

March 5, 2021

The Honorable Gary Gensler  
Member Elect  
Securities and Exchange Commission  
100 F St NE,  
Washington, DC 20549

Dear Mr. Gensler:

Thank you for testifying before the United States Senate Committee on Banking, Housing, and Urban Affairs on March 2, 2021, at our hearing to consider nominations.

In order to complete the hearing record, please respond to the enclosed questions by Monday, March 8, 2021, at 12:00PM. When formatting your response, please repeat the question, then your answer, single spacing both question and answer. Please do not use all capitals.

Send your reply to Mr. Cameron Ricker, the Committee's Chief Clerk. He will transmit copies to the appropriate offices, including the Committee's publications office. Due to current procedures regarding Senate mail, it is recommended that you send replies via e-mail in a Microsoft Word or PDF attachment to [Cameron\\_Ricker@banking.senate.gov](mailto:Cameron_Ricker@banking.senate.gov).

If you have any questions about this letter, please contact Mr. Ricker at (202) 224-5587.

Sincerely,

Sherrod Brown  
Chairman

SB/cr

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Chairman Sherrod Brown:**

1) Where have you excelled in past positions in hiring and promoting people of color? Where is there room for improvement?

*Incorporating diversity, equity and inclusion into the workplace is an area where all leaders should strive for continuous improvement, and I take that responsibility seriously. I am proud to have hired diverse staff at the CFTC and with the members I recruited for the Biden-Harris Agency Review Team for independent financial regulatory agencies identify as a person of color.*

2) In August 2011, President Obama issued an Executive Order establishing a coordinated, government wide initiative to promote diversity and inclusion in the federal workforce. The executive order reads, in part, that “Attaining a diverse, qualified workforce is one of the cornerstones of the merit-based civil service . . . . To realize more fully the goal of using the talents of all segments of society, the Federal Government must continue to challenge itself to enhance its ability to recruit, hire, promote, and retain a more diverse workforce. Further, the Federal Government must create a culture that encourages collaboration, flexibility, and fairness to enable individuals to participate to their full potential.” The order required each agency to establish an agency-specific diversity, equity, and inclusion strategic plan with specific objectives.

*Coordinated, government-wide initiatives to promote diversity and inclusion in the federal workforce are critical to attracting and retaining the best talent to our agencies. If confirmed, I will work with staff at the SEC as well as fellow Commissioners to honor the principles of this Executive Order.*

3) Please describe your commitment to diverse hiring at the Securities and Exchange Commission (SEC). Will you review and update the SEC’s diversity, equity, and inclusion strategic plan to ensure it contains specific objectives?

*Diversity, equity and inclusion are critical to attracting and retaining the best talent to accomplish the SEC’s mission. To fulfill this commitment, specific plans and objectives against which performance is measured are important, and if confirmed, I plan to review and update the SEC’s diversity, equity, and inclusion plan to do so.*

4) Will you commit to establishing a system for reporting regularly on the SEC’s progress in implementing an agency-specific diversity, equity, and inclusion strategic plan and in meeting the objectives under the plan?

*Meeting diversity, equity and inclusion goals requires appropriate planning and measurement of progress against specific objectives. If confirmed, I will establish systems to track diversity, equity and inclusion as well as the agency’s success at meeting goals.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

5) Will you commit to transparency on workplace policies, salaries, and benefits? What is your plan for implementing these policies?

*If confirmed, I will work with the SEC's Office of Human Resources, the Office of Minority and Women Inclusion and SEC staff, including the SEC employee bargaining unit, to create a workplace that has fair and transparent policies to promote diversity, equity and inclusion.*

6) What are some short- and long-term strategies for addressing disparities in participation in the securities markets and financial literacy?

*Women and people of color in the United States have historically been underrepresented in the securities markets. If confirmed, I will work with the Director of the Office of Minority and Women Inclusion to use all statutory tools available to advance participation in the markets. Financial literacy is one important tool available to the SEC to increase access to information to inform sound investment decisions. If confirmed, I will work with the Office of the Investor Advocate and Office of Investor Education and Advocacy to ensure the Commission's financial literacy programs are meeting goals.*

7) Have you previously implemented and required diversity, equity, and inclusion training for all employees and implicit bias training for managers within your purview?

*While leading the CFTC, I followed all guidance suggested by our Office of Minority and Women Inclusion as it relates to employee training. On the Biden-Harris Agency Review Team for independent financial regulatory agencies, on which I served as a team captain, anti-discrimination training was required.*

8) Will you commit to implementing and requiring diversity, equity, and inclusion training for all employees within your purview? What is your plan for implementing these trainings?

*Diversity, equity and inclusion training is an important tool to improve the performance of any workplace. If confirmed, I will work with the Office of Human Resources and the Director of the Office of Minority and Women Inclusion to examine training options available and implement a training plan and schedule as appropriate.*

9) Will you commit to implementing and requiring implicit bias training for managers within your purview? What is your plan for implementing these trainings?

*Implicit bias training for managers is an important tool to ensure that any workplace is free from the types of bias that can prevent employees from meeting their full potential and fulfilling the mission of the organization. If confirmed, I will work with the Director of the Office of Minority and Women Inclusion to examine training options available and implement a training plan and schedule as appropriate.*

10) Please describe how you view the role of SEC Chairman in appropriately serving BIPOC? How do you view the SEC's role in furthering racial equity?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*Three areas in which the SEC can serve these communities include promoting internal diversity at the agency in terms of hiring and promotion; diversity at regulated entities, in terms of the Office of Minority and Women Inclusion's authority to conduct voluntary diversity surveys within the financial services industry; and in policies that meet the mission of the SEC to protect investors, maintain fair, orderly and efficient capital markets and promote capital formation. If confirmed, I will work to advance progress on these three areas as well as others.*

11) Please list at least 3 specific areas of focus/priorities for advancing racial equity, diversity, and inclusion at the SEC. What specific measures will you use to evaluate success in these areas, and over what period of time?

*If confirmed, three areas in which I will focus efforts on racial equity include internal diversity at the agency in terms of hiring and promotion; diversity at regulated entities, in terms of the Office of Minority and Women Inclusion's authority to conduct voluntary diversity surveys within the financial services industry; and in policies that can help reduce the wealth gap, including access to capital for minority-owned businesses. If confirmed, I will use established metrics to measure progress, working with the OMWI and with the Office of the Investor Advocate, Office of Investor Education and Advocacy and Office for the Advocate of Small Business Capital Formation.*

12) Please describe how you plan to work with and engage the financial services sector to serve BIPOC and dismantle systemic racism's impact in those sectors? How, specifically, will you hold the industry accountable on these issues? How will you accelerate private sector efforts to achieve more inclusive leadership?

*If confirmed, I plan to set an example in leadership at the SEC and would encourage private sector leaders to do the same. If confirmed, I would look to encourage diversity in terms of employment at regulated entities by using tools at the disposal of the Office of Minority and Women Inclusion, including the authority to conduct voluntary diversity surveys within the financial services industry.*

13) How do you plan on incorporating the views and work of the Office of Minority and Women Inclusion across the SEC?

*If confirmed, I plan to work directly with the Director of the Office of Minority and Women Inclusion to advance the statutory goals set forth by Congress under Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 which directs the Office to advance "the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts."*

14) The SEC has outside advisory councils and task forces comprised of industry leaders, academics, non-profits, and other stakeholders. They serve as volunteers but have significant influence being appointed by and working closely with you. Should your agency be judged by its

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

success in populating these groups with more diverse advisors on these councils and task forces, and if so, over what period of time?

*Advisory groups serve an important role in informing the work of the SEC. Given that membership on these advisory groups is on staggered fixed terms, the Commission should be judged on its work over time to promote diversity, equity and inclusion as membership terms expire and new members are appointed.*

15) What specific measures will you use to evaluate the SEC's success in understanding and addressing the needs of BIPOC? Will you regularly report to Congress on the progress being made on these measures?

*If confirmed, I will leverage the SEC's talented staff to understand the economic data related to the Commission's tripartite goals of investor protection, capital formation, and maintaining fair, orderly and efficient markets. This includes understanding the needs of BIPOC investors and issuers run or owned by minority and women entrepreneurs. As the nation begins to recover from the economic devastation caused by the coronavirus, it is important to understand how all communities are faring to ensure an equitable recovery. If confirmed, I will include updates on that work during my engagements with Congress.*

16) An agency's budget reflects its values and goals. How do you plan to allocate and sufficiently resource internal and external efforts to advance DEI as part of the agency's annual budget process? How will you ensure sufficient financial support for the agency-specific diversity, equity, and inclusion strategic plan to ensure you are able to meet the objectives established under that plan in a reasonable time period?

*If confirmed, I will work with the SEC staff, including the Director of the Office of Minority and Women Inclusion, to understand what budget resources the agency needs to advance goals related to diversity, equity and inclusion. Budget requests to Congress will include a description of the resources needed by the agency to advance all DEI goals.*

17) Accurate information about the financial situation of public companies is essential for honest securities markets. In 2002, Congress passed the Sarbanes-Oxley Act of 2002, creating the Public Company Accounting Oversight Board (PCAOB) in reaction to major corporate accounting fraud, including at Enron and WorldCom.

Please explain your view on the importance of the PCAOB to protect investors. Also, will you commit that if you are confirmed you will work to strengthen the PCAOB and to ensure its professionalism and independence?

*I had the honor of working on the Senate Committee for Banking, Housing and Urban Affairs under the leadership of Senator Paul Sarbanes, a great public servant we recently lost. Sarbanes-Oxley was bipartisan legislation, signed into law by President Bush, which created the PCAOB to ensure that audit firms are held to high independence standards and are subject to effective oversight -- two critical weaknesses exposed by the Enron and WorldCom failures. If*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*confirmed, I will ensure that both the SEC and the PCAOB are fulfilling their missions, as envisioned by Congress, to provide that audit firms fulfill their gatekeeper function of ensuring that the financial disclosures on which our market transparency depends are complete, accurate and reliable.*

18) The statutory mandate in section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is fundamentally about enhancing transparency to promote transparency, accountability and to combat corruption. This provision required issuers in extractive industries to disclose their payments to foreign governments so those governments can be held accountable for the money being paid to those governments. As Acting Chair Lee observed in opposing the final rule, that goal is in keeping with the United States' long history as a leader in international efforts to combat corruption, and with the SEC's role in anti-corruption efforts: enforcing the Foreign Corrupt Practices Act, ensuring compliance with anti-money laundering rules, and participating in the important work of the Financial Action Task Force to combat money laundering and terrorist financing.

The modified rule adopted by the Commission in December 2020, fell far short of these goals, allowing payment information to be aggregated to such a degree that the resulting disclosures will obscure information crucial to anti-corruption efforts and material to investment analysis. The rule also contradicted the Commission's own economic analysis. As a result, it will severely restrict the transparency and anti-corruption benefits that the disclosure statute required.

Will you consider reviewing the 1504 rule to better take into account the explicit transparency and accountability goals identified by Congress in the statute, and bring it more closely into alignment with international anti-corruption and transparency standards?

*The SEC in December finalized a rule to fulfill its congressionally directed mandate under Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This is after the Congress vacated the original rule with a Congressional Review Act challenge in 2017. If confirmed, I will take a close look at the updated rule to see if it fulfills the anti-corruption intended by Congress while also providing investors with useful information to guide their investment decisions.*

19) In recent years, exchange-traded vehicles (ETVs) have become increasingly complex. Episodes of market volatility highlight those complex features and risks for investors.

