

**Securities and Exchange Commission Investor Advisory Committee
Minutes of October 5, 2009 Meeting¹**

The Securities and Exchange Commission Investor Advisory Committee convened its second meeting at 9:30 a.m. on October 5, 2009, in the multipurpose room of the Securities and Exchange Commission's headquarters in Washington, D.C. The meeting lasted until 3:40 p.m. and was open to the public (with a break from approximately 12:15 p.m. to 2:15 p.m., during which Committee members attended subcommittee meetings). Those present were:

United States Securities and Exchange Commissioners

Commissioner Luis Aguilar
Commissioner Elisse Walter

Advisory Committee Members

Hye-Won Choi, Committee Co-Chair
Richard (Mac) Hisey, Committee Co-Chair
Mark Anson
Jeff Brown
Mercer Bullard
Stephen Davis
Abe Friedman
Melody Hobson
Dennis Johnson
Adam Kanzer
Mark Latham
Dallas Salisbury
Kurt Schacht
Damon Silver
Kurt Stocker
Ann Yerger

Official Observer

Fred Joseph

Advisory Committee Securities and Exchange Commission Staff

Kayla Gillan, Designated Federal Official
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>.

Securities and Exchange Commission Staff Panelists

Tim Buckley
Rich Hannibal
Ken Johnson
Jeff Minton
Susan Nash
Shelley Parratt
David Shillman

OPENING REMARKS AND INTRODUCTION OF SEC STAFF PANEL²

Ms. Choi opened the meeting and Commissioner Aguilar offered opening remarks, including a request for retail investors to share their views with the Committee. Mr. Hisey then made brief opening remarks. Ms. Gillan introduced a panel of SEC staff to discuss the SEC's strategic planning process, including: Mr. Johnson, of the Executive Director's office; Mr. Hannibal of the Office of Compliance Inspections and Examinations; Mr. Shillman, of the Division of Trading and Markets; Mr. Minton, of the Office of the Chief Accountant; Ms. Parratt, of the Division of Corporation Finance; Ms. Nash, of the Division of Investment Management; and Mr. Buckley, of the Office of Human Resources.

PRESENTATION BY SEC STAFF ON STRATEGIC PLAN

Mr. Johnson gave an overview of the strategic plan. He noted that it had not been approved by the Commission and that a draft would be publicly available once the Commission approved its release. Mr. Johnson described the process of crafting the plan, which he noted involved a steering committee co-chaired by Ms. Gillan and Diego Ruiz, the Commission's Executive Director. Mr. Johnson noted that there were four working groups, one for each of four strategic goals, made up of representatives from 16 different divisions and offices of the Commission. Mr. Johnson then introduced Mr. Hannibal to discuss Strategic Goal 1, fostering and enforcing compliance with the federal securities laws. Mr. Hannibal described three underlying outcomes to that Goal: (i) fostering compliance; (ii) promptly detecting violations of the federal securities laws; and (iii) prosecuting violations of the federal securities laws and holding violators accountable. Mr. Hannibal then responded to questions about the culture of the Commission and increasing investor awareness about investments. Mr. Johnson addressed a question from Ms. Yerger about SEC resources and, in response to a question from Ms. Choi, indicated that the agency is required to update its strategic plan every three years.

Mr. Shillman, Mr. Minton, and Ms. Nash then discussed Strategic Goal 2, establishing an effective regulatory environment. Mr. Minton discussed a few initiatives in support of creating a regulatory environment that promotes high quality disclosure, financial reporting, and governance, including rule proposals in the areas of enhanced disclosure about risk management, executive compensation, decision and practices, and nominations

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.

of directors and board governance, as well as promoting high quality accounting standards. Mr. Shillman discussed market structure issues including the staff's review of dark pools, short selling, self-regulation, the small cap market, and municipal securities, derivatives, commodities and futures, and credit rating agencies. Mr. Shillman also discussed financial privacy issues. Ms. Nash discussed a number of initiatives in the investment advisor and investment company area, including proposed amendments to the adviser custody rule, 12b-1 fees, money market funds, exchange-traded funds, amendments to Form N1-A, pay-to-play issues, and investor adviser/broker-dealer harmonization.

