

# MEETING MINUTES

## U.S. Securities and Exchange Commission's Investor Advisory Committee Minutes of the Meeting on September 21, 2022

The Investor Advisory Committee (IAC) met on September 21, 2022, in a public meeting held remotely online at <https://www.sec.gov>. The meeting convened at 10:00 am<sup>1</sup> and was broadcast live by webcast. The webcast archive can be found online: [Part 1](#) and [Part 2](#).

The following individuals participated in the meeting:

### Commissioners of the U.S. Securities and Exchange Commission (SEC)

Chair Gary Gensler  
Commissioner Hester Peirce  
Commissioner Mark Uyeda  
Commissioner Jaime Lizarraga

### Members of the Investor Advisory Committee

Jamila Abston  
Cambria Allen-Ratzlaff  
James Andrus  
Cien Asoera  
Gina-Gail Fletcher  
Elissa Germaine  
Brian Hellmer  
Colleen Honigsberg  
Christine Lazaro  
Nancy LeaMond  
Lori Lucas  
Christopher Mirabile  
Andrew Park  
Sandra Peters  
David Rhoiney  
Paul Roye  
Brian Schorr  
Paul Sommerstad  
Alice Stinebaugh  
Leslie Van Buskirk

---

<sup>1</sup> All times listed are for the local Washington, DC time.

# MEETING MINUTES

## Panelists

Kavya Vaghul  
Tye Graham  
Ethan Rouen  
Christine Shaw  
Elisabeth de Fontenay  
Henry T.C. Hu  
Richard Zabel  
Stephen Fraidin  
Ty Gellasch  
David A. Katz  
Jeffrey N. Gordon  
Brandon Rees  
Anne Simpson  
Jason Czarnezki  
Madison Condon  
Jon Hale

## SEC Staff

Marc Sharma, Chief Counsel, Office of the Investor Advocate

## Opening

Chair Christopher Mirabile called the meeting to order at 10:00 am, opened the meeting, and a roll call of members was taken.

## Initial Business and Opening Remarks

Chair Mirabile turned the floor over to Chair Gensler for opening remarks, followed by remarks by Commissioner Peirce, Commissioner Uyeda, and Commissioner Lizarraga.

## Approval of Minutes

A motion was put forward and seconded to approve the minutes of the IAC meeting held on June 9, 2022. The minutes were approved and subsequently posted to the [IAC webpage](#).

## Panel Discussion Regarding Human Capital Management: Labor Valuation and Performance Data

Chair Mirabile turned over the floor to Ms. Allen-Ratzlaff to introduce the panel topic and moderate. Ms. Allen-Ratzlaff introduced the panel followed by remarks from each panelist in the order listed below:

- **Kavya Vaghul**, Senior Director of Research, JUST Capital
- **Ethan Rouen**, Assistant Professor of Business Administration, Accounting and Management Unit, Harvard Business School

# MEETING MINUTES

- **Christine Shaw**, Principal Investment Officer for Corporate Governance and Sustainable Investment, Office of the Connecticut State Treasurer
- **Ty Graham**, Executive Vice President and Chief Human Resource officer, Amalgamated Bank

Ms. Vaghul discussed the current U.S. labor market, opportunities for companies, investors, and others, and opined on the availability of data related to human capital metrics. She commented on the causes and consequences of a tight labor market, how the current climate helps explain job quality shortages, and on investors' ability to obtain data.

Mr. Rouen discussed the need for better labor disclosures and insight into employment expenses. He then provided some commentary on employee turnover as it relates to investors, diversity, equity, and inclusion (DEI) disclosure, retention and turnover, and categories such as health, safety, and training.

A Q&A between panelists and attendees occurred, moderated by Ms. Allen-Ratzlaff before moving to the second part of the panel.

Ms. Shaw began by providing remarks on biographical data related to the Connecticut pension and trust funds. She then provided commentary on how manager selection relates to how managers evaluate labor-related issues. She provided commentary on shareholder engagement activities, and human capital management disclosures.

