Oversight of the Securities & Exchange Commission
House Financial Services Committee
September 27, 2023

Opening Statements

Chair McHenry (R-NC) said that the last time Gensler was here, McHenry voiced his concerns about Gensler's work at the SEC. He said that Gensler has done nothing to remedy bipartisan concerns from this Committee and the SEC's current rulemaking puts our financial markets at risk. McHenry said that the SEC has failed to assess the cumulative impact of the rulemakings, and this is shoddy work, and it does not adhere to the SEC's statutory authority. He said that members on both sides of the aisle have raised concerns about MiFID, the equity market structure proposals, and swing pricing/hard close, and the SEC has failed to address these concerns. McHenry added that not a single item on the SEC agenda seeks to address capital formation. He said that the SEC's work on digital assets has created more confusion and lasting damage. McHenry noted that the bipartisan legislation on digital assets that would provide consumer protection, while the SEC's ad hoc approach is on a losing streak in the courts. He said that the lack of Gensler's responsiveness to oversight is inappropriate. McHenry pointed to how the Committee has yet to receive a nonpublic document and the SEC is not above the law. He said that he did not want to be the first Chair to issue a subpoena to the SEC, and it is time for Gensler to consider the lasting consequences of his actions.

Ranking Member Waters (D-CA) said that McHenry said that his patience is running thin, and her patience is thinner with the Republicans who are forcing the US government to shut down. She said that the SEC will also be shuttered if this shutdown happens, and it will hamper the SEC's ability to stop fraud or finalize rules that are critical for investors. Waters noted that we saw Fitch downgrade the US credit rating earlier this year and now Moody's is considering downgrading our credit rating. She wanted to know how furloughing 90% of the SEC staff would hurt the US. Waters said that the SEC is providing investors with the information they need to evaluate climate risk and they are reforming the stock market which failed traders during the stock market event. She was also pleased that the SEC was finalizing rules to bring transparency to private funds. Waters said that the SEC is acting thoughtfully and respectfully, and Gensler has issued less rules than previous commissioners. She said that this extreme MAGA Republican shutdown is the biggest threat to businesses and investors.

Rep. Wagner (R-MO) said that the SEC's mission is to protect investors and facilitate capital formation, but Gensler's leadership has undermined these core objectives. She said that the SEC is imposing costly and burdensome disclosure requirements and recent proposals lack a comprehensive analysis of market dynamics and the impact of these rules. Wagner added that Gensler should also not ignore Congress when they send him bipartisan letters.

Rep. Sherman (D-CA) said that Gensler has prevented a system where we can have anonymous unhosted wallets for corrupt politicians and he is providing regulation that provides more clarity. He said that Gensler is generally right, except on swing pricing, and ESG does matter, and it impacts trillions of dollars of investments.

Witness Testimony

The Honorable Gary Gensler, ***Chair, U.S. Securities and Exchange Commission,*** began by explaining the history of the US capital markets, how regulation has contributed to our success, and how we cannot take our leadership in the capital markets for granted. He pointed to the SEC's three part mission and 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 SEC regulations are done with an eye to investors. He pointed to DERA and said that this office provides robust economic analysis which considers costs and benefits. Gensler said that the SEC has actually provided ample time to comment, noting that on average stakeholders have 70 days to comment on proposals. He added that they also continue to get comments after comment periods have closed. Gensler noted that most of their rulemakings have been adjusted based on public feedback. He said that the SEC would be down to a skeletal staff if the government shuts down and they will not be able to oversee markets adequately.

Member Questions

Chair McHenry (R-NC) said that last time Gensler was here, he asked him about Ether. McHenry asked why Bitcoin is not a security. Gensler said that this is related to the Howey Test, which talks about the public anticipating a profit off the efforts of others, and he did not see Bitcoin meeting this test. He added that the staff at the SEC also did not think it was a security. McHenry asked if Gensler thinks Bitcoin, is a security. Gensler said that it does not meet the Howey Test. McHenry said that it is a commodity then. Gensler said that it is not a security. McHenry said that the CFTC says that it does not have authority over Bitcoin and digital commodities. He then asked Gensler if legislation is necessary to address the regulation of digital assets. Gensler said that in the parts of the system that are not securities, the CFTC does not have ample authority there and he thought Congress could give them plenary authority. McHenry said that the spot market lacks a regulatory paradigm and established law and asked if they should take action there. Gensler did not understand the question. McHenry asked if Gensler believes the Commission must vote to release nonpublic information. Gensler said yes. McHenry asked if they had scheduled a vote to provide nonpublic documents. Gensler said that they are working with the Committee staff to provide information. McHenry said that none of these documents are public and asked when they would schedule a vote to release nonpublic documents. Gensler gave a nonanswer. McHenry said that Gensler's inaction is noncompliance, and the Committee will need to take action. He added that Gensler has also failed to do comprehensive analysis of the equity market structure rulemaking and the Committee intends to get his compliance on their requests.

Ranking Member Waters (D-CA) said that she is concerned about gross violations of the law in the crypto markets and pointed to TerraLUNA as an example. She asked what actions the SEC has taken to shut down crypto firms and recover funds for harmed investors. Gensler said that this field is ripe with fraud and manipulation and Americans are getting hurt by noncompliance in this field. He said that the SEC finalized rules on SPBDs in crypto and they addressed crypto in the custody rule and the best execution rule. Gensler said that they have brought up numerous cases in this field to protect the public. Waters then turned to the impact of a government shutdown on the SEC and asked what percentage of staff will be furloughed. Gensler said that 92-93% would be furloughed. Waters asked which Division would be most impacted. Gensler said that it would be across the agency, but the public will not have someone at full force overseeing the markets. He added that they cannot review documents for IPOs, but they will keep open the comment files and tips and complaints lines. Waters said that she is concerned about IPOs and said that she has worked to improve this process. She then asked what would happen if a whistleblower came to the SEC and if the SEC could respond. Gensler said they could intake this complaint, but they could only act if it is an emergency. Waters asked what will happen if there is a major disruption in market operations infrastructure during a shutdown and if the SEC could respond. Gensler said that senior leadership would be there, but they would be down to a skeletal staff.