Mr. Shillman responded to questions about the issue of high frequency trading, noting that the staff is examining whether some strategies are exacerbating volatility or otherwise disadvantaging the executions received by retail investors. Mr. Hisey asked about Commission resources, including technology resources. Ms. Gillan noted the Commission's recent approval of the creation of the Division of Risk, Strategy, and Financial Innovation.

Mr. Bullard suggested a comment period of more than 30 days for the plan might be appropriate and asked if the new Division's goals would be discussed in the plan. Mr. Davis raised the issue of fiduciary duty. Commissioner Walter noted the existence of relevant legislation and the Commission's interest in the issue. She also noted she had expressed support for an across-the-board fiduciary duty for broker-dealers. Commissioner Aguilar noted he had advocated for fiduciary standards for those who give investment advice.

In response to a question from Ms. Choi, Ms. Gillan indicated that the staff is assessing the issue of proxy access, including considering numerous comment letters. She also noted that staff would be bringing final rules for Commission consideration as soon as practicable. Ms. Yerger asked how the Commission was seeking to become more proactive in identifying and addressing issues. Ms. Gillan noted the existence of the new Division and aggressive efforts to identify current staff skill sets and possible improvements. Mr. Hannibal added that the Office of Compliance Inspections and Examinations has in place a risk processing system involving its 800 examiners.

In response to a question from Mr. Anson, Mr. Shillman discussed proposals involving municipal securities. In response to a question from Mr. Kanzer, Ms. Gillan noted that the staff was looking at the timing of potential Commission rules in the proxy area. Also in response to the question, Commissioner Walter noted a concern with the impact of moving forward with rules related to Rule 14a-8 without joining them with rules related to Rule 14a-11. Commissioner Aguilar noted the importance of the deliberative process in this area.

Next, Ms. Parratt discussed Strategic Goal 3, facilitating access to information investors need to make informed investment decisions. She described the Commission's full disclosure programs, the mandatory review schedule, and the impact of technology. Ms. Parratt also noted that the staff is reviewing the core company disclosure requirements of

regulation S-K, as well as proxy voting and shareholder communications. Ms. Nash then discussed the summary prospectus the point of sale initiatives. She also noted the staff's consideration of issues related to target date funds and coordination with the Department of Labor.

In response to questions from Ms. Hobson, Ms. Gillan and Ms. Nash discussed the use of metrics and surveys in targeting investor outreach, including about the summary prospectus. Mr. Stocker noted the importance of understandable disclosure. In response to questions from Mr. Hisey, Ms. Nash discussed interactive and layered disclosure. In response to a question from Ms. Choi, Ms. Parratt noted that the staff is undertaking a comprehensive review of proxy disclosure. In response to queries from Mr. Salisbury, Ms. Nash noted the Commission's authority in the area of fund names and that the staff was also looking at ETFs. Ms. Parratt also noted, in response from a query by Mr. Kanzer, that the staff is working on responding to requests for rule changes and interpretive guidance in the area of corporate social and environmental information.

Mr. Buckley discussed Strategic Goal 4, which relates to enhancing the Commission's performance through alignment and management of human, information, and financial capital. Mr. Buckley described staff efforts to improve selection, professional development and performance management systems. He discussed efforts at leadership development, as well as IT initiatives. He finally discussed financial management issues. In response to questions from Ms. Hobson, Mr. Buckley noted the Commission staff has had low staff turnover recently. Mr. Hannibal described ideas under consideration about staff training. Mr. Joseph noted the importance of not chasing the latest training fad and focusing on collaboration. Mr. Anson recommended the consideration of obtaining input, including through staff consulting positions, from non-U.S. persons.

Mr. Hisey asked about staff plans should the Commission not receive sufficient resources. Commissioner Aguilar and Commissioner Walter noted their long support for adequate resources for the Commission. Mr. Silvers suggested the staff and Commission clearly indicate the need for resources and commended Mr. Buckley for the focus on having different Divisions work more closely together. Mr. Silvers raised the issue of whether it made sense to have SEC staff interacting more with regulated entities and market participants. Commissioner Walter noted that the "revolving door" with respect to SEC staff and industry needed to be managed, but can also produce positive voices for change investor advocacy.

Mr. Silvers also noted the Commission's need to minimize middle-management turnover. Mr. Buckley, in response to a question from Mr. Friedman, offered that increasing the number positions and motivating and training current employees are ways to improve overall staff competency. Commissioner Aguilar expressed his support for focusing on recruiting staff so that the Commission staff could be more representative of the people the Commission serves.

