

**Securities and Exchange Commission Investor Advisory Committee
Minutes of July 27, 2009 Meeting¹**

The Securities and Exchange Commission Investor Advisory Committee convened its first meeting at 10:00 a.m. on July 27, 2009, in the Auditorium of the Securities and Exchange Commission's headquarters in Washington, D.C. The meeting lasted until 3:25 p.m. and was open to the public (with an hour break from 12:00-1:00 p.m., during which Committee members met with agency officials to discuss administrative matters). Those present were:

Securities and Exchange Commission

Chairman Mary Schapiro (attended portions of meeting)
Commissioner Luis Aguilar
Commissioner Elisse Walter

Committee Members

Hye-Won Choi, Committee Co-Chair
Richard (Mac) Hisey, Committee Co-Chair
Mark Anson
Jeff Brown
Mercer Bullard
Stephen Davis
Abe Friedman
Dennis Johnson
Adam Kanzer
Mark Latham
Barbara Roper
Dallas Salisbury (participated via phone)
Kurt Schacht
Kurt Stocker
Ann Yerger

Official Observer

Fred Joseph

Securities and Exchange Commission Staff

Kayla Gillan
David Fredrickson
Owen Donley
Zak May
Smeeta Ramarathnam

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

OPENING REMARKS AND INTRODUCTIONS

Commissioner Aguilar and Ms. Gillan, the Designated Federal Officer (DFO) for the Committee, opened the meeting. Commissioner Aguilar offered opening remarks, followed by remarks by Mr. Hisey and Ms. Choi. Following those comments, each participating Committee member introduced him or herself and described briefly issues important to their constituencies. Next, the Commission staff introduced themselves. Chairman Schapiro then arrived and offered introductory remarks. Commissioner Aguilar transferred presiding officer duties to Mr. Hisey.

DISCUSSION AND ADOPTION OF COMMITTEE BY-LAWS AND OPERATING PROCEDURES

Ms. Gillan summarized the draft By-Laws and Operating Procedures, including a discussion of the duties of the Co-Chairs in crafting the agenda, the definition of quorum, the approval of minutes, the creation of subcommittees, and the ability to amend the By-Laws and Operating Procedures. Mr. Johnson moved for the adoption of the Committee By-Laws and Operating Procedures.

Ms. Roper raised the issue of a member's potential conflict of interest and the possible usefulness of adding a recusal policy. Chairman Schapiro noted that, in her experience, advisory committees often did not take many votes but that the Committee could create a recusal policy. Mr. Brown noted that the SEC would be ultimately responsible to act on any recommendation of the Committee. Ms. Gillan noted that the Committee was envisioned to provide input to the Commission, whether that input came in the form of a vote, consensus, or different views of members; she also stated that the Commission staff would draft a recusal policy for consideration at the next meeting. Commissioner Aguilar called for a vote on the motion to adopt the By-Laws and Operating Procedures. The motion passed unanimously.

DISCUSSION OF POTENTIAL AGENDA ITEMS²

Fiduciary Duty

Mr. Hisey led the morning discussion of potential issues for the Committee to consider. Mr. Hisey noted that issues of fiduciary duty, as well as the differing standards of duty for investment professionals, had garnered significant attention recently. Mr. Stocker offered that a uniform standard and common rule book for financial professionals would be useful. Mr. Bullard remarked that the fiduciary duty standard has a significant history in common law and should be applied wherever individualized investment advice is given. Mr. Salisbury stated that there exists a great deal to clarify in this area. Mr. Davis noted that the misalignment between investors and corporate boards lies behind the recent financial crisis, and that fiduciary duty underlies that misalignment. He also recommended the Committee review fiduciary duty, including with research and in

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

comparison to fiduciary duty as applied in foreign jurisdictions. Mr. Anson noted the importance of defining fiduciary duty. Mr. Brown described issues that may arise in applying a fiduciary duty to relationships with self-directed investors, including the concern that a firm would charge additional fees or decline to provide services. Ms. Roper noted that fiduciary duty would be a useful issue for the Committee to explore, especially in light of the potential for investor confusion in the area. Mr. Kanzer noted the relationship between fiduciary duty and social investing, and offered that the Committee should provide guidance in the area. Mr. Bullard noted the usefulness of defining fiduciary duty and expressed disagreement with the idea that fiduciary duty necessarily entails a duty to monitor, or might limit services provided or increase fees to investors. Mr. Davis noted that the concept of accountability should be considered in discussions of fiduciary duty.

