

Oversight of the U.S. Securities and Exchange Commission
Senate Committee on Banking, Housing, and Urban Affairs
September 15, 2022

Opening Statements

Chairman Brown (D-OH) welcomed Chair Gensler and said that workers and their families do not measure the economy by the stock market. He said that they must fight the corporate price gouging of corporations and the financial watchdogs must keep our economy and markets stable. Brown said that includes strengthening corporate disclosures to stay ahead of risks like climate change and looking into the practices of PE and hedge funds as they expand into more areas of the economy. He said that the Senate recently confirmed new Commissioners to the SEC, and he thought that if Wall Street is complaining, Gensler is doing his job right. Brown said the SEC must continue to make enforcement a priority and under Gensler, the SEC has increased prosecution for insider trading and the Committee has considered a Reed bill on this. He noted that Senators Kennedy and Van Hollen have pushed for the Holding Foreign Companies Accountable Act (HFCAA) and how this law jump started negotiations with the Chinese. Brown pointed to the Executive Order on digital assets and how the SEC continues to enforce the laws around crypto. He said that the Committee has looked at how crypto can play a role in frauds, scams, and illicit finance. Brown pointed to how the Ag Committee is considering legislation introduced by Senators Stabenow and Boozman on crypto commodities and emphasized that it was important to look at jurisdictional lines. He said Dodd-Frank fixed issues in the OTC derivatives markets and, similarly, regulators need to work together again. Brown moved on the climate risk disclosure proposal and how investors outside the US already benefit from standardized climate risk disclosure. He added that disclosure around stock buybacks would also improve transparency. Brown said that the Inflation Reduction Act (IRA) would also tax these buybacks, and these are the first steps made in years to reign in this scheme. He looked forward to hearing more from the SEC on how they are holding bad actors accountable.

Ranking Member Toomey (R-PA) stated that the SEC has a critical role in protecting investors and facilitating capital formation. He thought some of the SEC's recent actions make him question how they are carrying out their mission and pointed to how they dealt with crypto lenders like Celsius. Toomey said that these platforms froze customers' accounts, and the SEC took action against BlockFi, but not Voyager and Celsius. He questioned where the SEC was and why they have not clarified the rules of the road for crypto. Toomey said that Gensler has stated that most crypto tokens are securities but has said that Bitcoin is a commodity. He said that if most are securities, it follows that many platforms need to register with the SEC in some capacity. Toomey said many transactions can be done without intermediaries and crypto intermediaries are not like other market intermediaries. He thought there was a larger problem here and pointed to an article in Bloomberg on Gensler wanting to write the rules for crypto, but he's not writing them. Toomey said that crypto tokens are very different from traditional

securities, and they merit a tailored regulatory framework. He then moved onto the burdensome rules being imposed on the traditional securities market, like the proposed rule on climate. Toomey said that the SEC estimates that the compliance cost will increase significantly, and it will increase the costs of going public as well. He said that the cost of compliance will be more material to the investors than the information itself. Toomey said that this is about arming climate activists with data so they can go after companies, and this will lessen investment in the energy industry. He thought the SEC risked politicizing the agency, undermining national security, and harming the economy. Toomey said he had asked basic questions about the development of the climate rule, but the SEC has been stonewalling him. He went on that the SEC will ultimately have to answer to the Courts and he pointed to the *West Virginia vs EPA* case. Toomey said that the SEC should consider itself on notice and the separation of powers will be upheld.

Witness Testimony

The Honorable Gary Gensler, *Chair, U.S. Securities and Exchange Commission*, began by explaining the history of the U.S. capital markets and how we cannot take our leadership in the capital markets for granted. He said that they must remain vigilant to drive efficiency and maintain transparency across our markets. Gensler said that markets work best when they are efficient and that we have done a lot, but we have not updated our National Market System (NMS) in 17 years. He added that they are also looking at the Treasury Market and our Private Funds market. Gensler said the system also works best when there is integrity in the market which is why they have proposed rules on SPACs, and insider trading plans. He believed that crypto was covered by the securities laws and crypto intermediaries have to register with the SEC in some capacity. Gensler emphasized that they cannot undermine the laws of our capital market and the market has to work well under stress. Lastly, he noted projects on resiliency, including on settlement time, open-end funds, the Treasury Markets, cybersecurity, and more.