DISCUSSION OF SUBCOMMITTEES

Ms. Choi introduced the three subcommittees (Investor Education; Investor as Purchaser; and Investor as Owner), and Ms. Gillan introduced the staff of the subcommittees.

Mr. Salisbury, Chairman of the Education subcommittee, briefly described issues the subcommittee may consider: matters related to financial literacy; the ways issuers and boards communicate with investors; the types of technology that can be utilized for education; and the use of layered education resources. He also noted that the subcommittee would consider process issues and the sequencing of these, and potentially other, agenda items.

Mr. Bullard, Chairman of the Investor as Purchaser subcommittee, discussed potential differences between the Investor as Purchaser subcommittee and the Investor as Owner subcommittee, and noted the following issues as potentially of interest to the subcommittee: fiduciary duties; plain language; disclosure; regulatory treatment of credit-based instruments; arbitration; use of technology; and evaluation. Mr. Bullard also discussed the possibility of reaching out to both retail and institutional investors for input.

Mr. Davis, Chairman of the Investor as Owner subcommittee, noted that he had sent a memorandum to members of the subcommittee discussing some of the issues the subcommittee may address. He noted that there may be some issues about which there is already consensus, including majority voting and a clarifying statement from the SEC about the applicability of Regulation FD to dialogue between investors and boards. Mr. Davis also raised other issues the subcommittee might consider, including proxy voting and process, collective action by investors on governance issues, environmental social and governance disclosures, executive compensation, Rule 14a-8, responsibilities of shareholders, and international issues. Mr. Davis also noted that the subcommittee may look to public input, including to investors outside the United States, in developing a consensus or recommendations for the Committee.

DISCUSSION OF DRAFT RECUSAL POLICY

Ms. Gillan discussed a [draft recusal policy](#) developed in response to a request of the Committee at the meeting of July 27, 2009. Members of the Committee discussed the merits of the three paragraph draft policy, as well as whether there was a need for a policy more generally. Issues discussed included the possibility that the draft policy could inhibit discussion, the potential of limiting the policy to conflicts involving undisclosed personal financial interests, the idea of editing the draft policy into a broader policy statement, and that the draft policy was not intended to change members' statuses on the Committee from representative to special government employees. The Committee, by a hand vote, directed the staff to draft a policy statement that reflects the Committee's discussion.

Commissioner Aguilar then introduced Lori Schock, who was appointed Director of the Office of Investor Education and Advocacy. The Committee recessed at approximately 12:15 p.m.

RECESS

The Committee reconvened at approximately 2:15 p.m. In response to a question from Mr. Bullard and Commissioner Walter, Mr. Fredrickson indicated that a DFO or designee needs to attend any meeting and that the subcommittees should be cognizant of potential issues that may arise with respect to creating a quorum of the full Committee.

REPORTS FROM THE SUBCOMMITTEES

Education Subcommittee

Mr. Salisbury noted issues of financial literacy and financial education would be the highest priority areas for the group. The next highest would be exploring the types of technology and media that could be used to get messages out to the public. Also of priority to the subcommittee would be determining the scope of existing research and the efficacy of layered educational resources. Mr. Salisbury indicated, as an initial assessment, that the subcommittee did not anticipate holding hearings or taking testimony.

Investor as Purchaser Subcommittee

Mr. Bullard stated that the subcommittee agreed to take up two issues initially: fiduciary duty and mandatory arbitration. With respect to fiduciary duty, Mr. Bullard noted the Committee agreed that: (i) brokers may already be subject to fiduciary duty in some contexts; (ii) brokers should have a fiduciary duty when providing retail, personalized investment advice; (iii) fiduciary duty should be based on actual services provided to the client and the expectations of the client; and (iv) the fiduciary duty standard that should apply is a higher standard than the suitability standard and other standards currently applicable to brokers. In response to a question from Commissioner Walter, Mr. Bullard noted that fiduciary duty derives from the law of agency, which includes concepts of apparent and actual authority; he stated an investor could be made to expect certain services and that the broker did not actually provide those services would not be a defense to a claim of breach of fiduciary duty. With respect to mandatory arbitration, Mr. Bullard described a number of issues, including whether arbitration should be mandatory, the absence of a requirement that panels provide written opinions, the basis on which panels are formed, the qualifications of public and non-public panelists, and the issue of substantive legal guidance. Mr. Bullard also noted a number of issues the subcommittee is reviewing for possible future consideration, including market structure and pre-sale disclosure.

