



# *FedFin Client Report*

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Tuesday, April 18, 2023

## **HFSC GOP Hammers Gensler on Crypto, Climate**

**Client Report: CRYPTO41**

### **Executive Summary**

As [anticipated](#), HFSC's hearing today with Chairman Gensler was a raucous affair which, while divided sharply on party lines when it comes to Mr. Gensler, also laid out general agreement on matters such as the need for stablecoin legislation (the topic of a high-profile hearing tomorrow). Mr. Gensler did not begin on a positive note, providing what many on both sides saw as a confusing answer when asked for a clear distinction between securities and commodities. Democrats were also not united in his defense when it came to governing cryptoasset by enforcement, not regulation; as noted in this report, they were more aligned when it comes to climate-risk disclosures. Mr. Gensler also defended pending rules on qualified custodians ([see FSM Report CUSTODY5](#)), refusing to retract problematic accounting standards for bank custodians, taking questioning also on pending MMF standards ([see FSM Report MMF19](#)) and [OEF regulation](#). He indicated that the agencies are beginning to work on a revised incentive-compensation rule but provided no timeline for completion or indication of what process the agencies will pursue to do so.

### **Analysis**

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

Chairman McHenry (R-NC) described Mr. Gensler's lack of response to Congressional inquiries as unacceptable, reiterated arguments that the SEC is regulating by enforcement and driving crypto overseas, and denounced what he described as a "breakneck" rulemaking pace. Ranking Member Waters (D-CA) pushed back, claiming the GOP is "harassing" the SEC to delay or impede work that they disagree with.

#### ***Testimony***

Mr. Gensler's oral statement summarized his written testimony which in turn summarized and briefly defended a raft of Commission rulemakings and related actions.

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## Q&A

- **Crypto Regulation:** Chairman McHenry, Rep. Huizenga (R-MI) and other Committee Republicans reiterated arguments that the SEC's lack of regulatory clarity is pushing crypto and digital innovation overseas. Rep. Lynch (D-MA) pushed back, arguing that the SEC and banking agencies have issued a wide array of guidance, just not the guidance the crypto industry wants. Ranking Member Waters asked if the SEC has adequate authority or if legislation is needed; Mr. Gensler maintained that the SEC has all the authority it needs and repeated that the industry is largely non-compliant with existing securities laws. Quoting Mr. Gensler as previously saying "the SEC needs additional congressional authority," Rep. Emmer (R-MN) argued that this contradiction is an example of the Commission fueling uncertainty. Rep. Sherman (D-MA) called on Congress to pass legislation labeling all intangible investment assets as securities.
- **Stablecoins:** Rep. Hill (R-AR) asked the Chairman if he still supports the presidential working group's recommendation that Congress needs to create a stablecoin framework; Mr. Gensler said he does but noted that Congress needs to ensure new legislation does not undermine the SEC's or CFTC's enforcement authority.
- **Bank Custody:** Reps. Barr (R-KY) and Davidson (R-OH) argued that the SEC's crypto bulletin effectively bars banks from providing crypto custody services, preventing crypto firms from accessing institution-grade finance. Mr. Gensler defended the bulletin by citing the SEC's consistent consultation with accounting authorities.
- **Executive Compensation:** Rep. Velasquez (D-NY) asked the Chairman when the longstanding incentive compensation rule mandated by Dodd Frank will be finalized; Chairman Gensler noted that he has initiated conversations with the other regulators but did not indicate a timeline.
- **Climate Disclosures:** Reps. Huizenga, Williams (R-TX), and Mooney (R-WV) reiterated that the SEC's climate proposal far exceeds its mandate. Reps. Beatty (D-OH), Pressley (D-MA), and Tlaib (D-MI) praised the proposal, arguing that climate change's potential financial harm is material to investors. Ms. Tlaib, however, voiced concern that the proposal may allow companies to underreport their climate impact by allowing firms to determine what is material.
- **Swing Pricing:** Reps. Horsford (D-NV) and Kim (R-CA) argued that using swing pricing for MMFs or OEFs and the resulting 4 pm hard close may disadvantage unsophisticated and west-coast investors.
- **OEFs:** Rep. Wagner (R-MO) cited that the SEC's OEF proposal required funds to assume a worst-case scenario 10% run and asked how the Commission derived this figure; Mr. Gensler agreed to follow up.