whole point is there's this whole population that's not there, that the investment community is not getting exposure to and
that needs to change. And I think the investment
community will benefit as well as society will benefit.
And I recognize the need to try to separate the two.
But it will lift all boats and we will achieve the
fullest potential of the markets and the country.

CHAIRMAN BERNARD: I think that's a great
answer and, Susan, I appreciate your candor and concern
in expressing those views. I encourage everyone as we -
- and again, with all the Subcommittee topics we've got,
ESG, D&I, we're going to hear after lunch about the
private investments, let's make sure we hear all
perspectives on these issues as we move forward to final
recommendations.

So any other questions? We're actually
getting close to time here, at least the planned time.
But any other quick questions from anyone before we
break for lunch?

MR. GARCIA: I just would make -- I didn't
know if there was another hand or not, but if I could
have one more minute.

I think it's totally appropriate for the SEC
to be willing to evaluate, re-evaluate policies, because
things do evolve and agencies do that on a regular
basis. Even the Supreme Court will revisit cases as
society changes. And if you think about some of the
great cases in the past like Plessy vs. Ferguson where
people said separate but equal was good or appropriate.
That's what they said at that time. But then fast
forward and we realize times have changed and then you
had Brown vs. Board of Education which opened up and
removed discriminatory behaviors in the public school
system. In other words, things do evolve and I think to
better serve society and times, one has to be open-
minded and willing to look at policy to ensure that it
is not outdated.

MR. DRAEGER: Thanks, Ed.

Well said, Gilbert
I just want to say how much I appreciate
Susan's perspective as well and recognize that it takes
courage to wade into these conversations and I find what
you said to be a terrific perspective and important.
The concept of materiality, since the '90s the
Commission has kind of accepted that qualitative
materiality has a important place in the universe of
considerations of investors that in some areas rivals
quantitative materiality. You know, it used to be if we
couldn't show something impacted revenue or profits by
five percent, then it wasn't material. But we're in
((audio disruption). We have the luxury of that having
been addressed, you know, in the '90s, so now the
question for us is has D&I moved into that realm of
qualitative materiality where it's something that's
important to investor decisions and selection of
advisory firms. So, I'm just fleshing that out a little
bit and just also saying that I am really grateful for
your courage to get involved in the conversation.

MR. GARCIA: Thanks, Susan.
CHAIRMAN BERNARD: Seeing none, it's about
12:11 on my clock, Eastern. We're going to take a break
till 1:00 sharp, for lunch. Again, for those of you
watching on SEC.gov, you'll see a holding screen and
we'll come back on at 1:00 sharp.

And if I could ask the Committee members to
keep your line open so we don’t end up with
connectivity. Obviously you can turn off the cameras
and if you would, turn them back on a few minutes before
1:00 so we know we're all present before we open it back
up.

And we'll see everyone at 1:00.

(Lunch
recess)

CHAIRMAN BERNARD: Welcome back, everyone.
To close out the day, we've still got a couple
-- several more important discussions but given the
length, we're going to run through a couple of hours
without a break and let everybody finish up around 3:00.
So, first of those, as I had mentioned this
morning is to hear from our Private Investment
Subcommittee. So with that, I'll turn it over to Rama.

MR. SUBRAMANIAM: Thank you, Ed. I want to
thank the Commissioners for allowing me as part of the
Private Investment Subcommittee to provide a further
update.

I'm going to share my screen. As I'm doing
that, I also want to thank the SEC staff for helping us
out on this, particularly Christian Broadbent, Emily
Rowland and Jay Williamson.

Is my screen sharing? Yes, it should be now.
Before we turn to the agenda for today, I just
wanted to remind people what the Private Investment
Subcommittee has been looking at and where we're up now
in deliberations.

We initially started out looking at the supply
and demand characteristics of the asset management
industry. I think there was some pretty conclusive
evidence there that we see factors that favor, strongly
favor, us looking at expanding private investments. The
two main supply and demand factors there were shrinking
public markets -- by shrinking, I mean shrinking in
terms of number. We see the market capitalization of
the S&P 500 at record highs but dominated by very large
companies and also fewer companies that are now listed.
Recent SPAC mania might change that slightly
but largely that theme continues. And on the demand
side, we see a demographic as well as a pension
discretness to more self-managed money that is limited
largely to public markets.

We then looked at measuring returns from
private equity primarily. We looked at that ourselves
and we also had some experts, both academics as well as
industry participants on a lively panel led by Eric
Sirri. We decided to give Eric a break this time after
moderating that panel.

We also covered the regulatory landscape that
is currently in play and provided a summary on that. I
think the main conclusion on the regulatory landscape
was that while there have been several measures to
enhance or broaden access to private companies through
various exempt offerings as well as changes or, frankly,
reductions in the level required for accredited
investors, this didn't help a lot of private investments
in funds, as those were governed primarily by the
Investment Company Act and the requirement for a
qualified purchaser, which was in broad terms a $5
million net worth requirement which meant that less than
one percent of households qualified.

After the last meeting, we decided that we
were going to embark on two further areas. The first
was to look at other asset classes and on that, we're
going to hear today from John Suydam on private debt and
Adeel Jivraj on real estate.

We also raised some design -- initial design
principles in our last meeting. We wanted to discuss
the design principles further. Joe Savage and John
Bajkowski have been talking to some of the AMAC members
and wanted to share some initial feedback on those
discussions.

We also wanted to discuss the emerging main
issues for the rest of the Committee to start to
consider.

Lastly, I'll come back at the end of the
meeting to discuss comments and suggestions that we have
received by the SEC relevant to this issue. In
addition, there have been a couple of other comments
that have been received, and one of them from former
Commissioner Clayton whose letter is posted on the AMAC
website. In addition, a couple of public comment
letters received by the Committee on Capital Markets
Regulation, which picks up some of the suggestions that
I will cover.

Before I hand over to John, I just wanted to
briefly touch on a couple of other matters. I wanted to
cover what we decided to not look at. In our last
meeting, John Suydam from Apollo presented a very good
taxonomy of how to think of private capital markets.
And apart from real estate -- and real estate was
included in a category of real assets which included
infrastructure assets and other real assets -- we
decided not to look beyond real estate as there was a
lack of public market comparisons in other real assets.

The other category we decided to not look at
was structured products. Structured products are a very
large market. In John's last presentation, they were
tagged at around seven trillion in size. We decided not
to look at them because they're largely used by
insurance companies to match long-term assets and
liabilities and by other very large investors with long-
term horizons.

And lastly, hedge funds. Everyone has heard
of hedge funds, they also are a very large market,
around 3.5 trillion. Given the variety of asset classes
and strategies, it makes any comparison of public
markets impossible. As such, for now, we've decided not
to look beyond real estate and private credit and
private equity that we've already looked at and
presented some findings on.

Lastly, we mentioned in the last meeting
potentially looking at comparing private investments to
perceived risky retail products such as levered ETFs and
ETNs as well as options. Upon reflection, we decided
not to compare private investments with these products.
Two reasons really. One is they're not comparable, and
second, just because there's a more risky retail product
that retail investors can now invest in does not make
for good reasoning to allow wider access to private
investments.

With that, I'm going to skip the next slide
and come back to it in my wrap up and I'm going to hand
over to John Suydam to talk about private credit.

I'm going to stop sharing my screen and John
will take over.

MR. SUYDAM: Thank you, Rama.
I'll take a second and share my screen. Okay.
Good morning -- or good afternoon. Thank you,
Rama, for the opening remarks.

I was just going to go a little bit through
some of the work that we've done on looking at private debt investments. What we on the Committee have done over the last month or so was to talk with a number of consultants, typically these are two to three consultants for the institutional investors that invest in the private debt space to gather information about comparables and how you can compare the performance of private debt investments with public indices. And they provided us a bunch of data on that, that we've gone through.

The first thing I wanted to touch on is the page that I've got up now in front of you, which is, you know, how to think about private debt and what is and what is not private debt, because lots of things can fit into it.

So, although the definition of private debt I think varies pretty widely, I think it's generally looked at as debt investments that are held in or loans that are made to private companies. You know, so these are not broadly syndicated or CUSIP'd securities that are available on a liquid trading market or in the secondary market. But rather investments into projects or companies that are privately held.

There's a couple of ways to differentiate this and this will get into the second page on how you compare some of these strategies and the returns. The key ways are on the left side of this chart -- the type of security; in the middle, the type of asset category; and on the right, the type of lender that would be lending into these type situations.

So on the left-hand side -- and this will, as I say, factor in as we talk about some of the information we got on returns -- it stratifies between senior debt investments within companies; subordinated or mezzanine, kind of used interchangeably, investments; whether those investments are secured, typically more of the senior, or unsecured; or what has become more focus over the last number of years, unitranche investments which have a combination of senior and mezzanine type investing combined within a single security or single loan.

In the middle category, lots of different asset classes where private debt investments are made, either in asset-backed; corporate, which is where we most focused with some of the data that we've gotten because it was most comparable; distressed investing; infrastructure; and then as Rama mentioned, real estate, which will be covered later; special situations structured credit; and venture debt. Those are areas that we didn't focus on to pull data.

And on the right side, the type of lenders into this. So the first one you see, the 3(c)(7) is the private funds. There were also registered funds that engaged in this; BDCs are one of them, interval or tender funds, mutual funds, banks and then others like insurance companies.

So to take you through, you know, in trying to look at what the -- if you can make a comparison on returns that we've looked at, we've put together or I put together a bar chart that focuses on a couple of things. Given the nuances between the private credit markets, it's challenging to measure against private market indices and there aren't -- you know, because the portfolios have different constructions within them, there are not precise comparisons that can be made. So what many industry participants do is they compare private credit investments to corporate high yield benchmarks, government bonds, credit indexes, and public equity returns over various time periods.

And I'll walk through how these comparisons were made. This is data that we received from a large consultant, and I'll explain that data to you in a moment. But the data tended to show that although the private credit returns tend to lag the public market alternatives over the shorter periods of time, over longer periods of time there seems to be an out-performance. So to make this, let me kind of walk you through what this is.