So that investors may better understand the features and potential risks of complex ETVs, will the Commission continue its work to consider the issues raised by such products, including as described in the Joint Statement Regarding Complex Financial Products and Retail Investors, which may include "additional obligations for broker-dealers and investment advisers relating to complex products, as well as point-of-sale disclosures or policies and procedures tailored to the risks of complex products" as discussed in the Joint Statement?

*Investor protection is at the heart of the SEC's mission. Disclosures and sales practices and procedures should be tailored to the complexity of the product being sold and should be mindful*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*of providing needed information especially for retail investors. If confirmed, I will work with the Divisions of Corporation Finance, Trading and Markets, Investment Management, and Economic and Risk Analysis, as well as the Office of the Investor Advocate to review the effectiveness of existing regulatory requirements and where needed to implement new rulemakings, guidance or other policy actions.*

20) Sustainable investment focused on environmental, social and governance (ESG) matters by some measures now represents approximately \$17 trillion in assets under management in the U.S. Acting Chair Lee has hired a new Senior Policy Advisor on Climate and ESG.

What other steps can be taken to ensure continuing ESG expertise throughout the SEC?

*If confirmed, I commit to building on the work of Acting Chair Lee to hire experts who will prioritize providing investors with the material information they need to make investment decisions, while providing consistent and clear reporting obligations for issuers.*

21) The Legal Entity Identifier (LEI), an ISO and adopted U.S. standard, is a part of 26 U.S. regulations. The LEI's origin is rooted in Commodity Futures Trading Commission regulations following the Great Recession. The U.S. government, however, remains dependent on more than 50 identification schemes. More work needs to be done to unify government data.

Will you support the inclusion of standards, like the LEI, in future SEC regulations?

*While serving as Chairman of the CFTC, I oversaw the initial adoption of a legal entity identifier regime, which helped both the private and public sectors in identifying and measuring risk across the financial system. This allowed regulators to better protect our markets and assisted internal risk management efforts within firms. If confirmed, incorporating LEI across rulemakings represents one tool to improve risk monitoring while cutting costs for the industry and I would seek to support such a standard where appropriate.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Ranking Member Toomey:**

*Congressional Oversight*

1) Please provide your philosophy on how the SEC under your chairmanship will approach and respond to Congressional information requests (both for documentary information and oral testimony), if you are confirmed.

*I believe that Congressional oversight is important. While Chairman of the CFTC, I testified over 50 times before Congress. If confirmed, I am committed to ensuring that the SEC is responsive to oversight requests and provides Congress with the information that it needs consistent with appropriate law and regulation.*

2) If confirmed, do you intend to respond to information requests differently depending on who is making the Congressional information request (whether it's the chair of the Congressional committee, the ranking member, or another member of Congress)? Please answer "yes" or "no." If your answer is "yes," please fully explain why you intend to respond differently depending on who is making the Congressional information request.

*I believe that Congressional oversight is important. While Chairman of the CFTC, I testified over 50 times before Congress. If confirmed, I am committed to ensuring that SEC is responsive to oversight requests and provides Congress with the information that it needs consistent with appropriate law and regulation.*

3) Do you agree that Congress has long played a critical role in oversight of the executive branch? Why or why not? Will you commit that, if confirmed, you will timely respond to and fully comply with all Congressional information requests, including but not limited to requests for records, to the SEC? Please answer "yes" or "no." If your answer is "no," please explain why.

*Agencies, including the SEC, should be responsive to the public and to Congress. At the same time, the SEC's must carry out the constitutional duties assigned to it, including pursuing ongoing law enforcement matters or protecting confidential supervisory information. If confirmed, I will ensure that the SEC is responsive to oversight requests while meeting the Commission's enforcement and confidentiality obligations, as well as any other appropriate law and regulation.*

4) Will you commit that, if confirmed, you will make yourself and any other SEC employee expeditiously available to provide oral testimony (including but not limited to briefings, hearings, and transcribed interviews) to the Committee on any matter within its jurisdiction, upon the request of either the Chairman or Ranking Member? Please answer "yes" or "no." If your answer is "no," please explain why.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*While Chairman of the CFTC, I testified over 50 times before Congress. As I said at last week's hearing, I agree to appear and testify before any duly constituted committee of Congress. If confirmed, I am committed to ensuring that the SEC is responsive to requests for hearing testimony consistent with appropriate law and regulation.*

5) Do you believe that the SEC may assert any privileges or other legal justifications to withhold information (whether records or oral testimony) from Congress? Please answer "yes" or "no."

*If confirmed, I will consult the agency's legal counsel so that the Commission can be responsive to Congress while ensuring that the SEC can carry out the statutory duties in which it is entrusted.*

6) If you answered "yes" to question #5, please list every such privilege or other legal justification and provide the legal basis for why you believe the SEC may use such privilege or legal justification to withhold information from Congress.

*If confirmed, I will consult the agency's legal counsel so that the Commission can be responsive to Congress while ensuring that the SEC can carry out the statutory duties in which it is entrusted.*

7) In an effort to be open and transparent with Congress and the public, will you commit not to assert any such privilege or legal justification against Congress that you listed above? If not, why not? If so, please identify all such privileges or legal justifications that you will commit to not assert against Congress.

*If confirmed, I will consult the agency's legal counsel so that the Commission can be responsive to Congress while ensuring that the SEC can carry out the statutory duties in which it is entrusted.*

*Employee Morale at CFTC*

8) During your tenure as Chairman of Commodity Futures Trading Commission (CFTC) staff morale plummeted, going from above the median score for morale among federal agencies to being in the bottom quarter of federal agencies for morale.<sup>1</sup> According to an article by Bloomberg, under your tenure the CFTC became "one of the worst places to work among small agencies, receiving low marks for work-life balance, pay and quality of leadership."<sup>2</sup> In your view, why did morale among CFTC employees crater during your tenure as Chairman of the CFTC?

---

<sup>1</sup> *Best Places to Work in the Federal Government*, <https://bestplacestowork.org/rankings/detail/CT00>

<sup>2</sup> Jennifer Epstein and Benjamin Bain, *Biden Taps Gensler as SEC Chairman, FTC's Chopra as CFPB Chief*, BLOOMBERG (Jan. 17, 2021), <https://www.bloomberg.com/news/articles/2021-01-18/biden-taps-gensler-as-sec-chairman-ftc-s-chopra-as-cfpb-chief>.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*I was honored to work alongside the talented staff at the CFTC to implement dozens of statutorily required rulemakings in the wake of a financial crisis that cost U.S. investors, borrowers, homeowners and taxpayers trillions of dollars and wreaked havoc on millions of families, including families of employees of the CFTC. Bringing transparency to a \$400 trillion over-the-counter swaps market during a difficult time for our country no doubt was a challenging task, especially for an agency that often did not receive budget resources from Congress commensurate with the responsibilities with which it was entrusted. I am proud of the CFTC staff for their dedication and service to our country in the face of these constraints.*

*Use of Personal Email for Government Business*

9) In a CFTC inspector general report entitled “Review of the Commodity Futures Trading Commission’s Oversight and Regulation of MF Global, Inc.” the inspector general found that you consistently used your personal email to conduct government business from the very beginning of your tenure as CFTC Commissioner in 2009 until the collapse of MF Global, Inc.<sup>3</sup> If confirmed, will you commit to not using your personal email to conduct government business? If not, why not?

*If confirmed, I will follow all legal and regulatory requirements related to email correspondence and related matters, including the Federal Records Act. The CFTC Inspector General looked at the issue and concluded that once the issue was flagged, this practice was ceased.*

*Materiality*

10) In your confirmation hearing, you confirmed to Senator Shelby that a corporation is owned by its shareholders, and management should work for the shareholders.

- a. Do you agree that directors owe a fiduciary duty to act in the best interests of shareholders?
- b. Do you agree that securities disclosure is meant to inform investment decisions of shareholders and potential investors and not for the purposes of non-investor “stakeholders”?
- c. As SEC Chairman, will you refrain from enacting any securities disclosures that will primarily advance the interests of non-investment stakeholders?

*If confirmed, materiality will guide my decisions as SEC Chair related to disclosure requirements under the federal securities laws. The Supreme Court has held that information is material if there is a “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of*

---

<sup>3</sup> Commodity Futures Trading Commission’s Office of the Inspector General, *Review of the Commodity Futures Trading Commission’s Oversight and Regulation of MF Global, Inc* (May 16, 2013) at v, <https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/oigregulationmfglobal.pdf>

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*information made available.” Fiduciary duties of corporate directors is generally a matter of state law. For example, as I understand it, the Delaware courts have defined it as a duty owed to the corporation and its shareholders. If confirmed, I will follow the law in my consideration of policies that come before the Commission related to disclosure.*

11) In 2013, SEC Chairman Mary Jo White criticized attempts to use the SEC disclosure requirements for “exerting societal pressure on companies to change behavior, rather than to disclose financial information that primarily informs investment decisions.”<sup>4</sup> Do you agree with her concern?

*If confirmed, materiality will guide all my decisions as SEC Chair. The Supreme Court has held that information is material if there is a “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” If confirmed, I will follow the law in consideration of policies that come before the Commission related to disclosure.*

12) U.S. Supreme Court Justice Thurgood Marshall in TSC Industries vs. Northway, 426 U.S. 438 (1976), said that “if the standard of materiality is unnecessarily low . . . management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decision-making.” Do you agree with Justice Marshall that a materiality standard that is “unnecessarily low” may bury “shareholders in an avalanche of trivial information”?

*If confirmed, materiality will guide all my decisions as SEC Chair. The Supreme Court has held that information is material if there is a “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” If confirmed, I will follow the law in consideration of policies that come before the Commission related to disclosure.*

*Public companies and capital formation*

13) Do you agree that unnecessary regulatory and litigation costs can deter companies from going public or staying public?

*Unnecessary costs should be eliminated where possible. Whether a cost is unnecessary can depend on an individualized perspective. The total mix of factors influencing whether a company goes or remains public is complex and unique for each firm.*

14) If confirmed, will you work to reduce any unnecessary regulatory costs on public companies?

*If confirmed, I will work with fellow Commissioners and SEC staff to eliminate unnecessary costs where possible. Whether a cost is unnecessary can depend on an individualized*

---

<sup>4</sup> <https://www.sec.gov/news/speech/spch100113mjw>

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*perspective. The total mix of factors influencing whether a company goes or remains public is complex and unique for each firm.*

15) If confirmed, will you work to reduce any unnecessary regulatory costs on private companies?

*If confirmed, I will work with fellow Commissioners and SEC staff to eliminate unnecessary costs where possible. Whether a cost is unnecessary can depend on an individualized perspective. The total mix of factors influencing whether a company goes or remains public is complex and unique for each firm.*

16) Is it possible to have both robust public capital markets and robust private capital markets at the same time?

*Yes*

17) Are you concerned that capital formation is disproportionately concentrated within a select few geographic areas? If so, what steps would you undertake to promote capital formation in other geographic areas?

*If confirmed, I will work to advance the mission of the SEC to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Working through the Office of the Advocate for Small Business Capital Formation, we can take steps to raise awareness of these options, particularly in those regions and for those companies that are at greatest need.*

18) Under former SEC Chairman Clayton, the SEC revised rules to enhance capital formation, particularly for small and medium-sized companies. He reformed offering exemptions, shortened the period between integrated offerings, and expanded the definition of accredited investor. Will you commit to keeping these rules in place?

