

HOUSE FINANCIAL SERVICES HEARING ON OVERSIGHT OF THE SEC

EXECUTIVE SUMMARY

On Wednesday, September 24, the House Financial Services Committee held an oversight [hearing](#) of the Securities and Exchange Commission (SEC), featuring testimony from the entire commission. The extended session, saw lawmakers from both parties touch upon a wide array of issues regarding the agency and the financial sectors it regulates. Notably, **Ranking Member Maxine Waters (D-CA)** invited **Chair Patrick McHenry (R-NC)** to strike a “grand bargain” with committee Democrats on stablecoin legislation before the end of the year. Several members on either side of the aisle criticized the agency’s approach to the digital asset sector, deeming it to be ideologically opposed and hostile to the industry at large, resulting in a regulatory regime that is difficult to operate under. These members, largely opposed to the SEC’s approach to cryptocurrency, touted the House-passed Financial Innovation and Technology for the 21st Century Act (FIT21) ([H.R.4763](#)) as a solution to regulate the industry. There was similar bipartisan concern regarding the storage of financial data in China, as **Reps. Brad Sherman (D-CA)** and **Michael Lawler (R-NY)** raised concerns regarding financial apps headquartered in China.

Throughout the discussion, Republican lawmakers expressed disapproval toward SEC rulemaking under the tenure of Chair Gary Gensler, pillorying what they termed a lack of stakeholder engagement and “regulation by enforcement,” and questioning the lack of focus on capital formation. In contrast, the majority of Democrats on the committee effusively praised Chair Gensler’s record at the SEC, highlighting efforts to protect consumers and investors.

OPENING STATEMENTS

Chair Patrick McHenry (R-NC) ([statement](#)) attacked the SEC as a “rogue agency.” He noted a string of judicial victories overturning SEC rules, regulations, and enforcement actions. He accused these rules of exceeding the SEC’s statutory authority, with insufficient public engagement. Chair McHenry condemned the SEC for failing to pass rules to strengthen capital formation. He touched upon the House’s passage of FIT21, a bill to create a regulatory regime for digital assets, a sector in which he argued that the SEC is restricting innovation.

Ranking Member Maxine Waters (D-CA) ([statement](#)) praised the leadership and record of Chair Gensler. She applauded his use of enforcement actions to make the marketplace “fairer” for investors. In particular, she praised the climate risk disclosure [rule](#), and called upon the SEC to pass additional disclosure rules in the area of human capital. Ranking Member Waters called upon Chair McHenry to strike a “grand bargain” with committee Democrats on stablecoins, and proposed backing stablecoins with short-term Treasury bills.

Subcommittee Chair Ann Wagner (R-MO) accused Chair Gensler of allowing insufficient public comment on rules.

Subcommittee Ranking Member Sherman (D-CA) praised the swing pricing proposed [rule](#), custody proposed [rule](#), and AI data analytics proposed [rule](#). He called for the commission to be a leader in the regulation of artificial intelligence (AI). Finally, Rep. Sherman praised the climate disclosure rule.

WITNESS PANEL

SEC Chair Gary Gensler ([testimony](#)), providing testimony on behalf of the entire commission, noted the SEC's duty to protect investors, maintain the strength of markets, and facilitate capital formation. He emphasized the importance of U.S. capital markets to continued economic prosperity. Chair Gensler concluded by remarking that the agency's funding has not been increased, despite increasing needs for its regulatory and enforcement authorities.