In each of these time periods, the one year, three year, five year, ten year, twenty year, the first four bars on the -- going from left to right -- are private returns. And these were returns that the consultant had gotten over a 20- to 30-year period, cash-on-cash returns from about 500 private credit funds. And those broke down into the first bar, senior debt. So these are returns largely focused on the most senior part of the capital within private companies.

The second bar is subordinated debt. So mezzanine or debt that is second in rank or subordinated in rank to the senior debt.

The third bar is credit opportunities, which is a broader category including distressed and other credit strategies that have higher yielding characteristics generally and some more risk associated with them.

And then the fourth bar, which is a composite of private credit. Basically the first three on a composite basis.

The returns that are shown here are, you know, basically blended returns across all of the funds that
they looked at on a after expense, after fee basis. So what you see in the next three bars after the break in each of the one, three, five, ten, twenty years, are three market indices: the Bloomberg Barclays Government Bond Credit Index, the Bloomberg Barclays Corporate High Yield FTSE High Yield Index and the Russell 3000 Equity Index. Those indexes have been adjusted due to the difficulty in doing comparables between private funds and market, because you have to try to match the inflows and outflows in the public benchmark against the inflows and outflows in the private funds. So these have been adjusted to reflect those changes in inflows, outflows basically buying securities as the cash would go in and out of the private funds.

The probably most comparables ones that you can see is the first bar senior credit to the first bar within the indices which is the Bloomberg Barclays Bond Credit Index. And then the second bar which is the subordinated debt to the Bloomberg Barclays Corporate High Yield FTSE High Yield, which is also a form of subordinated debt quite often within the high yield space.

And as you see in most of these comparisons, in the first year, third year, the public comparisons tend to look better and then they tend to even out and gain over time.

The equity index is included here because there are some elements within some of the debt portfolios, particularly within subordinated debt and credit opportunities, which have more -- or have some type of equity characteristics -- you know, preferred stock or warrants that would go with the debt.

I guess we'll move on from there but the better -- basically what we found is that there was a differentiation or the data seems to indicate there's a differentiation between the public and the private returns.

MR. SUBRAMANIAM: Thanks, John.

MR. SUYDAM: Should I unshare my screen?

MR. SUBRAMANIAM: I think Adeel is about to share his screen. I don't know, Ed, whether you want people to ask questions along the way on a category or we save questions for the end.

CHAIRMAN BERNARD: I think we can probably just have Adeel go ahead. Now that his screen is up, we sort of can't see and I actually think it's fine. Let's go ahead. And those of you who may already have acquisition but has the potential to produce cash flows once the value has been added. The building may have occupancy issues, management problems and so they require a deep knowledge of real estate and strategic planning by the owners. And then lastly you have Opportunistic, which has the biggest potential for payoff, but they are the most complicated projects and they don't see a return on their investment for an extended period of time. They are ground up developments typically, empty building, land developments or repositioning one building from one use to another. And as I mentioned, they provide little or no cash flow at the beginning, but have the potential for significant cash flow once the value has been added.

The other thing I thought I would cover before we go into the returns is just the different types of products out there that provide exposure to hard physical assets, real estate assets. The first, most common one is a public equity REIT. They provide their access through retail investors, through a brokerage account similar to a public stock. The investments tend to be focused on that higher quality side of Core and Core Plus, so they're really looking for income generation. There's liquidity through secondary market trading, it provides very good transparency through
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<td>public periodic financial reporting on a quarterly and annual basis. Again, it's really there for income production and they typically will be sector-focused on office buildings, data centers, hospitality or healthcare. They are generally internally managed, although they don't have to be from an expense perspective. But once all the expenses are paid, they are required to pay out a bulk of their income to the shareholders as part of the REIT rules. Their returns are measured on a secondary market-based trading and so very similar to public stocks in terms of measurement. And so at times you could have a dislocation between the underlying value of the property they hold versus what people are trading them on the secondary market. And they do at times hold value added and opportunistic, but as I mentioned, the core of their portfolio, the majority of their portfolio is really in that core and core plus, and that's primarily a function of also the REIT rules of having to pay out the income on an annual basis. So they don't really have a lot of retention of follow-on investing. The next type of structure out there is a public non-listed REIT. They also are accessed through retail -- they also provide access to retail investors, however, you have to go through a broker or pay a sales commission. They are not traded on a stock exchange, that's probably one of the biggest differences to the public REIT counterpart. So as a result, they have limited liquidity and the redemptions programs are varied by company. The similarities to the public REIT are that they do provide public financial statements. They similarly manage properties for income, although they could be diversified or sector-focused and they're also required to pay out a bulk of their income to shareholders as part of the REIT rules. Some of the differences are they charge an asset management fee and a performance fee. Their returns are based on NAV, so they're more correlated to the underlying property and the valuations of those properties. And there have been recently more online platforms offering these public non-listed REITs directly to retail investors and that's had the effect of reducing the expenses associated with this offering. And then lastly, you have the private real estate funds. They're limited liquidity with some funds offering no liquidity. The structure can be varied. So closed-end, open-end, limited liability, limited partners. While they provide financial statements on a periodic basis, they're not public and they invest across the real estate spectrum of that core, core plus, opportunistic and value added. But I would say the majority of their investments are in that value added, opportunistic side. They also charge an asset management fee and a performance fee, generally have more leverage and their returns are based on IRR as opposed to any type of share-based or NAV rule. And they're currently not available to your retail investor. So I thought that would be helpful just to understand some of the structures and the type of investments as we go into the investment return piece. We received information from Hamilton Lane and Cambridge Associates through 9/30. Both of these provide -- both of these utilize public equity REIT benchmarks, either the FTSE NAREIT Equity Index or the Dow Jones Equity REIT to compare back to private returns. And both try to utilize a methodology to try to convert either the private return into a public benchmark or vice versa where they try to convert the public benchmark into an IRR-based comparison. So similar to what John said, I think in looking at the -- it's challenging to really measure the real estate return in the private returns against a public market benchmark. So that's something that needs to be taken into consideration when you're evaluating the returns based on these different methodologies.</td>
<td>opportunistically and the majority of their investments are in that value added, opportunistic side. They also charge an asset management fee and a performance fee, generally have more leverage and their returns are based on IRR as opposed to any type of share-based or NAV rule. And they're currently not available to your retail investor. So I thought that would be helpful just to understand some of the structures and the type of investments as we go into the investment return piece. We received information from Hamilton Lane and Cambridge Associates through 9/30. Both of these provide -- both of these utilize public equity REIT benchmarks, either the FTSE NAREIT Equity Index or the Dow Jones Equity REIT to compare back to private returns. And both try to utilize a methodology to try to convert either the private return into a public benchmark or vice versa where they try to convert the public benchmark into an IRR-based comparison. So similar to what John said, I think in looking at the -- it's challenging to really measure the real estate return in the private returns against a public market benchmark. So that's something that needs to be taken into consideration when you're evaluating the returns based on these different methodologies.</td>
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<td>Generally speaking, in looking at the return information over a three, five and ten year period, the private investments out-performed the public REIT between 100 and 300 basis points. But I did want to point out that that information was based on a particular return comparison and return assumptions and certainly if you had different comparisons or different assumptions, you could get different results. The other thing that was interesting looking at the returns were that in the one year return through 9/30/20, there was significant over-performance by private real estate and I think this really can be explained for the most part by the difference in measurement of returns of public REITs following share-based trading and market emotion and sentiment during the corporate environment where on the private side it's really based on that underlying property valuation. And then we did find periods of over-performance where -- over longer periods when we incorporated the global financial crisis. So 15 years and beyond. So I think similar to what we found in private equity asset classes it's really difficult to draw a conclusion on the performance of the returns given the challenges in comparing these private returns to the public REITs given the differences in the returns and</td>
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the methodology and the assumptions.

But at the end, I do think there's value in terms of the fact that there could be another vehicle on the private side that offers investors an opportunity to diversify within the real estate sector through the opportunity to invest in value added and opportunistic investments, obviously with the appropriate investor protections. And I know that's part of the next conversation that we have in terms of design principles.

So, Rama, that's what I wanted to share with the rest of the Committee in terms of the returns. I can take questions now or at the end.

MR. SUBRAMANIAM: I think we're going to do questions at the end.

MR. JIVRAJ: I'll stop sharing then.

MR. SUBRAMANIAM: Yeah. Before Joe Savage and John Bajkowski talk about design principles, which will take up most of the time on the discussion, I want to reiterate a couple of things on the real estate side.

What to me was interesting -- maybe it's just to me and some of the members on the House Subcommittee -- was that, you know, when we look at private equity, the difficulty was getting access to private companies and private -- private funds that invest in private companies through public markets. One thing about real estate is there's nothing from a regulatory perspective stopping listed or unlisted REITs and retail investors investing in any sort of real estate. The reality that stops them doing that is actually more a tax issue which is that they have to distribute 90 percent of their earnings, I think it's their taxable profits. Right, Adeel? In order to keep their REIT treatment, and that pushes them towards core and maybe some core plus real estate. They could, if it wasn't for that requirement, it's not an investor restriction requirement that stops them from investing in all sorts of real estate, opportunistic, you know, value added real estate. It tends to be a different reason. And so, that end of the real estate is left to mainly private funds. But for a very different reason. It's interesting to kind of get to a similar outcome for a very different reason.

With that, Joe and John, are you ready to share your screen? I think, Joe, you're going to share your screen and you're both going to discuss; right?

MR. SAVAGE: Right, that's right. So let me do the sharing.

All right, so everybody can see the slides I hope.

VOICE: Yeah.

MR. SAVAGE: Okay, good.

All right, so the -- what we wanted to do is John Bajkowski and I interviewed a select group of other AMAC members and colleagues from their firms, just to solicit their views on potential design principles for increasing investor access to private investments. And our goal really was to explore whether -- whatever access with suitable investor protections can be achieved within current investment vehicles such as registered investment companies. So the way we're going to do this is I'm going to first talk about our discussions with these AMAC members and their colleagues on design principles criteria. In other words, what factors should we think about in designing increased access to private investments. And then John is going to go through these interviewees' reactions to particular structures that potentially could achieve wider access.