Member Questions

Chairman Brown (D-OH) said that we cannot let the crypto market undermine the traditional market as Gensler said. Brown noted the proposed rules on climate, cyber, and stock buybacks and asked why we need to improve this disclosure for large and small investors and for how markets operate. Gensler said this goes back to investors getting to decide based on full and fair disclosure. He said this lowers the cost of capital because it increases transparency, and it also adds competition and market integrity. Brown said he noticed today that we will see a lot of republicans attending the hearing, many of whom against all evidence are climate deniers. He said that on climate risk disclosure, why is the SEC not making climate policy but improving disclosure for investors. Gensler said that investors and companies are in this conversation already and investors get to decide. He said that investors want to know about climate because it matters for the financial and other performance of the company. Gensler said this goes back to buying or selling a stock or voting a proxy, climate matters. Brown said that Gensler is saying

that he is a disclosure regulator. He then turned to crypto and said that crypto touches securities, commodities and banking laws. Brown noted the Ag committal legislation and asked why it is important for regulators to coordinate so gaps and loopholes do not exist. Gensler said that the definition of securities should be the remit of the SBC, HFSC, and SEC and if we end up with multiple agencies defining what securities are, it could undermine other definitions like treasury securities or securities in the equities markets. He said they work with other regulators, and they worked with the Treasury closely on the proposed rule from yesterday. Gensler said that many participants in the market are dual registrants and if the Congress gave the CFTC greater authority over bitcoin, they would work together, even though they have already worked with the CFTC on this. Brown then moved on to how the enforcement division shrank by 5 percent over the past five years, yet, despite that, the SEC has pursued new cases in crypto, focused on fraud and misconduct of financial professionals in securing admissions of guilt. Brown thanked Gensler for doing this.

Ranking Member Toomey (R-PA) said that Gensler has made clear that Bitcoin is not a security and the SEC's report characterized Ethereum as decentralized. He asked if it was fair to say that for Gensler, a significant factor in determining if a token is a security is centralization or decentralization. Gensler said that he is focused on the expectation of profit from common enterprise. Toomey asked if it was possible to have a common enterprise if it is decentralized. Gensler said that if the public is anticipating profit based on common enterprise and these are not laundromat tokens. Toomey asked what about Bitcoin makes it not a security. Gensler said that there is no group of individuals in the middle. Toomey said he is choosing not to use the term decentralized. He said that his point is that there are a lot of projects and Gensler has acknowledged that there are tokens that are not securities and Toomey thought this was due to being non centralized. He did not think it was fair to not provide clarity. Gensler said that he tries to stick to what the Supreme Court says on common enterprise and there are groups of developers in the middle. Toomey said that if there is not a group in the middle, it is decentralized. He then moved onto the lack of clear registration processes for crypto and how there is no clarity on how a platform should address private keys. Toomey knew that Gensler said that the intermediaries should come in and asked if it wouldn't be better for the SEC to clarify how they apply rules. Gensler said they are talking to a number of platforms, like exchanges, lenders, and more. He said that in the exchange and broker dealer space, the broker dealer custody rule has not been used and he has told staff to use everything in the regulatory toolkit to get this industry under investor protection. Toomey was concerned that the approach he was taking with these one-off discussions is this idiosyncratic decision on one company and that's not a good way to pass rules and that it should be a public process. Gensler said the SEC and asset backed securities market did about 10 years with exemptive orders and then a rule based on these, so that's why they think it's worth talking to the industry.

