

SEC Asset Management Advisory Committee - Subcommittee on Diversity and Inclusion

Recommendations for Consideration by the AMAC on July 7, 2021

Gilbert A. Garcia

Scot E. Draeger

Paul Greff

I. Background

Based on input from membership of the SEC Asset Management Advisory Committee (hereinafter the “AMAC”) regarding asset management industry priorities, the AMAC formed the Subcommittee on Diversity and Inclusion (hereinafter the “Subcommittee”). Prior to the Subcommittee’s formation, the lack of gender and racial diversity within the asset management industry (hereinafter the “industry”) was already well-known and widely acknowledged. For example, before the Subcommittee’s formation, the investor community, many in the asset management industry, and Congressional leadership, had been advocating for more transparency and study of diversity and inclusion in the industry.¹ The focus of the Subcommittee has included the following actions: (1) study the current state of diversity and inclusion in the industry, as well as the impact of the lack of diversity and inclusion; (2) gain informed perspective on investor interest in diversity matters, as it pertains to investor (and/or investment consultant) selection of asset management firms and investment products; (3) consider investor need for transparency regarding matters of diversity and the ease or challenge associated with access to reliable disclosure; and, ultimately, (4) consider whether Commission action in this area would benefit the investing public, the industry at large, and the public markets. As the Subcommittee’s work progressed over the last year, a refined focus was made to identify areas where increased transparency on matters of diversity and inclusion would have specific benefit relative to investors’ description of what is “material” to their selection of investment advisers and investment

¹ See, e.g., *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority- and Women-Owned Asset Managers*, September 2017, Submitted to the AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>; U.S. House of Representatives, House Financial Service Committee – Subcommittee on Diversity and Inclusion, House Hearing Transcript, 116th Congress, *Diverse Asset Managers, Challenges, Solutions, and Opportunities*, <https://www.congress.gov/house-event/109724/text>; *The importance of Diversity in Asset Management*, March 19, 2019, Alliance Bernstein, <https://alliancebernstein.com/library/the-importance-of-diversity-in-asset-management.htm>; *When Will We See More Diversity in Investing*, Harvard Business Review, May 25, 2019; *Understanding Diversity and Inclusion in the Investment management Industry, The Diversity Project*, PwC, March 2018, <https://www.pwc.com.au/financial-service-understanding-d&i-in-the-investment-management-industry-pdf>.

funds. The AMAC remains dedicated to focusing recommendations on matters directly germane to the Commission’s mission, which it believes includes investor protection, market fairness, and encouragement of a market environment that is worthy of public trust. The AMAC approached this work with an earnest dedication to serve the investing public, the industry, and other securities market participants.

II. AMAC’s Study of Diversity and Inclusion

Over the course of many months and countless hours, the AMAC has gathered and studied data and convened panels of experts in public forums. The quantitative data on the lack of diversity and inclusion, the qualitative “human” side of experiences shared by women and people of color in the industry, and the call by investors for more transparency on diversity, were all compelling (independently and collectively). A *truly* brief summary of what we learned is represented below.

A. The Statistics Are Startling and Tell a Clear Story

Of the \$70 trillion in global financial assets under management (hereinafter “AUM”) across the investment universe, less than 1% are managed by minority-owned or women-owned firms.² Independent from AUM, across the industry of asset management firms, percentages of ownership interests by women and people of color in asset management firms remains startlingly and disproportionately low, by any and every objective measure.³ Women and people of color also remain

² See *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority-and Women-Owned Asset Managers*, September 2017, Submitted to AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>.

See also *Study: Race Influences Professional Investors’ Financial Judgments*, Lyons-Pedia et. al., Stanford University, May 2019, Submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-race-influences.pdf>.