So, we started our interviews, we gave this list which you see on the slide of criteria. That being liquidity of investments, the ability of the investor to, you know, sell or redeem their investment and get their money back fairly promptly. Diversification, should these private investments be diversified into a number of different categories or, you know, asset classes. Whether it's important to have institutional investor participation. And the idea there is that perhaps this would help -- you know, retail investors are the vehicles they're investing in to only invest in private funds that also have institutional investors.

And the idea would be those kinds of funds that already have institutional investors would likely be perhaps the better, you know, the more attractive types of private funds that institutional investors would be interested in and perhaps also help keep the fees down since institutional investors are more focused on things like that. Disclosure of fees, risks and conflicts, avoiding excessive risks and fees, aligning advisor compensation with investor interests, chaperoned access meaning whether there should be some sort of intermediary between the investor and the product or fund they're investing in, whether that be a fund manager or some sort of financial advisor, to help them choose what to invest in. And then lastly, investor choice.

So what we generally heard is four of these, really maybe three of these that were the most important to the folks we talked about. I would say top of the list was liquidity. Most of the members, the AMAC members and their colleagues felt that liquidity was very important for expanding access to retail investors. Of course, you know, any time you try to improve liquidity, there's a trade-off because typically private

39 (Pages 150 to 153)
investments tend to be highly illiquid, so you've got
a sort of a tension there between, you know, gaining
exposure to private investments and losing liquidity.

But overall, I think that the interviewees we
talked to felt that retail investors generally want to
have easy access to their investments, particularly if
something unexpected comes up and they need immediate
access to, you know, the proceeds from selling their
investments. And one person we talked to in particular
said that over-allocating an investor's funds to
illiquid private investments can be dangerous.

Second, I think criteria that was commonly
felt to be important was disclosure of the fees, risks
and returns. You know, I think all of the members we
talked to and their colleagues felt that it's very
important that there's transparency in any sort of
investment vehicles that gets access to private
investments, particular with respect to the risks of the
investments and the fees that are going to be charged.
They do note that it's -- you know, performance is
something that ideally should be disclosed as well but,
you know, as we heard from Adeel and John, you know,
sometimes it's difficult to calculate performance. It's
also difficult to compare performance of a private
investment to, you know, more public investments or
traded stocks, things like that.

Institutional investor participation probably
was the third most popular criterion. Several members
were intrigued by the idea that if you basically would
limit, you know, the private funds that these vehicles
could invest in to those that already had institutional
investor participation, you might get a better quality
of private fund, you wouldn't get, you know, a less
attractive private fund that's sort of handed down to
the retail investors because institutional investors
aren't interested. But one of the persons we talked to
felt that this would be hard to achieve in practice,
since he doubted that institutions would be interested
in funds that were open to retail investors either
directly or indirectly.

And then lastly, chaperoned access. You know,
a couple of people we talked to felt that it may be
necessary for retail investors to have that access,
particularly in the case of defined contribution
participants and, you know, allowing that chaperone,
whether it's the fund sponsor, the -- you know, a
financial advisor to the investor or perhaps a manager
of a fund, to balance risk, returns and fees. But we
also heard that if you do have, you know, an advisor or
some other chaperone, that's likely to increase, you
know, the burden for these structures and also likely to
increase fees. And of course if the financial advisor is
paid by the issuer, you've obviously got a conflict of
interest that could affect the recommendations made by
the advisor.

So that in a nutshell is what we talked about
in terms of design principles criteria, and I'm going to
turn it over to John Bajkowski now to talk about some of
the particular vehicles that we discussed with them.

MR BAJKOWSKI: Thank you, Joe. I think you
stopped sharing. Sorry.

MR. SAVAGE: Okay, hold on.

MR. BAJKOWSKI: So as the slide is coming up,
we primarily focused in on instruments that are already
registered investment companies with the goal of --
because these particular products already have fairly
strong disclosure and transparencies in regards to
issues such as risk factors, fees, holdings that might
facilitate the ability to have retail investors
participate in these particular instruments.
So looking at -- we first looked at registered
exchange-traded closed-end funds. So if you could
advance the slide.

So, the big concern of liquidity is somewhat
alleviated with closed-end funds. Once the closed-end
fund has its offerings, individuals are then able to
provide liquidity or trade amongst themselves because
the shares themselves are traded on the exchange. So
that alleviates the necessity of the fund manager to
maintain liquidity. They can take a longer term
perspective as far as their investments are concerned.
The difficulty that comes about with that is that
although these funds can invest in private equity, the
SEC has taken the position that if a registered closed-
end fund has more than 15 percent of its portfolio in
private investment companies, the fund may be only
offered to accredited investors. And in addition, the
SEC has not permitted the U.S. Securities and Exchange
Commission to list such closed-end funds for trading.
So we were kind of curious to know what kind of
feedback our fellow AMAC members had as far as that
was concerned. And for the most part, we received
positive feedback. I think, again, the notion of
providing liquidity amongst other investors was seen as
very good. I think the concerns came about with the use
of (audio disruption). And again, the notion of to the
extent that the calculation of NAV might be
made difficult with that, that is a concern. And also
the issue is how do you standardize the valuational
process and method and timing. And historically many
closed-end funds that are publicly traded trade at a
discount to NAV and the concern is that not having the
ability to have a clear snapshot as to the true value of
the underlying assets, that might actually even create a
larger discount to the premium and what would happen in
that situation is you might have people trying to game
that and it might hurt other investors.

So the big concern I think was that while
liquidity -- the possibility of liquidity is there, and
there was a strong disclosure platform, there were some
concerns as far as the ability to put these funds trade
at a discount to NAV. And on top of that, there was some
issues as far as the ability to charge performance fees.
Those are regulated and restricted in terms of these
types of instruments here unless you are a qualified
Investor.

Next slide. So when it comes to closed-end
funds, it’s just different structures of closed-end
funds and moving beyond the publicly traded closed-end
funds, there are also funds that offer liquidity as far
as the ability to purchase shares on a continuous basis,
but then the redemptions themselves are done from the
fund and they're done either on a predisclosed periodic
basis, which is an interval fund and a specific amount
where they are done at the discretion of the board, a
way or uniform process for redeeming shares once the
redemption window opens. For example, you know, you
can’t queue up your redemptions in advance. So these
are not publicly traded, they're private and typically
offered through registered investment advisors and there
is no standard way for investors to queue up and get
their redemptions in advance.

ICI is working with some of its members to
help institutionalize some efficiency, but it is still a
concern that was raised as far as tender offer and
interval funds.

I guess you can go forward a couple of slides
here. The next big asset class, moving beyond closed-
end funds that we were really getting a lot of comments
on from people as far as opening up to investors, retail
investors, is a target date fund. And the thought
process is that a target date fund has a long-term
perspective and -- but then take a sleeve of private
equity or other illiquid investments, there might be a
better vehicle, because they have to take a long-term
perspective in that context.

And, you know, currently funds, open-ended
funds, are restricted to 15 percent of net assets in
regards to illiquid investments. So the question is, you
know, should that limit be raised. And furthermore, a
tender offer fund.

So we looked at these registered closed-end
funds and the issue is, you know, what kind of problems
do these solve. In this case, the shares are being
issued at NAV so the issue of a discount is done away
with and redemptions when they take place are either
scheduled with some certainty but -- and they’re also
done at the NAV value. Now in terms of the feedback
that we got from our fellow AMAC members here is that
again, the disclosure is very strong and that is a great
benefit. So we got positive feedback.

But there are still some concerns as far as
the ability to honor redemption requests. So, for
example, with an interval fund, an interval fund has to
have full liquidity for the amount of the part that’s
going to be redeemed over the period of the redemption.
So in that context, the funds themselves would have to
have a mix of assets, they can’t be just purely long
term and illiquid. They have to have some level of
liquidity to manage those redemptions. So that’s one
concern as far as their ability to truly be taking a
long-term perspective on that.

And I think probably the greatest practical
concern that was raised as far as the interval funds and
tender offer funds is that really there's no standard
number of individuals are concerned about whether or not
they could, through their fiduciary responsibilities,
even carry a private investment and higher cost elements
in their portfolio.

So in terms of feedback, you know, in
relationship to the positive feedback we got from
interval funds, tender offer funds and even closed-end
funds as far as being able to raise those standards, I
think the primary concern that we really had as far as
whether it made sense to really open up target date
funds to initial investments was that the primary
concern is that -- just to get individuals invested into
retirement plans is probably the primary issue at play
here. There's still a need for provide bigger liquidity
and there can be quite a bit of churn that occurs
amongst different fund operators, even those these are
longer date instruments.

So really in times of market volatility, it
may be difficult if you have a 15 percent allocation, to
maintain that. There may be issues as far as actually
calculating the NAVs since the calculations are done
typically quarterly or what-not. So, there may be some
need to even set up things like stress gates at times of
market volatility to help spur redemptions.

You know, in addition to that, the concern or
the point was raised that having a small target or a small element of private equity involved in the overall portfolio, you know, isn't going to change the overall return profile that much. So, you know, really due to some of the liquidity concerns and the potential for risk of loss, you know, is there really a need to raise the standard beyond 15 percent. There is some concern that was raised whether or not that's the primary concern. And really the overall goal with target date funds and retirement savings in general was just to get better participation in these instruments.

Last section, and Joe already talked about a lot of these issues already as far as concern that should be brought up. But really, you know, whether it was appropriate to allow registered funds to invest in underlying private funds managed by the same investment advisor, really they can’t do that currently. And there was a lot of doubt expressed whether or not that would make sense. There’s a lot of concerns that were raised as far as conflicts of interest and structure, any kind of investment arrangements would need to be negotiated at arms length, you know. And there’s really a great need for transparency in that conflict and great rules for managing conflicts of interest in that regard. And just concern that there be, you know, again less sophisticated investors could potentially get confused as far as how to handle the stuff. So a need for a lot of investor education in this area.

