Risky Business: An investor briefing on Meta
Introduction

From the composition of its board and consolidation of the key roles of CEO and President in founder Mark Zuckerberg to a share structure granting him control of shareholder decision-making, Meta Platforms Inc. (formerly known as Facebook and referred to in this briefing as Meta) has deviated from corporate governance best practice since its IPO. This concentration of corporate decision-making and the absence of effective board and shareholder oversight creates risks for investors. More than $200bn was wiped off the value of the company in a single day in February 2022 as daily user numbers fell, with privacy scandals both driving younger users to competitor TikTok and damaging Meta’s targeted advertising strategy.1 Faced with such existential threats, Mr. Zuckerberg is pinning the company’s future and shareholder returns on his metaverse project - a strategy being pursued without due consideration of the types of human rights issues that have contributed so heavily to Meta’s current woes.

In this briefing, we describe three crises currently engulfing Meta that we believe arise, at least in part, from a problematic governance structure that bestows complete control on one individual: threats to advertising revenue, an acquisition strategy at risk from antitrust regulation, and a pattern of willfully misleading investors and regulators about company practices.

We believe shareholders should consider the prudence of continued investment in the company if Meta and Mr. Zuckerberg remain indifferent to investor concerns and the obvious need to change. Meta’s governance structure poses challenges to shareholders hoping to hold the company to account other than by exiting. Super majority votes by independent shareholders calling for the abolition of the dual class structure and an independent Chair have been ignored.2 However, shareholders should consider at least being more public about their engagements with Meta and their requests of the company on key issues. The annual shareholder meeting provides an opportunity to do so.

SumOfUs members have co-filed a resolution for the 2022 AGM asking for an independent assessment of the potential civil and human rights harms arising from the use and abuse of the metaverse and whether such harms can be avoided or mitigated.3 It’s essential for shareholders, given the strategic significance of the project and the level of company resources being allocated to it, that the metaverse strategy is developed correctly from the outset. A resolution has also been filed by SumOfUs members co-filing with Harrington Investments and the Park Foundation calling for independent assessment of the Audit and Risk Oversight Committee’s capacities and performance in overseeing company risks to public safety and the public interest and in supporting strategic risk oversight on these issues by the full board. Shareholders should support these resolutions.

Key issues for investors

• Disinformation & privacy issues now impacting user numbers and advertising revenue.
• Centralization of power in Mark Zuckerberg a central factor in company’s inadequate response to these controversies.
• Concerns that the metaverse strategy is a rushed attempt to pivot away from ongoing scandals without consideration of the potential platform abuse and human & civil rights concerns that will impact the strategy.

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1 Murphy, H. Waters, R. and Platt, E. “Investors wipe more than $220bn from value of Facebook owner Meta.” Financial Times. February 3 2022
https://www.ft.com/content/51ea47e1-50c1-4b72-94d6-884017a1a14a
3 Provided below.
The sole source of Meta’s revenue - advertising - is increasingly vulnerable:

• The Cambridge Analytica scandal led to an advertising boycott by major brands.
• Bipartisan congressional hearings are highlighting the platform’s severe harms to young users.
• Brands do not want their ads to run alongside hate speech yet less than 3% of violent speech is taken down by the A.I. safety systems the company relies on.
• Meta’s lack of capacity to moderate violence and hate speech internationally threatens global revenue. Only 13% of misinformation detection resources are spent outside the United States.

### Threats to advertising revenue

Meta’s key revenue stream is under pressure on a number of fronts. In each instance, the centralization of power in Mr. Zuckerberg is a significant - and perhaps the primary - factor in Meta’s inadequate response.

### Disinformation leading to boycotts

Meta’s social media platform Facebook has faced an advertising boycott as well as regulatory and political backlash in different jurisdictions over the platform’s facilitation of and failure to prevent disinformation on a range of issues from Covid-19 to violence against ethnic minorities in countries including Ethiopia, Myanmar and India.