Mr. Hester Peirce, Commissioner of the SEC

Ms. Caroline Crenshaw, Commissioner of the SEC

Mr. Mark Uyeda, Commissioner of the SEC

Mr. Jamie Lizárraga, Commissioner of the SEC

DISCUSSION AND QUESTIONS

Digital Asset Regulation

- Chair McHenry questioned if the SEC differentiates between crypto “tokens” and crypto “securities.” Chair Gensler confirmed that the difference is determined by the “Howey Test,” set out by the Supreme Court.
- Chair McHenry asked if part of the differentiation is due to a lack of regulatory clarity. Ms. Peirce confirmed her belief that an explicit law would improve clarity in regulatory language.
- Chair McHenry wondered if excessive agency work has been dedicated to digital assets, and questioned how much time has been spent on capital formation. Ms. Peirce expressed her belief that there has been no positive work on capital formation over the past four years.
- **Rep. French Hill (R-AR)** commented on the bipartisan support for FIT21, and denounced the SEC's approach to the sector, which he deemed “regulation by enforcement.” Ms. Peirce termed the approach “very bad ... [and] inefficient,” leading to questions about SEC authority. Mr. Lizárraga answered that the SEC is operating lawfully under the current framework.
- Rep. Hill accused the SEC of failing to use its discretionary authority to provide regulatory clarity in the digital asset ecosystem. Mr. Uyeda relayed that the SEC can explicitly define how crypto treasuries pass the Howey Test.

- **Rep. Nydia Velazquez (D-NY)** questioned if savings realized by tokenization of assets have been passed onto consumers. Chair Gensler relayed that tokenization does not change the value of assets.
- **Rep. Brad Sherman (D-CA)** applauded the SEC’s regulatory actions in the cryptocurrency sector, and called for stricter conflict of interest and revolving door regulations.
- **Rep. Stephen Lynch (D-MA)** expressed concern that North Korea is targeting the employees of cryptocurrency firms and exchanges to steal assets, noting that a potential breach could put investor funds at risk. Chair Gensler identified the irrevocable ledger as a significant risk to the sector that enables cybertheft.
- Rep. Lynch also commented on the “vertical integration” of the crypto industry as a risk to consumer funds, and he expressed specific concern with FIT21 legislation. Chair Gensler identified the separation of stock exchanges and broker-dealers as a key to the success of the U.S. financial system.
- **Rep. Andy Barr (R-KY)** called for clear and explicit digital asset regulations. Ms. Peirce agreed on the importance of explicit regulations.
- **Rep. Tom Emmer (R-MN)** critiqued the tenure of Chair Gensler, especially with regard to digital assets. In a similar dialogue, **Rep. Warren Davidson (R-OH)** was also critical of Chair Gensler for a perceived bias against the digital asset industry.
- **Rep. Sylvia Garcia (D-TX)** asked what fraud prevention measures are being considered for cryptocurrencies and crypto ATMs. Mr. Lizárraga shared that the SEC will enforce all securities laws, and that this remains a priority.
- **Rep. Ritchie Torres (D-NY)** criticized the SEC’s definition of treasuries under Chair Gensler.
- **Rep. John Rose (R-TN)** emphasized the need for a platform for cryptocurrency platforms to register with the SEC, and questioned whether firms that receive approval to operate as a Special-Purpose Broker-Dealer (SPBD) are able to custody digital asset securities that have not been previously registered with the SEC or have received an exemption. Chair Gensler relayed that they cannot custody non-securities.
- Ms. Peirce — in conversation with Rep. Rose — expressed her belief that the SEC’s approach to the digital asset industry should be driven by regulation rather than enforcement.
- **Rep. Wiley Nickel (D-NC)** criticized the SEC’s stance on digital assets.
- **Reps. Mike Flood (R-NE)** and Nickel critiqued [Staff Accounting Bulletin \(SAB\) 121](#). Chair Gensler defended the bulletin, and did not commit to rescinding it. Rep. Flood asked if it has led to concentration risk in the digital asset custody industry. Ms. Peirce argued that it has.
- **Rep. Bryan Steil (R-WI)** asked whether the proposed rule regarding the Safeguarding of Advisory Client Assets ([NPRM](#)) would endanger the cryptocurrency industry. Mr. Uyeda confirmed his belief that it could.
- **Rep. Byron Donalds (R-FL)** questioned if a digital asset sandbox would function under the provisions of the FIT21 Act. Ms. Peirce suggested that the lack of an approval process would enable innovation.
- Rep. Donalds, in conversation with Ms. Crenshaw, agreed on the need to engage with stakeholders in the decentralized finance (DeFi) industry.