Sen. Tester (D-MT) noted his group letter to the SEC on their proposals and thought he would agree that sufficient comment is important. He pointed to the Proposed Rule on Climate-Related Disclosure, and he agreed that climate change is real and not going away, but he also knows that access to capital and markets is really important. Tester understood the burden of reporting information and a number of banks and farm groups are concerned about this rule from an Ag standpoint. He asked what folks in production agriculture would have to do to disclose their emissions under this rule. Gensler said if they are not public companies, they don't come under the rule, but they have heard from farming organizations and public companies would have an obligation under the proposals with regard to GHG emissions for their own emissions and estimated supply chain emissions if they are material. He said they are looking at this. Tester said that he sells to publicly owned companies, for instance, he sells wheat to a publicly owned company, and he asked what he as a farmer selling grain, cattle, etc. has as a recourse if the company asked for information. Gensler said that the company does not have an obligation to ask specifically, and they just have to estimate or discuss how they are managing Scope 3. He said this is what the comment process is about and how they address this to lower the costs. Gensler said that the intent is not to have non-public companies under this rule. Tester said his concern is that they sell to public companies and if the public company says 'hey, we need you to tell us how much fuel and fertilizer you use,' it becomes an issue, especially for the little guy. Gensler said that this is not the intent of what they did, especially with safe harbor.

Sen. Tillis (R-NC) noted that they sent an oversight request a while ago and he knows that Gensler's office provided a one-page response suggesting they meet with staff. He asked when they would receive a specific written response. Gensler said that they stand ready to meet with them and what they put out to the public was hundreds of pages and it explained the reasons. Tillis asked if they could get a commitment to meet absent a written response. Gensler said they stand ready to have staff meet and discuss the process. He said that this rule is rooted in decades of law, and it is a conversation that is already happening between companies and their investors. Tillis said that they would continue to press on answers to specific questions. He then turned to the Treasury Markets and asked if it was the single most important market. Gensler agreed. Tillis listed reasons for its importance and thought the recent proposal could curtail liquidity in the treasury market. He asked if the SEC really intended to require customers to register as dealers. He understood that any firm has to register as a dealer if it transacts in a certain market. Gensler said there are two prongs and that Tillis' understanding is correct. Tillis asked about how a pension fund that frequently transacts in the treasury market and exceeds the trading threshold would be considered a dealer under any commonsense interpretation. Gensler said it is about holding yourself out regularly and it would not cover pension funds as we know it. Tillis then asked if the nature of the trading would matter too. Gensler said that as large as treasury markets are, their pension funds are not trading at those types of levels. He said that he would submit several QFRs and said that they need to figure out how to get specific answers to the questions they asked.

Sen. Menendez (D-NJ) said that last time he asked Gensler to adopt the Asset Management Advisory Committee (AMAC) recommendations on diversity and they sent a letter supporting these recommendations. He asked for an update on the status of adopting these recommendations. Gensler said that there are four recommendations and they have been working with Menendez staff on the recommendations around staff guidance on how asset managers are selected and EEO complaints and how those are shared with other agencies. He felt that they had made good progress and would put out guidance soon. Menendez appreciated this, but he was disappointed because in other areas the SEC has taken bold steps, however when presented with the noncontroversial AMAC recommendation he has not been as aggressive. He asked if he could commit to concrete progress on this by the end of the year. Gensler said that he took DEI seriously at the SEC and when it comes to policy, it is held up in court, but Nasdaq put in place a listing requirement with regard to board diversity. He said they approved that and on these four committee recommendations, they have made good progress on two of them. Menendez then highlighted one of the AMAC recommendations, enhanced disclosure by investment companies and investment advisors regarding diversity within their workforce and leadership. He thought disclosures about diversity are incredibly important, which is why he introduced the Improving Corporate Governance Through Diversity Act and asked if enhancing diversity disclosures for advisory firms, investment company boards, and consultants would empower investors to make more informed decisions. Gensler said that they are continuing to look at this recommendation. Menendez said that the AMAC found that the investment performance at diverse AMs is better or equivalent to others, so the fiduciary duty does not require the exclusion of newer and smaller investment advisers. Gensler said that he shares the view and that this is the guidance staff is working on to put out. Menendez said that the fiduciary duty should not be used to exclude women and diverse firms, given the data.