³ See *Diverse Asset Managers Initiative Investment Consultant Survey & Report 2018*, Raben Group, Submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-diverse-asset-managers-initiative-2018.pdf>; *Diverse Asset Managers Initiative Investment Consultant Survey & Report 2019*, Raben Group, Submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-diverse-asset-managers-initiative-2019.pdf>; *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority-and Women-Owned Asset Managers*, September 2017, Submitted to AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>; *Diversity of Asset Managers in Philanthropy*, Global Economics Group, Knight Foundation, February 2020, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-diversity-of-asset-managers-in-phil.pdf>; *2018 Diverse Asset Management Firm Assessment*, Josh Lerner, Harvard Business School & Bella Private Markets, January 2019, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-2018-diverse-asset-management.pdf>.

dramatically underrepresented (by all objective measures) at the board and senior management levels within asset management firms and fund complexes.⁴ This severe underrepresentation also extends to general employment within the industry.⁵

B. Active Discrimination Exists and Remains a Barrier for Minority-and Women-Owned Firms

Studies that the AMAC believes are from credible and objective sources find widespread gender and racial bias in the decisions by those in positions making asset and asset manager allocation decisions regarding who manages money for governments, universities, charities, foundations, and the institutional market in general.⁶ Credible studies also show that artificial barriers that do not advance

See also Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Solange Brooks, New America Alliance, before the AMAC, July 16, 2020, <https://sec.gov/files/a.mac-071620-transcript.pdf>; Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Brenda Chai, before the AMAC, Associations of Asian American Investment Professionals, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Bob Greene, National Association of Investment companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>.

⁴ See *Diverse Asset Managers Initiative Investment Consultant Survey & Report 2018*, Raben Group, Submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-diverse-asset-managers-initiative-2018.pdf>; *Diverse Asset Managers Initiative Investment Consultant Survey & Report 2019*, Raben Group, Submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-diverse-asset-managers-initiative-2019.pdf>. *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority-and Women-Owned Asset Managers*, September 2017, Submitted to AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>.

⁵ See *Diverse Asset Managers Initiative Investment Consultant Survey & Report 2018*, Rabin Group, Submitted to AMAC on July 16, 2020. <https://sec.gov/files/amac-background-diverse-asset-managers-initiative-2018.pdf>; See *Diverse Asset Managers Initiative Investment Consultant Survey & Report 2019*, Rabin Group, Submitted to AMAC on July 16, 2020. <https://sec.gov/files/amac-background-diverse-asset-managers-initiative-2019.pdf>.

⁶ See *Study: Race Influences Professional Investors' Financial Judgments*, Lyons-Pedia et. al., Stanford University, May 2019, Submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-race-influences.pdf>. *2018 Diverse Asset Management Firm Assessment*, Josh Lerner, Harvard Business School & Bella Private Markets, January 2019, submitted to AMAC on July 16, 2020,

the interests of investors have been constructed and are being utilized by asset allocators under the guise of fiduciary considerations.⁷ The AMAC believes that, considering the critical role of asset allocators in setting priorities on how capital is distributed, the implications of these stark gender and racial disparities are concerning and adverse to the interests of the public markets at large.

C. Performance Myths Were Dispelled

Put simply, the AMAC believes the evidence is clear that investment performance by diverse asset managers is equal to or greater than the investment performance of firms that lack diversity in ownership and senior leadership, despite differences in size and length of track record.⁸ Artificial

<https://sec.gov/files/amac-background--2018-diverse-asset-management.pdf>; *Intolerance of Failure – Evidence From U.S. Private Equity, January 2019*, Josh Lerner, Harvard Business School & Bella Private Markets, <https://www.sec.gov/files/amac-background-intolerance-of-failure.pdf>;

⁷ See *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority-and Women-Owned Asset Managers*, September 2017, Submitted to AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>; *2018 Diverse Asset Management Firm Assessment*, Josh Lerner, Harvard Business School & Bella Private Markets, January 2019, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background--2018-diverse-asset-management.pdf>; *Intolerance of Failure – Evidence From U.S. Private Equity, January 2019*, Josh Lerner, Harvard Business School & Bella Private Markets, <https://www.sec.gov/files/amac-background-intolerance-of-failure.pdf>.