Rep. Hill (R-AR) noted that he and Rep. Foster led a bipartisan letter regarding concerns about the equity market structure rules and they urged a pause until the SEC finalizes the order execution rule and evaluates the impact. Hill noted the SEC's dealer proposal and how it says 'uncertain' many times regarding the impact of the rule. He said that this letter is bipartisan and asked if Gensler would wait for Rule 605 before finalizing the other proposals. Gensler said that the equity market rules have not been updated since 2005. Hill said that the SEC needs to rely on data when doing this though, and then turned to the CAT. He said that for over a decade, this bad idea has been floating around since the flash crash. Hill said that this is massive overkill and an unnecessary invasion of privacy and a tax on brokerage accounts. He asked Gensler why he did not just bury the CAT. Gensler said he was allergic to cats. Hill moved on and asked if Gensler knew what a blue sheet was. Gensler said that he is familiar. Hill said that all of our markets have surveillance on trading through SROs and the SEC regulates SROs so there is no justification for capturing all these trades when they have this market data. He asked why the blue sheet was insufficient. Gensler said that the CAT gives the SEC a look into those trades. Hill thought this was unnecessary.

Rep. Sherman (D-CA) said that this is about capital formation and if there is a government shutdown, we will shut down IPOs. He asked if this would apply to new bond issuances and companies that are public who want to issue more shares. Gensler said that it depends, and many public companies would be prevented from doing additional offerings. Sherman said that the SEC also cannot do any additional investigations. Gensler said that this is really narrow, the SEC can protect public property. Sherman said that it will be the Wild West on Wall Street and he could not think of a worse thing they could do. He then turned to swing pricing and said that it does not achieve its purpose. Sherman said that this rule has been criticized by Republicans and Democrats and big players are not subject to this rule and asked if there was any chance, they would take this rule back to the drawing board. Gensler said that he was aware of the concerns and pointed to the objective of the proposal, avoiding dilution in these funds. Sherman said that funds can already adopt this, and they do not. He then pointed to the custody rule and said that they need a safeguarding rule for intangible assets. Sherman said that if tangible assets need a safeguarding rule, he hoped it would be separate, and asked if the custody rule is mainly targeted at intangible assets like crypto. Gensler said no and pointed to how Dodd Frank expanded this to all assets. Sherman hoped there would be different approaches for tangible and intangible assets. Gensler said that they would take this under advisement.

Rep. Lucas (R-OK) pointed to his letter on the SEC's two proposed rulemakings on security-based swaps (SBS) and security loans and entered this into the record. Lucas said that these proposals could impair market liquidity and the SEC should study the data before moving forward with this. He then turned to the custody rule and how it would impose requirements that are inconsistent with CFTC rules. Lucas said that this would create significant problems and asked Gensler if the SEC had consulted with the CFTC on the impact of this rule. Gensler said that the letter on SBS gained his attention and on the safeguarding of assets, SEC staff has consulted with staff at the CFTC and taken their thoughts into consideration. He said that they are some time away from finalizing this rule as it takes 12-24 months to finalize rules. Lucas then turned to the rule on PDA/AI and said that it casts a broad definition over covered technology. He said that the economic analysis explains that it would require substantial resources to comply, and it would hurt smaller investment advisers. Lucas asked how broad this definition of covered technology is and what the intent of the rule is. Gensler said that this rule intends to ensure that brokers and investment advisers put investor interests ahead of their own. Lucas said that the US should lead the way in AI, and we should be careful about being hostile to new technology.

Rep. Meeks (D-NY) noted that he has previously asked about the economic analysis of the Private Funds Rule and requested that the SEC consider the disparate impact on minority owned firms. He said that DERA shared his concerns and Birdthistle said that the economic impact analysis was expanded to look at this. Meeks asked if the economic analysis was expanded and what specific changes were made based on this. Gensler said that the rules consider impacts on small businesses. Meeks wanted to get more details on this and then shifted to page 553 of the Private Funds Rule and how it suggests that smaller investment advisers, which are usually diverse, should consider reducing assets under management to avoid registration to mitigate the impact of the rule. He asked if telling these firms to stifle their growth would decrease the amount of funding going to diverse entrepreneurs. Gensler said that often some firms are right at the cutoff point under certain rules, but overall, this rule is helpful because it promotes competition and transparency. Meeks said that it seems to him that Gensler is telling these asset managers not to grow, and this is problematic. He said that under Gensler the SEC has been active and he left it to others to discuss the pace and breadth of rulemaking. Meeks asked if the SEC considered the comprehensive impact of finalized and pending rules. Gensler said that they do and in each economic analysis, they consider other rules and adjust the baseline.

Rep. Sessions (R-TX) said that the Committee wished that they had a better relationship with Gensler and the SEC. He pointed to how he talked to Gensler a couple years ago about a company facing an issue that is still unresolved. Sessions turned to how the SEC announced an increase in enforcement fines last November, and how the SEC has launched a crusade against the financial system. He asked where this money goes. Gensler said that the matter Sessions talked to him about, that is public record. Sessions said yes, but the SEC blocked the company's counsel from knowing what was wrong. Gensler then discussed the money from the enforcement penalties, saying most of it goes to fair funds, those who have been harmed, and the US Treasury. Sessions wanted more information on this and said that the Committee wanted to have better interactions with the SEC.

Rep. Scott (D-GA) agreed with Waters comments on the potential shutdown and said that Gensler is doing an excellent job at a difficult and challenging time. He pointed to how he and Rep. Lucas sent Gensler a letter with respect to the SEC's proposed rule regarding SBS reporting, and they raised concerns with how this rule could impair market liquidity and hinder the SEC's core mission of maintaining fair and efficient markets. Scott asked if Gensler could expand on whether widespread public access to information on large SBS positions could impair the ability of market participants to hedge. Gensler said that they are looking at this and SBS can be used to replicate positions taken in the stock and bond markets. He pointed to how Archegos did this and this is one of the reasons the SEC put out a proposal on reporting to the Commission or publicly. Scott asked if Gensler saw any risk in allowing the public to take advantage of this information, for example by facilitating front running and copycat trading. Gensler said that they got this comment from a number of commenters, and it is taken up in their economic analysis. He said that the markets can benefit from transparency, but sometimes people benefit from opacity. Scott was delighted with Gensler's presentation and urged Gensler to keep up the good work.