And then finally, we talked a little bit about chaperone access and when it comes to chaperone access, I think -- and Joe touched on this quite a bit initially -- is that whether it makes sense and I guess there’s a perceived desire that chaperoned access, you know, would be beneficial if there was a fiduciary responsibility in regards to that. But there’s still concerns as far as conflicts of interest, additional fees that would be involved and could you really have the best -- would institutional investors also want to expend their assets with mutual investors as well.

So these are some of the primary concerns we came across. Again, people thought it was a good idea but it would need to be significantly regulated and to address the conflicts of interest that were involved in this particular area.

So as kind of a summary this’s kind of the most comments we have available as to those types of instruments.

MR. SAVAGE: Thanks, John. Let me see if I can unshare. Okay, great.
Okay, Rama, we’re going to turn it back to you now to sum up.

MR. SUBRAMANIAM: Yeah, thanks. And the last slide that you skipped over there, I think you guys pulled together a nice summary of some of the requirements and differences in those different types of closed-end funds which we shared in the materials.

I just wanted to spend a moment going back to one of my slides so I’m just going to share my screen again and then we’ll take questions.

I think the last thing we did was to try and summarize some of the comments received in the area. So the first area and the one that I’ve got a slide on is that a pretty on-topic question was asked in the Commission’s concept release on harmonization back in 2019. And in particular, question 115, which is stated at the top of the slide, “What restrictions should there be, if any, on the ability of closed-end funds, including BDCs, to invest in private funds including private equity funds and hedge funds and to offer their shares to retail investors?”

There’s a link on that slide to both the harmonization concept release as well as numerous letters that were received on the overall concept release. With the help of SEC staff we tried to pass through those letters and focus on the ones that answered this question or gave comments on these questions. I tried to then summarize some of the themes and this is obviously quite high level and general. But I think it’s interesting that -- and this goes back to September 2019 -- that some of the recurring themes are things we’ve discussed here. And that is, using the registered investment company regime to allow retail investors to invest in private funds.

Removal of the 15 percent limit on closed-end funds investing in private funds is something that has come up and also came up more recently when Dalia Blass spoke and there was some comment on that. Allowing closed-end funds that invest in private funds to list and create a secondary market, something we discussed just before.

Increasing the flexibility of interval funds and tender offer funds to make them more suitable for private investments. Joe and John touched on the fact that we do have concept of interval funds and tender offer funds but they’re probably not ideally suited for private investments given the fact that private investments have two primary liquidity issues. One is they invest over time generally into private investments as they build up the fund. And then exits occur all the time. So you’ve got kind of, you know, two sides to that
liquidity problem.

Allowing advisors or registered investment companies to be affiliated with underlying sponsors, the issue of otherwise increasing fees of having a separate advisor to the registered investment company, allowing target date funds to have greater percentage of their investment in private investments that decrease as target dates get closer.

Apart from these comments, which were not, you know, directed at the Asset Management Advisory Private Investment Subcommittee because it came before that, we have on record, you know, the letter from Chairman Clayton that picks up on some of these themes, you know, using target date funds, use of interval funds and tender offer funds. There are also a couple of comment letters from the Capital Markets Committee which is an organization -- I'm going to share my screen while I'm talking -- Committee on Capital Markets Regulation has written to the AMAC Private Investment Subcommittee on a couple of occasions. One of them arrived yesterday and we haven't had a chance to digest that, but in their earlier letter from January this year, similar themes emerged around using closed-end funds, listing them using tender offer and interval funds as well as some specific comments on removing the 15 percent threshold.

My last comment I think is liquidity is a big concern, but I feel like it's a so-called circle you can't square, square you can't circle and you don't know which one is right, in that if you have fundamentally underlying less liquid investments, your only option -- and we see this in fixed income ETFs in some case, right? -- the only option to create a liquid product out of that is to create a trade of secondary market product. That can have times where it trades at a significant discount to the underlying NAV, just given the difference in valuation times of the underlying assets versus the market valuation of the other assets.

So, it is an area that either people have to accept less liquid investments or accept that if you have a secondary market, there could be some dislocation or differences in valuations of the secondary market trader product versus the underlying product. But that's something that we're going to have to grapple with as we get closer to making recommendations. Ed, I believe we've got nine minutes, so I want to leave some time for questions we're probably going to pass on to other people in the Subcommittee to answer.

CHAIRMAN BERNARD: Okay. And if you're able, you may want to turn your camera back on, Rama.

Questions or comments for the group. First of all, thank you all, I think that's a really good advancement of the already great work you've been doing. So thank you for that.

Questions, comments?

I guess I'll start with one just to make sure I understand, particularly with the feedback from some of the members. The chaperoned access, am I correct that you're still of a view that that's a path you're pursuing? Recognizing that you've got -- you need to address the potential conflicts of interest and so forth? Or is that one that is losing ground?

MR. SAVAGE: So I'll start and John can respond as well.

I think, like I said, the reaction from the members we talked to and their colleagues was kind of mixed. I would say they were worried about chaperoned access adding, you know, another layer, more fees, perhaps more complexity. On the other hand, I think everyone agreed that, you know, retail investors in whatever way they're going to gain access to private investments need to have some person there between them and the investments, and that might be a fund manager.

So it kind of depends on what you mean by chaperoned access, but I think there was less enthusiasm for adding fees through a financial advisor, but certainly I think there was a recognition that there needs to be, you know, someone between the investment and the retail investor.

CHAIRMAN BERNARD: Yeah, because I guess I've always assumed that what you all meant by chaperoned was that it was in a managed fund structure of some sort that had a fiduciary running the fund. And I guess equally importantly from an investor protection standpoint, if you do, for example, a closed-end fund, then you bring the entire Investment Company Act regime into the picture for the investor protection piece, as opposed to chaperoned meaning literally a financial advisor which adds fees on top of fees, although I suspect many people will in fact access these through advisors but they've got their own arrangement with them on how they compensate them.

So let me ask it differently. Is there a view that without the benefit of something like the 40 Act regime to provide a regulatory framework for this, that -- I mean, would people prefer that over managing the conflicts that you have described and the fee issues you've described, of using a chaperoned access?

MR. SAVAGE: I guess my understanding and
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<td>2. structure --</td>
<td>2. able to charge higher fees to retail. But that's</td>
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<td>3. CHAIRMAN BERNARD: Okay.</td>
<td>3. possible, I just didn't hear that.</td>
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<td>4. MR. SAVAGE: -- and the protections that are</td>
<td>4. MR. SUBRAMANIAM: Yeah. I'd add, you know,</td>
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<td>5. already built in.</td>
<td>5. it's a good idea in concept, I don't think we thought</td>
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<td>6. CHAIRMAN BERNARD: Okay. Scot.</td>
<td>6. through the practical workability of it. In fact, one</td>
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<td>7. MR. DRAEGER: Yeah, thank you.</td>
<td>7. of the comments from the Committee on Capital Market</td>
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<td>8. First of all, John, John, Joe, Adeel, Rama, wow, this is an amazing</td>
<td>8. Regulations suggested something similar around having, you know,</td>
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<td>9. job. You guys, I mean so comprehensive and impressive. The design</td>
<td>9. chaperoned access and not just be around having a registered</td>
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<td>10. principles are just incredibly thoughtful.</td>
<td>10. fund, but also that a percentage of the investments in</td>
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<td>12. the funds that registered vehicle invests in have, you know for</td>
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<td>12. gatekeeping that Joe mentioned with pairing, partnering institutional investors with retail investors because the gatekeeping offered by that, you know, would seem to be pretty powerful if you truly were going to have a situation where retailers or retirement plans were going to have access to the same share class that institutional investors were going to have access to. So, I'm wondering when you were receiving feedback on that -- you had mentioned that there was some question about whether institutional investors would really want to partner with retail or retirement plans and I'm wondering what your sense was, Joe, of whether it was more that the private issuer sponsoring the products wouldn't want to reduce the terms, you know, for retailers down to the levels that were necessary to put them on par with institutions, whether that was more a barrier than it was institutions not actually wanting to be inside the same products as the retailers? I'm just trying to assess, you know, where the barrier comes from. And it might be the case that we say to the issuers, hey, if you want access to retirement plans, then this is the cost of entry, you've got to give them the same terms you give the institutions. So that's my question/comment.</td>
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<td>1. MR. SUBRAMANIAM: No, I think, you know, we hope to come back at the next meeting with recommendations. I think we want to get back together and talk a bit more. It's a difficult area really balancing that liquidity and investor protection with what we think is a diversifying investment with, you know, I think generally better returns. You know, you could argue about liquidity, you could argue about the comparability, but I don't think anyone is trying to say that there's worse returns, at the very least. And I think it's important for people to have that diversification, but how we balance all the things we discussed about today is not easy and there will have to be some compromises. And how we balance that I think is kind of key.</td>
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you know, each of the subcommittees we’ve heard from
today are not quite done with their work, so they will
carry on at least to the next meeting. I think some of
them may be wrapping up with recommendations at that
point and we’ll sort through the process to ensure if in
fact we’re going to vote on recommendations at the next
meeting, that you have adequate time to review those
recommendations ahead of any vote.

But to add onto that and to broaden our work,
we followed a process to add some items to the agenda
and the next 40 minutes or so we’ve set aside time for
each of Neesha Hathi and Scot Draeger to outline their
respective subcommittee’s topics and the approach they
expect to take.

Now I literally asked them I think two weeks
ago to chair these and they formed their groups, so
they’ve literally each had a call with their group to
sort of formulate, you know, sort of define the problem
statement and begin to talk about process. So the
intent here is to tee up the topic, see if the group has
any input for them as they get their work underway. And
then we’ll come back at the next meeting and get more
deeply into the topics.

So, this will be pretty informal, but what we
were thinking is 20 minutes for each and roughly 10
minutes of comments from them to talk about how they’re
going to approach it and that leaves us 10 minutes for
Q&A. And when they finish, if that’s in 40 minutes,
great; if it’s a little less than that, we will go into
our lightning round and wrap up for the day.

So with that, Neesh, you want to go first?

MS. HATHI: Sure, happy to. Thanks, Ed.