Internal documents reveal that in a number of instances Meta staff and management were aware the platform was being used to spread disinformation and/or incite violence but inadequate action was taken. Meta doesn’t appear to understand the scale of the moderation problem — which it typically minimizes or denies — because it hasn’t invested in the infrastructure and capabilities that would enable it to understand the scale or to address the harms its platforms are causing. In many places, for example, the company lacks fluent language speakers and has no idea what is being posted, suggesting that the platform may well be so large as to be fundamentally unmanageable.

Internal company documents show that Meta “has, in many cases, failed to adequately scale up staff or add local language resources to protect people in these places” and has instead relied on A.I. for moderation.

Meta’s inadequate response to problematic content on its platform is an example of how decision-making is unhelpfully centralized in Mr. Zuckerberg. He resisted making adjustments to the platform’s algorithm even after multiple staffers and content providers reported that a failure to do so “increased outrage and divisiveness, political polarization, and promoted misinformation and...
These controversies threaten Meta’s key revenue stream: corporate advertising. Numerous campaigns in recent years have successfully leveraged the power of advertising boycotts and Facebook is particularly vulnerable. In 2020, five months into the pandemic and at the peak of the Black Lives Matter protests, more than 1,200 companies boycotted Meta through a campaign called Stop Hate for Profit. A number of those companies, including Dunkin’, LEGO, and Target, have pledged not to spend money on the company’s platforms until meaningful changes have been made to protect users from racism, anti-Semitism, and hatred. The cosmetics company Lush also quit social media platforms over safety concerns. Meta’s failure to address these issues is likely to lead to adverse regulatory action as well. Lawmakers in the UK and EU, for example, are finalizing stronger legislation to stop misinformation.

For investors, maintaining a stake in a company being blamed for genocide and hate crimes carries additional reputational risk as well as raising questions over investors’ own human rights and due diligence obligations when it comes to investing in companies.

Loss of advertiser trust

Meta has also lost the trust of advertisers, with some media companies seeing their client spending on Facebook decreasing 5-10% over the last year. Even the platform-friendly Internet Advertising Board forecasts potential issues for Meta’s future advertising revenue, citing a “trust gap” and writing, “While there are clear benefits to online experiences, there are also clear drawbacks consumers encounter that can impair their perception of brands, including hate speech, fraud, misinformation and more.”

Meta is also facing problems with advertising accreditations from the US Media Rating Council as advertisers push to see results of a brand safety audit of Facebook by the Media Rating Council on which Meta has dragged its feet. While the company announced it was beginning the audit, it apparently is not following the data standards the MRC requires.

ExchangeWire reported, “Facebook has been warned that it could have its advertising accreditation revoked after failing to provide an effective performance metric. The concerns came to light after an audit conducted by Ernst and Young, which found that Facebook did not have an efficient or accurate system to report on the performance of ads run on its platform.”

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Trust is likely to be further undermined by claims that Meta with Mr. Zuckerberg’s approval together with Google colluded to manipulate ad markets22 - which is now subject to an antitrust lawsuit (see page 6).23

Privacy concerns impacting advertising revenue
Meta faces continuing controversies over its protection of user privacy and data harvesting. This has driven user discontent as well as moves to protect privacy by software companies and lawmakers. The Federal Trade Commission’s (FTC) record $5 billion fine, a result of the Cambridge Analytica scandal,24 is not a one-off privacy based monetary penalty for Meta. In Europe, the company was fined $267 million in 2021 by Ireland’s Data Protection Commission for breaching Europe’s GDPR data protection legislation.25 The sharing of data between WhatsApp and its parent Meta - something it had originally promised not to do at the time of acquisition26 - was a significant issue. Multiple investigations are ongoing in the EU into major Facebook data breaches including one in which personal data of approximately 533 million Facebook users worldwide were made available on the internet. These data breaches and other privacy breaches have led to calls for stricter enforcement of GDPR protections for users’ data. In early 2022, the IAB Europe was ordered to significantly tighten access to personal data by advertisers.27

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Meta also faces new privacy regulations that directly threaten its revenue model. New consumer protection laws in California and elsewhere “will require users’ explicit permission to share and use data generated from digital interactions...[and] the $152 billion US digital advertising industry will lose access to most third-party data, which has powered programmatic advertising.” Describing the potential changes as a ‘reckoning for the advertising industry’, McKinsey states that, “Our analysis suggests that up to $10 billion in US publisher revenue is at risk.”