Rep. Posey (R-FL) pointed to how the SEC continues to assert that the SEC does not need to do the same regulatory and cost benefit analysis as other agencies and asked why they are defiant to this. Gensler said that they follow the mandate from Congress on economic analysis and they do economic analysis in all of their releases. Posey asked if the IG is wrong that they do not need to do further economic analysis. Gensler said that the SEC follows the mandate from Congress to look at the impact on capital formation and they look at costs and benefits. Posey asked if rules comply with APA. Gensler said yes. Posey asked if the SEC evaluates the cumulative impact of their rules. Gensler said that they evaluate a baseline and if there is an interaction when they finalize a rule, they update the baseline for the next rule. Posey turned to climate and asked if firms investing in ESG should disclose the risks of climate subsidies drying up. Gensler said that this proposal is about materiality, the SEC is not a climate regulator, and investors want this information in a comparable and consistent manner. Posey asked which proposed rule is most vulnerable to the major questions doctrine. Gensler said that they do everything they can to stay within the law, and they take a close look at court cases to ensure their rules are within the laws.

Rep. Cleaver (D-MO) said that he believes in climate change and most of the warming we are experiencing took place over the last 40 years. He pointed to how there are weather events all along the Missouri river system, like floods and droughts, and this disrupts businesses. Cleaver said that he was pleased that the SEC released a proposed rule on climate risk disclosure and asked if there is any company that is immune from climate risk. Gensler said that the SEC is not a climate regulator, and this is a matter of investors making investment choices, and the SEC wants to bring comparability and standardization to this process. He added that the SEC has heard consistently from investors that this disclosure is useful.

Rep. Luetkemeyer (R-MO) pointed to his letter with Rep. Cleaver on the SEC's conflicts of interest rule and the treatment of mortgage insurance-linked notes (MILNs). He noted that they requested clarification on the language of the rule around this and they were disappointed with the response. Luetkemeyer asked if federal policy should encourage more private capital in the housing market when it involves well capitalized and highly regulated entities. Gensler said that the SEC oversees the mortgage securitization market, and they are trying to drive greater efficiency. Luetkemeyer said that it is a question if you can be a partner with the private sector and reinsurance is really important for these companies. He asked if Gensler supported something like this. Gensler said that mortgage originators rely on mortgage insurance, which he agreed is an important part of the market. Luetkemeyer asked if Gensler is considering changes to the rule to clarify the treatment of MILNs. Gensler said that they are considering the comments on this proposal and Congress mandated that the SEC has to help ensure that underwriters and sponsors of certain mortgage securitizations cannot bet against investors. Luetkemeyer wanted a response to this letter and then turned to China. He said that in 2022, the PCAOB inspection reports of Chinese and Hong Kong based companies were a reminder that audit reports from these companies cannot be trusted and the audits are useless. Luetkemeyer asked if, under the HFCAA, these companies will not be inspected for another 2-3 years. Gensler was not familiar with the PCAOB rotating schedule, but they do not have the staff to do this on an annual basis. Luetkemeyer pointed to his legislation with Sherman that would require an annual audit of these audits and added that the funneling of our capital to Chinese companies needs to stop. He said that they would appreciate Gensler's support for this. Gensler said that anyone who issues stock in the US needs to comply with our laws.

Rep. Himes (D-CT) pointed to the impending government shutdown and how it will impact the military and SBA. He asked Gensler to talk about what a shutdown would do to morale and capabilities in the SEC. Gensler said that they would be down to a skeletal staff and in terms of morale, history shows that it is hard on morale. In terms of the markets, he said that this shutdown will impact companies trying to go public. Himes said that the SEC is full of people prosecuting fraud and shutting down insider trading and noted that the SEC would not be able to do this anymore. Gensler agreed. Himes turned to insider trading and noted his bill which is trying to define insider trading in law. He said that we have court made law, which creates a lot of uncertainty, and he asked Gensler where we are and if we could benefit from codified statute on insider trading. Gensler said that the SEC has provided technical assistance on a legislative package on this, and he thought that the SEC has good, robust authorities, but the technical assistance supported what Himes was trying to achieve. He said that they did not want to lose the authorities that they currently have. Himes said that if they could codify the definition of insider trading, that may simplify the task of the SEC and create confidence in the market. Gensler said yes, and they just did not want to undo the good law in place.

Rep. Wagner (R-MO) pointed to the PDA/AI analytics proposal and how Gensler previously spoke about the benefits of this technology for investors at MIT. She asked Gensler to explain his change in views. Gensler said that it is the same Gary Gensler and robo advisers and brokerage apps should stand by the basic concept that the investor comes first. Wagner agreed and said the proposal fails to acknowledge Reg BI and the fiduciary standard that protects investors. She urged withdrawal of this proposal. Wagner said that this proposal effectively rewrites Reg BI by holding investment advisers to a higher standard of conduct. She asked Gensler if he intentionally withheld his intentions to redo Reg BI when he spoke about not redoing it in April. Gensler stood by his previous statement and said that they want to address behavioral nudges. Wagner said that Reg BI has a fiduciary standard, and they are superseding this standard. She said that there is bipartisan support to withdraw this rule and then asked how many staff with the Divisions of IM, TM, and DERA were involved in the PDA/AI proposal. Gensler said that he did not have a number. Wagner asked if they had advanced degrees in computer science. Gensler was not sure how many of them did.

Rep. Foster (D-IL) wanted to explain his letter with Rep. Hill, saying that it is not saying the SEC should stop working on market reforms in parallel with 605 upgrades, but that they should get 605 done so they have updated reporting of quality of order executions, so they can look at the data and finalize market reforms. Foster then turned to the flash crash and how the CFTC handled that, adding that this is the reason to make the CAT a success. Foster asked if Gensler has had time to put thought into this idea and if it would speed up 605 reporting. Gensler said that Foster is raising an idea of whether the CAT can be used for quality of order execution, but this would raise costs and benefits as well and currently, market participants (brokers) can quantify order quality. Foster said that they need to make an apple to apples comparison and asked if Gensler has had time to look at this idea and see if it is a useful way to speed up 605 reporting. Gensler said that currently brokers can quantify their order quality and said the CAT does not capture and compare orders in a way in which if you put an order in, then you see the quality, adding that more requirements here could be good.

