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Senate Banking Committee Hearing

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Provided by:



OVERVIEW

Yesterday, the Senate Banking Committee held a [hearing](#) to consider the nomination of Gary Gensler to be a Member of the U.S. Securities and Exchange Commission (SEC or Commission) and Rohit Chopra to be Director of the Bureau of Consumer Financial Protection (CFPB).

Key Takeaways

- Former Chairman of the U.S. Commodity Futures Trading Commission (CFTC) Gary Gensler explained that advances in technology and changes in market structure have fueled the recent market volatility. He said the Commission should examine payment for order flow (PFOF) and its impact on best execution, while noting the small number of firms that compete for retail order flow.
- Gensler said that innovations in FinTech, like cryptocurrencies and blockchain technology, have been a catalyst for important changes in the financial industry, but he said they also raised investor protection concerns. He said the SEC should be technology-neutral and added that additional regulatory clarity is needed to address these new products.
- When asked about a financial transaction tax on U.S. equity trades, Gensler responded that he has not closely studied the issue; however, he said that the current, modest fee that helps fund the SEC has not had a negative market impact.
- Rohit Chopra said that modernizing the U.S. payment system would help further equal access to banking and financial products. He was cautious about large technology firms entering the financial space, e.g., Facebook's Libra/Diem project, and how they would impact consumer privacy and other protections.

SUMMARY

Opening Statements and Testimony

Chairman Sherrod Brown (D-OH)

The CFPB is the voice for the many Americans that feel like they do not have a voice in Washington. Mr. Chopra has the expertise and track record to lead the CFPB and has a deep knowledge of consumer financial markets and holding bad actors accountable. He has earned the endorsements of many groups, and with him leading the CFPB, Americans can be assured that he will look out for them.

Mr. Gensler has delivered results at the CFTC and Treasury, and he will bring the same results to the SEC. He will bring the focus back to the people who make this country work and take on Wall Street's bad actors.

Ranking Member Pat Toomey (R-PA)

The CFPB has repeatedly overstepped its jurisdiction and used public pressure practices to harm businesses, e.g., publishing unsubstantiated consumer complaints. Mr. Chopra helped establish the unaccountable CFPB, which is why I have concerns with his nomination. While at the Federal Trade Commission (FTC), he took an anti-business stance. We know he favors unaccountable regulators, raising concerns about how he will run the CFPB.

Mr. Gensler has a great deal of knowledge about the securities markets, which are an important engine for economic growth. The SEC has traditionally administered the securities law on a bipartisan basis, but there are some that want it to use its regulatory powers to advance a progressive agenda. Securities laws are not the appropriate vehicle to address climate change and racial inequalities. His work at the CFTC raises questions about whether he will push the bounds of the SEC's jurisdiction.

Gary Gensler

When the SEC's rules are clear, and it enforces them, the U.S. economy grows and prospers. But when we fail to root out wrongdoing or adapt to new technologies or to understand novel financial instruments, things can go wrong, and people get hurt.

If confirmed, I will work to strengthen transparency and accountability in our markets and promote efficiency and competition so our markets can operate with lower costs to companies and higher returns to investors.

Markets and technology are always changing, and our rules have to change along with them. I believe FinTech can be a powerful force for good, but only if we continue to harness the core values of the SEC in service of investors, issuers, and the public.

[Rohit Chopra](#)

Consumers continue to discover serious errors on their credit reports or feel forced to make payments to debt collectors on bills they already paid or never owed. These kinds of problems will make it more difficult for our country to sustain a full recovery.

In the mortgage market, fair and effective oversight can promote a resilient and competitive financial sector and address the systemic inequities faced by families of color. Administration of consumer protection laws can help families navigate their options to save their homes.

Discussion

Equity Market Structure

Brown: What does the recent market volatility mean for ordinary Americans, and what steps should the SEC take to address it? *Gensler:* Changes in technology have helped fuel the recent market volatility. If confirmed, I will examine how customers can still get best execution in light of PFOF, how to ensure market access when trading apps fall short, how to improve competition, and lower back-office costs.

Toomey: Will you commit that the SEC will undertake the initiatives we discussed and were included in my letter to the SEC's acting chairman? *Gensler:* If confirmed, I look forward to working with SEC staff and the Committee on those items we discussed, including a shorter settlement time.

Reed (D-RI): Will you commit to evaluating PFOF and related practices? *Gensler:* Yes, we should always evaluate market changes. Recent events have raised the need to examine PFOF and best execution.

Warner (D-VA): I have often fought against conflicts of interest in the equity market structure, and these issues have been reignited around the recent market volatility. How will you examine these issues? *Gensler:* Technological innovations have raised important policy issues in our capital markets. We will examine equity market structure and PFOF. A small number of the financial firms are buying the majority of retail order flow. We will also address what best execution means in the context of these trends.