*Capital formation and investor protection are at the heart of the mission of the SEC. Markets—and technology—are always changing. Our rules have to change along with them. If confirmed, I will holistically review capital formation rules related to small and medium-sized companies and make individualized determinations about whether to preserve, expand or revise such rules.*

19) Can you commit to exploring how to improve liquidity for the more thinly traded stocks of smaller companies?

*The mission of the SEC includes a mandate to maintain fair, orderly and efficient markets. If confirmed, I will work every day to advance this mission, including through work to improve liquidity for thinly traded stocks of smaller companies.*

20) Can you commit to adopting rules to reduce the regulatory burden relating to providing research coverage of smaller and emerging growth companies?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*The mission of the SEC includes a mandate to maintain fair, orderly and efficient markets. If confirmed, I will work every day to advance this mission, including through work to improve research coverage of smaller and emerging growth companies.*

21) Can you commit to create a “finders” regime to help small businesses find capital?

*If confirmed, I will take responsibility for the rulemaking calendar including a review of the SEC’s proposed Exemptive Order issued last year that would exempt certain “finders” from broker registration requirements. I will work with the Commissioners and staff to determine whether further action is appropriate to advance the SEC’s mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.*

22) On December 22, 2020, then-SEC Chairman Jay Clayton wrote to the SEC’s Asset Management Advisory Committee (AMAC) regarding “Thoughts on Future Progress of Private Investment Subcommittee.”<sup>5</sup> His letter outlined ways in which the SEC could allow more retail investors to access private equity. If confirmed, do you promise to thoroughly evaluate all of the options outlined in this letter?

*If confirmed, I look forward to more thoroughly evaluating the letter and the various options outlined in it. I also welcome the opportunity to engage with your staff and you on investment opportunities available to retail investors.*

23) In a letter to the SEC Asset Management Advisory Committee dated December 22, 2020, then-Chairman Jay Clayton suggested that retail investors could have a relatively modest exposure to private equity and venture capital as part of a diversified target date retirement fund that is managed by a qualified registered investment adviser and has with a target date that is 20 years or more in the future. Do you have any objections to that suggestion?

*If confirmed, I look forward to more thoroughly evaluating the letter and the various options outlined in it. If confirmed, I would want to work with industry participants, retail investors, and SEC Commissioners and staff in understanding the merits of this particular suggestion. As I discussed in the hearing last week, I will be guided by our statutes and the need to ensure that capital markets are serving working families.*

24) If confirmed, will you commit to continuing SEC efforts to explore the use of Business Development Companies (BDCs) and closed-end funds to facilitate retail exposure to private investments?

*If confirmed, I look forward to learning about the Commission’s activities and the views of the staff regarding investments in Business Development Companies and closed-end funds. More broadly, if confirmed I will consider new tools and strategies to support retail investors while ensuring that retail investors are protected and able to make suitable investments for themselves.*

---

<sup>5</sup> [www.sec.gov/files/clayton-amac-letter-2020-12-22.pdf](http://www.sec.gov/files/clayton-amac-letter-2020-12-22.pdf)

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*Market structure*

25) Can you commit to a robust review of the rules governing fixed income and Treasury market structure and, where appropriate, making rule changes to those rules?

*If confirmed, I look forward to doing a robust review of rules on the fixed income and Treasury markets alongside the U.S. Treasury and Federal Reserve. I will work with fellow Commissioners and agency staff to continue the work begun by the SEC last year when it issued a rule proposal on ATS. It is important that our rules keep pace with changing technology and market events.*

26) Can you commit to evaluate how to best promote competition between national securities exchanges, alternative trading systems (ATS), market makers, and broker-dealers engaged in internalization to benefit investors?

*Markets - and technology - are constantly changing. The overall U.S. equity market is a critical national asset that provides a vital mechanism for capital formation for firms and individuals; investment opportunities for Main Street; and economic growth. If confirmed, I will work with fellow Commissioners and SEC staff along with hearing from market participants on how best to promote transparency and competition in the equity markets. If confirmed, I would work with fellow Commissioners and SEC staff to examine market structure issues holistically to best maintain fair, orderly and efficient markets as many of the technical and economic issues of markets are highly interrelated.*

*Harmonization of CFTC and SEC regulations*

27) If confirmed, can you commit to work to harmonize SEC and Commodity Futures Trading Commission (CFTC) rules to implement Title VII of the Dodd-Frank Act, to the extent appropriate?

*As a former Chair of the CFTC, I spent a great deal of time working to finalize Title VII rules at that agency. I agree that harmonizing Title VII rules between the CFTC and SEC is an important goal, and, if confirmed, I will work towards the goal of harmonization, where appropriate.*

28) Are there any other areas where there may be overlap of SEC and CFTC regulations on market participants (e.g., between commodity pools and registered investment companies)? If so, do you have any recommendations for further harmonization?

*As I know firsthand from my time as Chair of the CFTC that the SEC and CFTC share jurisdiction over the swaps market and that harmonization is an important goal, where appropriate. There are a number of market participants that are regulated by both Commissions, with many market participants trading in the futures, swaps and securities markets. It is important that the CFTC and SEC have strong communication and coordination to ensure that our regulations align where appropriate in a way that provides strong investor protection, fair, orderly and efficient markets, and facilitation of capital formation.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*Money market funds*

29) If confirmed, will you protect the SEC's jurisdiction to regulate money market funds?

*Yes*

30) If confirmed, will you ensure new SEC regulations for money market funds, if any, will be narrowly tailored and will not eliminate or significantly reduce the viability of money market funds as an investment?

*Money market mutual funds are an important part of our financial ecosystem with nearly \$5 trillion in investments. The regulatory framework governing such funds should ensure access to investors for this important product while also ensuring stability in our financial system. If confirmed, I will study SEC regulations adopted in the last decade to determine if they are working towards these goals.*

31) As part of any further changes to the rules regulating money market funds, will you commit to consider allowing a stable net asset value for institutional prime and institutional municipal money market funds?

*If confirmed, I will seek the advice of staff, counsel and fellow SEC Commissioners on this subject.*

*Systemic risk*

32) I want to discuss guardrails on Systemically Important Financial Institution (SIFI) designations by the Financial Stability Oversight Council (FSOC).

- a. Should SIFI designations allow for due process, including a clear process for both designation and de-designation?
- b. Should they incorporate robust economic cost-benefit analysis?
- c. Should they first explore an activities-based approach to regulating a systemic risk, before considering a firm-specific SIFI designation?

*FSOC designations should follow the statute as set forward in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and any guidance or rulemakings issued therein. As I understand it, the FSOC process allows for multiple avenues for input for non-bank financial firms both during the multi-stage designation process and via established processes to de-designate, as evidenced by de-designations in the recent past. In making designation decisions, economic analysis is an important tool to consider. Further, Dodd-Frank provides for both entity designations and activities-based designations, as Congress recognized that both*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*approaches are sometimes useful. Depending on the unique circumstance, either or both approaches may be warranted.*

33) Under what conditions, if any, would you support the FSOC or the Financial Stability Board (FSB) designating mutual funds, exchange-traded funds (ETFs), and money market funds as non-bank SIFIs?

*If confirmed, my views on non-bank SIFI designation will be grounded in the legal requirements of the statute and the public interest in preventing systemic risk.*

34) Asset managers provide investment advice to clients. They do not bear the risk of investments made by their clients. Asset managers do not own the assets that they manage. Should asset managers be designated by the FSOC or the FSB as non-bank SIFIs? If so, under what conditions?

*If confirmed, my views on non-bank SIFI designation will be grounded in the legal requirements of our laws and the public interest in preventing systemic risk.*

35) Under what conditions, if any, would you support work on climate change and sustainability by the FSOC, FSB, or International Organization of Securities Commissions (IOSCO)?

*Collaboration with international regulators through the FSB and IOSCO can contribute to the SEC's three-part mission. International standards can help ensure investor access to consistent, comparable data that they can efficiently integrate into their investment processes. At the same time, it is important that any standards for market participants integrate the unique features of our domestic market, legal and regulatory infrastructure and the needs of local investors and issuers.*

*Regulation Best Interest*

36) What protection is provided by a fiduciary duty that is not provided by Regulation Best Interest?

*When investors turn to financial professionals for advice and recommendations about their investments, advice that may be critical to their retirement security or their ability to fund a child's college education, they deserve advice that serves their best interests. If confirmed, I will work with my colleagues and the Commission staff to ensure that the Regulation Best Interest rule, as interpreted and enforced by the SEC, lives up to its best interest label.*

37) Do you believe that investors should have the choice of commission-based transaction investment advice?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*I believe that investors should have access to a range of quality options when seeking investment advice and that regulations applied to providers of that advice must protect against self-dealing and mitigate conflicts of interest.*

38) In your book *The Great Mutual Fund Trap*, you were critical of asset-based fees charged by financial planners. In an era of low or no-commission brokerage accounts, do you still agree that an asset-based fee can be expensive—“a fifteen-yard penalty for piling on” as you described in your book?

*Much has changed in the last 20 years since I co-authored the book. Investors should work directly with their financial planners to determine fee structures appropriate for their needs and objectives.*

*Blockchain/Bitcoin/Digital Ledger Technology*

39) Do you believe a crypto-currency can transform from a “securities token” to a “utility token”?

*The securities laws define a security to include investment contracts. The Supreme Court has defined such investment contracts to include arrangements in which "a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." If confirmed, I will review questions of whether a crypto-currency is a security in light of the definition laid out by the Supreme Court.*

40) As suggested by SEC Commissioner Hester Peirce, would you consider whether to pursue an experimental safe harbor for a digital token offering?

*If confirmed by the Senate, I look forward to engaging with Commissioner Peirce, other Commissioners and SEC staff on this issue.*

41) What role should blockchain and digital ledger technology play in clearance and settlement of securities transactions and payments?

*I have spoken before of the potential of blockchain technology to serve as a catalyst for change. If confirmed, I would look forward to fostering an environment that is supportive of financial innovation while also ensuring that investors are protected, markets are fair, orderly and efficient, and capital formation is facilitated.*

*Rulemaking best practices*

42) The SEC has a statutory duty to adequately consider competition, efficiency, and capital formation in rulemakings. If confirmed, how will you enforce this requirement?

*If confirmed, I will endeavor to fulfill the tripartite mission of the SEC to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation along with*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*following the statute to consider investor protection, competition, efficiency, and capital formation in rulemakings.*

43) Do you agree that policymaking should be done through notice and comment rulemakings in accordance with the Administrative Procedure Act, not through guidance, no-action letters, and enforcement actions?

*I understand the Commission's statutory obligations under the Administrative Procedure Act. I also believe that guidance and no-action letters can play an important role in getting timely information out to market participants that provides clarity and reduces compliance costs.*

44) Do you agree with FTC Commissioner Rohit Chopra's testimony at your joint nomination hearing that guidance issued by federal agencies should not impose obligations on regulated parties?

*I understand the Commission's statutory obligations under the Administrative Procedure Act. I also believe that guidance and no-action letters can play an important role in getting timely information out to market participants that provides clarity and reduces compliance costs.*

45) In June 2020, the U.S. Court of Appeals for the D.C. Circuit struck down the SEC's fee cap pilot project. If confirmed, can you commit to developing guardrails that govern the SEC's use of pilot projects to prevent a similar outcome in the future?