See also, Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Solange Brooks, New America Alliance, before the AMAC, July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Brenda Chai, before the AMAC, Associations of Asian American Investment Professionals, July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Bob Greene, National Association of Investment Companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>.

⁸ See Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>; See Testimony of Robert Rabin, Raben Group, before the AMAC, July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>.

See also, *2018 Diverse Asset Management Firm Assessment*, Josh Lerner, Harvard Business School & Bella Private Markets, January 2019, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background--2018-diverse-asset-management.pdf>; *Intolerance of Failure – Evidence From U.S. Private*

barriers (such as AUM size and length of track record) have been constructed that, when applied dispositively, directly and indirectly exclude women and people of color from the opportunity to compete within the industry. Indeed, peer-reviewed academic research indicates that diversity in life experiences is additive to investment performance.⁹

- D. There is a Clear and Direct Link Between the Commission’s Mission and Investor Calls for Transparency on Diversity and Inclusion in the Asset Management Industry
- The Concept of “Public Interest” Has Evolved: Central to the Commission’s work (legally and philosophically), is the concept of “public interest,” and appreciating where the Commission’s mission overlaps with public interest. Within the industry, it is widely acknowledged, publicly and privately, that we are in the midst of an evolution of the concept of “public interest,” as that interest pertains to diversity in the industry (and, at large, in the global economy).¹⁰ The education the AMAC has received from leaders in

Equity, January 2019, Josh Lerner, Harvard Business School & Bella Private Markets,
<https://www.sec.gov/files/amac-background-intolerance-of-failure.pdf>;

⁹ See, for example, Oleg Chuprinin and Denis Sosyura, 2018, Family Descent as a Signal of Managerial Quality: Evidence from Mutual Funds, *Review of Financial Studies* 31, 3756-3820. This paper indicates that mutual fund managers from less-privileged backgrounds outperform those that come from a family of privilege. The authors infer that managers born poor face higher hurdles in being promoted in the asset management industry, so those who are promoted have better talents.

See also, Alexandra Niessen-Ruenzi and Stefan Ruenzi, 2019, Sex Matters: Gender Bias in the Mutual Fund Industry, *Management Science* 65, 3001-3025. Here, the authors document lower investor inflows to female-managed mutual funds, while there is no different in portfolio performance associated with gender. The authors infer that this may be a reason for the low fraction of women in the mutual fund industry.

¹⁰ See *National Association of Securities Professionals, Statement for the Record by Ronald C. Parker, CEO NASP, U.S. House Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, June 25, 2020*, submitted in advance to AMAC July 16, 2020, <https://sec.gov/files/amac-background-parker-nasp-statement.pdf>; See also Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Opening remarks of former SEC Chairman Clayton at the AMAC Meeting held on July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Opening remarks of former SEC Director of the Division of Investment Management, Dalia Blass, at the AMAC Meeting held on July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Bob Greene, National Association of Investment Companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>;

government, the corporate community, the investing public, and the industry, has raised awareness (and, for most, full acceptance) that diverse perspectives, diverse work forces, diversity of those who have access to capital, fair competition for allocation of capital, and growing the diversity at the ownership level within the industry, are each accepted as being in the “public interest.”¹¹ For the AMAC, it is clear that those in opposition to this truth, will be on the “wrong side of history.” Historically, and presently, the Commission has exhibited a keen sense of the direction of public sentiment (and sentiment of both investors and other market participants). From the dedication of the Commission (as seen in recent Commission speeches and actions, as well as appointments and work of individuals within the Commission,) it appears clear to the public that the Commission is “leaning into,” and not resisting, this evolution of “public interest.”¹²

Testimony of Solange Brooks, New America Alliance, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Brenda Chai, before the AMAC, Associations of Asian American Investment Professionals, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>;

See also Testimony of Michael Manning, NEPC, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Michael Miller, Colonial Consulting, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Clayton Jue, Leading Edge, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Cheryl Alston, Employees’ Retirement Fund of the City of Dallas, Texas, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Michael Frerichs, Illinois State Treasure, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Anyori (A.J.) Hernandez, New York State Common Retirement Fund, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>;

See also, Testimony of John (Martin) Cabrera, Cabrera Capital, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>; Testimony of John W. Rogers, Jr., Arial Investments, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>; Testimony of Ruby Dang, Garcia, Hamilton & Associates, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>.