Rep. Barr (R-KY) asked Gensler if he had ever spoken to Sen. Menendez about Gurbir Grewal. Gensler said no. Barr pointed to a call with Sen. Menendez on his calendar from two years ago and asked what they talked about. Gensler said that he thinks they talked about disclosure of political contributions. Barr pointed to how Grewal was hired soon after this call and Menendez put out a glowing statement on this hire. He asked if Gensler was aware of this statement. Gensler was not aware. Barr said that he would follow up on this. He then turned to the climate risk disclosure rule and how Gensler argues that it is merit neutral. Barr said that this proposal would discriminate against fossil energy, and asked how it is investor protection to deter investment in profitable companies. Gensler said that this is not what it is about, and it is about comparable and consistent disclosure. Barr said that Gensler is trying to redirect capital and discriminate against fossil energy. He said that this information is immaterial and then he moved on to Basel III. Barr asked if Gensler had consulted with Fed Vice Chair Barr on Basel III and its impact on CRE and how it interacts with the rules on conflicts of interest rule, private funds, and custody. He thought all these rules would severely impact CRE. Gensler said that they have ongoing conversations with the Fed, but they do not consult with them on Basel III.

Rep. Beatty (D-OH) wanted to get to the PDA/AI proposal but wanted to discuss the shutdown first. She asked if a government shutdown would grind the SEC to a halt. Gensler said that they would have a skeletal staff. Beatty noted that employees would be without pay, and they are hardworking people with children who are being kneecapped by Republicans. She asked if this shutdown would impact their ability to register new issuers and surveil the market. Gensler said that new IPOs would essentially be shut down. Beatty said that they are responsible for keeping the government open and then she turned back to the PDA/AI proposal. She understood that the proposal is broad in scope, and it covers a range of investor interactions. Beatty said that there is concern that it could even encompass financial education tools. She asked Gensler if he could address these concerns. Gensler said that the comment period is open until Oct. 10 on this rule, and it has a basic concept of ensuring that investor interests come first. He noted that if you are in finance and you are nudging clients into options trading or higher fees with a robo advising, therein lies a conflict.

Rep. Williams (R-TX) pointed to the SEC's climate disclosure rule and how small businesses are concerned about this rule and how costly it will be. He said that the SEC needs to stop their abuse of the rulemaking process and asked what the average amount of time companies will need to spend complying with this disclosure and how filing on indirect emissions provides information to investors. Gensler said that investors make decisions based on this information and the SEC wants to make this disclosure consistent and comparable. He noted that they got a lot of feedback on Scope 3, and they are taking this into consideration. Gensler added that their remit is about public companies. Williams noted the swath of rules from the SEC and how cost benefit analysis is crucial and asked if the SEC had engaged in roundtables and investor testing to solicit feedback on rulemaking. Gensler said that they solicit feedback during the comment period, and they benefit from that feedback.

Rep. Vargas (D-CA) thought Gensler was asked an ugly question about Sen. Menendez earlier and asked for comment. Gensler could not comment about the criminal prosecution, but he did not discuss anything with Menendez in May 2021 except his concerns about disclosure like diversity disclosure. Vargas turned to climate related risk and the established materiality standard and how, given the recent headlines, this seems to be a gigantic issue that people want to know about. Vargas said that the SEC is not a climate regulator though. Gensler agreed and said that investors are making decisions based on climate risk and the SEC wants this to be accurate. Vargas said that investors in companies, like insurance companies, want to know these things, especially as they move out of states like California. Gensler said that for the SEC, it is whether investors find this information to be material.

Rep. Emmer (R-MN) had a series of questions and asked if it is fair to say that large institutions benefit from regulatory uncertainty more. Gensler said they could. Emmer noted that Gensler had a career at Goldman Sachs and asked if it is true that this is where he made most of his wealth. Gensler said that he has done well since then. Emmer understood that Gensler is the cop on the beat, but questioned if he could be impartial after working at Goldman. Gensler said yes. Emmer asked if most digital assets are securities. Gensler said a significant majority are investment contracts. Emmer pointed to how bank executives expressed concern about the flow of deposits to crypto, and how a judge recently found that DeFi removes intermediaries like banks. He asked Gensler to assure him that his style of harassment to digital asset innovation is not to protect industry incumbents. Gensler said that this field is ripe with fraud, and he is trying to protect investors. Emmer said that he is convinced that Gensler is not an impartial regulator and even the courts are highlighting the damage that the SEC is doing.

Rep. Gottheimer (D-NJ) noted how it takes 12-24 months for the SEC to adopt rules that it proposes and asked if he worried that all these rules are putting smaller businesses at a disadvantage. Gensler said that we benefit from hearing from these small businesses, and they adjust rules based on these comments. Gottheimer said that part of his concern is that there are 50 separate rules and 14 new rules scheduled and asked how Gensler is shaping the agency to allow for small business to have a say. Gensler said that this is why they put out the agenda and they keep soliciting comments after the deadlines and they take meetings. Gottheimer said that they often do not know how to meet with the SEC, and they do not have big regulatory teams. Gensler said that these are some of the best meetings, but they do not show up on the calendar as much. Gottheimer turned to digital assets and the legislation that the Committee passed. He asked Gensler to explain why a rulemaking process has not started on digital assets. Gensler said that there are already laws on the books for securities and there is nothing incompatible here. Gottheimer pointed to the use of MOUs and how Gensler was working on one with the CFTC on crypto. He asked for the status of this. Gensler said that they work with the CFTC on a case by case basis in the crypto field and they both have the same goal of protecting the public.

Rep. Huizenga (R-MI) wanted to follow up on McHenry's line of questioning and said that this is routine oversight. Huizenga pointed to how they asked about the climate proposal and when a vote would be scheduled, and they never got an answer. He added that Gensler also claims that he doesn't have the votes to hand over non-public documents and asked if Gensler is voting yes on this. Gensler said that he believes in oversight. Huizenga wanted a yes or no answer and assumed his answer was no. He asked what he is doing to get a vote on this and if he is whipping on this. Gensler said that they have one on one conversations about this. Huizenga thought the Committee needed to help him out and asked what Gensler's plan was if he did not get the votes. Gensler said that they are working to respond. Huizenga asked if they would be supportive of legislation that would clarify that the SEC is not required to have a full commission vote to comply with a request by Congress. Gensler said that they would be happy to help with technical assistance on this. Huizenga supported having a compulsory process to get Gensler to cooperate. Huizenga then asked if Gensler ever received a memo on the impact of the *West Virginia vs EPA* case on SEC authority. Gensler was not aware of a memo, but they talked about this. Huizenga planned to follow up on this.