*If confirmed, I look forward to discussing the subject with SEC staff and Commissioners. I also look forward to being briefed by the Office of General Counsel on this case, how it progressed through the legal system, and the implications of the court's opinion for future SEC pilot programs.*

*Enforcement*

46) In *Christopher v. SmithKline Beecham Corp.*, the U.S. Supreme Court reiterated that "agencies should provide regulated parties fair warning of the conduct a regulation prohibits or requirements." 567 U.S. 142 (2012) (internal quotation marks, brackets, and citation omitted). As SEC Chairman, will you comply with this principle?

*If confirmed, I will abide by all binding precedent consistent with the advice of the Office of the General Counsel at the Commission.*

47) Do you agree that the economic effects of corporate penalties often fall on shareholders instead of punishing those who are actually responsible for corporate misdeeds?

*SEC enforcement actions can include penalties against a corporate entity, sanctions against individuals employed by an entity, or measures to prevent certain behaviors and practices. All of these tools should be available to our civil enforcement agencies to be deployed based on the facts and the law of each case.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

48) Will you commit to aggressive enforcement against microcap fraud?

*If confirmed, I will endeavor to enforce against all fraud subject to SEC resource constraints*

49) Will you commit to aggressive enforcement against brokers and investment advisers who steal their clients' funds?

*If confirmed, I will endeavor to work with SEC staff to enforce against all fraud subject to SEC resource constraints.*

50) Do you believe in a "broken windows" theory of enforcement, where all technical violations of SEC rules and regulations automatically trigger an enforcement action?

*As Chair of the CFTC, I had the honor to lead a civil law enforcement agency. We endeavored every day to bring the facts and the law together in front of courts and hold people accountable. I believe it is essential that our regulations be backed by enforcement that is tough but fair. If confirmed, in choosing where to focus our limited enforcement resources, I would prioritize those actions that can be most effective in protecting the integrity of our capital markets and in ensuring that our most vulnerable retail investors are not taken advantage of. In making those decisions, I would work closely with, and rely heavily on, the judgement of the agency's very capable professional examinations and enforcement staff.*

51) Can you promise to work with other financial regulators to create a single bad actor database for enforcement actions?

*If confirmed, I look forward to working with other financial regulators and self-regulatory organizations such as FINRA on this matter.*

52) Can you commit to reviewing the Rule 10b5-1 safe harbor for sales by insiders?

*If confirmed, I look forward to working with fellow Commissioners and SEC staff to consider modernizing this provision.*

*Public Company Accounting Oversight Board (PCAOB)*

53) By statute (15 U.S.C. § 7211(e)(1)), PCAOB members must be "appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers, brokers, and dealers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures." If confirmed, will you ensure that all appointments to the PCAOB Board clearly have these qualifications?

*If confirmed, I will follow all applicable laws in appointing persons to the PCAOB Board.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

54) Traditionally, the SEC has taken recommendations from all of the SEC Commissioners on appointments to the Public Company Accounting Oversight Board (PCAOB). This helps ensure that the PCAOB works by consensus and that appointees have the relevant experience necessary to succeed as a PCAOB member. If confirmed, do you promise to take this approach for all appointments to the PCAOB Board?

*If confirmed, I would consult with fellow Commissioners with regard to potential appointments to the PCAOB.*

*Small Businesses*

55) The Regulatory Flexibility Act (RFA) requires federal agencies, including the SEC, to consider the effects of rules on “small entities” and consider whether alternative approaches could minimize the harm to small entities. The SEC has nine different definitions of the term “small entity” to cover different types of SEC-regulated entities. These definitions generally rely on revenue-based dollar thresholds. The SEC last updated six of these definitions in 1982. The SEC updated one definition in 1986, and two definitions in 1998. For example, while the SEC definition of “small entity” for an investment adviser is having less than \$25 million of assets under management (AUM), the Dodd-Frank Act raised the minimum amount of AUM to \$100 million in order to register with the SEC. Due to these outdated definitions, the SEC routinely argues that its rules do not impact small entities under the RFA. If confirmed, will you update these definitions, so that the SEC’s impact analysis on small business in rulemaking is meaningful?

*If confirmed, as part of the process of updating existing regulations, I believe it is appropriate to consider any applicable exemptions to assess their impact on market participants, including both issuers and investors.*

56) If confirmed, will you promise to tailor rules and compliance dates for small businesses, where appropriate?

*If confirmed, when designing regulations, I believe it is appropriate to consider the risks posed by regulated entities on the basis of their size and complexity.*

*SEC Management Practices*

57) If confirmed, will you continue to provide SEC Commissioners with at least 30 days to review drafts of non-enforcement matters, as is current SEC practice?

*If confirmed, I will provide fellow Commissioners with a reasonable opportunity to review drafts of non-enforcement matters. Commissioners may require more or less than 30 days, depending on the facts and circumstances of the matter being considered.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

58) If confirmed, will you continue to have weekly one-on-one meetings with each SEC Commissioner, as was practice under Chair Mary Jo White and Chairman Jay Clayton?

*If confirmed, I look forward to working collaboratively with my fellow Commissioners and meeting with them frequently to maintain productive relationships and advance the work of the Commission.*

59) What approach will you take to finalizing the long-term lease for the SEC headquarters office?

*My understanding is that the matter is the subject of confidential negotiations between the SEC and GSA, who are reviewing various potential real estate options. If confirmed, I will work with the SEC staff and GSA to get up to speed on this and to finalize the lease.*

*Short Selling*

60) Do you believe that short sellers generally contribute to price discovery in the marketplace, and also help reduce fraud?

*Short selling has long been a fundamental part of markets, contributing to liquidity and the price discovery of securities and other financial assets. Short sellers also can identify potential problems within market participants. It was a short seller, for example, who first raised questions about Enron's accounting. There is also a potential, unfortunately, for abuses related to short selling, as there is with any market transaction.*

61) If confirmed, do you promise to not take any action that would make short-selling either illegal or impractical?

*If confirmed, my focus with regard to short-selling would be on addressing fraud, manipulation and transparency in the furtherance of the SEC mission to protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation.*

*Consolidated Audit Trail*

62) As the SEC continues to implement the Consolidated Audit Trail (CAT), will you commit that the CAT will not contain any personally identifiable information (PII) of investors?

*I understand that the SEC under Chairman Clayton adopted rules to restrict the personally identifiable information in the Consolidated Audit Trail, namely restricting the date of birth and redaction of Social Security numbers, individual tax identification numbers, and account numbers. If confirmed I'd work with the SEC commissioners and staff to examine remaining issues, particularly the rule proposed on a unanimous basis last summer that pertains to data security.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

63) If you cannot commit to the exclusion of PII from the CAT database, will you commit the SEC to notifying each person whose PII is disclosed in the event of a CAT data breach?

*Data security is of the utmost importance in the implementation of the CAT and I will continue to work with the SEC commissioners and staff to work through outstanding issues related to data security.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Kevin Cramer:**

1) Many publicly traded companies have been besieged by hostile activist actions at shareholder meetings and in response to these abusive actions last fall the SEC finalized much needed modernizations and amendments to section 14a-8 of the Exchange Act Rule. These amendments will prevent environmental fringe groups from commandeering shareholder meetings to pass resolutions aimed at pushing a political agenda. It's a win for our energy producers who have been the victims of such attacks. Do you plan to support efforts to roll back these common sense reforms during your term on the SEC?

*Shareholders are the owners of the companies in which they invest. In advancing its 14a-8 proposal last year, the Commission heard from investors concerned about their ability to engage in shareholder democracy as well as issuers concerned about the consequences for capital formation. If confirmed, I will discuss the issue with Commissioners, SEC staff and other stakeholders to evaluate how the SEC should approach this issue.*

2) Many companies across the nation already disclose information for investors and stakeholders in their corporate social responsibility (CSR) reports. Additionally, companies utilize a variety of accepted frameworks to report their disclosure obligations including the now well-established Sustainability Accounting Standards Board and the emergent Task Force on Climate-Related Financial Disclosure, for example.

- a. Can you assure me that you will take into account existing frameworks as the SEC considers the imposition of addition disclosure reporting requirements so as to avoid duplication, prevent unnecessary expenditures and reporting fatigue?
- b. Can you describe what you believe would be the best course at the SEC to accomplish that?

*If confirmed, I will examine existing frameworks for disclosure, including those you mention, with an eye towards minimizing any compliance burden for issuers while providing investors with the material information they need for investment decisions. The best course for the SEC to accomplish that goal is by taking an approach that listens to stakeholders and following the legal obligations for stakeholder feedback that apply under the Administrative Procedures Act and other laws.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Mike Crapo:**

1) In June 2019, the SEC adopted a package of rulemaking and interpretations known as the Regulation Best Interest rule, which struck an appropriate balance of increasing transparency in investors' relationships, while preserving access to advice and investment products.

a. If confirmed, would you uphold the Regulation Best Interest rule, as written?

*When investors turn to financial professionals for advice and recommendations about their investments, advice that may be critical to their retirement security or their ability to fund a child's college education, they deserve advice that serves their best interests. If confirmed, I will work with my colleagues and the Commission staff to ensure that the Regulation Best Interest rule, as interpreted and enforced by the SEC, lives up to its best interest label.*

2) With regard to cryptocurrency, do you believe that the current regulatory framework provides sufficient predictability and certainty for market participants?

*I have spoken before of the potential of blockchain technology and cryptocurrencies to serve as a catalyst for change. To the extent that someone is offering a crypto token which is an investment contract or security that's under the SEC's remit, the SEC has a responsibility to ensure investors are adequately protected. Some cryptocurrency tokens have been deemed to be solely a commodity, as Bitcoin has been, and are within the purview of the CFTC. If confirmed, I would look forward to fostering an environment that is supportive of financial innovation while also ensuring that investors are protected, markets are fair, orderly and efficient, and capital formation is facilitated. As cryptocurrency technology evolves, it's important to stay true to our principles of investor protection and at the same time, be technology neutral.*

3) The proxy voting process was a focus of the SEC under Chairman Clayton, as there were valid concerns regarding the misuse of this process and other aspects of corporate governance to prioritize environmental, social or political agendas over the economic interests of end-investors.

Last year, the SEC adopted a final rule, which acknowledges the important role proxy advisors play in the corporate governance ecosystem, while instituting new policies increasing transparency and allowing companies to correct errors in voting recommendations.

a. Do you agree it is important that institutional investors ensure that retail investors' interests are being reflected in voting decisions?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

- b. If confirmed, would you uphold the reforms made through the final Proxy Advisor Rule finalized last year?

*I agree with the Commission's guidance that when investment advisers exercise proxy voting authority on behalf of their clients their fiduciary duties to act with loyalty and care extend to their exercise of voting decisions (17 CFR Parts 271 and 276.) If confirmed, I would work with fellow commissioners and SEC staff to understand the Proxy Advisor rules better, to see whether they addressed the potential conflicts of interest at the least costs for market participants, and determine its impact on achieving the mission of the agency.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Steve Daines:**

1) During your confirmation hearing on March 2, 2021, you stated “I think that it does bring efficiency to many pension to have proxy advisers. It’s a service that helps pension funds and investors through the proxy season.” According to the 2020 Proxy Season Survey, conducted by the U.S. Chamber of Commerce, Only 44 percent of the companies responding believe that proxy advisory firms carefully research and consider all relevant aspects of a particular issue on which it provides advice, higher than in both 2019 and 2018 (39 percent both years).