Mr. Graham began by providing remarks on human capital data and manage a workforce. He then provided commentary on the metrics used in 10-k and Proxy filings such as: DEI workforce composition, total number of employees, number of unionized workers, percentages of employees that are internally promoted, employee training, employee tenure, and competitive pay.

A Q&A between panelists and attendees occurred, moderated by Ms. Allen-Ratzlaff.

## **Recess**

Chairman Mirabile took the meeting into recess at 12:06 p.m.

## **Non-Public Administrative Session**

Chair Mirabile took the Committee into a non-public administrative session at 12:30 p.m.

## **Afternoon Session**

Chair Mirabile called the afternoon public session to order at 1:30 p.m. and asked Gina-Gail Fletcher to introduce the panelists for the afternoon session.

## **Panel Discussion Regarding Proposed Rule 10B-1, Position Reporting of Large Swap Positions**

Chair Mirabile turned over the floor to Ms. Fletcher to introduce the panel topic and moderate. Ms. Fletcher introduced the panel followed by remarks from each panelist in the order listed below:

# MEETING MINUTES

- **Henry T.C. Hu**, Allan Shivers Chair in Law of Banking and Finance, University of Texas at Austin School of Law
- **Richard Zabel**, General Counsel, Chief Legal Officer and Head of Research, Elliott Investment Management
- **Elisabeth De Fontenay**, Professor of Law, Duke University School of Law

Mr. Hu began the discussion with an overview of Section 10B based rulemaking. He then provided commentary on equity derivatives and the difference in their disclosures under a 13D regime, “synthetic equity” vs. cash-settled equity swaps. He highlighted differences in filing deadlines and threshold amounts.

Mr. Zabel began by talking about activist investing as a practice, and about cash-settled security-based swap strategies. He then provided commentary on the negative effects of instituting the SEC’s proposal to require next-day public disclosure of the holding of security-based swaps above a specific threshold.

Ms. De Fontenay began by discussing proposed rule 10B-1 and concerns surrounding market efficiency, public derivative markets, and systemic risk. She then provided commentary on various proposals regarding disclosure of large swap positions, reporting windows, and thresholds related to the differences between equity and debt swaps.

A Q&A between panelists and attendees occurred, moderated by Ms. Fletcher before moving to the second panel.

## **Panel Discussion Regarding Schedule 13(D) and 13(G) Beneficial Ownership Reports**

Ms. Fletcher introduced the panel followed by remarks from each panelist in the order listed below:

- **Stephen Fraidin**, Partner, Cadwalader
- **David Katz**, Partner, Wachtell, Lipton, Rosen & Katz
- **Jeffrey N. Gordon**, Richard Paul Richman Professor of Law, Columbia Law School
- **Ty Gellasch**, President and CEO, Healthy Markets
- **Brandon Rees**, Deputy Director of Corporations and Capital Markets, AFL-CIO

Mr. Fraidin began the discussion by outlining the SEC proposed rule change, and shared his views on the window required to file, the SEC’s definition of “undisclosed groups,” and his thoughts on cash-settled derivatives.

Mr. Katz began by sharing his thoughts on market transparency and his perception of deficiencies in the current rules. He then provided commentary on the ten-day reporting window and the differences between institutional investors vs. activist investors. He further shared commentary on beneficial ownership.

Mr. Gordon began by discussing the Williams Act, abrupt control shifts, and buying opportunities that allow firms to acquire shares at an unaffected price. He provided commentary on the ten-day window, and advocated for various safe-harbor provisions, in addition to providing comments on tipping in advance of the filing of the 13D.

# MEETING MINUTES

Mr. Gellasch began by providing background on public position reporting and offered some suggestions for improving the SEC's recent proposals. He advocated for more transparent public disclosure.

Mr. Rees began by sharing commentary on the Commission's proposed Form 13D and 13G beneficial ownership rules. He then shared commentary on the ten-day window and discussed the definition of a “group” in relation to the rules.