¹¹ *See id.*

¹² *See* Opening remarks of former SEC Chairman Clayton at the AMAC Meeting held on July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Opening remarks of former SEC Director of the Division of Investment Management, Dalia Blass, at the AMAC Meeting held on July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>.

- The Concept of “Materiality” has Evolved: Also central to the Commission’s work 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 appreciate that the Commission makes thoughtful study of what a reasonable investor considers “material” in a variety of contexts. In the context of the disclosures made by SEC-registered advisory firms (in Form ADV and other disclosure documents) and the fund products they manage (in Form N-1A and other disclosure documents), the question for the Commission is: In today’s world, what information is considered material both by and to an investor (institutional or retail) when deciding whether to hire or retain an SEC-registered advisory firm (whether as a consultant, direct asset manager, or through a fund managed by the advisory firm)? Once again, we look to the education we received during the AMAC meetings over the last year, the many inputs coming from the investing community, and the excellent data gathered by the industry’s trade groups, such as the Investment Adviser Association and the Investment Company Institute. What we have learned is that the kinds of information that is material to investors has evolved alongside the evolution of public interest in elevating diversity as a “value” that is worthy of consideration in the advisory and investment fund selection process.¹³ We believe it has become clear that, for the

¹³ See *National Association of Securities Professionals, Statement for the Record by Ronald C. Parker, CEO NASP, U.S. House Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, June 25, 2020*, submitted in advance to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-parker-nasp-statement.pdf>; See also Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Opening remarks of former SEC Chairman Clayton at the AMAC Meeting held on July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Opening remarks of former SEC Director of the Division of Investment Management, Dalia Blass, at the AMAC Meeting held on July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Bob Greene, National Association of Investment Companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Solange Brooks, New America Alliance, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Brenda Chai, before the AMAC, Associations of Asian American Investment Professionals, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>;

See also Testimony of Michael Manning, NEPC, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Michael Miller, Colonial Consulting, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Clayton Jue, Leading Edge, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Cheryl Alston, Employees’ Retirement Fund of the City of Dallas, Texas, before the AMAC, September 16, 2020,

investing public, information about the presence or absence of gender and racial diversity within an advisory firm's workforce, officer ranks, ownership ranks, in construction of fund boards, and business practices is increasingly accepted as a material consideration in the selection of and/or retention of an investment advisory firms.¹⁴

<https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Michael Frerichs, Illinois State Treasury, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Anyori (A.J.) Hernandez, New York State Common Retirement Fund, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>;

See also, Testimony of John ("Martin") Cabrera, Cabrera Capital, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>; Testimony of John W. Rogers, Jr., Ariel Investments, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>; Testimony of Ruby Dang, Garcia, Hamilton & Associates, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>.

¹⁴ *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority and Women-Owned Asset Managers*, September 2017, Submitted to AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>; *Diversity of Asset Managers in Philanthropy*, Global Economics Group, Knight Foundation, February 2020, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background-diversity-of-asset-managers-in-phil.pdf>; *2018 Diverse Asset Management Firm Assessment*, Josh Lerner, Harvard Business School & Bella Private Markets, January 2019, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background--2018-diverse-asset-management.pdf>.