Environmental, Social, and Governance (ESG) Issues

Mr. Kanzer described the social investment community and the increase in demand from institutional investors for ESG disclosure. He discussed briefly the United Nations' *Principles for Responsible Investment* and the Global Reporting Initiative (GRI), as well as the potential impact of sustainability crises. Mr. Davis offered that ESG issues, including the use of the GRI as the standard for reporting, have recently become more prominent. Mr. Johnson noted that increased ESG data allows investors to make more informed decisions and strengthens discussions between investors and boards and management.

Pre-Engagement Disclosure

Ms. Roper suggested the Committee should rethink the overall approach to disclosure from an investor's viewpoint, especially with respect to pre-engagement disclosure. Ms. Yerger noted a recent discussion of institutional investors and offered that these issues should be considered not just for individual investors, but also institutional investors. Mr. Bullard noted that this issue was a priority of his for a number of years. He also offered that the distinction between offer and sale under the securities laws, as well as between delivery and availability of information, may no longer have functional meaning.

Plain Language

Mr. Stocker noted that the key issue in this area is determining what the investor needs, as opposed to considering disclosure from a delivery standpoint. Mr. Joseph noted his concern that some individual investors may seek unrealistic high returns, even given efforts toward plain English and other measures. Ms. Roper noted the potential usefulness of layered disclosure, and also the value in testing disclosure documents. Mr. Stocker expressed support for the idea of testing.

Use of Technology

Commissioner Walter asked for comments on retail investor comfort with using technology. Mr. Stocker noted that the New York Stock Exchange's Proxy Working Group performed testing that indicated investors do trust company web sites, but not necessarily the web sites of intermediaries. Mr. Friedman noted that large institutions have resources to use technology to review disclosure that retail investors may not have access to, and that he would like to see the Committee explore ways of using technology to provide better data to the individual investor. Ms. Roper discussed research indicating that there is reluctance by some investors to use the Internet for certain purposes, and noted that it would be useful to determine the basis of this reluctance.

Education

Chairman Schapiro noted the importance of including financial literacy as part of the educational system in this country, as well as the difficult question of how to calibrate disclosure for individual investors given the different levels of financial literacy. She requested views on that issue, as well as on the concept of layered disclosure.

Mr. Bullard stated that the Committee should emphasize education, but also that the securities laws need to regulate investors as they are – as opposed to as they should be. He also noted the importance of ensuring that those who give investment advice consider the interests of the investor.

Commissioner Walter asked if the Commission should focus on self-directed investors in addition to those who seek advice from investment professionals. Mr. Brown noted that Charles Schwab is focused on this area, especially on education of 401(k) participants.

Mr. Davis described a financial literacy program in Connecticut for high school students. Mr. Bullard noted that there is a national organization, Jump\$tart, that is very involved in financial literacy in the educational system. Mr. Latham suggested consideration of an investor education pilot program using a competitive voting system to allocate public funds. Mr. Friedman noted the success of the Ariel Academy in Chicago. Ms. Gillan called for a one-hour recess.

WORKING LUNCH (INCLUDING DISCUSSION OF ADMINISTRATIVE MATTERS)

CONTINUED DISCUSSION OF POTENTIAL AGENDA ITEMS

Commissioner Aguilar reconvened the Committee. Mr. Hisey called on Mr. Salisbury, who was participating telephonically, so he could offer his comments on the morning session. Mr. Salisbury noted the investor education focus of the President's Advisory Council, the Financial Literacy Education Commission, and, potentially, a federal consumer protection agency. He also stated that there is a preference by individuals, at

this time, for the written word as opposed to using technology such as the Internet. He also mentioned pension fund trustee education efforts in Australia.

Ms. Choi led a continued discussion about other potential agenda items for the Committee:

Regulatory Treatment of Credit-Based Instruments

Mr. Joseph began the discussion commenting on the significance of derivatives and the fact that Congress and the Commission are examining related issues. Ms. Roper noted the possibility that the Committee could re-examine the lines between sophisticated and unsophisticated investors. Ms. Choi suggested the Committee might want to hear from experts in the area.

Arbitration

Mr. Joseph suggested the Committee explore issues related to arbitration, including mandatory arbitration and panel composition. Mr. Bullard stated that disclosure of the basis of arbitration decisions would be useful as well.