- a. Would you have concerns if pension funds, or other institutional investors, relied on advice that is not based on careful research?
- b. Could pension funds, or other institutional investors, theoretically be sacrificing returns on their investments if relying on advice that is not based on careful research?
- c. Would pension funds, or other institutional investors, potentially be in breach of their fiduciary responsibilities if they relied on advice that is not based on careful research?
- d. How would you approach the question of “efficiency” when weighing the costs and benefits of outsourcing research to proxy advisory firms when considering a rulemaking or guidance for proxy advisory firms?

*Proxy advisory research is one tool used by investment advisers in making voting decisions on behalf of clients. Investment managers often supplement research from proxy firms with their own in-house research and analysis. If confirmed, working with fellow commissioners and SEC staff, we would need to be careful that the research provided by proxy advisory firms is not subject to conflicts of interest, as that may undermine the quality of research used by shareholders in the exercise of their voting rights. Further, we also would want to be mindful not to impose undo costs on fiduciaries. Finally, I believe that economic analysis is an important consideration in crafting regulations and that that analysis should include both the costs and benefits to the regulated entities and on investors.*

2) A foundational principle of U.S. securities law is the materiality standard, which helps protect investors by filtering out irrelevant information. Deviation from the principle of materiality is costly to public companies and does not serve the public interest. It is for this reason that I was troubled by your exchange with Ranking Member Toomey on the concept of materiality during the hearing on Tuesday, March 2nd, 2021.

- a. Using the hypothetical situation posed by Ranking Member Toomey, could you elaborate on when, with regard to a publicly-traded company spending a financially insignificant amount of money on electricity, it would be material whether or not that electricity came from renewable sources?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*The Supreme Court has held that information is material if there is a substantial likelihood that a reasonable investor would view that information as having a significant impact on the “total mix” of information disclosed. If confirmed, the law will guide my consideration of policies that come before the Commission related to disclosure. As the Supreme Court has determined, there are not simple monetary thresholds to determine materiality, which is a nuanced and case-specific standard.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator John Kennedy:**

1) Many companies across the nation already disclose information for investors and stakeholders in their corporate social responsibility (CSR) reports. Additionally, companies utilize a variety of accepted frameworks to report their disclosure obligations, including the now well-established Sustainability Accounting Standards Board and the emergent Task Force on Climate-Related Financial Disclosure, for example.

- a. Can you assure me that you will take into account existing frameworks as the SEC considers the imposition of additional disclosure reporting requirements so as to avoid duplication, prevent unnecessary expenditures, and reporting fatigue?
- b. Can you describe what you believe would be the best course at the SEC to accomplish that?

*If confirmed, I will examine all existing frameworks for disclosure with an eye towards minimizing the compliance costs for issuers while providing investors with the material information they need to make investment decisions. The best course for the SEC to accomplish that goal is by taking an approach that listens to stakeholders and following the legal obligations for stakeholder feedback that apply under the Administrative Procedures Act and other laws.*

2) I have been very concerned with the SEC's actions regarding the Consolidated Audit Trail (CAT). Specifically, I have focused my efforts on the CAT Customer Database, the largest government database of its kind that will, when fully operational in 2022, capture all customer and order information for equity securities and listed options, costing \$75 million annually to run.

This target-rich database will provide more than 3,000 users from the SROs and the SEC with unfettered access to the CAT customer database, and one can only imagine what foreign actors will do once this thing begins to capture tens of millions of records every day and will maintain data on 100 million retail and institutional accounts.

In fact, the hacking of the Solarwinds proprietary network serves as a very recent and sobering example of exactly what we know will happen when the federal government is at the helm. This hack is believed to originate in Russia and allowing hackers to spy on U.S. cybersecurity firms and the Department of Homeland Security undetected for months.

It would seem to me that the easiest solution here that protects my constituents in Louisiana and consumers across the country would be to instead receive the information directly from the securities firms when needed and in an expeditious timeframe. The securities industry has proposed this type of expedited system that would allow the data to stay within broker-dealers but would be available upon 24 hours-notice.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

- a. Why is that not a better, safer approach? Are you prepared to oversee this database and guarantee it will never be breached?

*Data breaches are a real concern. We saw that when the SolarWinds case came to light and I understand that data at a self-regulatory organization is a target for hackers. I understand that the SEC under Chairman Clayton adopted rules to restrict the personally identifiable information in the Consolidated Audit Trail, namely restricting the dates of birth and redaction of Social Security numbers, individual taxpayer's identification numbers, and account numbers. If confirmed, I'd work with the SEC commissioners and staff to examine remaining issues, particularly the rule proposed on a unanimous basis last summer that pertains to data security.*

3) Last year, Congress unanimously passed my "Holding Foreign Companies Accountable Act," which delists companies off the stock exchange if they don't comply with audits by the Public Company Accounting Oversight Board (PCAOB). These audits were created to prevent another ENRON and preserve the integrity of our capital markets system. The SEC has 90 days to promulgate rules for this legislation which passed back in December.

Investor protection is very important to me. The more information the public has, the better their decision-making process is.

- a. Can you think of any good reason why U.S. investors should be exposed to fraudulent companies in China or companies that are arms of the Chinese Communist Party and wish to do harm to the United States?
- b. Chinese stocks also end up in index funds, and some index providers have even been pressured by the Chinese government to include them. Will you commit to examining the conflicts of interest inherent in the index business that can lead to U.S. investors being exposed to fraudulent companies, and will you pressure the exchanges to do more to keep our markets from importing China's fraud?

*U.S. markets should be free from fraud, including fraud originating from abroad or from foreign state-owned enterprises. If confirmed, I will work with the Divisions of Corporation Finance, Investment Management and Enforcement, along with the Office of Chief Accountant to ensure that U.S. investors are not exposed to fraudulent companies, including those from abroad. I also would look forward to working with Congress and the PCAOB on the timely and full implementation of the Holding Foreign Companies Accountable Act.*

4) It has now been more than a decade since the collapse of Stanford International Bank Limited (together with its affiliates, "SIB") and R. Allen Stanford's arrest for orchestrating the second-largest Ponzi scheme in United States history. As you know, this \$7 billion Ponzi scheme was built on the backs of ordinary, working-class Americans in states such as Florida, Louisiana, and Texas. The vast majority of these individuals have suffered extraordinary pain as their life savings vanished and they reached retirement age in poverty.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

As you may know, the evidence strongly indicates that TD Bank aided and abetted Stanford's banking outside the United States. By providing banking services to Allen Stanford without so much as questioning a single transaction in the face of Stanford's suspicious activity, TD Bank helped Stanford defraud thousands of unsuspecting victims.

TD Bank ignored numerous inescapable signs of fraudulent activity: large round sums leaving Stanford's TD Bank accounts; actual investment returns that could not support the unreasonably high CD returns SIB was offering; consistent wire transfers to accounts maintained by entities other than SIB; SIB's limited number of Canadian customers; SIB's correspondent banking services with another North American banking institution; SIB's location in Antigua, one of the highest risk jurisdictions in the world known for money laundering; and Stanford's declared bankruptcy and designation as a Politically Exposed Person.

Since the Stanford fraud was exposed, TD Bank has used every legal maneuver and stall tactic to deny victim recoveries. Finally, after 12 years of pain and suffering, a lawsuit in Canada is currently in the trial phase; however, it is clear that TD Bank is not serious about accepting responsibility or bringing an end to this longstanding nightmare. Even if TD Bank loses the Canadian lawsuit, we expect them to exhaust the appeals process as Stanford victims continue to struggle. Their conduct has been truly egregious. As SEC chair, you can play a significant role in helping to facilitate an end of these victims receive their long-awaited recoveries.

The SEC also oversees the receiver appointed in this matter, Ralph S. Janvey. In addition to delivering abysmal results for long-suffering victims (less than 5 cents on the dollar), Mr. Janvey and his legal team at Baker Botts LLP ("Baker Botts") have objected to organized victims intervening in litigation against SIB's correspondent banking partners, including TD Bank and Societe Generale Private Banking ("SocGen"). We were alarmed to learn that the receiver would object to our constituents retaining their own counsel and seeking to participate in litigation against major banks – including TD Bank and SocGen – that appear to have aided and abetted the Stanford empire.

- a. If confirmed, will you commit to using the tremendous influence and power of the SEC to help expedite the generation of meaningful recoveries for victims?

*I am familiar with what happened in the Stanford case and my heart goes out to all of the victims who lost substantial shares of their money due to the behavior of Stanford and others in his criminal enterprise. I know you have worked diligently to ensure that the receiver charged with resolving the estate is treating victims responsibly and being a good steward of resources. If confirmed, I look forward to working with you on this, including on how to recover any funds outside of the U.S. in foreign bank accounts that have yet to be recovered so far.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Cynthia Lummis:**

1) Many companies disclose information for investors and stakeholders in corporate social responsibility reports. Additionally, companies utilize a variety of accepted frameworks to report disclosure obligations including the Sustainability Accounting Standards Board and the Task Force on Climate-Related Financial Disclosure.

- a. Can you commit that you will take into account existing frameworks as the SEC considers the imposition of additional disclosure reporting requirements, to prevent unnecessary expenditures and duplicative reports?
- b. Can you describe the concrete actions you will take at the SEC to ensure this occurs?

*If confirmed, I will examine existing frameworks for disclosure with an eye towards minimizing compliance costs for issuers while providing investors with the material information they need to make investment decisions. The best course for the SEC to accomplish that goal is by taking an approach that listens to stakeholders and following the legal obligations for stakeholder feedback that apply under the Administrative Procedure Act and other laws.*

2) The Commission and staff have stated on numerous occasions that modernization of the Custody Rule is being studied at various levels. Can you provide an update on the status of this study, and approximate dates when it began and a projected estimate of completion?

*If confirmed, I will work with the Commissioners and staff to quickly take responsibility for the rulemaking calendar. Once I have greater insight into all of the ongoing work being undertaken at the Commission, I look forward to working closely with Congress and responding to information requests regarding the substance and timeline of the SEC's work.*

3) The Commission took enforcement action against Great Plains Trust Company, a Kansas-chartered non-depository trust company, in September 2020. As a state-chartered trust company, the Commission is the secondary regulator, and the Kansas Office of the State Bank Commissioner is the primary regulator. In the banking regulatory space, state and federal regulators generally always take joint supervisory action, both as a sign of comity in our state-federal system and the practical fact that state regulators are the chartering authority and the federal regulator provides deposit insurance or supervises membership in the Federal Reserve System. Will you commit to always give state regulators confidential notice of pending enforcement actions, respecting their role as the primary regulator/chartering authority, and take joint enforcement actions with state regulators whenever possible?

*When I chaired the CFTC, our Division of Enforcement worked cooperatively with federal and state regulators on enforcement matters, including by sharing confidential information as permitted by federal and state laws and as warranted by the facts and circumstances. I respect the independent and complementary interests served by the various federal and state regulators, including banking regulators, and believe that enforcement can work best when regulators*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*partner as appropriate. If confirmed, I will work with the SEC staff to consider joint enforcement actions with state regulators as appropriate.*

4) State and federally-chartered banks are listed in the Investment Advisers Act and Custody Rule as being eligible “qualified custodians.” Both are subject to the same rigorous bank examination standards. Since Congress listed both in the Advisers Act, can you commit to always ensuring parity and equal treatment of national and state banks under our securities laws, absent direction from Congress?

