



# *FedFin Client Report*

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Tuesday, September 14, 2021

## **Gensler Stands Firm on Crypto, Climate, MMF, Gamification Rules**

**Client Report: INVESTOR18**

### **Executive Summary**

As is often the case, Senate Banking's hearing today with SEC Chairman Gensler did not touch on the fixed-income structure questions highlighted in his [written testimony](#) even though these could be among the most consequential for long-term capital-market regulation and the balance between the Fed and SEC in this key arena. Instead, the session focused largely on consequential hot-button questions such as the SEC's plans for climate-change disclosures and cryptoassets. Here, partisan differences were again on vigorous display, with the sharp divisions between Chairman Brown (D-OH) and Ranking Member Toomey (R-PA) making it clear that regulatory and enforcement actions -- not statutory clarification -- will set policy until at least the next Congressional election. Doubtless aware of this, Mr. Gensler reiterated ambitious plans related to incentive compensation, crypto assets, stablecoins, gamification and numerous other issues detailed in this report. He also indicated that the SEC's new framework for MMFs will come out early next year, dampening expectations in some quarters that the Fed's new standing repo facility is the only change this sector will see.

### **Analysis**

#### ***Opening Statements***

Chairman Brown pointed to the disconnect between the stock market and normal Americans, urging strong SEC enforcement and greater market transparency. On the other hand, Ranking Member Toomey criticized the SEC's new focus on climate and human-capital disclosures, refuting the need to regulate either cryptoassets or new retail-brokerage delivery channels. He also urged the Commission to issue a formal "Howey" statement defining when cryptoassets are securities instead of making this determination in case-by-case enforcement actions.

#### ***Testimony***

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As we [detailed yesterday](#), SEC Chairman Gensler today covered a wide range of topics in his first appearance before Senate Banking as chairman.

## Q&A

- **Crypto:** Sens. Toomey and Warner (D-VA) urged the SEC to provide greater crypto guidance, with Sen. Toomey also asking which cryptocurrencies are securities; Mr. Gensler said only that many cryptocurrencies and stablecoins are securities. He also rejected the need for guidance, arguing that there is already considerable clarity the SEC will expand upon when asked. Sen. Warren (D-MA) rejected assertions that crypto enhances financial inclusion, arguing that its high, unpredictable fees pose substantial risks to vulnerable Americans. Sen. Lummis (R-WY) argued that the SEC has not provided enough no-action relief, also asking about existing regulatory gaps; Mr. Gensler pointed to gaps in coordination between agencies, also highlighting issues around transfer agents and custody with which the SEC could work with Congress for clarification.
- **Climate Risk:** Sens. Tester (D-MT) and Smith (D-MN) asked about the SEC's work on climate issues; Mr. Gensler highlighted the importance of consistent, comparable disclosures on physical and transition risk. Sen. Cortez Masto (D-NV) asked about green fund labeling; Mr. Gensler believes that metrics are needed to identify truly green funds, reiterating that staff will soon make recommendations in this area for future Commission action. Sen. Warner also urged a broader look at the whole realm of ESG reporting.
- **Executive Compensation:** Sen. Brown asked about the importance of strong executive compensation rules; Mr. Gensler noted that, beyond the rule mandated by Dodd-Frank that must be implemented, executives should not be compensated for material misstatements.
- **MMF Reform:** Sen. Toomey supported reforming MMFs by removing the thirty percent weekly liquidity benchmark and perhaps instead using fees and gates. Otherwise, there is no need for reforms that he believes would eliminate or reduce the viability of MMFs as an investment. Sen. Ossoff (D-GA) asked if Mr. Gensler shares FRB Chairman Powell's concerns about MMFs; Mr. Gensler does, noting his hope to address MMFs by the first quarter of 2022.
- **Human Capital Disclosures:** Sens. Brown and Warner highlighted the importance of standardized human capital disclosures; Mr. Gensler noted that such disclosures are critical to valuations.
- **Cyber Security:** Sen. Reed (D-RI) highlighted his bill (S.808) that would require companies to disclose if they have a cyber expert on their boards; Mr. Gensler has asked staff to take up cyber disclosures, looking closely at S.808. Sen. Tester asked what cyber standards the SEC is considering; Mr. Gensler cited cyber hygiene and incident reporting.

- **Diversity & Inclusion:** Sen. Menendez (D-NJ) asked if Mr. Gensler will bring the SEC's asset management advisory committee's diversity recommendations before the commission for a vote this year; Mr. Gensler could not commit to a timeline, but has asked staff to examine the issue. Sen. Warnock (D-GA) asked what the SEC is doing to encourage investor capital to look outside their traditional geographic areas for investment opportunities; Mr. Gensler noted initiatives to promote private-fund competition.
- **Political Contribution Disclosures:** Sen. Tester (D-MT) asked if shareholders should have access to corporations' political spending information; Mr. Gensler noted that investors increasingly want to see this information. Sen. Menendez further highlighted potential material risk posed by political donations contradicting public statements.
- **Gamification:** Sen. Cortez Masto asked about the status of the SEC's GameStop report; Mr. Gensler noted that the report is currently in front of the other commissioners and will be released shortly.
- **Systemic Risk:** Sen. Ossoff asked about the greatest systemic risk; Mr. Gensler believes this is currently health care risks, also mentioning commercial real estate, reach for yield, and the LIBOR transition.
- **China:** Sen. Daines worried that the SEC is not doing enough to oversee Chinese broker dealers to protect Americans' sensitive personal information.