Sen. Kennedy (R-LA) thanked him for his work on the HFCAA and asked for a quick overview of this issue's status. Gensler thanked Kennedy for his work on this and said that HFCAA gave them the additional leverage that they needed. He said that they said to the Chinese in August 2021, that they needed a statement of protocol before sending over auditors. Gensler said that PCAOB inspectors will be on flights tomorrow and it will take 8-10 weeks, so they will know if the Chinese will comply by Thanksgiving or so. Kennedy did not know if the Chinese would comply either and noted that he and Van Hollen had a bill that passed the Senate being considered by the House to move the deadline from three years to two years and he thought this might help. Kennedy then shifted to the climate risk disclosure rule and thought Tester raised good questions. He asked for Gensler's best guess on compliance costs. Gensler said he supported Kennedy's Accelerating Holding Foreign Companies Accountable Act (AHFCAA) and on climate, he said that they lay out the economic analysis in the rule. Gensler said that they lay that out per company based on the size and the total cost is in the single digit billions across the economy. Kennedy said it will cost billions to comply and those are scarce resources,

especially for those like Tester, and presumably the purpose of the rule is to focus investors' attention on the risk of climate change so they can demand that companies do a better job and to lower the world temperature. Gensler said that this is not the purpose, they are not a merit regulator, it is for the investors. Kennedy said that the people who support the rule, that is their intention, and he wanted to know how all this money spent on compliance would lower world temperatures. He noted the use of coal in China and India and how we do not have an agreement for them to reduce emissions, so spending this money will not help world temperatures. Gensler said that this is not what their authorities are or what motivates him on this, it is for investors to get consistent information and lower greenwashing.

Sen. Van Hollen (D-MD) turned to HFCAA and thanked Gensler and his team for their work and agreed that the timeline could be shortened with HFCAA. He thanked Gensler for his rulemaking on 10b5-1 trading plans and how at the beginning of the Congress, he and Fischer directed the SEC to undertake this rulemaking. Van Hollen noted clear abuses from insiders using this and pointed to a WSJ article on this issue. He also thanked Gensler for recognizing fraudulent securities scams, often targeting seniors, and noted legislation to crack down on this fraud via a grant to the SEC to help seniors out. Van Hollen said that state securities insurance commissioners support it. Gensler acknowledged that this is a big problem they are dealing with. Van Hollen said that they want to pass this legislation to better fortify states and they are also working on the TICKER legislation. He addressed country by country reporting for big multinational corporations and pointed to the EU and Australia moving toward increased disclosure requirements for large multinational corporations to disclose the countries in which they book profits and pay taxes as a way to mitigate risk to investors. Van Hollen said some companies are using sketchy tax havens and this is putting investors at risk. He was pleased to see the SEC's work on Amazon and country by country reporting and asked if new investor disclosures are needed in this area. Gensler said that they are looking at this and the FASB is looking to break out and disaggregate tax reporting for public companies and in the next few months, they are going to address this for the top handfuls of countries and get public feedback.

Sen. Cortez-Masto (D-NV) noted enforcement actions against crypto asset issuers, but not many cases have been brought against the exchanges where crypto assets are primarily traded. She asked Gensler to address why crypto asset intermediaries and exchanges should be regulated under the Exchange Act and why it is important for investors and market participants. Gensler believed that the vast majority of tokens are securities and these intermediaries with lots of tokens will have a bunch of securities. He said regulation benefits the public because they protect against front running, manipulation, and it ensures transparency. He pointed to the stock exchanges like Nasdaq and how they are regulated for the public benefits. Gensler said that there is a lot of noncompliance, and they are looking to work with the intermediaries, get them inside, and regulated. Cortez-Masto asked if the SEC could identify potential money laundering activity through this. Gensler said that this is more in the remit of the Treasury, however under the

money laundering laws, those registered with the SEC, like exchanges and broker dealers, have certain compliance obligations with FinCEN. He added that even if they do not register and they are legally supposed to, they have to comply with that. Cortez-Masto moved to ESG and said that we have a new generation of investors conscious of going green. She asked if they were looking to invest in this space. Gensler said yes, but they are also thinking about the future transition risk of companies. Cortez-Masto appreciated the conversation on greenwashing and how asset managers have discussed greenwashing risk. She asked him to talk about this. Gensler said that asset managers have said that they will invest in carbon neutral investments, which is why you have to make sure they are living up to this obligation to ensure integrity and address greenwashing.