Yet again, Meta’s vulnerability on privacy issues highlights the personal role of Mr. Zuckerberg. In October 2021, the Attorney General of the District of Columbia added Zuckerberg personally as a defendant in a consumer protection lawsuit accusing Facebook of misleading its users about the sharing of data with third parties.29

28 Murphy, H, Waters, R and Platt, E. “Investors wipe more than $220bn from value of Facebook owner Meta.” Financial Times. 3 February 2022 https://www.ft.com/content/51ea47e1-50c1-4b72-27d0-52f7cd864017a1f4a
Meta faces major litigation across the US:

- The FTC is suing the company for “illegally maintaining its personal social networking monopoly through a years-long course of anti-competitive conduct.”
- Forty-eight state Attorneys Generals are suing Meta for monopolistic activity in the acquisitions of Instagram and WhatsApp.
- Texas is suing the company “for capturing and using the biometric data of millions of Texans without properly obtaining their informed consent.”

Recommendation for shareholders

- Support shareholder resolutions calling for independent assessment of civil and human rights risks including privacy violations on company platforms and efforts to mitigate such risks.
- Support calls for more active oversight of the CEO from board members including the appointment of an independent Chair.
- Engage with Meta on its plans to address the likely continuing risk to advertising income from increased privacy protections.

Acquisition strategy falling foul of Anti-Competitive Practices

Meta has pursued an aggressive acquisition model to protect itself from competition - a strategy some commentators have suggested raises questions about the ability to innovate.31 Most notably, the company purchased Instagram in 2012 and WhatsApp in 2014 — meaning that (including Messenger) it controls four of the world’s five largest social media platforms. It is claimed that Meta breached pre-merger commitments when it changed WhatsApp’s privacy policy two years later to enable data sharing. In addition, Meta is facing antitrust action from the FTC on these two crucial acquisitions as well as additional actions from a number of states, the Biden administration and other countries. In Congress, a parallel movement with unusually strong bipartisan support is circulating several bills designed to rein in the anti-competitive practices of Meta and other companies.32

The 2021 revised FTC complaint alleges that Meta violated federal antitrust laws with its acquisition of Instagram and WhatsApp and seeks “a permanent injunction in federal court that could, among other things: require divestitures of assets, including Instagram and WhatsApp; prohibit Facebook from imposing anti-competitive conditions on software developers; and require Facebook to seek prior notice and approval for future mergers and acquisitions.” 33


https://www.npr.org/2022/01/11/1072169787/judge-allows-federal-trade-commissions-latest-suit-again
In 2022, 48 attorneys general, led by New York’s Attorney General Letitia James, appealed the dismissal of their lawsuit against Meta claiming the company had obtained a monopoly through its acquisitions of Instagram and WhatsApp and had harmed competition.34

Yet another lawsuit, this one filed by 17 state attorneys general against Google, has exposed “what amounts to secret collusion between Google and Facebook to rig the online ad market in their favor and to keep out competitors....”35 According to a news report, the lawsuit alleges that Mr. Zuckerberg as well as the CEO of Google was aware of the deal and signed off on it. The lawsuit claims that Meta’s COO Sheryl Sandberg described it in an email as “a big deal strategically.”36

Under the Biden administration, federal agencies and rule makers are showing a level of interest in addressing antitrust and anti-competitive action we have not seen in 70 years. A recent Presidential Executive Order specifically identifies Big Tech as a source of anti-competitive danger to the economy and urges concrete action including “a review of our merger guidelines....”37