*I understand that the staff of the Division of Investment Management issued a statement in November 2020 to “encourage interested parties to engage with the staff directly on the application of the Custody Rule to digital assets, including with respect to the definition of ‘qualified custodian’ under the rule.” This followed the Wyoming Division of Banking’s letter indicating that a Wyoming-chartered public trust company is permitted to provide custodial services for digital and traditional assets under Wyoming law. If confirmed, I will look closely at the comments submitted in response to the Division’s questions and will work with federal and state banking regulators to better understand this issue. I believe that providing access to qualified custodians that can be trusted to safeguard customer assets is an important goal.*

5) As CFTC Chairman, you crafted and implemented post-financial crisis reforms related to the derivatives market. These rules have been in place for years and appear to work well. For example, it is my understanding that the market held up well in the face of last year’s COVID-related disruptions. At the same time, I understand that the SEC is still in the process of finalizing its regime. Will you be able to leverage your previous work and converge the timing and substance of the SEC rules with existing CFTC rules?

*If confirmed, I will work with fellow Commissioners and SEC staff to complete all rulemakings directed by Congress. While serving as the Chairman of the CFTC, we were able to finalize our congressionally-directed rulemakings related to Title VII in a timely and often bipartisan manner.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Robert Menendez:**

1) Section 13(d) of the Securities Exchange Act of 1934 requires investors who become the beneficial owners of more than five percent of an issuer's equity securities to report certain identifying information to the SEC. But if undisclosed or disclosed without sufficient information, such ownership stakes could undermine the security, transparency, and fairness of our capital markets.

- a. How do you believe the SEC should monitor equity markets to ensure that foreign investors are not accumulating significant shares in public companies, especially in the media and technology sectors, without filing the requisite disclosures?

*The Commission has a number of mechanisms to monitor investors', including foreign investors', acquisition of significant ownership of public company stock. I believe that transparency is essential to well-functioning capital markets and, if confirmed, will work to ensure compliance with SEC regulations to promote market transparency.*

- b. How would you propose to strengthen SEC enforcement in this area?

*As Chair of the CFTC, I was honored to lead a civil law enforcement agency which endeavored every day to bring the facts and the law together in front of courts and held people accountable. If confirmed, I will bring this same commitment to accountability to the SEC.*

2) Section 956 of Dodd-Frank requires the OCC, the Federal Reserve, FDIC, NCUA, FHFA, and the SEC to jointly propose a rule to prevent executive compensation plans that encourage excessive risk in our financial system and threaten a repeat the events of the 2008 crisis. That rule is now 10 years overdue.

- a. If confirmed, will you make it a priority to finish the work of Dodd-Frank and finalize this rulemaking?

*If confirmed, I will work with fellow commissioners, SEC staff and counterparts at other financial regulators to complete all rulemakings directed by Congress. While serving as the Chairman of the CFTC, we were able to finalize our congressionally-directed rulemakings related to Title VII in a timely and often bipartisan manner. If confirmed, I will consult with my counterparts to move forward on the joint mandates given to us by statute to issue a rule addressing compensation plans that encourage excessive risk in our financial system.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Jerry Moran:**

1) The Federal Trade Commission (FTC) has proposed to modify pre-merger notification requirements under the Hart-Scott-Rodino Act (HSR) to create an exemption for de minimis acquisitions of voting securities. The proposal includes some concerning limitations on the availability of the exemption, as well as an expansion of the definition of “person” in Section 801.1.1(a)(1) to include “associates.” These changes could new complications for the managements of investment funds that are registered with the Securities and Exchange Commission (SEC).

Investment funds are already subject to strong regulation by the SEC that includes disclosure requirements similar to those sought under the proposed HSR amendments. In fact, such regulation includes regular reporting through Form 13F reports (as well as schedule 13D and 13G filings) by investment managers, which provides transparency into equity ownership by investment managers across all funds over which a manager exercises investment discretion. The amendments as proposed by the FTC would fundamentally alter fund management with overly burdensome new reporting requirements that would extend far beyond reporting and impose immense financial costs on investors. Moreover, as a result of the FTC’s proposed aggregation provision, subsequent delays in finalizing investment transactions would harm investors who would have otherwise benefitted from more timely acquisitions or rebalancing of their accounts.

- a. As Chairman, do you plan to protect the SEC’s independence and regulation of investment funds and products?
- b. Do you agree that the SEC is the primary regulator of investment funds?
- c. Do you have any concerns for how the FTC’s pending rulemaking would affect investment funds?
- d. Will you commit to engaging with the FTC to advise the Agency on how the proposed amendments to HSR could negatively impact retail investors?

*If confirmed, I will work to advance the mission of the SEC, as an independent agency, to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. If confirmed, I look forward to learning from market participants, you and your staff, and FTC leadership about issues of interest to both agencies.*

2) Something that seems to be getting lost in the recent narrative about payment for order flow is that investors not only are getting commission free trades, but they are also getting better execution quality because the trades are being executed by wholesalers that provide price improvement. The wholesalers have a duty of best execution and are subject to comprehensive disclosure requirements about the quality of their executions – duties they are obligated to fulfill regardless of whether they pay for order flow or not. Do you agree that retail investors benefit

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

from a competitive trading environment in which wholesalers are incentivized to get the best price for every trade?

*Markets - and technology - are constantly changing. Payment for order flow, along with other aspects of U.S. equity market structure, raises a number of policy questions, including whether and how it enables best execution for investors; its role in growing concentration in market making; and its effects on fair, orderly and efficient markets. If confirmed, I would work with fellow Commissioners and SEC staff along with hearing from market participants to examine market structure issues holistically as these issues are highly interrelated.*

- 3) The GameStop episode has spurred significant debate over shortening the settlement cycle from T+2 to T+1, or even T+0.
- a. What are your views on whether the settlement cycle should be shortened and what the right solution is?
  - b. While it may be a convenient soundbite to call for a shorter settlement cycle, there will certainly be significant costs associated with an acceleration, and those costs and benefits may differ by type of participant. Market participants will have to invest in new technologies and compliance costs will be significant. How do you view the cost/benefit analysis of moving to a shorter cycle?

*There are several parties, from DTCC to the SEC's Investor Advisory Committee, that have recommended shortening the settlement cycle in order to reduce risk and costs in the system. This will be an important area for the Commission to examine and, if confirmed, I would plan to explore the possibility of shortening settlement cycles.*

*There could be significant risk reduction and cost benefits to potentially shortening the settlement cycle, but as with many policy choices, there would be some potential tradeoffs. If confirmed, I would discuss the matter with fellow commissioners, SEC staff, and relevant stakeholders along with considering appropriate economic analysis on costs and benefits.*

- 4) Over the past several years, the SEC has made great strides in modernizing the infrastructure of our national market system, particularly with respect to the provision of market data and access to the markets. For example, the SEC streamlined and introduced governance enhancements to dated national market system plans governing the dissemination of market data, and expanded the nature and scope of data that the exchanges are required to make available to all investors.

Will you commit to continuing to prioritize market structure enhancements aimed at reducing the barriers to access to markets and market data if you are confirmed as Chairman?

*Market structure issues are complex and highly interrelated. Markets - and technology - also are constantly changing. The overall U.S. equity market is a critical national asset that provides a*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*vital mechanism for capital formation for firms and individuals; investment opportunities for Main Street; and economic growth. If confirmed, I will work with fellow commissioners, SEC staff and hear from market participants to examine market structure issues holistically in furtherance of the SEC's three part mission and ensure that the U.S. capital markets remain the best in the world.*

5) While I agree that investor protection is one of the most critical aspects of the SEC's mission, I worry about the use of the enforcement and examinations process to shape the securities laws outside of the rule making process. Will you commit today that you will respect the integrity of the administrative law framework and refrain from using investigations and examinations to establish de facto regulations?

*I understand the unique role of guidance and regulation and the obligations that apply under the Administrative Procedure Act, the Congressional Review Act and other applicable laws. Providing the public and interested stakeholders with the opportunity for notice and comment as well as the other due process protections that apply is essential for good policymaking. Enforcement actions also should and must be brought when there is a violation of law.*

6) There has been a lot of discussion about the SEC playing an important role on climate and ESG issues in the Biden administration. Given the tools available to the SEC, it seems that enhanced issuer disclosure requirements are some of the lowest hanging fruit for reforms in this area.

Can you provide an overview of your climate and ESG priorities in other areas? For example, do you foresee prioritizing any ESG initiatives related to the trading ecosystem or market structure?

*The Commission under Acting Chair Lee has announced a number of changes to how it deals with ESG in recent weeks. If confirmed, I will examine existing frameworks for disclosure with an eye towards minimizing compliance costs for issuers while providing investors with the material information they need to make investment decisions. If confirmed, I look forward to engaging with fellow Commissioners and the SEC staff to learn what has already been completed, what additional actions are under consideration, and whether any rulemakings are being considered.*

7) The U.S. capital markets are constantly growing and evolving, and it is now more critical than ever for regulators like the SEC to work collaboratively with market participants to get the expertise needed to regulate smartly, and to understand the incentives, costs, and benefits of participating in the markets so that the best interests of investors are served. At a large agency like the SEC, much of this collaborative work is carried out by the staff, and I am sure you agree that it is of critical importance that the staff have an open door policy in terms of interacting with market participants in carrying out the business of the agency.

Will you commit to prioritizing staff engagement with the industry participants and investors during your tenure?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*Yes, I will prioritize active engagement with stakeholders with an interest in the mission of the SEC.*

8) Earlier this year, for the first time ever, trading volume on off-exchange venues surpassed trading on exchanges. The proliferation in alternative trading venues is the byproduct of technological advances in our market's infrastructure that has resulted in better price discovery and superior execution quality for investors. During your tenure at Chairman of the CFTC, you were a vocal supporter of directing more trading to regulated platforms with transparency, including SEFs and Exchanges. The equity market has a number of differences from futures, including immediate post trade transparency through trade reporting, requirements that off exchange trades comply with the order protection rule of Regulation NMS, post trade transparency thru public FINRA reporting. This has resulted in a market structure where there is high execution quality, and investors have choices, within these important rules, as to how to execute.

Please elaborate on your views relating to on-exchange vs. off-exchange in the equities markets. And will you commit to supporting innovation in all trading venues to the extent that they facilitate better execution quality for investors?

*If confirmed, I will look to find ways to support innovation in trading venues that leads to better execution quality for investors. At the CFTC, we worked to increase the transparency in the previously unregulated swaps market. In the equities markets, we already have existing market exchanges and off-exchange trading venues. If confirmed, I look forward to engaging with fellow commissioners, the SEC staff and market participants to see if there are ways that equity market trading can be improved.*

9) The consortium charged with running the CAT recently sought approval from the SEC to shift liability for harm caused by data breaches or other cyber incidents to market participants like broker-dealers who are required to report data to the CAT but otherwise have no control over the data once it is reported. I am sure you agree that this creates a perverse set of incentives, where the controller of the data has no "skin in the game" from a liability perspective and therefore less incentive to protect the sensitive data it controls.

- a. Will you commit to studying this proposal very carefully and to ensure that liability is assigned to the entity that controls the reported data?