Sen. Rounds (R-SD) thought that they needed to take a second look at the climate rule given the previous discussion. Gensler said that they have heard a lot from farmers and will want to ensure that it does not touch these private actors. Rounds said that if rules are ambiguous, they have to go back to the regulators, which causes concerns for those who want to invest. He then pointed to Gensler's speech last week on crypto and how it may be important to be flexible when imposing existing disclosure requirements. Rounds pointed to Bloomberg reporter Matt Levin's comments on how the SEC has been suing crypto projects for illegally issuing securities for about five years now, but at the same time has not put out any proposed rules on crypto projects. He agreed with Levin, that Gensler seems to want to regulate crypto. Rounds said that he has heard from a variety of companies that they will try to work with the SEC and then Gensler turns around and hits them with heavy enforcement actions or slow walks the process. Rounds said that Gensler has asked crypto companies to come in and register and then asked Gensler if any companies had come in and tried to do that. Gensler said that not liking the answer from the SEC does not mean there is no guidance, and they are talking to a wide swath of organizations to get them properly registered and inside the remit. He said that they will protect the public as best they can. Rounds said that the SEC has released 32 new rules and has more coming that will greatly impact capital markets and capital formation. He said that the economic impact has been viewed in isolation and they should be viewed in terms of the cumulative and cross sector effects, in order to prevent unintended consequences for our capital markets and broader economy. Rounds asked why the SEC has not considered the broader impact. Gensler said they have had 34 rules and that they do consider cross issues and sometimes even reopen proposals. Gensler said they also get comment letters after the comment period and they read them and put it in, so it takes months, sometimes 18 months to finalize rules. Gensler said that Rounds can call his cell phone anytime.

Sen. Smith (D-MN) asked Gensler about materiality and how securities laws are grounded in materiality. Smith asked Gensler to talk to the Committee about how climate disclosures are material information for investors. Gensler said it is material because so many investors are considering this information due to the potential for future transition risk. He said the big asset

managers add up to \$50 trillion and they want disclosure on this. Gensler acknowledged farmers not needing to get caught up in Scope 3, but the investor community is supportive. Smith said that this is important for investors to have this information. Gensler agreed. Smith then touched on the private fund market and how private equity and hedge funds have an outsized role in our economy, including in pensions plans, so she was pleased to see his action on this. She said that individual ownership of private funds has been on the rise and asked Gensler about the proposed changes to Form PF and how it will protect investors and the integrity of the market. Gensler said it will improve efficiency, transparency and performance. He said that Form PF was put in place after the 2008 crisis by the SEC and CFTC at the direction of Congress.

Sen. Lummis (R-WY) wanted to address Sec. 301 of her crypto bill. She said they shared Gensler's concern about the information gaps that can arise when digital assets are later used and traded by others. Lummis said that those who raise money from the initial sale of digital assets and those that continue to provide essential managerial efforts should be held responsible to provide disclosures to the market and the innocent secondary purchasers of digital assets should not be subject to strict liability. She said that in their bill, rather than attempting to impose new rules on secondary purchasers not involved in fundraising transactions, they propose technology neutral disclosure obligations that would hold responsible those who benefit from this fundraising, not the innocent user digital assets who don't know what the sponsor is up to. Lummis asked him about this and the need for disclosure in the digital assets market. Gensler said that disclosure is key, and they are setting up a new industry office in this field. He said the entrepreneurs and the sponsors/promoters should have the disclosure obligation and the SEC has the authority to facilitate and have different sets of disclosure. Gensler differed with Lummis on the secondary market because in the secondary stock market, there is still a disclosure requirement that covers the intermediaries and periodic reporting. He said that the intermediaries and common enterprise, not users, should have the obligation to disclose. Lummis asked if similar disclosure options should apply to ICOs. Gensler said they are similar in kind, but there may be a different list. Lummis said they want to address any of the gaps that Gensler sees in the bill, and she did not see an avenue for her bill to be before the Committee before the end of the year. She said that she wanted to work with him and his staff before January on this legislation and improve it. Gensler said that they don't want to undermine the capital markets and definitions.