In line with this order, the FTC in September withdrew its support of vertical merger guidelines adopted by the appointees of the previous administration, a sign of much tighter regulation of mergers to come. Meta is also likely to face sharper oversight of all merger plans as the FTC and DOJ jointly plan to counter years of “overly permissive” merger enforcement by targeting “killer acquisitions” of start-up companies.38

For a company which has relied so heavily on simply purchasing potential competitors, this regulatory tightening may prove particularly problematic as the company attempts to build out a metaverse offering that will likely rely on acquisitions of the innovative companies already working in that space. The UK’s Competition and Markets Authority recently ruled that Meta must sell Giphy, which it acquired in 2020, and the EU is working to create a level playing field through updated regulations in both the Digital Services Act and the Digital Markets Act.39

Recommendation for investors
Engage with Meta on the extent to which its future metaverse strategy will rely on acquisitions and how the company will mitigate threats to this strategy from increased controls in different jurisdictions on anti-competitive practices.

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Meta continues to face high fines and regulatory risks

- Whistleblower complaints to the Securities and Exchange Commission (SEC) allege Facebook misled investors efforts to combat misinformation on issues such as climate change and covid-19.
- Another whistleblower complaint to the US SEC alleges that Meta has been misleading investors about its “shrinking” teen and young-adult user bases.
- In 2019, the company paid a $5 billion fine to the FTC for deceiving users about their data’s privacy.
- In non-English speaking markets, the company is at heightened risk of regulations and restrictions as a result of its failure to moderate harmful content.

Misleading Regulators and Investors

Internal company documents confirm what many have long alleged: that Meta has willfully made misleading statements to Congress, regulators, investors, and the public about its business practices and impacts on society. Whistleblower Frances Haugen claims that Meta has misled the public on its progress to combat hate speech and disinformation on Facebook.40 The company has itself admitted to making misrepresentations on the “extent of its spying on teenage user data.” 41

Mr Zuckerberg has become personally embroiled in failure to disclose allegations with Senator Richard Blumenthal of Connecticut accusing him of lying to Congress42 and the Attorney General of the District of Columbia adding Zuckerberg personally as a defendant in a consumer protection lawsuit.43

Facebook’s own Oversight Board - established to counter claims of a lack of oversight on content decisions - has stated publicly that Meta has not been forthcoming and when launching its first Transparency Report in October 2021 stated: “. On some occasions, Facebook failed to provide relevant information to the Board, while in other instances, the information it did provide was incomplete.”44

The impression that Mr. Zuckerberg and Meta are not providing full disclosure exposes the company to legal action that threatens its future, as well as to threats to advertising revenue on which it relies for most of its revenue.

Attorney General Dave Yost of Ohio has filed a lawsuit against Meta “for misleading the public on how it controlled its proprietary algorithm all in an effort to boost its stock and deceive shareholders.” The suit, filed on behalf of the Ohio Public Employees Retirement System and other Meta investors, alleges that investors have lost $100 billion in the wake of disclosures that Meta executives made misleading statements about the negative impacts of its platforms. The lawsuit seeks to recover the lost value and force Meta to reform how it does business.

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The metaverse - a strategic gamble

As continuing controversies hit the news, discourage users, and worry advertisers, the company’s most recent attempt to shift attention away from these problems is the recent name change and plans to become a ‘metaverse company’. Meta is dedicating significant resources to this project; almost 10,000 employees are working on metaverse projects and there are plans to hire 10,000 more. Meta estimated metaverse related investments in 2021 alone to total $10bn.45

Yet, there is no evidence that the company has adequately assessed the potential psychological and civil and human rights harms to users that may be caused by the use and abuse of the platform - issues the company executive leading the project admits pose an “existential threat” to the company’s ambitions.46 Privacy concerns have been raised by the Irish Data Protection Commission over Meta’s smart glasses which is part of the company’s initial moves towards the metaverse technology it intends to rely on.47 Given the impacts already felt by Meta on its existing business and platforms from such failures, shareholders would be prudent to demand the company commission robust independent assessments and implement appropriate governance measures.