Cortez Masto (D-NV): What steps will you take to protect investors that may not be knowledgeable about trading risks? *Gensler:* Technology has provided greater market access, but it also raises questions about gamification and behind-the-scenes payments when an app purports to offer free trading, i.e., PFOF. We need to study these issues and what they mean for the marketplace.

Blockchain Technology and Cryptocurrencies

Rounds (R-SD): Our outdated regulatory regime has led to cryptocurrency organizations setting up overseas. What can Congress and the SEC do to provide a more friendly environment for innovators in this space? *Gensler:* These innovations (cryptocurrencies) have been a catalyst for change in the financial industry, but they have also raised investor protection concerns. I will work with the Commission to promote innovation, while protecting investors.

Hagerty (R-TN): It is challenging for regulators to manage advancements in technology. Share your thoughts on the SEC's role in regulating digital assets. *Gensler:* The SEC should be technology-neutral while staying true to its mission. If someone is offering an investment contract and there are exchanges trading it, there needs to be investor protections. If not, then it is likely a commodity like bitcoin and would be within the CFTC's jurisdiction.

Lummis (R-WY): Do you agree that the SEC needs to provide more regulatory clarity on digital assets and blockchain technology? How can we ensure consumer protections for digital assets that do not also hamper innovators? Talk about how blockchain technology can promote financial inclusion, reduce risk, and create new markets. *Gensler:* Markets constantly change and evolve, and it is important for the Commission to provide guidance and clarity whether it is through rulemaking, no-action relief, etc. Custody is an important issue and so is protecting investors from market fraud and manipulation. Blockchain technology has been a catalyst for important changes in numerous areas.

FTT

Tillis (R-NC): Would an FTT in the U.S. have the same kind of negative impacts similar laws have had in other countries? *Gensler:* I have not closely studied the issue, but the U.S. currently has a modest transaction fee to support the SEC. Even in its modest level, this fee has not had a negative impact on our capital markets.

ESG Initiatives and Company Disclosures

Toomey: Is it a good idea to require company boards to adhere to some kind of quota, whether regarding race or gender? Talk about materiality in regard to climate disclosures and political spending. *Gensler:* Board diversity and in senior leadership benefits decision making. Materiality is defined as what a reasonable investor would need to know to decide whether to invest or not. I will be grounded in economic analysis and the Supreme Court's materiality definition.

Shelby (R-AL): Elaborate on the difference between political materiality and economic materiality. *Gensler:* I will be grounded in economic analysis and what the courts have found to be material to a reasonable investor.

Menendez (D-NJ): Do you agree that political contributions represent material information that could impact a company's financial performance? Does greater board and leadership diversity lead to better corporate performance? *Gensler:* Disclosures are critical to investors and promoting capital formation. I will be grounded in the materiality standard that drives disclosure. Yes, greater diversity among a company's ranks can help its performance. Human capital is an important part of a company's value proposition, and we will examine what information investors want about human capital.

Warren (D-MA): Is there any reason why companies should be able to hide their climate risks to investors? Should the SEC require private equity firms to disclose how they operate, i.e., loading up companies with debt? *Gensler:* Companies should not be able to hide their climate risks to investors, but materiality will be at the heart of our work. Yes, private equity firms should disclose their business practices to their investors (limited partners).

Van Hollen (D-MD): Is it important for the SEC to match its disclosure rules with investors' demands for information? *Gensler:* The courts have been clear that the investor gets to decide what is material, not the regulators. A growing amount of capital and a number of investors are looking for broader disclosures.

SEC Enforcement

Warren: If Robinhood cheated individual investors, should it be allowed to use forced arbitration to avoid being held accountable? *Gensler:* Investors should have an avenue to redress in the courts.

Daines (R-MT): How should the SEC determine whether to pursue an enforcement action versus other means? Will you make targeting schemes against senior citizens a priority? *Gensler:* Enforcement is about following the facts and law to stamp out fraud and manipulation in the markets. Those less able to protect themselves need the SEC.

CFPB Authority and Governance

Scott (R-SC): Did Congress provide the CFPB oversight of the insurance industry? Will you improve the transparency of the CFPB's rulemaking and enforcement programs? *Chopra:* No, Congress did not provide the CFPB oversight of state-regulated insurance agencies. Yes, federal agencies should strive for transparency into its processes.

Tillis: Will you try to expand the scope of the CFPB's authority related to unfair or deceptive practices? *Chopra:* We will enforce the law as it is written. Transparency needs to always be a priority, particularly as it relates to ensuring that small firms can compete with large incumbents.

Rounds: Share your thoughts on the appropriate uses for the CFPB's civil penalty fund, and how will you promote its transparency? *Chopra:* The penalty funds should be used only for the statutory reasons, i.e., victim redress and financial literacy efforts. The funds will not be used for any other purposes.

Kennedy (R-LA): Should we pass legislation that requires the credit bureaus to establish a formal process that allows consumers to contest inaccurate reporting? *Chopra:* The idea that consumers can dispute incorrect credit reporting would be something worth pursuing.