Valuation

Mr. Hisey noted that both institutional and individual investors don't always understand how their accounts are valued, and that some of the technical language in this area can be difficult to understand, especially for individual investors. Mr. Hisey noted that valuation issues are relevant to mutual funds, hedge funds, account statements, and other areas.

Education (Cont'd)

Mr. Latham agreed with Mr. Salisbury that the Committee's advice should take into account other existing and proposed education initiatives. Mr. Stocker noted that there is an enormous amount of content in this area, and that organizing it in a way that made it useful for the investor was the main problem. Ms. Roper suggested testing to determine what education efforts are successful would be a good approach. Mr. Kanzer noted that there is confusion about basic concepts in the area of financial literacy, and that the Committee should consider the issue of what role the Commission may have in consumer protection.

Proxy Voting

Mr. Davis began the discussion noting the end of broker voting and other developments make it important that proxy voting be discussed. He noted the increase in majority voting and the possibility of requiring increased disclosure by institutional investor of their voting practices. He also asked whether the concepts of objecting beneficial owner/non-objecting beneficial owner (OBO/NOBO) should be reevaluated. Ms. Gillan defined the concepts of OBO and NOBO. Mr. Stocker noted a NYSE Proxy Working

Group survey on the issue that indicated many investors may not have a strong preference to retain either OBO or NOBO status. Ms. Yerger expressed support for the Committee examining the issues raised, including OBO/NOBO and ownership disclosure. Mr. Friedman noted that there are numerous issues of potential interest in this area, including shareholder rights, majority voting, and shareholder access. He also noted that institutional investors make significant voting-related disclosure to institutional clients. Mr. Anson discussed the concept of share ownership, and the obligations of owners to exercise their rights as owners in the proxy context. Mr. Stocker noted the relationship between communication and majority voting and other issues. Mr. Johnson expressed support for majority voting in director elections at public companies, and noted that there is a difference between proxy access and majority voting. Mr. Johnson also raised the issue of the timing of disclosure of director election results. Mr. Kanzer expressed support for majority voting and public disclosure by institutional investors about voting practices. Mr. Latham described new tools for individual investors to vote by copying the votes of institutional investors, being developed by Proxy Democracy, a non-profit group at which he serves as a director. He noted that newcomer MoxyVote plans to offer something similar.

Shareholder-Board Dialogue

Mr. Hisey led a discussion of shareholder-board dialogue. Ms. Choi expressed support for the Committee to focus on removing impediments to communication between boards and shareholders, including with respect to Regulation FD and the concert party rules. Mr. Davis supported Ms. Choi's suggestions, and also offered support for an independent chairman requirement. Mr. Davis described possible models for increasing communication, including bringing large institutions to a company or holding open meetings. Mr. Johnson noted improvement in the area of shareholder communication and that addressing proxy access and majority vote issues may have a positive effect on communication.

Shareholder Proposals

Mr. Kanzer raised three issues relating to social issues proposals, including: (i) a trend by Commission staff to allow exclusion of environmental risk-related disclosure proposals; (ii) disclosure of lobbying expenses and political contributions; and (iii) the staff's description of the burden of proof in the no-action process. Mr. Latham suggested that shareowner resolutions relating to auditor selection should not be deemed "ordinary business" and thus excludable from the proxy. He noted a parallel with director elections, which are now being considered fair game for shareholder involvement.

Shareholder Rights

Mr. Friedman offered that majority voting and the right to nominate directors may allow a number of other issues, such as compensation and risk management, to be addressed without the need for additional regulation or a one-size-fits-all standard. He also noted

there exist several additional issues to explore, including shareholders' right to call special meetings.

Executive Compensation

Mr. Johnson noted that the Committee should consider bringing in representatives from the compensation consulting industry to discuss conflicts of interest and possible solutions. He also expressed support for the Committee discussing shareholder voting on executive compensation. Mr. Friedman stated his view that the director election process allows for a shareholder voice on compensation issues and also expressed concerns that "say on pay" may have negative ramifications on shareholders' ability to address issues such as compensation. Mr. Stocker stated that majority voting may address many of the other issues raised. Ms. Choi offered that shareholders are interested not in micromanaging compensation decisions, but rather in ensuring that directors have made appropriate decisions for their business. Mr. Stocker noted that listing standards require disclosure of pay, but not of compensation to attract an executive to the company. Ms. Choi noted that shareholders are also interested in how executives are incentivized. Mr. Davis indicated that majority voting might solve most of the problems in this area, and that "say on pay" rules will be helpful. Mr. Anson expressed support for disclosing incentives to shareholders.