See also Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Solange Brooks, New America Alliance, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Brenda Chai, before the AMAC, Associations of Asian American Investment Professionals, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Bob Greene, National Association of Investment companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>;

See also Testimony of Michael Manning, NEPC, before the AMAC, September 16, 2020. <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Michael Miller, Colonial Consulting, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Clayton Jue, Leading Edge, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Cheryl Alston, Employees' Retirement Fund of the City of Dallas, Texas, before the AMAC, September 16, 2020,

- Our work and education have highlighted a shift in both public interest in diversity in the asset management industry and the extent to which adviser’s commitment to diversity is considered material to the decision of those selecting and retaining such firms. Our work has also highlighted a lack of current transparency easily available on matters of diversity, as well as the failure of “voluntary” disclosure initiatives to promote greater transparency. That drives us toward the recommendations herein. You will notice that a conscious decision was made to target/limit recommendations to disclosure (“sunlight”), and areas worthy of Commission study. We make no recommendations that would mandate any business decisions or any business practices on the part of any SEC registrant. Given the failure of past initiatives in achieving relevant disclosure on a *voluntary* basis, however, you will see that we recommend that such disclosures be *mandatory*.

III. Recommendations

A. Disclosure Recommendations

1. Transparency of Diversity Within a Firm: We recommend the Commission require enhanced disclosure in SEC filings by investment advisers required to be registered under the Investment Advisers Act of 1940 (particularly, Form ADV), to provide transparency on issues of gender and racial diversity in the workforce, officer ranks, and ownership ranks of advisory firms.
2. Fund Board and Fund Adviser Diversity: We recommend the Commission require enhanced disclosure in SEC filings for investment companies required to be registered under the Investment Company Act of 1940 (particularly, Form N-1A), to provide transparency on

<https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Michael Frerichs, Illinois State Treasury, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>; Testimony of Anyori (A.J.) Hernandez, New York State Common Retirement Fund, before the AMAC, September 16, 2020, <https://www.sec.gov/files/amac-9-16-20-mtg-transcript.pdf>;

See also, Testimony of John (“Martin”) Cabrera, Cabrera Capital, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>; Testimony of John W. Rogers, Jr., Arial Investments, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>; Testimony of Ruby Dang, Garcia, Hamilton & Associates, before the AMAC, December 1, 2020, <https://sec.gov/files/amac-120120-transcript.pdf>

gender and racial diversity on the fund board(s) of each fund, as well as issues of gender and racial diversity in the workforce, officer ranks, and ownership ranks of advisory and sub-advisory firms employed by each investment company registrant.

3. **Transparency of Business Practices for Consultants Who Recommend Investment Advisers and Investment Funds:** We recommend that the Commission enhance disclosure in SEC filings (particularly, Form ADV), to provide transparency in material business practices relevant to an investor’s assessment of gender and racial diversity and inclusion. Specifically, we recommend that the Commission require SEC-registered investment advisers who serve as either asset allocators or consultants for asset aggregators and/or allocators to include disclosure on whether and to what extent the registrant’s policies include diverse asset management firms in the pool of those considered and/or selected. In addition to such enhanced disclosures, the AMAC believes it is imperative that institutional investors have confidence that they are receiving unbiased recommendations (of which asset managers and funds to employ) from their consultants, including that consultants proactively consider Investment Advisers with a diverse ownership, diverse investment management personnel, and/or a diverse governance structure—given that such firms are generally smaller in AUM and easier to overlook. Thus, we also recommend enhanced focus by OCIE in the examination process on the adequacy (industry wide) of conflict-of-interest disclosure by registered investment advisers who serve primarily as consultants to institutional investors in making recommendations on the selection of investment advisers and funds. We believe that ensuring complete and prominent disclosure of any and all economic benefit that a consultant, or any of its affiliates, receives from money managers recommended to (or employed) by their clients is worthy of reinforcement.

Note: With respect to disclosure recommendations, we have focused on “why” change is needed and “what” change may be most appropriate and impactful in consideration of aligning investor interests, industry sentiment, and the Commission’s mission. We leave the “how” (or the details on location and exact scope of disclosure) to the very capable SEC Staff.