Rep. Casten (D-IL) asked Gensler to clarify what happened between 2010 and 2022 when the SEC decided to propose more climate disclosure. Gensler said that investors were increasingly interested in this information and many companies started following the TCFD framework. Casten appreciated that and thought it was sad that we need to keep reminding people that this is an industry-led initiative. He then pointed to the California climate disclosure bills and asked Gensler how this is factoring into how he is thinking about the disclosure and if they are on pace for an October release. Gensler said that they look at the economics seriously and that law in California is not yet signed into law, but this law would require certain companies to report Scope 1, 2, and 3 emissions. He said that this law could change the baseline as it would be less costly as the companies are already reporting this information. On the release date, Gensler said that twice a year they put out a unified agenda and they put dates on these proposals, but he would not put too much emphasis on that. He said that it takes 12-24 months to finalize proposals and they do not do this on a clock.

Rep. Loudermilk (R-GA) submitted a WSJ op-ed on the CAT to the record and noted that the government previously needed reasonable cause to look at this information. He worried that the CAT would become another warrantless government surveillance program without congressional oversight. He asked if Gensler had read this article. Gensler saw the headline. Loudermilk said that it lays out the issue of collecting PII and then submitted another letter to the record that he sent on CAT. He asked who would have access to customer information and how they would be vetted. Gensler said that he would read this article and in terms of individuals, it can only be used at the SEC and within the SROs. Loudermilk asked if the SEC would use data collected via the CAT and customer account information system to bring enforcement actions. Gensler said that they do and anticipate this in the future. Loudermilk asked who the CAT is being funded. Gensler said industry is funding it. Loudermilk said that this CAT is used for enforcement, but it is not subject to congressional oversight or appropriations, which he found to be problematic.

Rep. Torres (D-NY) worried about the use of the term investment contract and asked if an investment contract requires a contract. Gensler said that they are following the Howey Test, and that he took an oath to follow the law of the land. Torres described how the Howey Test came to be and how in August there were six professors who said that no decision at the Supreme Court has found that a scheme is an investment contract in the absence of an actual contract. He asked if Gensler agreed. Gensler said that the SEC has been in front of multiple courts. Torres thought it was telling that Gensler could not cite a court case on this and said that Gensler should know the answer on this as it determines the extent of his authority in the crypto sector. Gensler pointed to Howey and Reeves. Torres asked if purchasing a Pokémon card constituted a securities transaction. Gensler did not think so. Torres asked if it is a securities transaction if it is tokenized and on a blockchain. Gensler said that he would have to look at this further and if the investing public is anticipating profits, which is the core of the test.

Rep. Davidson (R-OH) pointed to a court case on a Bitcoin ETF and how Gensler does not seem to acknowledge the authority of the judicial branch given his reaction to this. He asked how the SEC would revise its approach to Bitcoin ETFs. Gensler said that he respects the courts, and he is familiar with this case. Davidson asked if there would be free passes for certain favored companies. Gensler did not follow and said that they are reviewing ETF applications on this. Davidson asked if he would preserve the place in the queue for those who have filed first and if he recognized the authority of the courts and the laws from Congress. Gensler said yes. Davidson said that he judged Gensler's deeds more than his words and pointed to *West Virginia vs EPA.* He said that climate disclosure is a major question, and he should work with Congress if he wants this. Davidson pointed to his legislation, the SEC Stabilization Act, and how Gensler is making the case for this bill. He said that this bill would preserve the current commissioners but add a sixth commissioner.

Rep. Horsford (D-NV) said that while investor protection is paramount, the largest risk that investing public is subject to right now is the risk of a government shutdown and the impact this would have on the SEC. He then turned to the open-end fund liquidity rule and said that Nevadans should not lose out on today's price because they live on the West Coast. Horsford asked what Gensler has been able to ascertain about the disparate impact of this rule on investors living in certain geographic areas. Gensler said that this issue has been raised and funds already close at 4PM ET right now. Horsford said that Nevadans should not be treated unfairly and this needs to be factored in. He then turned to how minority firms tend to be smaller, and they will have more difficulty complying with the new private funds disclosures. Horsford asked him to expand on his earlier answer that these funds were included in their economic analysis. Gensler said that he could follow up with the actual pages of economic analysis on this. Horsford said that this is a wider issue of equity, and he would continue to work on this issue.

Rep. Rose (R-TN) was glad to see that Gensler held an in-person open meeting last week since Gensler is not usually in the office. He asked how they can be sure of who Gensler is meeting with on a daily basis. Gensler said that these meetings would be logged. Rose pointed to Gensler's written testimony on how rulemakings have changed based on feedback, and he asked how much time he spends reading public comment. Gensler said that he gets summaries of the comments, as well as examples, and he reads all comments from Congress. Rose pointed to his letter with Rep. Wexton to Gensler on Shein and he asked if Shein should certify that the company does not use Uyghur Forced labor as a condition of registering securities in the US. Gensler pointed to how Congress passed the UFLPA and that this is the law of the land and the SEC put out guidance on this. Rose entered his letter to the record and then turned to crypto. He asked why Gensler pursued a litigation-heavy strategy despite none of his senior staff being litigators to address the crypto market. Gensler said that this market is rife with noncompliance, and they are addressing this market through some of their rulemaking as well. Rose thought these cases were brought with a political agenda, not a legal one. Gensler disagreed and said that this is about protecting the public. Rose wanted to see him do more on the regulatory and guidance side.

Rep. Tlaib (D-MI) said that Gensler has been public about the fact that it is too costly for firms if the SEC establishes a robust climate rule. Gensler said that this is what the comments have said. Tlaib said that some companies are already reporting these emissions in the US and will be reporting these emissions in the EU and California. Gensler agreed and said that this will change the baseline economics. Tlaib asked if he would look at this because of those moves by California and the EU on Scope 3 and questioned if these actions would undermine the argument that this disclosure is burdensome. Gensler said that this may change the economics over the years and the SEC needs to stay within its remit. Tlaib submitted a letter to the record urging Gensler to finalize a robust climate rule with scope 3 emissions. She said that it is simple why we need a robust disclosure rule, pointing to issues with greenwashing, which jeopardizes investments and pensions.