- **Rep. William Timmons (R-SC)** criticized the SEC’s characterization of Non-Fungible Tokens (NFTs) as securities. Ms. Peirce agreed, questioning the commission’s different characterizations for digital and physical assets.
- **Rep. Erin Houchin (R-IN)**, following up on the point made by Rep. Rose, raised concerns about the SEC’s “dancing around” the classification of Ether. Ms. Peirce reiterated her belief that the sector requires an explicit regulatory regime.

Market Regulation

- Rep. Velazquez noted that the SEC has yet to implement a rule to ban executive pay that incentivizes inappropriate risk-taking at financial institutions — despite having a statutory obligation to do so — and questioned why it has yet to take action. Chair Gensler explained that the SEC has moved to implement nine of the 10 obligated rules not yet promulgated, and that the SEC is dependent upon the Federal Reserve, as it must be proposed jointly. Mr. Lizárraga agreed on the importance of the rules, but commented on the difficulty of undertaking joint rulemaking and economic analyses simultaneously.
- **Rep. Frank Lucas (R-OK)** thanked Chair Gensler for his engagement on the securities-based swap position [rule](#). Chair Gensler noted that the SEC is considering pursuing additional public comment on the matter.
- Rep. Lucas, noting recent rules on treasury clearing, relayed the desires of market participants to extend the timeline for those rules to come into effect. Chair Gensler said that the first timeline is on track. Ms. Peirce argued that the agency should consider extending timelines, and should engage with industry on the necessity of doing so.
- Rep. Lucas criticized the custody rule and the predictive data analytics rule, and questioned how the SEC could determine potential unintended consequences before reaching the proposal stage. Mr. Uyeda suggested that the SEC could hold additional roundtable discussions with industry stakeholders.
- **Rep. Brad Foster (D-IL)** relayed his concern that social media can be used to manipulate the price of stocks, which can have significant implications for a company’s reputation and ability to raise capital. He asked if new short-selling regulations are needed to prevent social media-related market manipulation. Chair Gensler noted that short-selling is an important part of markets, but agreed that manipulation must be prevented.
- **Rep. Bill Huizenga (R-MI)** questioned why the SEC has diverged from its traditional materiality standard, and is instead using “decision useful” language. Ms. Peirce shared that using this more ambiguous language allows the SEC to listen to non-investors, who have non-investment interests in a company. She expressed concerns with this practice, while Chair Gensler claimed that the language solely concerns investors.
- Rep. Sherman questioned if there is any need for the safeguarding rule to cover real estate. While he did not answer the question directly, Chair Gensler noted that the agency has received significant comments on this matter.
- Rep. Wagner commented on large fines levied by the SEC, and questioned if this is justified by fraud or customer harm. Ms. Peirce claimed that typical cases are based on record-keeping problems, which should be addressed differently.