I don’t know what Scot was able to accomplish
in his first week, but I think we have a lot of work to
do on this evolution of advice topic. So, first of all,
I want to just call out the other Subcommittee members,
so Erik Sirri, Mike Durbin, Joe Savage and Jeff Ptak all
kind of have agreed to participate on this Subcommittee
around the evolution of advice. So thanks to all of
them. I’m sure they’re going to be chiming in as we
talk a little bit about how we think about this very
broad topic and kind of narrow it to something that we
think is relevant, timely and potentially a place where
this Committee can provide some fresh insight to the SEC
as we kind of explore it more deeply.

And so when we thought about this broad topic
around the evolution of advice, what we talked about
doing is actually trying to narrow it a little bit and
focus in a little bit around one of the key trends that
we see happening across the industry, which is

personalization and how that is impacting investment
advice.

And just as a little bit of context there, you
know, the technological advancements that we now have
can -- they can be done in automated ways. And so, you know,
technology can be applied to everything from the
financial planning part of the investment advisory
process, portfolio construction, portfolio management
and even things like behavioral support to help an
investor stay on track with the advice that they
receive.

But what that raises, I think that we want to
explore, is you know, if personalization can now be
offered throughout this experience and maybe can really
help create more customized and impactful services to
investors, what implications does this have on the
definition and delivery of investment advice and then
the responsibility of the advisors of the firms that are
delivering and providing that advice. Are there
opportunities that we should be considering to serve
investors better, where we don’t -- because of a lack of
kind of guidance in this particular area, the innovation
is not being pursued or, you know emerging

personalization experiences that are being pursued that
need additional guidance.

And so that’s kind of the context around what
we are going to explore in the Subcommittee. I’m going
to pause in a minute, I think what I’ll do is I’m going
to share four kind of sub-themes that we identified as
potential areas of focus, and then I’ll ask my
Subcommittee to probably chime in and then open it up
for questions.

So the four areas that we thought were most
interesting here and relevant, the first kind of
question is how does the level of personalization of
help and guidance impact whether the help and guidance
is defined as investment advice. So essentially, how
does personalization change the definition of investment
advice. And the way that we think about this is, you
know, traditionally one criteria for determining whether
investment guidance is actually considered technically
investment advice is actually the level of
personalization that that advisor or that firm provides
in the experience. And so the question really -- you
can think about a few questions under this, but how much
personalize technological guidance can you provide
before you cross the line to a registered status. So
imagine what is the line between a broker-dealer...
providing some technological assistance with digital tools versus an RIA providing discretionary management - where is that line and when do we cross over. Another example of that would be FinTech firms that are providing platforms for investors to share, you know, their own personal portfolios with others. And if they're earning -- that platform is earning a fee or if that portfolio creator is earning a fee from someone who consumed that portfolio, does that constitute investment advice. And given the growth of kind of community -- what I would call community-driven investing, that's a topic that we thought could be relevant within that first category of the definition of investment advice.

Second big theme was -- and this may end up kind of getting consolidated into that first one, but I think given there's so much around artificial intelligence and machine learning right now it's a separate theme, and that is really just what are the risks and opportunities associated with AI and ML-driven personalization. So if you think about how quickly these technologies and these platforms can learn about their clients and guide them towards personalized actions and behaviors, that can be very effective in helping an investor get better outcomes. But it can also be used to encourage behaviors that aren't necessarily typical and traditionally have relied on the know-your-client suitability process for that advisor determining what that recommendation should be. And given that there's these vast amounts of data now available, what responsibility does the advisor or the firm have to take into account all that other data that's out there, even -- and especially if inconsistent with what the client might have provided through a suitability process. That's the third theme.

And then the fourth one finally is kind of just a broader category around how does the trend towards personalization impact investors' ability to understand and then evaluate the investment advice that they receive. So if you imagine a world -- you know, I think for awhile we were talking a lot about kind of model portfolios and standardization of advice. But imagine a world now where these portfolios are getting more and more customized, how does an investor then compare, how do they evaluate, how do they think about the quality of the advice that they're getting and are there, you know, disclosures, are there benchmarking approaches, other things that we should be thinking about as an industry to help an investor better understand how -- the quality of the advice that they receive.

about better outcomes for the investors. And so, is there additional guidance that should be provided here to firms to kind of help them understand what's appropriate in helping an investor get to better outcomes or not. Or, is it so emerging that, you know, guidance here is just difficult and we need to see how the innovation evolves and what guidance is actually required. One particular note here that was called out by one of the Subcommittee members is based around, you know, behavioral nudging, you know, digital celebrating, confetti, you know the things that kind of can be created to encourage behavior and at what point did that, you know, personalization cross the line into something that's beyond what you would expect an investor's experience to be. So that's the second theme.

The third is does the increased access to an investor's personal information change the responsibility or the obligation that the advisor has in taking that personal information into account in providing any advice or recommendation. So the example here, you know, if you think about data aggregation and in the example like of a financial planning experience, data aggregation allows an advisor to actually have access to all kinds of data about an individual. But we typically and traditionally have relied on the know-your-client suitability process for that advisor determining what that recommendation should be. And given that there's these vast amounts of data now available, what responsibility does the advisor or the firm have to take into account all that other data that's out there, even -- and especially if inconsistent with what the client might have provided through a suitability process. That's the third theme.

So I'm going to pause there. I know that's a lot, those are the four themes and I would ask any of my Subcommittee members if there's anything else that you all would want to add.

MS. SOE: Hi, Neesha, this is Aye.

I want to go back to the point you made on the FinTech firms. So in the last two years or so, maybe even slightly longer, we hear a lot about direct indexing and fractional shares. And we also see that, you know, other than Eaton Vance or Parametrics that were bought by (audio disruption) with BlackRock, there are what we call (audio disruption) firms. So they are more providing the platform rather than the indexing -- direct indexing capabilities (audio disruption) portfolio.

Would those be considered registered investment advisors or are they right now at the moment just a platform? And it sounds like you're covering those sort of firms.

MS. HATHI: Yeah, we did talk about direct indexing actually specifically in our call just earlier this week. And I think, Aye, if it's offered, I think the way that we were talking about it, if direct indexing is offered in the construct of a fiduciary product, right, then, there is a standard. You know, a
separately managed account, for example, like a parametric, then there is kind of a construct for that. But I think what you're talking about also is that when fractional share trading is happening in a form of broker-dealer construct, it's the platform. And you could provide the investor with tools to allow them to create their own index -- what does that look like. And that's a self-directed value proposition, and is that advice that's incidental to brokerage -- like what is the experience there and how would you define that in that experience.

**MS. SOE:** Yes, that's my question, because the line is a little bit blurred. You know, the idea of providing capabilities at the same time is, you know, the capabilities is almost indirect advice. I'm curious to see how it advances.

**MR. DURBIN:** Neesha, it's Mike. I thought you described it beautifully, so I'm just more interested in what other AMAC members think about those themes. We've wrestled with those themes for a bit.

**MS. HATHI:** We did.

**CHAIRMAN BERNARD:** One comment I would make based on Aye's comment, and I think that was a great articulation as well. I think this is a very rich area for exploration, and importantly given the role of AMAC to bring business and market practitioner expertise to bear as opposed to -- I mean, we're obviously not a bunch of securities lawyers. The SEC can figure that piece out. I think this is an important topic as with the others that we picked where we can bring some of that judgment and expertise to bear that will hopefully help the SEC sort through it.

But what I was going to say is to Aye's point of, you know, sort of the blurry lines or the gray area, as I look at it, you've staked out four areas, all of which are gray areas and we need to find some clarification of, if I could use the visual image of which side of the line does one fall on and then what does that mean. I know you all have talked about one possibility is using sort of a case study methodology to look at specific examples so you can dig a little bit into the facts and circumstances and get an insight into, well, based on that, how would you think about this.

But I think we should all be prepared for in the coming sessions to be probing around in gray areas to try and find their bearings. I think it'll be very interesting.

Any other questions or comments for folks or advice for them as they take off into their journey into the gray?

(No response.)

**CHAIRMAN BERNARD:** Great. Well then maybe we'll just keep going. And Scot, pick up with your Subcommittee. Thank you for taking that on, and thank you very much, Neesha.

**MR. DRAEGER:** Thank you, Ed. And, you know, Neesha, terrific job, very creative, inclusion of behavioral science into all that you're thinking about is such an interesting angle. So thank you for your work, it sounds exciting.

On our side, I want to thank Ed obviously for gathering the input of the AMAC members and, you know, confirming interest in exploring the economic regulatory realities that exist for small funds and advisors. Also, really want to thank Susan McGee, Jane Carten, Russ Wermers and Alex Glass, who have all agreed to be part of this Subcommittee. Each of those folks has experiences and perspectives that will -- already have - add meaningful value to the work that's ahead for us.

The Subcommittee's initial gathering that we had -- and Neesha, much like your committee, we're really just getting off the ground here -- we really were focused on developing a shared vision for the scope of the SEC registrants that would be covered with our work, a common understanding of what we mean definitionally if we say issues impacting, quote-unquote, small advisors or small funds.

So we quickly with Russ's help, and I already was really loving the academic mindset that he brought to our discussion, but we found ourselves to unanimity and a focus on firms and funds for whom resource limitations or lack of leverage and/or scale in their segment of the market, creates unique challenges in the midst of growing economic pressures and growing regulatory demands that are sometimes shaped to influence practices for a different end of the market or to codify best practices for larger firm resources. And that was the first interesting thing that happened because I think we could have easily come into this and said, as might have been my original instinct, to say well firms under ten billion or funds under five billion. And we decided to go in a different direction from the scope of it and we're starting with the presumption that we're going to consider issues based on impact, resources, leverage, scale concern irrespective of AUM and irrespective also of the investment strategy pursued by a particular one firm or another, or whether they serve clients through services, products or both.

So in short, we decided that AUM and
investment segmentation would be barriers for the
calibration of our effort, which was exciting I think to
the whole group.

