



FedFin Client Report

Thursday, September 15, 2022

After Senate Banking Session, SEC Stays on Course

Client Report: INVESTOR20

Executive Summary

The Senate Banking hearing with Chairman Gensler today went as [expected](#): Democrats generally praised his work while Republicans strongly opposed it on both substantive and procedural grounds. As a result, we expect the chairman to continue as he has in the wake of prior, comparable hearings – pretty much as he pleases and as the rest of the commission will support. This will clearly change if Republicans gain control of both Houses of Congress after the midterm. Unless or until it does, the SEC will continue its enforcement-focused approach to [cryptoasset regulation](#) and [climate disclosures](#). Chairman Brown (D-OH) also confirmed our [forecast](#): he will defend not only his jurisdiction, but also a much more stringent approach to crypto regulation than contemplated by the Senate Agriculture Committee’s bipartisan legislation. If Republicans gain control of Senate Banking, then there will be considerably more common ground on the structure of digital-asset standards and enforcement policy, but we do not expect much give on the basic, jurisdictional issue of whether the SEC – under Banking – will retain a significant role. Mr. Gensler targeted prime brokers, MMFs, and open-end funds among his systemic-risk concerns. Ranking Member Toomey (R-PA) strongly opposed pretty much everything the SEC has done under Mr. Gensler, wrapping him into the accusations of both politicization and “liberalization” of rulemaking recently directed at the CFPB. This report analyzes testimony and Senate questioning.

Analysis

Opening Statements

In addition to protecting his jurisdiction, Chairman Brown applauded Chairman Gensler for increased enforcement actions related to insider trading and fraudulent activity in the crypto markets and for his proposals for tighter disclosure requirements around insider trading. Ranking Member Toomey continued his campaign against the Commission, focusing on climate risk and cryptoassets.

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Testimony

As [noted](#), Chairman Gensler's testimony reaffirmed his firm stand on the SEC's crypto jurisdiction and included a strong defense of climate-risk disclosures. He also reiterated his request to staff to lay out recommendations to enhance open-end fund liquidity, pricing, and resiliency during periods of stress.

Q&A

- **Cryptoassets:** Chairman Brown raised the Ag Committee's bill to give the CFTC greater digital-asset jurisdiction, asking Mr. Gensler to commit to continue working with both Senate Banking and relevant regulatory agencies to prevent loopholes; Mr. Gensler agreed, noting that he'd work with the CFTC should Congress give it more authority. Ranking Member Toomey used his questioning to interrogate Chairman Gensler on his definition of "security" and the extent to which decentralization is critical to it in the context of cryptoassets. Mr. Gensler said that many cryptoassets are defined by a "group of developers in the middle." Sen. Toomey also demanded a regulatory roadmap for crypto intermediaries. Chairman Gensler said that the SEC is in conversation with a number of intermediaries and is using everything in its regulatory toolkit to facilitate investor protection. Siding with Republicans, Sen. Cortez-Masto (D-NV), asked why cryptoasset intermediaries and exchanges should be regulated under the Exchange Act, and how investors and markets would benefit; Chairman Gensler reiterated his belief that the vast majority of crypto tokens are securities and that intermediaries thus have securities on their platforms. Sen. Lummis (R-WY) raised her bill ([see FSM Report CRYPTO28](#)), asking the chairman to commit to consistency with the measure's disclosure standards; he reiterated his belief that intermediaries as well as "those in the middle" should be covered in the disclosure requirements. Sen. Lummis said that she intends to reintroduce the bill in January.
- **Climate-related disclosures:** Chairman Brown asked Mr. Gensler to explain why climate-related disclosures do not constitute making climate policy. Along with Sen. Smith (D-MN), Chairman Brown also asked Mr. Gensler to explain his views on why climate disclosures are material to investors. Sens. Tester (D-MT), Rounds (R-SD), and Daines (R-MT) raised concern over the impact of Scope III disclosures on small businesses, with Sen. Rounds encouraging Chairman Gensler to be more precise in rulemakings. Chairman Gensler highlighted the need for standardization and noted that Scope III is not mandatory unless it is material or the company has made a commitment to emissions disclosure. Taking the opposite tack, Sen. Warren (D-MA) argued for stringent Scope III disclosure, noting that many companies would divest "filthy" parts of their business to downstream entities without the rule. Chairman Gensler reiterated his belief that most of the largest investment managers are supportive of all three scopes in the proposal.

- **Treasury Market Reforms:** Following yesterday’s Treasury market proposal, Sen. Ossoff (D-GA) asked Chairman Gensler to explain Treasury market illiquidity in layman’s terms, specifically asking if threats to Treasury markets undermine the Fed’s ability to execute open market operations in a crisis. Mr. Gensler said he is focused on “jitters” in Treasury markets and that the SEC can lower risk by ensuring that high frequency traders are registered and regulated, trading platforms are regulated, and that getting clearing right will lower risk in the system.
- **Financial Stability:** Sen. Ossoff also asked Chairman Gensler what he sees as the most significant threats to financial stability. Mr. Gensler’s list included the movement of central banks from accommodation to tightening, geopolitical challenges, and commodity price fluctuations. He also noted his focus on prime brokerage relationships and the resiliency of Treasury, MMF, and open-end funds markets.
- **Human-Capital Reporting:** Sen. Warner (D-VA) argued that human-capital investment is extraordinarily material to companies and asked Mr. Gensler to speak about potential reporting requirements for intangible human-capital. Mr. Gensler affirmed this information might be germane to public shareholders and that the SEC considering this issue.
- **Respect for Congress:** Sen. Tillis (R-NC) interrogated Mr. Gensler about the timeline of his response to a Republican letter about oversight concerns. Chairman Gensler did not provide a timeline for his response but said he would meet with Sen. Tillis and others to discuss the process. Other Republicans, including Sens. Rounds and Warner, also raised concerns about the pace of SEC rulemakings under Chairman Gensler and urged him to consider the cross-sector effects and regulatory interoperability. Chairman Gensler affirmed that these are taken seriously.