- B. **Commission or Staff Guidance to Fiduciaries Selecting Asset Managers:** We believe the record created through our work evidences that many fiduciaries use a narrow diligence checklist of exclusionary factors, such as minimum AUM and minimum length of performance track record, that have the direct or indirect impact of eliminating nearly all asset management firms owned by women and people of color from consideration in the selection process for institutional asset management.¹⁵ In other words, discrimination against diverse managers has effectively been

¹⁵ See *United States Government Accountability Office Report to Congress on the Investment Management Industry – Key Practices Could Provide More Options for Federal Entities and Opportunities for Minority- and Women-Owned Asset Managers*, September 2017, Submitted to AMAC on July 16, 2020, <https://www.sec.gov/files/amac-background-gao-investment-management.pdf>; *2018 Diverse Asset Management Firm Assessment*, Josh Lerner, Harvard Business School & Bella Private Markets, January 2019, submitted to AMAC on July 16, 2020, <https://sec.gov/files/amac-background--2018->

codified in diligence checklists on “how to fulfill your fiduciary duty” when selecting asset managers. These checklists are deployed by investment consultants who are, themselves, SEC-registered investment advisers, in their process of recommending asset managers to institutional investors.¹⁶ We believe factors such as AUM and how long a firm has been in business are certainly appropriate criteria (along with many other objective and subjective considerations). However, when they are each applied as independent and dispositive exclusionary hurdles, the impact is highly discriminatory.

We do not believe it is in the best interest of investors to have nearly all diverse managers “filtered out” of consideration by an inappropriately limited set of fiduciary considerations. Indeed, we believe that the Commission should encourage the use of diverse managers in order to promote the best outcomes for investors. We believe investors, the industry, and the public markets would benefit by Commission guidance that clarifies that a wide variety of factors may be considered by fiduciaries in their selection of asset management firms and that fulfillment of one’s fiduciary duty in this context does not require automatic exclusion of asset managers who are newer to the industry or do not already have a certain level of AUM. Once again, while we believe such factors are relevant in the total mix of information for a fiduciary, the Commission should discourage discrimination under the “guise” of fulfilling one’s fiduciary duty.

C. Pay-To-Play Universe: SEC Staff Study of the Influence of Political Contributions on Asset Allocation in the Institutional Market

1. Background: Our education has raised some interesting inquiries regarding the link between diversity & inclusion work and the pay-to-play rules. We believe it is universally accepted that investment advisers should be prohibited from making political contributions which may inappropriately influence the award of investment advisory contracts, and certainly this Subcommittee reaffirms that view. Yet, reasonable questions have surfaced regarding

[diverse-asset-management.pdf](#); *Intolerance of Failure – Evidence From U.S. Private Equity, January 2019*, Josh Lerner, Harvard Business School & Bella Private Markets, <https://www.sec.gov/files/amac-background-intolerance-of-failure.pdf>.

See also, Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Juan Martinez, Knight Foundation, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Solange Brooks, New America Alliance, before the AMAC, July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Brenda Chai, before the AMAC, Associations of Asian American Investment Professionals, July 16, 2020. <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Bob Greene, National Association of Investment Companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>.