*If confirmed, I look forward to studying this proposal carefully and to engaging with the consortium charged with running the CAT.*

10) The Consolidation Audit Trail (CAT) involves the collection of the personal and financial information of every single American investor (PII). This information would be stored in a centralized database in that will be an easy, high-value target for Russian and Chinese hackers to infiltrate our markets and steal the identity of innocent Americans. There is minimal justification for the SEC or anyone else to collect this sensitive information as the CAT can be just as effective without storing everyone's home address and social security number.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

- a. Will you commit to removing the requirement that retail investor PII be collected as the SEC moves forward with implementing the CAT?

*I understand that the SEC under Chairman Clayton adopted rules to restrict the personally identifiable information in the Consolidated Audit Trail, namely restricting the date of birth and redaction of Social Security numbers, individual tax identification numbers, and account numbers. If confirmed, I'd work with the SEC commissioners and staff to examine remaining issues, particularly the rule proposed on a unanimous basis last summer that pertains to data security.*

11) Over the past few years, there have been a number of instances where the major Exchange groups have chosen to take the Commission to Court to challenge various rulemakings. In most of those situations, market participants have been supportive of the SEC rulemaking. What is your view on how to balance the role of the Commission to engage in rulemaking to improve market structure with the recent litigious actions of for profit exchanges?

*While not commenting on any current or pending litigation that involves the SEC, I am a strong believer in the importance of engaging with industry participants and other key stakeholders during the regulatory process. It is important that the views of key market participants be taken into account in key policy decisions.*

12) Would you agree that maintaining private market investments in the economy is important to facilitating the post-COVID economic rebound?

*Yes.*

13) Would you agree that businesses in public markets and businesses in private markets are, and should continue to be subject to differentiated regulatory and reporting structures, due to a variety of factors including types of investors that are permitted to invest in these businesses?

*Yes.*

14) Would you agree that the SEC could not propose treating public companies and private companies as if they are the same thing without legislation specifically authorizing the SEC to undertake such a radical change in law?

*If confirmed, I would seek the advice and counsel of the SEC's attorneys, including in the Office of General Counsel, on the treatment of public and private companies under the securities laws. I would follow the requirements of the SEC's authorizing statutes regarding this, as with all matters.*

15) The U.S. capital markets are the finest in the world. American investors and firms also benefit from cross border access to global markets.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

- a. How are you viewing the cross border landscape today compared to your time serving as Chairman of the CFTC?
- b. Will you be willing to work with counterparts in other jurisdictions to preserve cross border access to financial markets?

*When I was Chair of the CFTC from May 2009 to January 2014, the U.S. and the world were still in the initial stages of responding to the financial crisis. The United States was at the leading edge of establishing a new legal framework to regulate these previously dark markets. Today, many countries have made progress toward building a financial regulatory regime, often modeled off of the progress made in the United States.*

*If confirmed, I would be eager to work with counterparts in other jurisdictions to support appropriate cross-border access to financial markets as required by U.S. law.*

16) In 2012 during your tenure as CFTC Chair, you were one of the early proponents for replacing LIBOR with a more robust benchmark anchored in actual and transparent market transactions. This transition process is well underway, with regulators around the world stating that market participants need to be prepared for the day in which LIBOR is no longer published or available to be used by market participants. More robust reference rates have been developed, launched and are now in use. In the derivatives markets, for example, nearly 70% of the notional outstanding of uncleared swaps have adopted contractual language for switching to these reference rates.

Could you describe what your approach would be with SEC-regulated financial institutions which have not yet made the transition?

*As I understand it, the transition to a new benchmark rate away from LIBOR is being led by the Federal Reserve Board and New York Federal Reserve Bank in consultation with other financial regulators, including the SEC. Many of the financial institutions that are affected by the transition are regulated by the SEC along with other regulators, including the Federal Reserve. If confirmed, I look forward to working with my fellow regulators to assist this transition and plan to engage with the Federal Reserve Board and New York Federal Reserve Bank to see what the SEC can do to facilitate the transition broadly across the financial sector.*

17) I am concerned that the SEC's Enforcement Division is basing enforcement actions on previous settlements and staff guidance (which do not create legal precedent) as opposed to undertaking a transparent rulemaking process. In your view, when the SEC determines there is a widespread industry practice that could be a violation of, for example, the Investment Adviser Act, how should it decide whether to engage in enforcement action, the issuance of guidance, or a rulemaking?

*I understand the Commission's statutory obligations for rulemaking under the Administrative Procedure Act. Guidance and no-action letters also can play an important role in getting timely*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*information out to market participants that provides clarity and reduces compliance costs. Which of these tools to use depends on context-specific questions regarding a particular issue or matter.*

18) Regarding digital assets native to various blockchain technologies, there appears to be some market uncertainty about the application of the US Securities Laws here generally, and to individual digital assets in particular. Some of this confusion relates to the method in which capital is originally raised to develop blockchain protocols, applications and the digital assets themselves when compared to the eventual utility of these digital assets once related protocols or applications are developed and launched. Multiple members of the Commission have commented on this potential digital asset dichotomy of representing a security at one point in time and later no longer falling within the jurisdiction of the Securities Laws. Also, concerns about the Commission's regulatory stance and its concomitant negative effect on the role of US business in international digital asset innovation and prominence has become so acute that the U.S. Chamber of Commerce recently called for the SEC to provide a clear pathway to non-security status for nascent digital assets.

Would you describe generally your plan to bring regulatory clarity to the application of the US Securities Laws to digital assets?

*I have spoken before of the potential of blockchain technology and cryptocurrencies to serve as a catalyst for change. To the extent that someone is offering a crypto token which is an investment contract or security that's under the SEC's remit, the SEC has a responsibility to ensure investors are adequately protected. The Supreme Court has defined such investment contracts to include arrangements in which "a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." If confirmed, I will follow the law regarding whether a cryptocurrency is a security. Some cryptocurrency tokens have been deemed to be solely a commodity, as Bitcoin has been, and are within the purview of the CFTC. As cryptocurrency technology evolves, it's important to stay true to our principles of investor protection and at the same time, be technology neutral.*

19) The CFTC has traditionally held anti-fraud and anti-manipulation enforcement authority over markets for transactions that are actual purchases of a commodity, also referred to as "spot markets." The CFTC has broadly asserted this authority over digital asset markets generally.

- a. Do you foresee that status quo continuing with regard to cryptocurrency spot markets?
- b. Will you explain your vision for how regulation of these markets may evolve and what regulatory innovations may be necessary to differentiate digital asset commodity markets from digital asset security markets to support that evolution?

*It is critical that regulators and regulations keep pace with changing technology, and that includes the burst of growth of new financial technology - including cryptocurrencies - in the last decade. I have spent the last several years at MIT studying this field, and I believe financial*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*technology 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. If confirmed, I look forward to working with the CFTC, along with other federal regulators and Congress, to facilitate innovation in the digital asset markets, consistent with established public policy frameworks.*

20) The first exchange rule filing to list and trade a bitcoin ETP was submitted by Cboe (then Bats) for SEC review in June 2016 and was disapproved in March 2017 on the basis that there was not a “significant, regulated market” underlying the proposed ETP. The SEC has disapproved a number of additional proposals since 2017 that have tried to address the “significant, regulated market” concerns in various ways, most recently in February 2020. In the past year since the last disapproval, the price of bitcoin has increased approximately five-fold and the regulated bitcoin futures market on Chicago Mercantile Exchange has grown significantly. Meanwhile investors have pushed assets into lightly regulated OTC bitcoin funds, the largest of which has grown from approximately \$2.5 billion to approximately \$35 billion in assets despite the significant premium volatility in these products (regularly ranging from 5% to 40%) causing risk above and beyond the volatility of bitcoin. Approval of a bitcoin ETP would essentially eliminate any premium (and thus the premium volatility) and provide investors access to bitcoin exposure through a transparent, regulated vehicle.

I understand a new proposal was submitted to the SEC this week to allow for a bitcoin exchange traded fund (ETF). Will you generally support bringing these types of funds to market so that investors can get bitcoin exposure in a familiar wrapper which trades in a well-regulated marketplace?

*Without prejudging any specific proposals that I may or may not consider at the Commission, if confirmed, I look forward to learning more about nascent products such as these and to discussing the staff’s regulatory decisions on these matters over the preceding few years.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Tim Scott:**

1) As you know, the SEC adopted its landmark Regulation Best Interest and Form CRS requirements less than two years ago. Reg BI put in place strong protections for investors; for example, extending investment advice protections to 401(k) rollover discussions, while seeking to preserve the broker-dealer and investment adviser business models. I believe it also struck the right balance in ensuring advice is accessible and affordable.

- a. What are your preliminary thoughts on the current set of rules governing investment advice?
- b. If confirmed as Chair, how will you ensure that the Commission's administration and interpretation of Regulation Best Interest continue to ensure that small and moderate balance savers enjoy both the enhanced protections of Reg BI and access to commission based services?

*When investors turn to financial professionals for advice and recommendations about their investments, advice that may be critical to their retirement security or their ability to fund a child's college education, they deserve advice that serves their best interests. If confirmed, I will work with my colleagues and the Commission staff to ensure that the Regulation Best Interest rule, as interpreted and enforced by the SEC, lives up to its best interest label.*

*If confirmed, I would work with our regulatory partners at FINRA, the states, and Department of Labor to ensure that our regulations live up to their best interest label and guard against harmful incentives that may conflict with that standard.*

2) Reg BI became effective in June 2020. Since then, the SEC has been actively examining firms for compliance and continuing to issue interpretive guidance. Given these considerations, I believe it makes good common and practical sense to let Reg BI's implementation play-out over the course of the next several years – rather than subjecting it to any significant modification or even rescission in the near term.

- a. If confirmed as Chair, will you commit to allowing the SEC to examine the full effect of Reg BI and Form CRS?

*If confirmed, I will work with my colleagues and the Commission staff to ensure that the standard, as interpreted and enforced by the SEC, lives up to its best interest label.*

3) The Securities and Exchange Commission is a member of both the Financial Stability Board (FSB) and The International Organization of Securities Commissions (IOSCO). The FSB is active on many matters of financial policy given its broad mandate to promote international financial stability. The FSB's membership primarily includes central bankers that provide a macro-perspective; by contrast standard-setters like IOSCO, the global standard setter for the securities sector, provide more technical expertise on issues.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

- a. In general, what do you believe is the role of international standard setting bodies like FSB and IOSCO?

*Participation in international standard setting bodies provides an opportunity for domestic regulators to learn from, consult with and coordinate on cross border issues with their counterparts in other jurisdictions.*

- b. Do you believe the Chair of the SEC has a responsibility to advocate for the U.S. regulatory and legal structure as part of the standard-setting process of the FSB and IOSCO?

*Where international standards can contribute to the SEC's attainment of its mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation, I believe it is the responsibility of the SEC Chair to engage proactively in conversations with the FSB and IOSCO.*

- c. What role, if any, do you believe the FSB has in establishing technical standards, including disclosure standards, for the securities sector? Do you believe IOSCO is better equipped to establish standards for the securities sector?

*Collaboration with international regulators through the FSB and IOSCO can contribute to the SEC's three part mission. International standards can help ensure investor access to consistent, comparable data that they can efficiently integrate into their investment processes. At the same time, it is important that any standards for market participants integrate the unique features of our domestic market, legal and regulatory infrastructure and the needs of local investors and issuers.*

- d. Do you agree that the U.S. is not legally obligated to adopt any standard developed by the FSB, IOSCO, or any other international standard setting body?