Rep. Foster (D-IL) showed a graphic from Bloomberg that Gensler was lagging behind his predecessors in rulemakings and asked if Harvey Pitt did comprehensive cost benefit analysis and looked at the interplay of the rules. Gensler said that they did it rule by rule. Foster asked if it was the same for Shapiro and Clayton. Gensler said that they are following guidance.

Rep. Timmons (R-SC) said that the SEC onslaught of rulemaking is impeding US markets and the proposals are overly broad and lack analysis. He pointed to the proposals on equity market structure despite no indications on market failure that would warrant these changes. Timmons pointed to how the SEC report on the meme stock event did not call for these changes and the industry says that Gensler is picking favorites between exchanges and wholesalers. He asked how concerned we should be about the potential for increased costs to investors, especially in scenarios when retail brokers may need to reinstate commissions due to changes like the suggested increase on price improvement. Gensler said that these proposals are about driving greater competition and efficiency. He pointed to how they are trying to bring more competition to the dark markets, and they are looking at the comments. Timmons asked if this proposal would result in the reintroduction of commissions. Gensler said that zero commission does not mean it is free. Timmons said that this is going to result in increased fees. Gensler said that the benefits of these rules are significant, and in terms of lowering the minimum increment, there is support for this and giving clients best execution seems straightforward. Timmons thought they should use a scalpel, not a sledgehammer.

Rep. Garcia (D-TX) showed the graphic from Bloomberg on Gensler having the slowest rulemaking pace in decades, and asked Gensler if he is a slacker. Gensler said that they do things thoughtfully and by the book, adding that they take the economic advice they get seriously. He said they are doing it on behalf of the American public and for investors and issuers and are making sure they do not work for the markets. Garcia said that another issue they have discussed is the importance of financial literacy and asked Gensler to provide an update on the SEC's efforts to improve financial literacy. Gensler said that they have an office of investor education and they also put out investor alerts and they try to engage with the public to help them understand the markets. Garcia then asked what they are doing to address language barriers. Gensler said that they have done some things with shareholder reports, and he could follow up with her.

Rep. Meuser (R-PA) pointed to the SEC's climate proposal and how it includes Scope 3 emissions disclosure requirements. He noted how companies offshore could submit suspect data and this could flaw the system as a whole. Meuser asked for Gensler's thoughts and asked if this was a push of capital toward certain industries. Gensler said that many investors have been asking about the risk of climate change, but many commenters have said that Scope 3 is not as developed, and they are taking this into consideration. He noted that the SEC does not regulate private companies and staff is looking to ensure that the SEC stays within its remit. Meuser asked what costs they are taking into consideration. Gensler said that they are adjusting economic analysis since they got so much feedback. Meuser turned to the safeguarding rule and what his reaction was to how this rule would be written differently if they collaborated with other regulators on this. Gensler said that they have heard a lot from investment advisers and banks on this. Meuser pointed to the SPAC merger with Trump's company and asked for reassurance that a revised S-4 will be expedited. Gensler said that the Division of Corporation Finance would handle this S-4 in regular order.

Rep. Nickel (D-NC) brought up securitization and how it is the cornerstone of affordable access to credit. He said that securitization funds a lot of residential mortgages, auto loans, and credit cards. Nickel was concerned that the SEC's proposed rule on conflicts of interest will impair the ability of securitization markets to function by outlawing activities that have no connection with securitization transactions, which he said would increase costs and reduce the availability of credit. He asked Gensler that given these uncertainties and credit crunch, would he commit to re-proposing this rule based on feedback. Gensler said that securitization is important to mortgages, credit cards, and auto loans and Congress mandated that conflicts of interest need to be addressed. He said that they are looking at the comments on this and they hope to sort through them. Nickel urged him to re-propose the rule and then moved onto a letter he joined regarding Grayscale. Nickel asked if the SEC plans to approve the current pending spot Bitcoin ETF applications. Gensler said that this is still being looked at and they will take this up eventually. Nickel asked Gensler how he explained the SEC's actions since they were deemed arbitrary and capricious. Gensler said that they act under the law as best they can and sometimes things go into court and that they are still considering this court decision.

Rep. Fitzgerald (R-WI) raised the proposal on PDA and asked if there is a lack of economic analysis and how this fits with investor protection. Gensler said that the rationale is that an investment adviser must put the investing public interests first. Fitzgerald asked if he was worried that this would be applied to everything, including spreadsheets. Gensler said that they are technology neutral, whether it is a spreadsheet or machine learning. Fitzgerald asked Gensler if he thinks it is consistent to say that Congress is asking for all these SEC rulemakings. Gensler said that we need to update our rulebooks to ensure that investment advisers are working on behalf of investors. Fitzgerald pointed to FSOC's recent proposal on designation of non-bank institutions and how they are worried about the lack of cost benefit analysis. He asked why they would eliminate this requirement. Gensler said that what they put out for comment was to ensure that they got back to the guidance from 2012. Fitzgerald then reiterated what Rep. Luetkemeyer said regarding the securitizations conflicts rule and asked Gensler how he can differentiate between managing risk and betting on both sides of the transaction without capturing necessary business activity. Gensler said that Congress gave them this authority and they cannot bet against investors.

Rep. Pettersen (D-CO) pointed to how only around 400 employees at the SEC would be retained if there was a shutdown and the SEC will not be able to perform critical functions. She said that the long term implications of the chaos in Washington is concerning to her. She asked how a shutdown will impact the US capital markets. Gensler said that in the short term, there is a risk that the SEC will not have the resources to oversee the markets, and that in the longer term, it is confidence in our capital markets and fiscal decisions that Congress has to make. He said that we are 40% of the world’s capital markets and that is a good thing, but confidence in our system could be shaken as well. Pettersen noted that we were downgraded about the debt ceiling crisis, and then she turned to AI. She pointed to an AI image of an explosion near the Pentagon and how this caused the stock market to dip in May. Pettersen said that AI can significantly impact our financial markets and this needs to be addressed at every level. She pointed to how she has a bill to evaluate this and how it needs to be regulated. Pettersen asked Gensler what they should do to address these risks. Gensler said that there are risks of deep fakes in the financial system.

