

LXR Group

Biweekly Bulletin

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11 Takeaway's from SEC Chair Gensler's September 15th Appearance Before Congress

On September 15, the Senate Banking Committee afforded lawmakers a rare [opportunity](#) to directly question the SEC chairman. Indeed, during a year in which the SEC has pursued a visible, ambitious, and often politically divisive regulatory agenda, the SEC Chair has testified to Congress on only a single occasion, and that was a relatively benign budget subcommittee [hearing](#), back in May. Foremost among the key takeaways: The Committee is laser focused on two issues: (1) the SEC's climate disclosure proposal, and (2) regulatory treatment of crypto tokens and digital assets. LXR Group's perspective on other key takeaways from Thursday's much anticipated SEC hearing is available [here](#).

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Top Policy Developments

Senate Democrats Push to Modernize Reporting Company Requirement under Exchange Act Section 12(g). On Wednesday, September 14th, Senators Jack Reed (RI) and Catherine Cortez-Masto (NV) introduced legislation that would amend Section 12(g) of the Securities Exchange Act of 1934 to modernize the triggers for registration as an SEC reporting company in an effort to compel extremely large and valuable "private" issuers to make disclosures to investors and public. According to the sponsors, the goal of the legislation is to "ensure that the lines between public and private capital markets are sensibly drawn and maintained." Specifically, the bill would extend SEC reporting and disclosure requirements to companies that have (i) a valuation of \$700 million (excluding shares held by insiders) or (ii) 5,000 employees and \$5 billion in revenues.

The Senator's legislation, [S. 4857](#), builds on a premise articulated in a 2021 [letter](#) to President Biden by a group of comprised of state regulators, and consumer advocates urging a freeze on "any amendments to weaken the federal securities laws or exempt companies from those laws," on the grounds that "further expanding the use of exempt offerings is unlikely to spur economically beneficial capital formation for investors or businesses," while "further expanding the pool of securities exempt from the disclosure and investor protections afforded by the federal securities laws has the potential to damage the economic recovery, including by increasing the probability of fraud and hindering the efficient allocation of capital." (*Continued as "Section 12(g), P.3*)

Senate Agriculture Committee Considers Crypto Legislation backed by CFTC Chair Behnam. On September 15th, at the exact same time as SEC Chair Gensler was delivering his own testimony to the Banking Committee, the Senate Agriculture Committee held a [hearing](#) to consider [S. 4760](#), the Digital Commodities Consumer Protection Act. The legislation is sponsored by Committee Chair Debbie Stabenow (D-MI) and [by Committee Ranking Member](#) John Boozman (R-AK). In her opening statement, Chair Stabenow [explained](#) that "This bill gives the Commodity Futures Trading Commission oversight over digital assets that act like commodities-such as Bitcoin and Ether-that currently have no federal oversight. This is a glaring hole in our financial system, and I believe we must close it. Our bipartisan bill will require that all digital commodity platforms register with the CFTC. This will set a uniform national standard and allow the CFTC to catch fraud before it happens. As its name suggests, our bill is focused on consumer protection." Additional co-sponsors span the political continuum, to include Sens. Cory Booker (D-NJ) and John Thune (R-SD).

In his [prepared remarks](#), Benham called the CFTC "the right regular" for what would be the bulk of digital assets. He pointed out that "As I have publicly stated several times, including to this committee, and as has been recognized by federal courts, many digital assets constitute commodities." In discussing the legislation, Behnam asserted that "The DCCPA leverages the historical strength of the CFTC as a market regulator by requiring registration and supervision of digital commodity platforms and digital commodity intermediaries as is required in CFTC-regulated derivatives markets."

(Section 12(g), cont.) Prior to the JOBS Act of 2012, Section 12(g) required companies with more than \$10 million in assets and a class of equity securities held by 500 or more shareholders to register the securities with the SEC.

"Basically, my legislation would require the nation's largest and most important private companies to register with the SEC. And they would then be subject to appropriate disclosure requirements. And I think it's necessary because we're seeing an extraordinary increase in private companies."

U.S. Sen. Jack Reed (D-RI) on [S. 4857](#)

Now, startups can avoid 1934 Act registration as long as they have fewer than 2,000 shareholders of record or fewer than 500 unaccredited investors. The Senator's bill would essentially repudiate the policy choice Congress made in 2012 to relax restrictions on "private" offerings to encourage access to "small business capital formation."

The Senator's legislation, which is already under attack by lobbyist for the private equity industry, is not likely to pass this year or anytime soon. However, by attempting to reestablish the "public" markets' role as the preeminent role of public markets as venue for serious capital raising, it is a bold and noteworthy step. Congress has been debating, and hearing testimony regarding, the risks of allowing private offering markets for several years, but this is the first time that a bill has been introduced that really aims to do it. The fact that the sponsor is Sen. Reed - a five term Senator and prior Chairman of the SBC's Securities Subcommittee, not known to engage on issues lightly or superficially - makes its introduction that much more interesting...

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