- Rep. Wagner questioned why the SEC did not issue a risk alert during the COVID pandemic, and has instead pursued responsive enforcement actions. Ms. Peirce agreed that a regulatory approach should have been taken first.
- **Rep. Roger Williams (R-TX)** raised concerns regarding compliance burdens of the SEC's regulatory requirements, and questioned if the SEC considers these burdens when engaging in rulemaking. Chair Gensler confirmed that the SEC engages in feedback with small businesses during public comment periods, and has routinely engaged the Small Business Administration (SBA). Ms. Peirce and Mr. Uyeda disagreed, claiming that the SEC could do "much more" to engage small businesses to minimize burdens.
- Rep. Williams noted his concern with the cost to enter the U.S. market, and critiqued the failure of the SEC to encourage capital formation. Ms. Peirce agreed, claiming this disincentivized companies from pursuing an Initial Public Offering (IPO).
- Rep. Williams and Mr. Uyeda highlighted the importance of public input for good policymaking.
- **Rep. Barry Loudermilk (R-GA)**, in conversation with Mr. Uyeda, confirmed that there is no plan to make the Consolidated Audit Trail (CAT) or Customer Account Information System (CAIS) public, but that future boards could change that. Rep. Loudermilk asked whether removing Personally Identifiable Information (PII) and the CAT would affect whether a CAT reporting firm is required to indicate that it using the Regulation SHO Market Making Exemption under SEC Rule 13F-2. Mr. Uyeda expressed his belief that it would not have any effect. Mr. Uyeda expressed to Rep. Loudermilk his belief that removing PII from CAT collection would not seriously impede short-sell data information.
- Rep. Loudermilk expressed concern that CAT could be breached by hackers, compromising the personal information of any stockholders. Ms. Peirce shared these concerns.
- **Rep. Ralph Norman (R-SC)** asked the commissioners to broadly outline the cause of capital shortages. Mr. Uyeda suggested increasingly complicated bureaucratic and administrative requirements are to blame, driven by regulatory burdens. Ms. Peirce additionally suggested finder's regulations, micro-offering exemptions, and expanding the accredited investor definition.
- **Rep. Dan Meuser (R-PA)** questioned why the SEC is pursuing equity market structure changes without updating Rule 605 training data. Chair Gensler relayed that many outdated rules required updating, and in some cases, restrictions have been lifted.
- Rep. Steil, in conversation with Ms. Peirce and Mr. Uyeda, confirmed that proxy advisors offer market-moving or vote-moving advice. Chair Gensler agreed. The three also denounced the decision to immediately revoke the 2020 Proxy Advisor [Rule](#).
- Rep. Steil claimed that [Staff Legal Bulletin \(SLB\) 14-L](#) changed decision making regarding the exclusion of non-germane or duplicative shareholder proposals, and questioned why an action letter was not issued. Mr. Uyeda relayed that the decision is made by SEC staff, reporting solely to the Chair.
- **Rep. Rashida Tlaib (D-MI)** condemned the "widespread" practice of stock buybacks, tying it to executive compensation in stock and options, and questioned when the SEC will repropose the struck-down stock buyback rule. Chair Gensler was unable to commit to a timeline.

- **Rep. Brian Fitzgerald (R-WI)**, on the Safeguarding of Advisory Client Assets rule, asked whether it is appropriate to include real estate in the initial proposal. Mr. Uyeda relayed that there have been comments suggesting that real estate should not be included.
- **Rep. Andrew Garbarino (R-NY)** expressed concern with the expiration of a No-Action Letter regarding Rule 15C2-11, which he fears could disrupt fixed-income markets, and requested an extension until the Rule is amended. Chair Gensler made no commitment on the issue.
- Rep. Garbarino requested an updated timeline on the issuance of the Safeguarding of Client Asset proposal. Chair Gensler conveyed that the agency is taking public comment into consideration, specifically regarding cash segregation, and was unable to specify a timeline.
- Rep. Garbarino urged the SEC to engage in rulemaking to encourage capital formation. Ms. Peirce agreed on the importance of pursuing this, emphasizing easing burdens on small companies raising money and large companies going public.
- **Rep. Young Kim (R-CA)** questioned how the SEC considers the overlap between existing and proposed rules. Ms. Peirce relayed that cost-benefit analyses consider existing rules, but not proposed ones. Rep. Kim promoted her legislation, the REG Act ([H.R. 7030](#)), which would require the SEC to consider the aggregate cost of regulations.
- Rep. Kim asked about the distinction between public and private markets regarding SEC authorities. Mr. Lizárraga emphasized the importance of balance between the two. Ms. Peirce, responding to concerns that the SEC seeks to regulate private companies, accused the current SEC majority of seeking to “erode” private markets.
- **Rep. Michael Lawler (R-NY)** asked if the SEC intends to pursue the implementation of Rule 10B-1. Chair Gensler explained that, while the agency does have statutory requirements under Dodd-Frank, it received significant comments that it is considering.