Rep. Kim (R-CA) said that she was concerned that the SEC has not carefully considered the aggregate costs and overlapping nature of their proposed rules, which is undermining our capital markets. She urged him to revisit the swing pricing and hard close proposal and asked how this proposal would level the playing field for her constituents in California, given the hard close. Gensler said that they are trying to ensure that when some redeems, they do not dilute the fund, and her constituents already need to put in orders by 1PM. Kim asked if he did not think those on the West Coast would be put at a disadvantage. Gensler said that mutual fund redemptions are required by 4PM ET. Kim said that they are very concerned about this, and then moved to how SVB failed because it did not hedge interest rate risk. She pointed to how the rule on securitizations and conflicts of interest would make this hedging more difficult. Kim asked Gensler to commit to ensuring the interest rate risk hedging is allowed. Gensler said that they are concerned about trading against investors. Kim then turned to the rulemaking agenda at the SEC and asked what sort of things mitigate litigation risk. (QFR)

Rep. Pressley (D-MA) said that there are unrelenting people and institutions who want to dismantle gains in DEI, and she wanted to talk about the importance of corporate board diversity disclosure. She said that corporate boards are powerful and are critical in determining the values and strategies of a company. Pressley said that the SEC plays an important role in overseeing corporate governance and diverse boards result in more successful companies. She asked what the SEC is doing to increase corporate board diversity disclosure. Gensler noted that they had a filing from Nasdaq on these issues and under the Exchange Act, they approved this, and it is still a matter of court challenge, and he thought this was an important piece. Pressley said that is correct and this information is important and asked if Gensler agreed. Gensler had to be careful about commenting on this. Pressley said that the SEC needs greater disclosure about disabilities, the workforce and diversity and asked if Gensler would commit to expanding diversity disclosure beyond the Nasdaq proposal. Gensler said that staff continues to review these issues.

Rep. Flood (R-NE) wanted to continue their discussion about SAB 121, which would impact banks' ability to custody digital assets. He asked if SEC staff conferred with the prudential regulators on this SAB. Gensler did not think so. Flood asked if FASB issued anything related to the custody of digital assets before the issuance of SAB 121. Gensler did not think so but could get back to him. Flood said that FASB added digital assets to its agenda after SAB 121 was issued and asked what rules the SEC had finalized related to the safeguarding of digital assets before SAB 121. Gensler pointed to the rules already on the books for custody from 2009. Flood said that the answer is none and there were no rules that addressed the custody of digital assets. He said that the SEC issued a rulemaking on custody in February 2023. Flood pointed to how Gensler said that he wanted the SEC to stay in its lane, but the SEC is not just going out of its lane, but it did not look at conflicts with existing rules and the justification was accounting guidelines that did not exist. Flood said that the SEC either knew there was no justification for this bulletin, or the SEC made basic mistakes in issuing this bulletin.

Rep. Lynch (D-MA) allowed Gensler to respond. Gensler said that SAB 121 was based on GAAP, it does not need a new FASB statement, and the custody rule from 2009 covers crypto securities. Lynch noted that the SEC saw its first split decision with the July ruling involving Ripple's XRP, and he worried we were heading toward a pattern of court battles to determine if a token is a security or not. He asked for Gensler's thoughts on this. Gensler said that the SEC filings at court speak for themselves, and they filed an interlocutory appeal. Lynch pointed to the digital assets market structure legislation and how it allows for provisional registration. He said that there are concerns that this opens up a vulnerability for consumers to be harmed and he asked if Gensler had a view on this. Gensler said that it is a common practice to commingle in the crypto field, and this has led to a lot of investors being harmed so those conflicts and different functions need to be separated out.

Rep. Norman (R-SC) asked if Gensler was aware of Promethuem. Gensler was aware. Norman asked if it was concerning that 20% of this company was owned by China. Gensler said that any registrant in our markets has to comply with our laws. Norman said that there is still the threat that information on investors is being shared with China and he pointed to how they sent a letter on this issue. He said that the response was a nonresponse. Gensler said that there are a number of broker dealers that have an affiliation with China and those broker dealers have to comply with our laws. Norman asked if Communist China plays by the rules. Gensler said that anyone in the US has to comply with our rules. Norman asked if Gensler is familiar with MetaMaterials. Gensler was aware. Norman asked if the SEC has information on the audited shares of this company. Gensler said that this may be public information. Norman said that the arbitrary rulemaking is upsetting investors and the SEC is going beyond its boundaries.

Rep. Green (D-TX) said that for the traditional services of an exchange, these are the kind of things that should be registered. Gensler agreed and added that they should comply with the laws. Green said that Public Citizen has indicated that crypto amounts to a giant Ponzi scheme, whose victims include low income individuals and people of color, and he was concerned about this. Green asked what the consequences are of having poorly regulated cryptocurrency. Gensler said that there have been billions of dollars of losses in this field, and there need to be full and truthful disclosure and no trading against customers. Green asked if Gensler considers the USD an effective digital currency. Gensler said that most of the USD is digital. Green asked if Gensler believes that we can have digital currencies that are not a Ponzi scheme if properly regulated. Gensler said that USD is already digital and crypto tokens are different because they are not a currency. Green said that failure to act can cause a lot of harm, as we have seen with one circumstance, and he appreciated Gensler's work.

Rep. Steil (R-WI) pointed to how he asked Erik Gerding about the SEC's legal analysis of shareholder proposals and how there does not seem to be any, which is concerning. He asked if the SEC conducts legal analysis of shareholder proposals. Gensler thought that when staff look at the legal component when they are asked about it. Steil said that the SEC only sometimes looks at whether a shareholder proposal is legal, and he thought this should be part of the baseline review that the SEC conducts. He wanted further information on how the SEC reviews shareholder proposals as the proxy advisors rely on the SEC for legality. Steil pointed to SLB 14L and how we have seen a dramatic increase in shareholder proposals concerned with social issues. He asked Gensler to define 'widespread public debate' with regard to social issues. Gensler said that this is ultimately between the company and investors and SEC staff give advice when asked. Steil said that the lack of definition here is concerning.