A Q&A between panelists and attendees occurred, moderated by Ms. Fletcher before moving to the Third panel.

## **Panel Discussion Regarding ESG Fund Disclosures**

Chair Mirabile turned over the floor to Ms. Abston to introduce the panel topic and moderate. Ms. Abston introduced the panel followed by remarks from each panelist in the order listed below:

- **Jason Czarnecki**, Gilbert and Sarah Kerlin Distinguished Professor of Environmental Law chair, Associate Dean of Environmental Law Programs and Strategic Initiatives, Pace University
- **Madison Condon**, Associate Professor, Boston University Law School
- **John Hale**, Global Head of Sustainability Research, Morningstar
- **Anne Simpson**, Global Head of Sustainability, Franklin Templeton and Visiting Fellow, Oxford University and Professor, University of California Berkeley

Mr. Czarnecki began the discussion by explaining some of the terminology surrounding ESG and related terms. He then provided commentary on what ESG lawyers are doing in the investment and financial space before offering some thoughts regarding concerns around ESG disclosure, ESG targets, and greenwashing.

Ms. Condon began with an overview of federal government actions related to monitoring climate change as a financial risk and, more specifically, what the SEC is doing. She then provided commentary on ESG-related rules that the SEC is working on.

Mr. Hale began by talking about the SEC's consideration of a proposed rule requiring ESG disclosure for mutual funds. He then provided commentary on the difference between ESG as process and ESG as product.

Ms. Simpson began by discussing her thoughts on the framework for ESG as a “fiduciary duty.” She then provided commentary on the previous product versus process discussion.

A Q&A between panelists and attendees occurred, moderated by Ms. Abston.

## **Discussion of Recommendations on Cybersecurity Disclosure**

Chair Mirabile asked Ms. Allen-Ratzlaff to present the proposed recommendation on cybersecurity risk management, strategy, governance, and incident disclosure. Following Ms. Allen-Ratzlaff's presentation, Chair Mirabile opened up the discussion to additional comments from IAC members.

# MEETING MINUTES

A motion was put forward and seconded to move for the adoption of the cybersecurity recommendation. A voice vote was taken with 17 members in attendance voting in the affirmative to approve the recommendation.

## **Discussion of Recommendations on Climate Risk Disclosure**

Chair Mirabile asked Mr. Hellmer to present the proposed recommendation on climate-related disclosure risk. Following Mr. Hellmer's presentation, Chair Mirabile opened up the discussion to additional comments from IAC Members.

A motion was put forward and seconded to move for the adoption of the climate disclosure recommendation. A voice vote was taken with all members in attendance voting in the affirmative to approve the recommendation, with four abstentions.<sup>2</sup>

## **Discussion of Recommendations on Accounting Modernization**

Chair Mirabile asked Ms. Honigsberg to present the proposed recommendation on accounting modernization. Following Ms. Honigsberg's presentation, Chair Mirabile opened up the discussion to additional comments from IAC members.

A motion was put forward and seconded to move for the adoption of the accounting modernization recommendations. A voice vote was taken with all members in attendance voting in the affirmative to approve the recommendation with one abstention.<sup>3</sup>

## **Subcommittee Reports**

Chair Mirabile called upon Ms. Allen-Ratzlaff to report on matters of the Investor-as-Owner Subcommittee. Chair Mirabile called upon Mr. Park to report on the matters of the Market Structure Subcommittee. Chair Mirabile then called upon Mr. Asoera to deliver the report on the matters of the Investor-as-Purchaser Subcommittee. Lastly, Chair Mirabile called upon Mr. Hellmer to report on the matters of the Disclosure Subcommittee.

## **Closing Remarks and Adjournment**

Chair Mirabile adjourned the meeting at 4:51 pm.

---

<sup>2</sup> Ms. Abston, Ms. Peters and Ms. Van Buskirk abstained.

<sup>3</sup> Ms. Abston abstained.