Cortez Masto: Elaborate on your views to provide restitution to consumers harmed under the prior administration. What is the CFPB's role in supporting small businesses? *Chopra:* When victims are not made whole, it not only hurts the victim, but it also harms the businesses that are trying to properly operate. Enforcement is crucial to the CFPB's work to protect small businesses.

Lummis: Do you agree that the CFPB lacks the authority to impose a usury cap? *Chopra:* Usury caps are primarily the prominence of the states.

Daines: Should the CFPB be led by a multi-member commission instead of one individual? *Chopra:* That decision is up to Congress, but either way, there needs to be accountability and responsiveness.

Student Loans

Reed: Talk about some of the most important consumer protections for students. *Chopra:* There are new products and services being offered to students, and we want to make sure that students start their lives with a good financial future. I am committed to monitoring these trends.

Menendez: Does the CFPB have the authority to oversee the student loan market? *Chopra:* Overseeing and regulating student loan collectors and servicers are within the CFPB's jurisdiction.

Smith (D-MN): What can Congress do to ensure high-quality federal student loan servicing? *Chopra:* It is critical for regulators not to not make the same mistakes that led up to the financial crisis, and many of these industry practices have been creeping into the student loan market. Loan servicers should follow through on their obligations, and we are at a critical moment when so many borrowers will be trying to resume their payments.

Housing and Mortgage Markets

Brown: What role can the CFPB play in helping to prevent another foreclosure crisis? *Chopra:* A decade ago, we saw how the foreclosure crisis devastated the economy and widened the wealth gap. We learned from the last crisis that regulators missed connections between the mortgage market and the broader economy. We will enforce homeowner protections and work throughout the government to avoid another crisis.

Tester (D-MT): How will you address the harm done by the CFPB under the prior administration? What are the most important considerations regarding revising the qualified mortgage rules? What are your housing priorities? *Chopra:* We need to conduct trend analysis and supervision to correct the issues we are seeing. We will balance consumer protections with access to mortgages. We do not want to return to the same marketplace we had before the foreclosure crisis. We need to be ready for looming problems regarding forbearances that may become foreclosures.

Warren: Explain the urgency of the current housing crisis and how you will use the CFPB's tools to address it. *Chopra:* The CFPB will monitor the mortgage markets and work with other regulators and states to spot the risks.

Protections for Military Families

Reed: Explain how the CFPB can make better use of its Office of Service Member Affairs. *Chopra:* It will be important for that office to maintain its focus on the latest consumer financial issues. We will work with the Department of Defense and other parts of the federal government to ensure this important demographic is protected from illegal and predatory practices.

Warnock (D-GA): Talk about your work expanding consumer protections, particularly for military families. *Chopra:* Military families move often and face complex situations, and if institutions are improperly foreclosing, overcharging, etc., it can raise questions whether that firm has the processes and abilities to handle the circumstances that military families face.

Other

Brown: What are the most significant developments you have seen in consumer finance? *Chopra:* It will be important how big technology companies are entering the financial industry. Technology plays an important role in every sector of our economy, but we need to better understand algorithms and data gathering; there are questions about transparency.

Shelby: Do you believe in cost-benefit analysis in terms of rulemaking? Will you work with the Republican members of the Commission? *Gensler:* Cost-benefit analysis is the heart of any rulemaking. I will have differences with the Commission's Republican members, but I will pursue ways in which we can work together.

Scott: Do you believe that open competition among NRSROs is important to protect investors and the broader financial markets? *Gensler:* Competition is very important in the credit rating space and the capital markets.

Warren: Talk about your plans for holding financial firms accountable for unfair lending. *Chopra:* Agencies should enforce the laws, particularly those related to financial discrimination and unfair lending.

Tillis: Do you support the activities-based reforms to the SIFI designation? *Gensler:* There are particular activities that can be systemic, and I will work within the FSOC on these issues.

Ossoff (R-GA): Why is it easier for Wall Street banks to access emergency funds in a crisis, and how can we level the playing field for smaller financial institutions and individuals? What are the implications for consumers and regulators related to new entrants in the financial sector? *Chopra:* Fed Chairman Jay Powell has discussed modernizing the payment system so that it can be more real-time, but the U.S. is falling behind. For example, China is investing in faster payments and a stablecoin, two initiatives that will help consumers and businesses get money faster. I support the Fed's efforts to modernize the payment system so that everyone can have equal access. Large technology firms are entering the financial space, e.g., Facebook's Libra project. We need to examine the issues coming down the pike related to market structure, and I do not want to see dominant players limiting new market entrants.

Daines: Are you concerned about the lack of competition in the proxy advisor business? Do you think the SEC has a responsibility in ensuring the proxy advisory system functions properly and that investors receive the most up-to-date information? *Gensler:* Competition is important for transparency and reducing conflicts of interest. I think the SEC has authority to address proxy service operations.