Sen. Ossoff (D-GA) asked what keeps Gensler up at night with regard to financial stability. Gensler said that with the war in Ukraine, tightening monetary policy, the remaining geopolitical challenges, commodity prices and COVID, he was looking and thinking about the relationship between the banking sector and the hedge fund sectors and investors, but also the relationship between banks and the commodity traders. He said that he thought about resiliency in the market which is why they are looking at the Treasury Market, MMF, and more. Ossoff turned to the Treasury Market and asked Gensler to break down the nature of concern about illiquidity in the

Treasury Market and how they are proposing to address it. Gensler said the market is a quarter of our capital markets and it is the foundation of our capital markets. He said they have had real ‘jitters’ in this market every few years and it puts pressure on the Fed. Gensler thought they could lower risk by ensuring that all the high frequency dealers are registered and regulated and that trading platforms are regulated and getting the benefits of clearing, which lowers risk in the system. He said they worked with the Treasury and the Fed on this. Ossoff asked if the concern of illiquidity in the Treasury Market threatens the Fed’s ability to execute open market operations in a crisis. Gensler said if we execute these proposals in the treasury market then it will build greater resilience and increase some competition in the marketplace. Ossoff noted military communities in Georgia and a Ponzi Scheme targeting veterans and asked Gensler to commit to cracking down on these schemes. Gensler committed to this and said veterans should let the SEC know if they see anything suspect.

Sen. Hagerty (R-TN) was struck by Gensler calling the Securities Laws the Gold Standard and he did not think this was the case anymore due to the crippling regulatory costs. He pointed to the 32 new rules that will cost even more and how this regulation will cause the capital markets to die a slow death. Hagerty noted the expansion of the SEC’s purview in the guise of investor protection and how previously, since not all markets are open to retail investors, the SEC traditionally used differentiating levels of paternalism depending on the given market. Hagerty stated that the two most egregious examples of this creep are the Private Funds Rule and the SEC’s announcement that it would begin to force significant disclosure requirements on fixed income securities, including those that are regulated under Rule 144A. He said that SEC staff has claimed that these rules will enhance investor protection, but he thought Gensler knew well that the qualified investors in these products are not unsophisticated and do not need hand holding. Hagerty went on that these rules would impose significant new costs and act as an impediment to American innovators who need early-stage capital to grow. He asked if the distinction between large institutional investors versus mom-and-pop investors is somehow unimportant or if there was some other motivation driving the SEC to go after larger investors, who his predecessors have given a degree of economy to. Gensler pointed to accredited and nonaccredited investors and the Private Funds rule *audio/video of livestream cut out*. Hagerty said these are sophisticated investors and small companies will lose access to capital due to this overreach.

Sen. Warner (D-VA) asked about the comment periods. Gensler said that they still review comments after the comment period and it takes a year, year and a half to finalize these rules. He said they sometimes publicly reopen comment periods and pointed to security lending and stock buybacks. Warner said that he worried about cybersecurity issues, and he was surprised that we have not seen more from Russia recently. He said that they worked to get an across-the-board mandatory cyber incident reporting incident legislation and trying to find the right timing for reporting and not interfering with the criminal investigation, but they can fall into materiality. Warner asked how they do this interaction between the CISA and SEC requirements on

reporting. Gensler said that they are focused on material events, and they put out a rule on cyber for public companies. He said they have been talking to DOJ and DHS on this and they included an important question in that proposal on national security. Warner thought the more they could spell this out about the interaction between agencies, the better. He then noted that they have legislation on human capital disclosure and thought human capital investment was important. Warner asked Gensler to speak on this. Gensler said they are looking at what worked and did not work under Clayton, and he remembered looking at key statistics about workforces at companies when he worked on Wall Street. He thought shareholders should have access to similar information and they also got a letter from former SEC commissioners on this.