Retail Investing

- Ranking Member Waters questioned what reforms the SEC implemented as a result of the “meme stock” phenomenon. Chair Gensler highlighted recent proposed rules promoting greater competition with half-penny trades, shortening the settlement cycle for securities, and mandated short-selling and execution-quality disclosures.
- Ranking Member Waters, noting the relationship between Robinhood and Citadel, asked how common these partnerships are. Chair Gensler noted that Robinhood’s closing of accounts abilities to buy or sell was a result of their relationship with clearing houses, and that recent rules would prevent this from happening again.
- Rep. Sherman expressed concern with celebrities using their status to promote investments, particularly when considering the rise of retail investors. Chair Gensler noted that this is touched upon in the SEC’s authorizing statute, and that celebrities have strict disclosure obligations regarding such advertisements. However, the Chair acknowledged a lack of resources in enforcing this.
- Rep. Wagner highlighted her Increasing Investor Opportunity Act ([H.R.2627](#)), to overturn the SEC’s position that retail investors cannot invest in alternative asset classes. Mr. Uyeda agreed on the importance of broadening investment opportunities, and expressed concern about the SEC staff’s position.

ESG, DEI, and Human Capital

- Rep. Huizenga asked whether environmental, social, and governance (ESG) “activists” are able to influence Chair Gensler’s decision to list a company in the U.S. Chair Gensler noted that companies, as long as they comply with the law, can be listed in the U.S.
- Rep. Barr questioned the SEC’s statutory authority for ESG rulemakings. Ms. Peirce agreed, expressing concern about moving beyond financial materiality.
- **Rep. Joyce Beatty (D-OH)** asked if companies that release human capital disclosures see tangible benefits. While Chair Gensler acknowledged that he believes the information to be important, what ultimately matters is if investors believe it to be material.
- Rep. Beatty asked if the SEC plans to increase disclosure requirements regarding Diversity, Equity, and Inclusion (DEI). Chair Gensler agreed on the benefits of diverse company boards.
- **Rep. Sean Casten (D-IL)** confirmed with the witnesses that they would all be open to establishing a regulatory regime for ESG rating providers.
- **Rep. Nikema Williams (D-GA)** asked how the SEC prioritizes DEI within its frameworks and seeks to tackle the racial wealth gap. Chair Gensler relayed the importance of recruiting from all backgrounds, while promoting equitable market access to all communities. He argued that ESG disclosures are important for investors to make informed decisions, and confirmed that the SEC seeks to promote capital formation for all communities. Mr. Uyeda disagreed, suggesting that small businesses find it difficult to access capital.

Emerging Risks

- **Rep. Emmanuel Cleaver (D-MO)** communicated his “major concerns” with AI in financial services. Chair Gensler, Chair Crenshaw, and Chair Peirce confirmed that this will be a major focus of the SEC.
- Rep. Sherman asked if data held by Chinese-owned brokerage firms is stored in China. Chair Gensler confirmed that brokerage firms can store data in any geography, as long as they are in compliance with the laws of the countries in which they operate. Rep. Sherman called for restrictions on data storage, such that brokerage firms cannot store data in China.
- Rep. Garcia praised the SEC for efforts to encourage multilingual consumer education and fraud education content.
- **Rep. Josh Gottheimer (D-NJ)** suggested that the SEC should take further actions to prevent market manipulation through social media. Chair Gensler confirmed that the agency treats fraud equitably, regardless of the technological vector, but is constrained by limited resources.
- Rep. Gottheimer questioned the SEC’s response to ransomware attacks, in coordination with other agencies. Chair Gensler confirmed that they work extensively with law enforcement and intelligence agencies, especially as it relates to the agency’s authority over cryptocurrency.
- Following up on the question of Rep. Sherman, Rep. Lawler expressed concerns that trading apps based in China are obligated to share data — potentially including the financial data of U.S. citizens — with the Chinese government. Ms. Peirce and Mr. Uyeda acknowledged and shared this concern.