After we created the field of vision I suppose
that we're in, we also I think developed a shared
perspective at the outset that we're not primarily
focusing on, as a goal, any kind of deregulatory effort
or that our focus is deregulatory in nature. So this is
not, to be clear, an effort simply to look for ways that
the regulatory burden can be reduced for the community
of small advisors and funds. We have a tremendous
amount of respect for the Commission staff and the
Commission and we enter this acknowledging that most of
the rules are in place for good reason.

You know, rather, we think there's meaningful
opportunities to approach a study of the economic and
regulatory issues that impact these firms from different
altitudes and angles and to seek an education and share
our own experiences and learn from your experiences to
frame the policy conversation in a manner that can align
the Commission's mission with also reconciling that with
some of the challenges in smaller ends of the market.

So, I wanted to share a list of some of the
potential work streams that we talked about. Obviously
we're in the early stages of this, so this was more of a
brainstorming session, but I felt there's no harm in
sharing.

Some of the work streams included things like
the constraints on accessing new issues in the bond
market for smaller advisors and funds. Those
constraints being largely tied to relationship and
leverage barriers that sometimes create unequal access
in the playing field.

The leverage constraints generally in the
vendor universe and the economic and client
service impacts of some of those constraints.

Evolution of things in FinTech that have
unique challenges, that create unique challenges for
firms at the smaller end of the market. You know,
licensing fees that are indirectly imposed on, you know,
the whole advisory community but have an outsized
balance sheet impact when they're indirectly imposed on
smaller firms. An example of that may be the evolution
of the CUSIP license fee debate and potential
e ncouragement of the Commission to take public positions
in a similar way that the EU has.

Proxy voting perspective of smaller advisors
and funds. We really think that the Commission's work
is not done here. You know, we would like to reacquaint
the Commission with some of the practical realities, the
costs and benefits of reasonable reliance on the proxy
voting advisory services attempting to maybe take the
Commission's focus outside of the battle between the
corporate issuers and the institutional investors to
consider some of the ground level real considerations of
the smaller advisors and funds.

Small fund governance was another area that we
put on the list, educating, you know, ourselves and the
current Commission on the benefits and drawbacks of
things like multiple series trusts, ways to leverage
operations and compliance tools that are available for,
you know, more reasonable cost.

Outsourcing in general. The question of where
it strengthens controls, internal controls, versus where
it weakens controls relevant to fulfilling the fiduciary
standard for small funds and advisors, was on the list.

Big category, don't know if we can tackle it,
but 12b-1 shareholder servicing fee reform and the
impacts on small funds and advisors who manage those
funds.

Calibration of cybersecurity and data
protection best practices for the smaller end of the
market. Once again, an area where best practices tend
to evolve for the resources in the large firms.

Encouragement of the financial regulatory
community to establish centralization of data privacy
legal regime, something I know Commissioner Peirce hit
on earlier today. I had no idea she was going to go
there but interesting alignment there.

E-delivery, which Mike Durbin and others have
already kind of put in the forefront in earlier COVID-
related recommendations but Edelivery as a default
mechanism for delivery of all disclosure documents.

The potential value that periodic assessment
and reporting by the Commission's Office of Economic
Analysis on a cumulative impact of regulations on small
advisors and funds was of potential interest.

And also modernizing the definition of small
entities for the regulatory purposes that the Commission
uses it.

And then finally, we thought it might be an
opportunity time to reacclimate or reconnect the public
and the Commission with the shape of the registrant
constituency. We tend to, you know, focus on things at
the large end of the market and I think the constituency
gets lost. Just to give the Committee a few teasers on
that, I think the Investment Advisor Association's
Evolution Revolution Report which they put out every
year is just really wonderful data and the 2020 report
on how our industry is dominated by small businesses as
far as the number of registrants regulated by the
Commission. So just by way of example, there are 13,500
SEC registered advisors and over 12,000 of them, or
almost 88 percent, have fewer than 50 employees and
manage less than two billion in assets. So, you know, it
gives you a sense of the shape. You know, ironically
the, quote-unquote, typical advisor if you look to the
mean of the data, is an advisor with less than 350
million in AUM, fewer than eight employees and has about
200 accounts.

So I think it's important to remember that,
yes, there's, you know, a few hundred very large
competitors out there but there's also an overwhelming
number of the registrants that are the regulated
community of the SEC who don't live in that space.

So, we would anticipate leveraging trade
groups, the SEI, IAA, Small Funds Network, Mutual Fund
Directors Council, IDC as well as industry participants,
small RIAs and also corporate service providers to small
advisors and funds such as fund administrators and
others who may be able to provide a nice education for
us.

So, that is my spiel, kind of what we know
right now. Subcommittee definitely approaches us with a
ton of humility and we're certain that there are,
despite that long list, you know, many potential work
streams that we either haven't identified or haven't
prioritized in our very short first meeting that we had.
So with that, I'll stop and once again say thank you to
my other Subcommittee members and they should all feel
free to add anything that I've missed, and I'm also
happy to answer any questions. And please send me all
ideas -- send us all ideas. We are excited to hear your
views and perspectives.

CHAIRMAN BERNARD: I should mention as folks -
- thank you, Scot -- as folks formulate questions for
Scot, you all know because you all responded thankfully
to the email I sent -- to arrive at both these topics,
we took into account expressions of importance from the
AMAC, expressions of interest or relevance. And I also
looked at in conversation with the IM staff, the actual
composition of their committee, our capabilities and the
roles of our firms to bring something -- you know,
expertise to bear on these issues. And these two topics
actually were -- you know, if I looked at it strictly on
sort of a vote basis, these were the two highest vote
getters. There's one other topic around indexing that I
think if we pursue it would need to be a little
narrower, so we might do it with, you know, a one-and-
done sort of panel like we did with some of the COVID
issues we took on last year. I may be back to you this
summer or fall to talk about that.

So these are the two areas that the group
thought we could have the most impact on and that were
most important. So with that, questions for Scot? And
great job enumerating the various paths you could go
down with the small advisor issues.

Any comments, questions? Rama.

MR. SUBRAMANIAM: Scot, great summary.

I think one of the issues I'm not sure you're
going to cover is whether a function of, you know, that
small managers versus large managers is structural or
driven by the industry rather than by regulation. What
I mean by that is -- and this is the hedge fund space --
large institutional investors don't want -- you know,
they want to write checks of 50 or 100 million. They
can't be more than, whatever, 10 percent, 15 percent of
a fund immediately means they need to go to hedge funds
that are at least 500 million. I know you're talking
billions, but in hedge fund world, over a billion
becomes a big hedge fund, right. And so whether part of
it is not actually regulatory but just more the
participants and the limits they place on themselves or
that their consultants place on them, that they can only
invest in a certain size fund. And Gil brought up a
similar issue that you see, you know, in the diversity
and inclusion of emerging managers or minority managers.

Some folks get cut out just on that basis which actually
applies to a lot of other people, right? And so some --
like New York State Pension has an emerging manager
program where even though normally they would be limited
to certain managers, they look at emerging managers, but
that's not widely participated in or it's not a sort of
program a lot of institutional investors have
participated.

MR. DRAEGER: Yeah, Rama, thank you very much.

I love those thoughts and I was taking notes as you were
speaking. I do think that analyzing kind of the
competitive restraints some of which are artificial,
including some of the ones that the D&I Committee
focused on, as you've also highlighted, could be a
powerful work stream. And as Ed has said early on in
this process, and I wholeheartedly agree, the work that
we do, particular the panels and the education, it may
not be intended to gear toward recommendations of
changing regulations but more informing the Commission
and this community about the economic and competitive
challenges and restraints that exist. So, they have
that as a backdrop for the work that they do.

So, thank you for that, very thoughtful.
MR. DURBIN: (dropped audio) others, it's Mike
Durbin, it's an excellent list by the way, welcome
to the gray zone. There's a lot in there.

But if I pulled a thread through I think the
13 things I wrote down that you highlighted, most of
that thread involves sort of P&L impact, like P&L
viability. And I'm wondering, do you and the team, are
you focused on -- because you could also bucket some of
these into broader meta themes. So the first among them
is P&L viability of small firms, but the second I heard,
and a few of these was are these firms sort of
constrained around the impact they can have on their
clients. You raised things like constraints on access
to new issues. Maybe you just don't have practical
access to certain vendors. Maybe outsourcing is not a
practical alternative, right? So again, there's a P&L
thread there but you're almost introducing a second
bigger theme which is around they just can't perform in
the way that they could perform if they had the benefits
and the options available to them of a larger firm.

I'm wondering, are you going to prioritize
maybe one or two meta themes above all others? Like
this Subcommittee is going to focus on driving the P&L
viability of smaller firms to the exclusion of
everything else, or nope, we're going to focus on that

but we're also going to focus on X, Y, and Z. I don't
know if you're following the question, but -- because
there are natural clusters of the 13 plus or minus
things that you highlighted. That thread that I read
was that you mentioned, I read your question as really
thoughtful. Sometimes they merge and the access to new
issues in the bond market is an example, you know,
because it got to a situation where smaller firms might
not be as able to effectively serve their clients
because of the nature of their lack of scale which
doesn't buy them the relationships necessary to be first
in queue, you know, so to speak. And so, to what extent
is there an intersection between P&L and scale and your
ability to effective serve clients in some ways. And
then in that space, are there barriers -- there are
probably barriers that are just appropriately
competitive disadvantages and there are other barriers
that maybe exist in the context of some conflict of
interest that the Commission could look at.

So I love your question and I don't have an
answer but it makes me want to think harder about how to
be focused with our effort. But Jane or Susan, Russ,

anyone else please.

MS. CARTEN: I mean, I definitely appreciate
the question and I think you're right that it'll form
some of our discussion in the future. I think all the
comments have been really good and useful to us in
moving forward.

MR. DRAEGER: I also want to say thanks in
advance to both Mike and Neesha because, you know, given
the role that Fidelity and Schwab play in serving and
knowing so well this end of the market, because almost
everyone in this end of the market employs either one of
you or the other or both. I know that access to your
teams is going to be important to our work streams and
thank you in advance for that.

CHAIRMAN BERNARD: I saw them both nodding, so
I think you're in good shape, Scot.

