Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
July 28, 2022 at 10:00 AM

Mr. Chairman, thank you.

Our hearing today looks at scams and risks in the securities markets with a specific focus on crypto. Given the recent collapse of an algorithmic stablecoin and the bankruptcy of several crypto lending platforms, this is a well-timed hearing.

And one would think, we'd hear from the SEC, the primary federal regulator of securities. Especially considering their Chairman considers nearly every cryptocurrency to be securities. That's the request Republicans made.

There must be some good reason why Chairman Gensler or one of his subordinates can't appear before the Senate to explain what the SEC was doing while several crypto lending platforms, like Celsius and Voyager, imploded. Especially since the Chairman would likely claim these companies fall into his jurisdiction.

Our Democratic colleagues have said he is not testifying today because it's possible he may appear at the Committee this fall. That's little comfort to the thousands of Americans who lent their crypto to Celsius and Voyager, some of whom will be unsecured creditors in those companies' bankruptcy proceedings.

What was the SEC doing while these companies and others were offering lending products that looked an awful lot like securities? And what is the SEC doing now to help ensure the crypto community gets the regulatory clarity it has repeatedly asked for?

They deserve answers now, not later. And Chairman Gensler has the answers to those and other questions—but refuses to share them with us.

It's clear some Americans invested in unsustainable schemes, and even fraud. We should investigate that fraud and prosecute any violations of law.

Since September of last year, I've said that some digital asset projects were offering returns that didn't make sense to me, and some of these endeavors would end badly. Over the past couple of months, that risk became reality.

As I mentioned, Celsius and Voyager were offering interest rates as high as 18% if customers would lend their digital assets to these companies. The firms would then lend that crypto to other larger investors to make short-term bets on crypto markets.

But once the crypto selloff began, borrowers couldn't pay their debts, and these platforms froze customer accounts. And now, both companies are in bankruptcy and investors are staring at billions in losses.

These circumstances beg the question: Where was Chairman Gensler and the SEC? Had the SEC responded to calls for clarity on how it would apply existing securities laws to novel digital assets and services, something I and others repeatedly asked for, things might have been different.

The SEC could have said how it intended to apply the Howey and Reves tests, which the SEC uses to determine when something is a security. The Howey test has four basic prongs. There must be: 1) an investment of money, 2) in a common enterprise, 3) with a reasonable expectation of profits, 4) that are derived from the efforts of others.

It seems like the crypto lending products I've mentioned had all four of those features. The SEC almost certainly believed so, too, because in February, they went after BlockFi for offering a similar lending product.

Here's the problem with the SEC refusing to publish regulatory clarity about when digital assets or services are securities. You're left instead with an ad hoc approach to consumer protection known as "regulation-by-enforcement."

There are four problems with this capricious and unevenly applied strategy. It's a serious challenge for any well-meaning innovator striving to comply with existing laws and regulations.

It stifles innovation. Market participants who lack the benefit of the SEC's thinking prior to designing a product may never create something that uses emerging technologies to solve a previously unsolvable problem.

It creates a legal grey area that allows entities with a higher tolerance for legal risk to offer products that might be bad for consumers.

It’s ineffective. Just ask those who lost money on these crypto lending products.

Let me give another example. When the SEC announced insider trading charges involving a former Coinbase employee last week, it claimed the offenders had illegally traded nine digital assets that were securities.

The SEC has reasons for why it thinks these digital assets are securities, which I’m very skeptical of. Yet, the SEC still failed to disclose its rationale publicly before launching an enforcement action. That kind of approach is patently unfair to developers and investors alike.

Republicans have been arguing for a more thoughtful approach to regulating digital assets. The first place where we should be able to find common ground and chart a path forward for clear, sensible regulation is with stablecoins.

There is clear bipartisan agreement that stablecoins should have stronger consumer protections. I’ve proposed a framework to do that, and am in discussions with several Members to make this proposal bipartisan.

Let me conclude with this. It’s important to investigate any fraud in the crypto market, and any violations of existing law. So while I appreciate today’s hearing topic, it’s a missed opportunity without talking to the SEC.

Moving forward, I hope my colleagues will take a balanced look at these technologies, studying both the consumer risks we will hear about today, as well as the potential for consumer benefits that distributed ledger technology could bring.