More broadly the company’s new strategy has drawn criticism with Paul Barrett, deputy director of the NYU Stern Center for Business and Human Rights saying that “…it doesn’t seem to respond to the mood of the moment.”48 Another academic industry commentator Scott Galloway49 stated that “in actuality Facebook is basically spending $10bn on a prayer that in the short run, it might change the conversation. It gives them an opportunity to talk about the metaverse instead of insurrection and teen depression.” He went on to describe Meta’s metaverse as “dead on arrival.”50

It’s questionable whether Meta has the organizational capabilities to appeal to younger generations51 who Zuckerberg sees as key to the success of his metaverse project, as evidenced by the loss of users to TikTok.52 Rich Greenfield of consultancy LightShed told the Financial Times that “Facebook is being forced to build something that we have no visibility into until it bears fruit ten years into the future.”53

Recommendation for shareholders

• Shareholders should satisfy themselves that the pivot to a metaverse strategy is based on sound business assessments, is being developed fully cognizant of the myriad social risks involved, has adequate independent oversight, and is not a rushed attempt to divert attention from fundamental issues with Meta’s core business under the sole control of a dual CEO/President already shown to have made strategic misjudgements on key issues resulting in litigation and controversy.
• Support the shareholder resolutions co-filed by SumOfUs.

46 Murphy, H. “How will Facebook keep its metaverse safe for users?” The Financial Times. November 12 2021. https://www.ft.com/content/df2145b7-5e44-446a-819c-51d67c5471cf
49 NYU Stern. “Faculty Directory Scott Galloway, Professor of Marketing.” https://www.stern.nyu.edu/faculty/bio/scott-galloway
53 Murphy, H., Waters, R. and Platt, E. “Investors wipe more than $220bn from value of Facebook owner Meta.” Financial Times. 3 February 2022 https://www.ft.com/content/51ea47e1-50c1-4b72-94de-b84071a1d41a
Conclusion

Meta’s chief financial officer recently admitted the company “faced a perfect storm of ‘headwinds’.”54 Flatlining and even falling Facebook user numbers, threats to the company’s key revenue stream and ongoing antitrust and regulatory scrutiny are inextricably linked with the centralization of control in Mark Zuckerberg and a failure to respond adequately to human and civil rights concerns. Rather than implement the much needed governance and operational reforms, Mr. Zuckerberg has instead chosen to pursue a strategy where such failings will likely expose the company and its shareholders to significant risk. Meta’s response to shareholder efforts at its 2022 annual shareholder meeting to establish adequate oversight and independent review of company practices will be a deciding moment in whether it is willing to shift to a more independent and accountable model of governance.

SumOfUs members have co-filed two resolutions for the 2022 Meta Annual Meeting:

Performance Review of Audit and Oversight Committee
This resolution requests the Board to commission an independent assessment of the Audit and Risk Oversight Committee’s capacities and performance in overseeing company risks to public safety and the public interest and to company value. Going back to the Cambridge Analytica scandal and continuing to the recent news, such an assessment would ensure investors are being provided with accurate and actionable information and provide valuable guidance to the board and shareholders.

Assessment of Metaverse User Risk and Advisory Shareholder Vote
This resolution requests that, given the announcement that the company is changing its name and its mission, the board and shareholders should receive a report of a third-party assessment of: potential psychological and civil and human rights harms of a metaverse. The report includes whether these harms can be mitigated or avoided, or whether there are unavoidable risks inherent in this new technology. The resolution also requests a vote by shareholders following release of such an assessment on this significant change in the company’s direction.

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54 Murphy, H. Waters, R. and Platt, E. “Investors wipe more than $220bn from value of Facebook owner Meta.” Financial Times. 3 February 2022 https://www.ft.com/content/51ea47e1-50c1-4b72-94d6-884017a1af4a
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