MS. HATHI: It's a great --

MR. DRAEGER: I purposely waited until you
were on the mic publicly, you couldn't say no.

CHAIRMAN BERNARD: What did you say Neesha?

Did you want to say something?

MS. HATHI: I said it's a great important

CHAIRMAN BERNARD: Great. Any other comments
or questions on that?

(No response.)

CHAIRMAN BERNARD: Then we will -- thank you
all, thank you both, Neesha and Scot and actually thanks
to everyone, all the panelists. It's been another very
productive and insightful day.

And I would love -- and I get particularly
good feedback actually from leadership and staff at the
SEC on these lightning rounds, just to hear the various
reactions from the group. So I'm going to do as I
usually do and start at one end or the other. I frankly
can't remember if I started at the top or the bottom
last time, but it's alphabetical by first name and I'm
going to give a couple of housekeeping things and so
I'll just give you a heads up, Adeel, you're going to be
first because I'm going to go from the top of the
alphabet by first name. And just take less than a
minute each. We've got 27 minutes left and we've got
about 18-20 people, so just what struck you. You know,
one to two things that you heard that struck you today
and it's okay if it's the same as something that
somebody else says because that gives us a sense of key
themes that are rising above others. And if you want to
go a different direction, that's fine as well.

So with that, Adeel, you're on the hot seat
MR. JIVRAJ: Thanks. I'll just start with a compliment today. I really enjoyed listening to the panel on ESG. I thought it was great to get the perspectives of both issuers and the investors on this topic in terms of what makes sense versus what the investing public wants to see.
I walked away from that thinking again how complicated this area truly is and I commend that Subcommittee on the thoughtful work they've done thus far in looking into these particular issues.
And then secondly, with the D&I Subcommittee, I really enjoyed listening to the recap of the progress they've made over the last 14 months and looking forward to revisiting their potential recommendations that Gilbert socialized with us. I think it's an important area and I do believe more transparency in the area could lead to positive change, so this is a great opportunity for us to make a significant impact in this particular area. So I (audio disruption).
And then lastly, looking forward to regrouping with my Subcommittee to move forward our particular work as well.
Good luck to the new Subcommittees that have been formed.
CHAIRMAN BERNARD: Great. Alex. Are you still with us?
(Mr. Garcia, No response.)
CHAIRMAN BERNARD: Actually I recall he said he might have to drop for a commitment. Aye.
MS. SOE: Thank you.
I am really looking forward to hearing more about the evolution of advice, particularly around, you know, FinTechs and what constitutes advice, direct indexing, all that. And also, you know, these days we hear so much about the use of AI and machine learning, it's like the newest best word, right? And almost every investment product that incorporates it, so I really am looking forward to hearing, you know, how that blurs -- the use of the machine learning and the AI, how does that interact with advice and what constitutes investment advice. So I'm really looking forward to hearing more on it.
I want to pick up one thing on the D&I. And that's to go back to, I believe it was Susan who said, you know, -- I'm a little bit unsure of how that fits within the securities law and the promoting D&I, you know, within the role of the SEC. So that area remains a big question mark for me.
CHAIRMAN BERNARD: Okay, thanks. Eric, you're up next.

MR. SIRRI: Yeah. Thanks for a great meeting as always and thanks to all the presenters for good discussions and the panel.
I think there are two things that struck me. One was something that Gilbert said; I think it was just a passing comment and it was on track records. And you remarked how track records could be -- you know, some firms suffer, especially minority firms, suffer because of the requirement for their track records, is that something that we fundamentally believe to be material?
I mean think about traditional disclosure, it's front and center on that. So that particularly resonated with me, maybe just crystallized for me how difficult the problem was.
And I think the other thing was on the advice subcommittee, which I'm part of. You know, listening to Neesha, some of the issues in people's comments. Just the idea of personalization which has traditionally been one of the ways in which you narrow down whether something is advice or not, at least within a regulatory construct. It's not true that's even the right criteria any more when you're doing it with technology. But if personalization is delivered in a depersonalized way, are we turning it into a set of rules, it's not obvious to me that that's how you'd want to screen what constitutes advice or not in terms of what regulatory buckets to put it in. So I'm looking forward to thinking about that problem. That's it.
CHAIRMAN BERNARD: Leave it to the academic to bring it to a really -- that's a really insightful observation, that's great.
Gilbert.
MR. GARCIA: Well, thank you, everybody and thank you for the comments on D&I and I think that, you know, some of the comments that have been made just means we've got a little bit more work to do to refine the argument, which we accept and we take on. And let me say that I had a blast with the work of the Subcommittee and we're on a mission. And sometimes the mission is how do we achieve something right and then it's really SEC's role to figure out the implementation end, rather than we did not focus on the implementation end and we recognize that some things could be out of the way of the SEC.
As it relates to the other panels, I mean the one that struck me the most also was ESG and not because there's some overlap with D&I, but because the breadth of material is so large and the task -- it's like a train that's running so fast already that I'm sure they feel a lot of pressure to come up with something because
First, I just want to say it was another fantastic meeting. I really want to extend my appreciation to the ESG presenters and to Gilbert. Gilbert, that was a fantastic speech you gave and I really appreciate it.

And this is where I say I'm not speaking on behalf of FINRA, I'm speaking on behalf of just me, but I've been doing rulemaking for about 22 years at FINRA and one thing I've learned through the process, I guess as Scot would say, you've got to have some humility about it, because chances are it's not going to be perfect. But what I learned is that when we do rules or if we do emphases on certain areas, we end up with some unintended consequences and then we end up with some unintended consequences. That doesn't mean you don't go forward, but I guess the advice would be to try to anticipate those as much as you can.

And the other thing is sometimes when you have rules that apply to certain parts of the industry and not others, depending on the perspective of the commenters, some people will say that's an uneven playing field and some people will say that's a regulatory gap. So there's no easy answers to these issues and I wish you all the best moving forward. I just say try to keep those in mind as you craft your recommendations. Thanks.

CHAIRMAN BERNARD: That's good counsel. John Bajkowski, you're next.

MR. BAJKOWSKI: Great session today, I really enjoyed the panels on both ESG and Diversity & Inclusion.

Actually my big take-away is kind of excitement of some of the new panels that are forming, the new subcommittees. You know for the new investor, you know, in the era of big data, there's a big change and what's going on as what's my advice and how that has evolved and I think that's taking on a very big role as far as how they interact with any information they get and how they use it. So I mean, it's a wonderful avenue to pursue, I think it's an important avenue for an individual retail investor out there. So I'm looking forward to (dropped audio).

CHAIRMAN BERNARD: Great, thanks. John Suydam.

MR. SUYDAM: Thank you, Ed.

I first want to say I was very impressed by Gilbert's remarks and the passion that he brought forth with them and I really look forward to seeing the recommendations and spending some time with them. The one thing I really took away between both
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| 1. ESG and D&I discussions is the tension with, you know,  
what's the limitation on SEC kind of authority. And it  
particularly hit me within the ESG discussion as to  
whether in these type of disclosure requirements that  
would be considered would be made applicable to private  
companies as well as public companies, which I think  
would be something that would be quite different than  
what we've seen before You know, accounting standards  
and those type things are not, at this time, kind of  
pushed in that direction. And I think it would be an  
 interesting thing to discuss and consider.  
CHAIRMAN BERNARD: Great, thank you. Mike  
Durbin.  
MR. DURBIN: Yeah, I'd just say on both ESG  
and D&I, like others have said, really phenomenal  
progress. I look forward to the recommendations that  
are coming. There were both great updates along the  
way.  
And the bridge to my next comment is because I  
also look forward to the recommendations because I think  
in both of those topics the demand is real. You know,  
we're measuring the rapid increase in flows in ESG, I  
think the demand is real for D&I, that our nation not  
lose the opportunity that was painfully created over the  
last year plus, to really, you know, demonstrate durable  
change. So I think the demand is real.  
Which leads me to the privates, another great  
update. I think it's absolutely fantastic. I  
personally love the design principle approach to thorny  
topics like this. I think it's a way to, you know, just  
sort of narrow our focus to consider design principles,  
so kudos to the team for doing that. And for reaching  
out to a member of us to get feedback. I am personally  
left a little wanting still on the demand. We spend a  
lot of time on the supply side on privates. In my view,  
I think it'd be good to spend a little more time on the  
demand. And maybe it's institutional demand, the retail  
demand, assessing, you know, do they want to bind  
themselves together in this sort of chaperoned access  
context.  
And the last thing that struck me was all the  
way back when we started this morning were the opening  
remarks by SEC Commissioners. And I heard in a couple  
cases, particularly Commissioner Peirce, a clear call to  
action for this group on breadth and depth of impact  
that we could have. So I know that you've got to help  
manage what's already a pretty aggressive agenda, but I  
paid particularly close attention to the comments this  
 morning. I sensed myself a change in tenor, really  
trying to get as much as possible out of this group and  
 | 1. I think we're up for it. So thank you.  
2. CHAIRMAN BERNARD: Thanks for that. Neesha.  
3. MS HATHI: Great. I'll echo it was another  
great day. I feel like we never have a Subcommittee  
meeting without great speakers and panelists and this  
was definitely not an exception.  
A few things that you know, struck me. I also  
thought that the ESG panel and speakers were excellent  
and Aye and the Subcommittee, how you juxtaposed them  
was just fabulous. I think it really brought dimension  
to the topic.  
You know, because a lot of my time is spent  
thinking about retail investors and the disclosures and  
information that they're overloaded with, I do kind of -  
- that whole theme around how much information can you  
put out there and the overwhelming nature of it, that  
point hit home with me. And at the same time, it feels  
like some of the standardization like the industry-  
specific templates and things like that, could be a way  
to experiment and kind of figure out is there some model  
that could allow us to take a step versus trying to go  
at this in some very substantial way. So it felt, you  
know, maybe because I live in the world of agile, agile  
development, experimentation is a theme that we talk a  
 lot about and I wonder if there's an opportunity to  
potential, as Mike explained, where we can  
actually add some value and some insight to the SEC that  
 |  

they can take into consideration going forward.