Sen. Daines (R-MT) thought the climate rule was beyond unreasonable and should be withdrawn. He said that the burden on larger and small companies will be significant and impact companies downstream. Daines asked if he thought it was reasonable to have companies collect and report on things regarding company cars. Gensler said that we have many companies disclosing GHG emissions, and they are often including Scope 3, so what the SEC is trying to do is bring some standardization to this. He said that if you have made a commitment and said it's material, you have to report. Daines clarified that companies would have leeway on whether they report or not. Gensler said that it is just a proposal, and it is only needed if they have made public commitments or think it's material. He said that there is no goal to touch farmers in any of this. Daines asked if this would be carved out specifically. Gensler said that it has to do with a company's public commitments and how they are estimating emissions. Daines hoped that Gensler heard their concerns, and they are watching what's going on in California and Europe. Gensler said that they want to adopt a rule that stands in court and many companies (depending on size) may have to comply with the European regime on climate. Daines turned to BDCs and their role in providing credit to middle market companies. He said one issue is the application of the SEC's Acquired Fund Fees and Expenses (AFFEs) to BDCs and how it overcounts the true cost of BDCs, which misleads investors. He noted his legislation, the Access to Small Business Investor Capital Act, which would allow BDCs to move 100 percent of AFFE disclosures below the fee table. Daines asked if the SEC was going to address the AFFE disclosure for BDCs and if investors deserve the parity of disclosure with REITs. Gensler said that BDCs are often owned by mutual funds, and there is transparency that investors in the mutual fund need to see.

Sen. Reed (D-RI) noted his legislation, S. 4857, the Private Markets Transparency and Accountability Act, which would require the nation's largest private companies to register with the SEC. He thought this was important given the increase in private companies and their involvement with the public markets. Reed asked about the interaction between public and private markets when it comes to investor protection. Gensler said that there is a difference between disclosure and consumer protection and their remit is public companies. Reed said many public companies were previously small and publicly owned. Gensler said that there are about 1,200 unicorns in the U.S. Reed said the investors' protection and disclosure is not the same for

them. Gensler agreed. Reed turned to the Sarbanes-Oxley Act (SOX) and how one big concern was that the Big Four accounting firms provide consulting as well and asked what the SEC is doing to prioritize independence over seeking non-audit revenue. Gensler said that SOX wanted to ensure that there was separation between auditing and consulting, and he has asked the Office of Chief Accountant at the SEC and the PCAOB to update their standards on this separation and independence. He said SEC Chief Accountant Munter has leaned into this recently. Reed said that there have been several issues at accounting firms, including ethical lapses and professional problems, and noted how those findings are not disclosed to the public. He noted that he and Grassley had legislation (the PCAOB Enforcement Transparency Act) to ensure that these findings about misconduct at accounting firms go public and he thought this was important. Gensler agreed that this is important.

Sen. Warren (D-MA) turned to the proposed rule on climate and then ran through the different examples of Scope 1, 2, and 3 emissions at a company like Exxon. Gensler thought she had them right. Warren said that you need all three scopes, otherwise they could just hire some smaller, non-reporting company to do their filthy work. Warren asked Gensler what percentage of emissions for a company like Exxon are Scope 3. Gensler was not sure, but for some companies it is as much as 90 percent. Warren said that he was close and about 88 percent of emissions for fossil fuel emissions are Scope 3 emissions and she thought the proposed rule gave companies too much wiggle room already. She said that Exxon and their trade association have been fiercely lobbying against this and if they get their way, investors will be in the dark. Warren asked Gensler, if a company only discloses 12 percent of their emissions, do investors have the information they need to know about a company's likelihood of success in a green economy. Gensler said that a lot of companies are making commitments about these scopes and if the emissions are material, they have to measure this. Warren said that if climate emissions are going to become more important in valuing businesses, do the investors have the information they need to make a good decision if the company only reports 12 percent of emissions. Gensler responded that the top three to four hundred investor letters mostly favor all three scopes. Warren said that big banks and asset managers have been asking about these emissions because it is crucial investment information.

Ranking Member Toomey (R-PA) said he had concerns about using financial regulators to advance a liberal agenda and this is so undemocratic. Toomey said he was putting Gensler in this category due to the proposed climate rule. He pointed to the Major Questions Doctrine and *West Virginia vs. EPA* and thought that the climate rule under this doctrine does not have congressional authority. Toomey asked if Gensler gave any consideration to rescinding this rule due to this recent SCOTUS case. Gensler said that they take the courts seriously and they are reviewing more than 14,000 comments and their authorities according to law. He said that investors want this information, and they have an obligation to ensure fair dealing and that

disclosures are not misleading. Toomey thought Gensler would find an unsympathetic court if they went ahead with the climate rule.