



---

# Securities and Exchange Commission Investor Advisory Committee

May 17, 2010  
Washington, DC



# Agenda

- 9:00 a.m.** Welcome by Commissioner Luis A. Aguilar
- 9:10 – 10:45 a.m.** Discussion with Dr. Dan Ariely, author of *Predictably Irrational*
- 10:45 – 12:45 p.m.** Discussion with Panel: Mandatory Arbitration  
*Moderator: Mercer Bullard, Chair of Investor as Purchaser Subcommittee*  
*Panelists: Linda Fienberg, Pres., FINRA's Dispute Resolution Department*  
*Patricia Cowart, Section Manager, Retail Brokerage Litigation Section, Wells Fargo Corp. Law Department*  
*Jennifer Johnson, Prof., Lewis & Clark Law School*  
*Barbara Black, Prof., University of Cincinnati College of Law*
- 12:45 – 1:30 p.m.** Lunch Break
- 1:30 – 2:15 p.m.** Discussion with Staff: Money Market Funds and Net Asset Value
- 2:15 – 2:45 p.m.** Update and Recommendation from Education Subcommittee: Public Service Announcement Campaign
- 2:45 – 3:30 p.m.** Discussion with Investor as Owner Subcommittee
- *Update from Staff: Status of Prior Committee Recommendations*
  - *Update from the Subcommittee: ESG Work Plan*
  - *Discussion: Pending Legislation*
- 3:30 – 4:30 p.m.** Next Steps/Closing Comments
- 4:30 p.m.** Adjourn



## Dr. Dan Ariely (Discussion)

Dan Ariely is the James B. Duke Professor of Psychology and Behavioral Economics at Duke University, where he holds appointments at the Fuqua School of Business, the Center for Cognitive Neuroscience, the School of Medicine, and the Department of Economics. He is also a founding member of the Center for Advanced Hindsight.

Dan is the author of the New York Times Bestseller *Predictably Irrational: The Hidden Forces that Shape Our Decisions* (February 2008) and *The Upside of Irrationality: The Unexpected Ways We Defy Logic at Work and at Home* (June 2010).

Dan earned a B.A. in psychology from Tel Aviv University, his M.A. and Ph.D. in cognitive psychology from the University of North Carolina, and a Ph.D. in business administration from Duke University. His research has been published in leading psychology, economics, and marketing and management research journals, and it has been featured occasionally in the popular press (*The New York Times*, *The New Yorker*, *The Washington Post*, *Financial Times*, etc.). He is a regular contributor to Marketplace on National Public Radio.



## Panel: Mandatory Arbitration (Discussion)

Moderator: Mercer Bullard, Chair of Investor as Purchaser Subcommittee

Panelists:

- Linda Fienberg, Pres., FINRA's Dispute Resolution Department
- Patricia Cowart, Section Manager, Retail Brokerage Litigation Section, Wells Fargo Corp. Law Department
- Jennifer Johnson, Prof., Lewis & Clark Law School
- Barbara Black, Prof., University of Cincinnati College of Law

Recommended Reading:

- November 9, 2009 Memo from Investor as Purchaser Subcommittee, to the Investor Advisory Committee
- May 17, 2010 FINRA Statement on Key Issues



## Panel: Mandatory Arbitration (Additional Background Materials – page 1 of 2)

- Barbara Black, *Is Securities Arbitration Fair to Investors?* 25 Pace L. Rev. 1 (2004)
- Barbara Black, *Do We Expect Too Much from NASD Arbitrators?* 7 Securities Arbitration Commentator (2004)
- Jill Gross & Barbara Black, *When Perception Changes Reality: An Empirical Study of Investors' Views of the Fairness of Securities Arbitration* (2008) available at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1559&context=lawfaculty>
- Jill Gross & Alice Oshins, *Investor's Guide to Securities Industry Disputes: How to Prevent and Resolve Disputes with your Broker* (Pace University School of Law 2009) available at <http://www.pace.edu/lawschool/files/jjls/InvestorsGuide.pdf>
- Jennifer Johnson, *Wall Street Meets the Wild West: Bringing Law and Order to Securities Arbitration*, 84 U.N.C. L. Rev. 123 (2005) available at <http://ssrn.com/abstract=808346>
- Jennifer Johnson & Edward Brunet, *Arbitration of Shareholder Claims: Why Change is Not Always a Measure of Progress* (2008)
- Jennifer Johnson & Edward Brunet, *Substantive Fairness in Securities Arbitration* (2007)



## Panel: Mandatory Arbitration (Additional Background Materials – page 2 of 2)

- NASD Dispute Resolution, *The Arbitration Policy Task Force Report — A Report Card* (July 2007) available at <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p036466.pdf>
- SIFMA, *White Paper on Arbitration in the Securities Industry* (Oct. 2007) available at <http://www.sifma.org/regulatory/pdf/arbitration-white-paper.pdf>
- Kevin Carroll, *Intelligent Investing: Arbitration Works* (June 17, 2009) Forbes.com available at <http://www.forbes.com/2009/06/17/securities-law-arbitration-intelligent-investing-fraud.html>
- Testimony of John Taft, SIFMA, before the U.S. House of Representatives Committee on Financial Services Hearing on Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office (Oct. 6, 2009) available at <http://www.sifma.org/legislative/testimony/pdf/JohnTaft-Testimony-beforeHFSC.pdf>
- Testimony of Randolph Snook, SIFMA, before the U.S. House of Representatives Committee on Financial Services Hearing on Industry Perspectives on the Obama Administration's Financial Regulatory Reform Proposals (July 17, 2009) available at <http://www.sifma.org/legislative/testimony/pdf/Snook-testimony-7-17-09.pdf>



# Money Market Funds & NAV (Discussion)

---

Staff Presenter: Robert Plaze

Recommended Reading:

- May 3, 2010 Memo from Investor as Purchaser Subcommittee, to the Investor Advisory Committee

DRAFT Resolution: (continued)



## Money Market Funds & NAV (Discussion)

### RESOLVED:

Money market funds should not be required to use a floating NAV. Money market funds play a vital role as cash management vehicles for millions of Americans and as liquidity facilities for short-term borrowers. They have an extraordinary history of stability, with only two instances of failure in three decades of regulation under Rule 2a-7.

If the Commission believes that the stability of money market funds can be improved, then it should consider appropriate prudential measures. Mandating a floating NAV, however, would put the continued viability of money market funds at risk and be detrimental to the interests of America's retail investors.



# Education Subcommittee (Action)

Update from Subcommittee Chair

## Recommended Reading:

- May 6, 2010 Draft Outline of Issues

## Recommended Resolution:

RESOLVED: As part of a broad investor education campaign, the Securities Exchange Commission (SEC) should create made-for-TV 30 second public service announcements (PSA's) using celebrities to teach the general public about basic, vital personal finance topics. These PSA's would cover a wide range of topics, and would be released individually over the next few years.



## Investor as Owner Subcommittee (Discussion)

---

- Update from Staff: Status of Prior Committee Recommendations
- Update from the Subcommittee: ESG Work Plan
- Discussion: Pending Legislation



# Next Steps/Closing

---

Next Meeting: TBA