¹⁶ *See id.*

whether there are some corners in this universe where the sunlight may still be needed to serve as a disinfectant on inappropriate influence of political monies in asset allocation.¹⁷ Independently, we have been educated that the practical application of the pay-to-play rules (and potential loopholes in the rules) may have created unintended consequences and adverse impacts on the ability for diverse asset management firms to compete for government, municipal, and institutional assets. Experts who provided public statements and reports raised concerns that contributions made by industry-organized Political Action Committees (a level of “sponsorship” where few, if any, diverse asset managers or their owners “contribute”), may be used to indirectly influence the allocation of government, municipal, and institutional assets.¹⁸ While there may be no technical violations of the current pay-to-play rules in this context, we believe the Commission should study whether the limitations of the pay-to-play rules, as currently drafted, leave scope for contributions to be made by market participants who have large PACs and extensive lobbying budgets, which are funded by, and typically used to procure influence for, disproportionately large, non-diverse, firms. At the same time, a small campaign contribution (but one exceeding the arguably outdated *de minimis* standard¹⁹) by the owner of a small and/or diverse asset management firm, supporting a candidate for governor, for example, would exclude that firm from responding to Requests For Proposals for government bodies, even where the governor has very little connection (and no real influence) over the selection of advisory firms. It appears to AMAC that the current environment may allow for the opportunity for PAC contributions to inappropriately influence asset manager selection, which seems contrary to the spirit of the pay-to-play rules. We believe a host of complicated issues are embedded here, including, among other things, First Amendment considerations, the adequacy of the scope and nuances of the existing pay-to-play rules, and the extent to which securities laws and election laws intersect, overlap, compete against, or compliment the multiple public policy areas implicated.

2. Study of Pay-to-Play Universe: While specific changes in the regulations in this area are best left to the SEC Staff’s expertise, our work and education has raised some interesting questions that are worthy of study by the Commission. It has been ten years since the Commission performed a “deep dive” in the pay-to-play area. We feel a recommendation that the Commission engage in a study of how the industry practices have “evolved” could produce meaningful insights.

¹⁷ See Testimony of Bob Greene, National Association of Investment companies, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Ron Parker, National Association of Securities Professionals, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>; Testimony of Robert Raben, Raben Group, before the AMAC, July 16, 2020, <https://sec.gov/files/amac-071620-transcript.pdf>.

¹⁸ See *id.*

¹⁹ See *de minimis* exceptions in Investment Advisers Act Rule 206(4)-5.

D. Procedure for Managing Reports of Discriminatory Practices

It is beyond question that a variety of discriminatory practices occur regularly within the industry. The shape and forms of such discriminatory practices vary widely. While some may involve employment practices (already regulated by other state and federal laws, regulations, and government agencies), other discriminatory practices involve independent contracting efforts. In certain circumstances, the independent contracting (of asset managers) occurs in arenas where state and federal laws on government procurement may apply; however, many discriminatory circumstances occur in private contracting processes that are not governed by government procurement laws and regulations. It can be confusing for those who are the subject of discrimination to know where to report such discriminatory practices.

To be clear, we fully appreciate that it is outside the Commission's mission or mandate to become a center for redressing complaints related to discriminatory employment and contracting processes in the securities industry. However, in order to ensure that such complaints are directed to the right forum for public redress outside the Commission, we recommend that the Commission establish centralized and uniform practices for directing reporting parties (who contact the SEC) to an office at a government agency which is designed and more appropriately equipped to investigate any valid complaints. In addition, we recommend that the Commission catalogue and maintain records associated with such complaints in a manner that can be evaluated over time. We also recommend that the Commission publish a list of resources on its website for victims of discriminatory practices in the industry.

IV. Conclusion

As provided at the outset, the focus of the Subcommittee has included: (1) study of the current state of diversity and inclusion in the industry, as well as the impact of the lack of diversity and inclusion; (2) gain informed perspective on investor interest in diversity matters, as it pertains to investor (and/or investment consultant) selection of asset management firms and investment products; (3) consideration of investor need for transparency regarding matters of diversity and the ease or challenge associated with access to reliable disclosure; and, ultimately, (4) whether Commission action in this area would benefit the investing public, the industry at large, and the public markets.

As our work progressed over the last year, the data and record, viewed objectively, showed broad investor and market interest in diversity disclosure by asset management firms. In following where the record took us, we refined focus to identify areas where increased transparency on matters of diversity and inclusion would have specific benefit relative to investors' description of what is "material" to their selection of investment advisers and investment funds, including in their selection of asset managers. AMAC's recommendations focus exclusively on matters directly germane to the Commission's mission, which includes investor protection, market fairness, and encouragement of a

market environment that is worthy of public trust. We approached this work with dedication to serving the investing public, the industry, and other market participants.