CHAIRMAN BERNARD: Great, thank you. Paul.

MR. GREFF: Thanks, Ed.

Real quickly, I'm just -- you know, when I just step back, take a big 30,000 foot view, you know, this Committee started a year ago on very broad topics, and I'm just impressed with the way that these subcommittees have really distilled them into actionable items that I think the SEC can act on. I will say that, you know, bias, for the D&I Subcommittee, I think we've done a good job of offering some low-hanging fruit I think the SEC can act on. I think there are some stretch recommendations there too.

But also on the private, I think that's a really interesting topic that they're dealing with, you guys. It's a noble mission, you know, to bring privates to the retail class but gosh, you know, the implementation is just where it's all at. So I just think -- I'm just impressed with what everybody's doing and everybody's on the right track. So I'm pretty pleased.

CHAIRMAN BERNARD: Great. Rama.

MR. SUBRAMANIAM: Thanks, Ed.

Yeah, great presentations. I think what struck me especially after Commissioner Peirce's comments this morning is these three subcommittees that have been going for between 14 and 18 months. You know, still getting to recommendations but they're so weighty and large.

and, you know, what exactly those recommendations are and what happens to those recommendations, you know, has in some ways little bit wider approach. So I'm glad to hear about the two new subcommittees and, you know, the sort of featured advice I find particularly fascinating.

My view is the world is getting personalized everywhere. Right? You see it in your Netflix recommendations, you see it when you jump on Amazon and it reminds you that you looked at something. That's the whole point of technology, is whether we like it or not, you know, with privacy concerns and other things, it's personalization. And I think it's moving very quickly into the investment advice space and it would be good to get ahead of it rather than behind it.

I think, you know, we've seen robo advisors but I think there's a step that it's getting to and when there's adoption, it will move very quickly where that line will get really blurred. So I'm fascinated by that area and I'd love to stay involved with that.

And so hoping that some of these subcommittees and some other topics we take on will also be sort of more specific and, you know, more rapid in

recommendations. The first three areas we've taken on, including the private investment subcommittee are great, but very weighty and large.

CHAIRMAN BERNARD: Great, thank you. Scot.

MR. DRAEGER: Thanks, Ed.

I just want to start with the private -- retail access to privates, I thought it was a really great job. This really exceeded my personal expectations on the integrity that he brought to that exercise. I have to admit when we first started exploring it, I was more apprehensive. I kind of felt like it was the private issuers pining for access to the retirement plan assets more than it was, as Mike said, the demand side or what-not. But I think that I'm really inspired by the design principles that you guys have put forward which add a lot of integrity, you know. And the use of the you know, products that are already in the public sphere to help retailers gain access to these areas. You took a very thoughtful approach, so thank you.

On the ESG, you know, once again, nice job. I thought the panel -- you showed the variety of opinions, it was predictable, issuers are on defense and, you know, asset managers pining for information are on offense. And I think that what I took was the need to balance the calibration of the goal to have disclosure manageable for the issuers and still helpful and plain language, you know, for the investors and asset managers.

One piece I'd like to see there that I think is complex is the marketing and advertising side of it. I mean I think for some of these individual investors, I'm constantly being asked about, you know, ESG label, SRI label, you know, we're going to get this fund or get that fund or pursue this strategy, you know. What does the label mean? You know, that's what the investors are confused about. And so we still -- I realize it's complex but I think we want to -- if we can -- get to a place where we have done some work that can alleviate that investor confusion in the advertising space.

So I'll just stop there.

CHAIRMAN BERNARD: Great, thank you. And Susan, you get to wrap us up.

MS. McGEE: Well, I'll be quick.

I thought the ESG discussion this morning was very thorough, loved the comment they focused on value not values, principles-based, more ESG is not better. But then when the asset managers came on and were, you know, they're clamoring for information, they're clamoring to make things a little bit more efficient. So as others have said, the train has left the station.
on this. And I thought that the asset managers gave some
really good details and specifics that I think we need
to seriously consider because evidently we're going to
have to do something. It's a no-brainer on the product
side that, you know, something has to be done there.
And I think -- I was happy to hear that the two asset
managers did recommend ICI disclosure framework which I
agree with also.
Gilbert once again, thank you for your
passionate comments. And loads of energy to you to keep
moving forward.
And then on the private investments, Rama made
the comment that it's a very complex topic and I am very
curious how this will proceed.
When you're dealing with retail investors,
there's so much focus on investor protection and a lot
of times investor protection means more regulation, more
constraints, which means cost which can lead to lower
returns.
And I think the idea behind getting retail
investors into some of these private investment vehicles
was so they could participate in these returns.
So I'm very curious, I think that panel, that
subcommittee has their work cut out for them because I
do really think it's very complex.

But thank you once again, and thank you, Ed,
for your leadership.
CHAIRMAN BERNARD: Thank you and Sarah, I'll
give you the last word in just a moment, but let me just
make sure because I think I've worked through the
participant list but let's see everybody. Have I missed
anybody?
(No response.)
CHAIRMAN BERNARD: And if not, I'll make
myself come up with a final close too.
So I want to just pick up on the comment that
-- first of all, thank you to all of the subcommittees
and the leaders and so forth. I think again I agree
with the comments of many, this was another very high
quality day.
And because I sit in on most of the calls, I'm
well aware of how much work goes into it.
To that point, I want to also thank Christian
Broadbent, Wale Oriola, Emily Rowland and Jay
Williamson.
As those of you on the subcommittees know,
they do an enormous amount of work behind the scenes and
in fact they've also been great about reaching out to
subject matter experts around the Commission. So,
Sarah, please know that we appreciate the support we're
getting from your team.
The comment I would make about today is -- and
it's a thread that's come through in many of your
comments -- on the one hand, I strongly agree with
Jane's comment that it was actually great that the ESG
team after discussing preliminary, you know,
recommendations in December, stepped back and said, you
know what, we've got some additional information to
gather. I thought the panel today was great.
On the other hand, in terms of the issue of
breadth versus depth, and Mike and some other comments,
I think you can see that all three -- D&I, ESG and
Privates are coming to a close.
There are some aspects of those issues you
could evaluate forever, but my sense is all of them are
sort of targeting towards reaching recommendations at
our next meeting, which I anticipate being sometime in
June. We'll have to work with the SEC around the timing
of that.
And so I would comment two things, and forgive
me, I'm going to be just a little sort of process
oriented for a moment.
For the subcommittee chairs, and I'll follow
up with you, I think we need to build work plans that
assume that materials are ready well before the next
meeting so that we can -- and in some cases part of
getting that material ready might be interacting with
some members of the Committee to expose them to where
you're going to end up. But so that we can bring
together fully formed ideas where people will be in a
position where they feel like they've had enough chance
to consider them to act on them.
And the flip side of that is for all of you,
most of you are on a subcommittee but for the work of
the others, there's potentially three different groups
who are going to be coming at you with homework.
We're all used to doing work when we're on a
subcommittee that's going to present but now we're going
to have homework to review materials ahead of the next
meeting being sent to you by the subcommittees. So I
just hope we'll all be prepared to do that work so that
we can, while we launch our two new advice and smaller
advisors next meeting, we can also bring these three
threads probably, if not to a close, getting very close
to it.
So, appreciate all the efforts. I think we're
at an important time -- and actually to Mike's point, if
we can close a couple out, maybe we'll have a little
capacity to take on some additional issues in our
remaining time as a group.
With that, Sarah, do you have any comments that you'd like to offer at the end of the day?

MS. SIETHOFF: So thanks, Ed. I think, you know, the one comment I would offer -- I think it's an interesting time for coming in and watching, as you said, these three subcommittees where it was very evident from today the months and months and months that you all have put into analyzing these areas and really starting to hone in on some areas.

I'll say I am also excited about the two new subcommittees and my one comment there would be I think both of them offer perspectives that we don't hear from all the time at the Commission.

I think from small funds small advisor we certainly try and do outreach from that but they are not as frequent engagers with us. So I am very excited to hear their perspective going forward.

And the future of advice, I just think is an amazingly rich topic and so I know I heard Neesha today say that she was trying to discern how to focus it because there's so much there that could be covered. I think the one thing I would say though is, you know, if you have other topic areas, you know, maybe keep a list of second areas that you'd love to share thoughts with us because, honestly, when I think of AMAC this is exactly the type of information you all can bring such rich perspectives that we don't always hear about of really how the industry is changing, what are some of these new trends, what do they mean, how should we be thinking about them.

So you have such a great group of people from different perspectives, so maybe if I could get your discard list at the end of it, I would love to hear thoughts on both everything you're going to bring as well as I think some of the ones that maybe you think you ran out of time for.

So, thanks, Ed.

CHAIRMAN BERNARD: Great, thanks.

Well, that brings us to the close of the day and as I thought about today, I think you all showed great judgment when the SEC came out asking about dates, that you picked a Friday. And I hope you had equally good judgment in blocking the rest of your afternoon.

For those on the west coast who unfortunately had to start at 0 dark 100 with us, first of all, we apologize and if we have a short meeting in the future, I promise we'll start later than 9:00 a.m. I realize you still have a day ahead of you, but I hope some of you -- regardless of whether you've got some free time this afternoon or not, I hope everybody has a good weekend and a good spring and we will be back to you soon about a date for our next meeting. So thanks, all. Cheers.

And to those of you in the public, thank you for hanging in with us all day and we hope you found it helpful.

(Whereupon, at 3:03 p.m., the meeting was concluded.)

* * * * *

PROOFREADER'S CERTIFICATE

In the Matter of: ASSET MANAGEMENT ADVISORY COMMITTEE

Date: Friday, March 19, 2021

Location: Washington, D.C.

This is to certify that I, Christine Boyce, (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 meeting.

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(Proofreader's Name)            3-29-2021
REPORTER'S CERTIFICATE

I, Kevin Carr, reporter, hereby certify that the foregoing transcript is a complete, true and accurate transcript of the meeting indicated, held on 3-19-21, at Washington, D.C. by the ASSET MANAGEMENT ADVISORY COMMITTEE.

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

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