Investor as Owner Subcommittee

Mr. Davis described a number of general issues for the subcommittee: (i) proxy voting and process; (ii) the role of proxy advisory firms; (iii) collective action by investors on governance matters; (iv) independent chair of board leadership; (v) ESG disclosure issues; (vi) executive compensation practices; (vii) Rule 14a-8; (viii) the responsibilities of shareholders; and (ix) international issues. Mr. Davis noted two other issues were added: information about how boards operate; and the use of technology. Mr. Davis stated that the first action taken by the subcommittee was to engage the staff in a discussion of proxy issues.

Mr. Davis noted the subcommittee also discussed two specific issues: majority standard voting and Regulation FD. Mr. Davis stated that there was not a consensus on how to proceed on the issue of majority voting at the meeting, and that the subcommittee may attempt to circulate language that might receive support from a majority of the subcommittee. Mr. Davis indicated there was no agreement in the subcommittee to take any action immediately. Mr. Silvers noted the subcommittee agreed to take up issues related to director elections as one set of questions. Mr. Davis agreed, and stated that the subcommittee supported the concept of moving to majority rule, or a hybrid rule, for all U.S. companies.

Mr. Davis next read a resolution of the subcommittee:

The subcommittee recommends that the Committee recommend the Commission provide guidance, either itself or through staff, on the applicability of Regulation FD to communications between corporate officers and directors, and the company's shareholders.

Mr. Davis stated that Chairman Schapiro had touched on the issue following a speech in Sydney, Australia, and that a statement from the staff or Commission might help dialogue between directors and shareholders. After some discussion about the scope of the proposed statement, the phrase “regarding governance matters” was added. Mr. Silvers offered that the resolution was intended only to suggest a document that would refer to the language of the Chairman from her speech.

Mr. Friedman indicated concern with the use of Committee resources and the relative importance of the issue. He also indicated that governance matters could be material to a company and therefore implicate Regulation FD. Mr. Salisbury noted that if the intent of the resolution was more than clarifying Chairman Schapiro’s statement, he would want additional information before making a decision. Mr. Davis expressed support for the resolution, including because it could promote dialogue between companies and shareholders. Mr. Bullard indicated his view that guidance from the Commission could give comfort to general counsels advising directors on communicating with shareholders; he also indicated that the issue was not important enough to defer to another meeting. Ms. Hobson expressed concern for prioritizing this issue first. Mr. Friedman expressed concern with spending Commission resources in this area. Mr. Salisbury indicated he

would like background materials to review before making a decision on the issue and suggested deferring the issue. Mr. Silvers stated that he did not think the proposal suggested a complete review of Regulation FD. Mr. Salisbury moved to defer the issue; the Committee passed the motion. Mr. Johnson suggested Mr. Davis provide background materials on the issue for potential reconsideration at the next meeting.

DISCUSSION OF FUTURE MEETING DATE, SUBCOMMITTEE ORGANIZATION, CONCLUDING REMARKS

Ms. Choi indicated the next meeting of the full Committee would take place on February 22, 2010. Ms. Hobson inquired as to the feasibility of serving on multiple subcommittees. Ms. Gillan indicated the subcommittees would likely not have overlapping meetings again. She also indicated that members were free to reconsider memberships on subcommittees, and that neither the by-laws nor the Co-chairs prohibited multiple memberships. Commissioner Aguilar expressed gratitude to the members, especially subcommittee chairs. A motion to adjourn was made and Ms. Choi adjourned the meeting at approximately 3:40 p.m.

CO-CHAIR CERTIFICATION

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

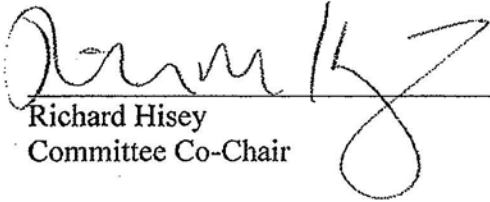


Hye-Won Choi
Committee Co-Chair

January 4, 2010
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

1/4/10
Date