Technology and Innovation

Mr. Friedman offered that the Committee could address the question of tension between the SEC's need to review new products to protect investors and the need to allow new products into the market in a reasonable fashion.

Globalization

Mr. Friedman suggested the Committee consider issues investors face in light of globalization, including the impact of disparate regulatory regimes. Mr. Anson noted that, as globalization increases, foreign investors are becoming more interested in U.S. corporate governance issues. He suggested that formalized collaboration between capital markets would be helpful, and noted that cross-border voting remains an issue. Mr. Schacht noted a recent report discussing globalization and cooperation and competition, as well as the issue of proprietary trading and concerns with front-running and misusing portfolio information. Mr. Friedman voiced support for a comprehensive review of securities regulation, including ways to reduce complexity.

SEC Resources

Ms. Roper noted that the Commission needs to be funded at a level where it can operate effectively and efficiently. Ms. Yerger, Mr. Brown, and Mr. Salisbury expressed support for that position.

DISCUSSION OF NEXT STEPS, INCLUDING FUTURE MEETING DATES, PRIORITIZATION OF ISSUES, AND A PUBLIC STATEMENT

Ms. Gillan proposed future meeting dates of October 5, 2009, February 22, 2010, and May 17, 2010. Ms. Gillan then noted Chairman Schapiro had publicly announced a number of areas of potential future Commission action including: environmental and climate change disclosure; a review of the proxy voting process; and a review of the 14a-8 shareholder proposal process. Ms. Gillan also noted pending Commission rulemaking, including disclosure related to compensation consultants, shareholder nominations, the timing of proxy disclosures, and mutual fund pre-engagement disclosure.

Ms. Gillan discussed the ability of the Committee, acting through the Co-Chairs in consultation with Commissioner Aguilar, to form subcommittees, and offered a number of subjects for possible subcommittees, including: fiduciary duty; the use of technology; education; environmental social and governance disclosure; and corporate governance. Mr. Johnson suggested adding a subcommittee to examine the Commission's resources.

Mr. Latham raised the issue of linking discussion of investor education with disclosure. Mr. Bullard noted a close connection between fiduciary duty issues and disclosure, as well as the distinction between general securities disclosure and distribution-focused disclosure. Ms. Roper offered that fiduciary duty is a subset of overseeing financial intermediaries, which she stated would be an appropriate subcommittee to establish. Mr. Salisbury recommended linking disclosure and education issues. Mr. Kanzer suggested discussion of governance issues with respect to environmental and social disclosure issues be separate from the broader notion of corporate governance.

Mr. Davis suggested a possible Committee resolution expressing unanimous support for majority voting. Ms. Gillan and Mr. Hisey suggested the topic be discussed by subcommittee or as an agenda item for the next meeting.

Following questions for clarification about the subcommittee procedure and the possibility of combining certain subcommittees, Ms. Gillan noted that the Co-Chairs (along with the DFO) are responsible under the By-Laws for the agenda and subcommittee functions. Commissioner Aguilar suggested the Co-Chairs review notes from the meeting and offer potential subcommittees and prioritize agenda items before the next meeting, taking into consideration the opinions of the Committee members. Ms. Gillan raised the idea of the Committee issuing a public statement. A consensus was reached to allow the Co-Chairs decide whether to release a statement.

Commissioner Walter and Commissioner Aguilar made brief closing remarks and Commissioner Aguilar, after consulting the DFO, adjourned the meeting.

CO-CHAIR CERTIFICATION

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

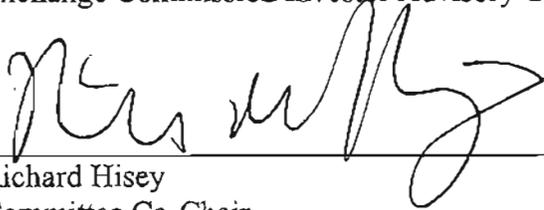


Hye-Won Choj
Committee Co-Chair

September 30, 2009
Date

CO-CHAIR CERTIFICATION

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



Richard Hisey
Committee Co-Chair

10/5/09
Date