Rep. Garbarino (R-NY) said that the Biden Administration has made the harmonization of cyber indecent reporting a top priority, and the SEC has finalized rules that are duplicative and overlapping. He asked why the SEC did not harmonize rules with existing regulations and wait until the rules from CIRCIA are finalized. Gensler said that they finalized the corporate disclosure piece since it is important for investors to know about material cyber breaches. Garbarino said that they have heard from the private sector that most cyber professionals are mostly focused on complying with regulations. He said that DHS has called this rule duplicative. Gensler said that they only require reporting when it is a material event, and they have a longer time than 72 hours to report incidents. Garbarino said that four days is longer, but there are different requirements around material breaches. He said that public reporting of breaches could also put these companies and other companies at risk. Garbarino said that public reporting before the breach is fixed is going to cause more harm than good. He then moved on to how between 2019-2022, the costs of CAT increased by 900%, and the SEC recently approved a funding model that would pass on costs to market participants. Garbarino asked what the SEC is doing to control the costs of CAT and if Gensler would support moving this to the SEC's budget. (QFR)

Rep. Lawler (R-NY) said that Gensler has embarked on a campaign to change many parts of our markets, noting the rules on equity markets, swing pricing, and private funds. He asked if Gensler has done a comprehensive analysis of the cumulative impact of these rules on the markets and the economy. Gensler said that their pace is about the same as prior Chairs, and on each of the rules, they do robust economic analysis. He said that they take into consideration the interaction with other rules as it changes the economic baseline. Lawler asked Gensler how they interact with stakeholders and if they have roundtables. Gensler said that they have had numerous meetings with stakeholders. Lawler asked Gensler if he would commit to allowing the public to comment on the updated economic analysis of the climate rule based on potential changes in law. Gensler said no. Lawler then touched on the SEC's proposal regarding Reg SCI and how it is expected to cost billions of dollars, which is absent from the cost benefit analysis. He asked why the Commission failed to acknowledge these costs. (QFR)

Rep. Nunn (R-IA) reemphasized the problematic impact of the swing pricing and hard close rule and urged Gensler to withdraw it. Nunn said that the extra regulations that the SEC is proposing as a part of the custody rule, under the guise of consumer protection, will add significant costs to small businesses and farms. He pointed to bipartisan letters from the Ag Committees on this and asked Gensler to consider withdrawing this proposal until the issues around derivatives are fixed. Nunn asked Gensler how many times agriculture was mentioned under economic analysis. Gensler was not sure. Nunn said that it was only mentioned in a footnote, which is concerning. He asked if there has been any coordination with the CFTC on this issue. Gensler said yes. Nunn asked when they asked for information from the CFTC and what comments the CFTC shared on this rulemaking and if they incorporated these comments. Gensler said that they have not finalized this proposal, and they reopened the comment period since it interacted with another proposal they finalized. Nunn urged Gensler to withdraw this rule.

Rep. Donalds (R-FL) pointed to how Gensler was the CFO for the Hilary Clinton campaign and John Podesta testified that Gensler controlled the day-to-day financial operations. He asked if Gensler was aware of the payment for the Steele Dossier. Gensler said no. Donalds said that this is interesting because Gensler is very tough on other CFOs and asked why he would not hold himself to the same standard. Gensler said that the SEC is concerned about the financials and that they are in line GAAP. Donalds then moved to a story that noted how Gensler met with Sen. Baldwin on 13D beneficial ownership disclosure and how thousands of comments were filed in favor of this rule soon after this meeting. He asked if Gensler engaged in astroturfing to advance his own agenda. Gensler said that he did not know what the press was talking about. Donalds asked if Gensler talked to an organization called 'We the Investors.' Gensler said that he had no memory of this. Donalds asked if it is appropriate for agency heads to engage with outside groups to advance their rulemaking agenda. Gensler said that they have to engage with stakeholders.

Rep. Houchin (R-IN) noted that most of Gensler's proposals are not mandated by Congress and asked why there is such a rush to mandate these rules. Gensler said that this is due to advances in technology. Houchin said that there is a perception that the SEC is neglecting public input, including bipartisan concerns about swing pricing and equity market structure, and asked why the opinions do not factor into his considerations. Gensler said that they do factor into his considerations. Houchin disagreed, and then turned to the proposed changes to Reg SCI and how it would expand this to more broker dealers. She said that the SEC cannot point to any tangible benefits for this proposal and asked how they justify this proposal. Gensler said that some broker dealers may have the size and scale that if they were taken down, it could be disruptive to the markets and that is the most important thing. Houchin pointed to how Gensler intends to approve a rule that expands the definition of an exchange, but this proposal is still fraught with lack of economic analysis. She asked him to comment on the expected timeline for the finalization of this rule. Gensler said that they do not do this on the clock, and they do it when they get the comments and legal authorities right. Houchin said that the timing of various SEC actions when the HFSC has sought to create a regulatory framework for digital assets is concerning. She thought Gensler was impeding the work of Congress. Gensler said that he respects the work of the Committee around crypto, adding that this is a field ripe with fraud and abuse, so their SEC enforcement sometimes coincides with Committee action.

Rep. Ogles (R-TN) said that they are at the point where subpoenas may be necessary. He then turned to the Names Rule, and asked if the SEC is equipped to determine what is good for the environment as it pertains to ESG. Gensler said no. Ogles said that on the social component of ESG, how will the SEC determine if a company is compliant with this. Gensler said that the Names Rule is about truth in advertising, and this was really a rule to protect the investing public. Ogles said that this creates a subjective nature to the rules process and questioned why even have the rule. Gensler said that if you say you are selling pepperoni pizza, there should be pepperonis on it. Ogles did not know how he could trust definitions from the Biden Administration if they do not even know how to define what a woman is. Gensler said that funds managers determine descriptions. Ogles said that these SEC rules just drive up costs and end up hurting investors. He urged McHenry to hit Gensler with subpoenas and said that enough is enough.

Chair McHenry (R-NC) asked Gensler to comply with the Committee's requests and said that Members have five legislative days to submit additional written questions. He asked Gensler to respond to those questions no later than October 30.