*Yes, standards are not binding. The SEC can agree to adopt a standard subject to the scope of the Commission's authority and the Administrative Procedure Act.*

- e. Do you agree that if the U.S. were to follow an international standard that it would be your obligation as the chair of the Commission to ensure that the SEC first conducts a sound economic analysis and that the standard is appropriately tailored so that it is workable and effective in the U.S.?

*If confirmed, I will adhere to the three part mission of the SEC and the requirements of the Administrative Procedure Act for all rules promulgated by the SEC. If confirmed, any rulemaking of the SEC also will take into consideration economic analysis.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

4) A lack of competition among incumbent NRSROs has been widely documented as contributing to the 2008 financial crisis. More than 10 years later, as the SEC has noted in its own annual report, competition is still a barrier to entry into this market. Some observers have supported proposals to assign credit ratings on a rotation to existing NRSROs. I am deeply concerned that this would further decrease competition in the ratings sector. Promoting competition among NRSROs helps ensure that investors are protected, and helps prevent the type of failures in ratings by the incumbents that led to the 2008 crisis.

- a. If confirmed as Chair, will you commit to opposing proposals that direct ratings business to NRSROs, or that otherwise suppress competition?

*Promoting competition in the credit ratings agencies, and more broadly in the capital markets, is critically important to the SEC's mission. If confirmed, I am committed to working with Congress, fellow commissioners, and the staff at the SEC to see how we can support and promote competition among credit ratings agencies.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Kyrsten Sinema:**

1) If confirmed, how engaged will you be with the activities of the Financial Stability Oversight Council? What unique perspective will active SEC engagement provide in advancing the FSOC's mission?

*The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 entrusts the Financial Stability Oversight Council with the mission of identifying risks to the financial stability of the United States; promoting market discipline; and responding to emerging risks to the stability of the United States' financial system. If confirmed, I will bring the perspective of the primary regulatory agency which I represent, the SEC, to all of the activities of the FSOC, including internal deliberations, risk monitoring and voting decisions. My career in financial markets, including my previous experience in the private sector and in state and federal government, along with my research from MIT, will inform my work on the Council.*

2) If confirmed, how will you approach the issue of ESG disclosures by public companies? Do you believe that ESG disclosures need to be mandatory in order for them to be effective?

*If confirmed, materiality will guide my decisions as SEC Chair related to disclosure requirements under the federal securities laws. The Supreme Court has held that information is material if there is a "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." In some instances, mandatory disclosures that provide for clear, consistent and comparable information may best inform investor decision-making and may reduce compliance costs for issuers. In other instances, individualized determinations of materiality, voluntary disclosures or the shareholder proposal process may be more effective at meeting investor and issuer needs.*

3) If confirmed, how will you navigate the existing EU framework on climate risk disclosures when considering a potential U.S. framework?

*There are a wide range of climate risk disclosure frameworks that have been developed by international governments and private sector actors. If confirmed, I will examine existing frameworks for disclosure, including the EU framework, with an eye towards minimizing any compliance burden for issuers while providing investors with the material information they need for investment decisions. The best course for the SEC to accomplish that goal is by taking an approach that listens to stakeholders and following the legal obligations for stakeholder feedback that apply under the Administrative Procedures Act and other laws.*

4) The transition from LIBOR to SOFR continues to be a subject of interest. If confirmed, what actions will you take to facilitate this transition in portions of the market where adoption has been slow or nonexistent?

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*As I understand it, the transition to a new benchmark rate away from LIBOR is being led by the Federal Reserve Board and New York Federal Reserve Bank in consultation with other financial regulators, including the SEC. Many of the financial institutions that are affected by the transition are regulated by the SEC along with other regulators, including the Federal Reserve. If confirmed, I look forward to working with my fellow regulators to assist this transition and plan to engage with the Federal Reserve Board and New York Federal Reserve Bank to see what the SEC can do to facilitate the transition broadly across the financial sector.*

5) If confirmed, will you commit to finalizing outstanding Dodd-Frank Title VII regulations on market transparency, clearing, and trading?

*If confirmed, I will work with fellow commissioners and SEC staff to complete all rulemakings directed by Congress. While serving as the Chairman of the CFTC, we were able to finalize our congressionally-directed rulemakings related to Title VII in a timely and often bipartisan manner.*

6) If confirmed, what factors will you consider when evaluating a potential Bitcoin ETF? Under what circumstances would one be approved?

*It is critical that regulators and regulations keep pace with changing technology, and that includes the burst of growth of new financial technology - including cryptocurrencies - in the last decade. I have spent the last several years at MIT studying this field, and I believe financial technology 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. Without prejudging any specific proposals that I may or may not consider at the Commission, if confirmed, I look forward to learning more about nascent products such as potential Bitcoin ETFs and to discussing the staff's regulatory decisions on these matters over the preceding few years.*

7) How can the SEC provide more regulatory clarity with respect to digital assets?

*It is my understanding that the SEC's FinHub and division directors have provided guidance on this subject. If confirmed, I look forward to discussing with fellow commissioners and the SEC staff the full range of actions we might take to provide additional clarity regarding these new assets.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Jon Tester:**

*Oversight and Enforcement:*

- 1) How do you plan to approach the oversight role at the SEC?

*As Chair of the CFTC, I had the honor to lead a civil law enforcement agency. We endeavored every day to bring the facts and the law together in front of courts and hold people accountable. I believe it is essential that our regulations be backed by enforcement that is tough but fair. If confirmed, in choosing where to focus our limited enforcement resources, I would prioritize those actions that can be most effective in protecting the integrity of our capital markets and in ensuring that our most vulnerable retail investors are not taken advantage of. In making those decisions, I would work closely with, and rely heavily on, the judgment of the agency's very capable professional examinations and enforcement staff.*

*Investment Opportunities for Individuals and Investments Outside of Traditional Hubs:*

- 2) What are your views on the changing volume and size of IPOs? Are you concerned about access for individual investors and retirement savers? Does this shift result in declining opportunity for average Americans seeing the benefits of companies growing and doing well?

*SEC rules encourage a vibrant environment where companies can raise money in both private and public markets, as appropriate for their particular needs and consistent with investor protections. Changes in markets, technology, and capital formation rules may alter the mix of public and private capital formation over time. If confirmed, I look forward to working with fellow commissioners and SEC staff, including the Investor Advocate and Office of the Advocate for Small Business Capital Formation, to continue to evaluate how to best foster both public and private forms of capital formation while protecting investors and maintaining fair, orderly and efficient markets.*

- 3) What impact does this have on rural America? Both on individuals and on the investment of dollars in the middle of the country?

*If confirmed, I will work to advance the mission of the SEC to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Working through the Office of the Advocate for Small Business Capital Formation, we can take steps to raise awareness of these options, particularly in those regions and for those companies that are at greatest need.*

*LIBOR Transition:*

- 4) I have been hearing from businesses, borrowers, and other participants in the marketplace concerning existing contracts with LIBOR written into their terms but that extend beyond when LIBOR will be published, including beyond the Fed's extended timeline.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

Do you think the parties to these contracts would benefit from the certainty from Congress on these contracts moving forward?

*As I understand it, the transition to a new benchmark rate away from LIBOR is being led by the Federal Reserve Board and New York Federal Reserve Bank in consultation with other financial regulators, including the SEC. Many of the financial institutions that are affected by the transition are regulated by the SEC along with other regulators, including the Federal Reserve. If confirmed, I look forward to working with my fellow regulators to assist this transition and plan to engage with the Federal Reserve Board and New York Federal Reserve Bank to see what the SEC can do to facilitate the transition broadly across the financial sector.*

*I defer to Congress on whether new legislation should be enacted to support that transition, however, if confirmed, I would have the SEC staff provide technical assistance on any such draft legislation as desired.*

*Remaining Dodd-Frank Rulemakings:*

5) The SEC still has a number of outstanding Dodd-Frank Rulemakings, some proposed and some that haven't made it that far.

Do you plan to prioritize outstanding rulemakings?

*If confirmed, I will work with fellow commissioners and SEC staff to complete all rulemakings directed by Congress. While serving as the Chairman of the CFTC, we were able to finalize our statutorily directed rulemakings related to Title VII in a timely and often bipartisan manner.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Thom Tillis:**

1) When I asked you about a Financial Transaction Tax during your confirmation hearing on March 2, 2021, you stated "I have not studied it in the way that you are talking about." However, in October 7, 2015, CNBC published a story titled "Clinton's campaign confirmed that the proposal for tax on high-frequency trading was crafted with input from her campaign chief financial officer Gary Gensler." A separate story published in Accounting Today on July 14, 2016 quotes you as saying, "[the Clinton proposal] is designed to address some of the concerns that she's had and many other observers have had, about markets flooded by high-frequency traders..."

- a. Have you indeed studied this issue in the past as evidenced by the two articles mentioned above?
- b. Will you commit to only making policy statements on issues you have studied and are grounded in robust cost-benefit analysis?

*As noted at the hearing, in my preparation, I had not studied current proposals for financial transaction tax. Six years ago, I had reviewed a 2015 campaign position related to possible fees that might be placed on high levels of order cancellations that might place a burden on the market. If confirmed, any rulemaking of the SEC will take into consideration economic analysis and will comply with all related requirements in the law.*

2) When I asked you about a Financial Transaction Tax during your confirmation hearing on March 2, 2021, your answer was largely on the collection of Section 31 fees collected by the SEC to fund its operations. These fees are designed to recover the costs incurred by the government, including the SEC, for supervising and regulating the securities markets and securities professionals. These fees are not for funding unrelated programs like has been called for by various legislative proposals. Are you concerned that an FTT could be used to fund activities that are entirely unrelated to the efficient functioning of our capital markets?

*Tax policy, and the use of proceeds thereof, is within the purview of the United States Congress and not within the remit of the SEC. If confirmed, I will honor the SEC's obligations to assess and collect Section 31 fees to fund its operations in accordance with the law.*

3) It is imperative that the SEC encourage, not hinder, diverse avenues for capital formation that facilitate growth in our capital markets. As the economy continues to recover and grow coming out of the COVID-19 pandemic, how do you see the role of the SEC in enabling the vigorous formation of capital?

*SEC rules encourage a vibrant environment where companies can raise money in both private and public markets, as appropriate for their particular needs and consistent with investor protections. Changes in markets, technology, and capital formation rules may alter the mix of public and private capital formation over time. If confirmed, I look forward to working with*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*fellow commissioners and SEC staff, including the Investor Advocate and Office of the Advocate for Small Business Capital Formation, to continue to evaluate how to best foster both public and private forms of capital formation while protecting investors and maintaining fair, orderly and efficient markets.*

4) In a report issued this January, the U.S. Chamber's Center for Capital Markets Competitiveness issued recommendations for promoting innovation in blockchain and digital assets. Do you agree that more can be done to help to provide clear guideposts and regulatory clarity for industry participants regarding what the law requires of them?

*It is critical that regulators and regulations keep pace with changing technology, and that includes the burst of growth of new financial technology - including blockchain technology and digital assets - in the last decade. I have spent the last several years at MIT studying this field, and I believe financial technology 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. If confirmed, I look forward to working with the CFTC, along with other federal regulators and Congress, to facilitate innovation in the digital asset markets, consistent with established public policy frameworks.*

5) In a recent report, DOJ cited at least 7 federal regulatory bodies having overlapping jurisdictional authority over digital assets (as well as applicable state authorities). Do you believe a framework for digital assets that more clearly demarcates the jurisdictional boundaries of applicable regulatory regimes – taking into account the inherent characteristics of the different digital assets and the transactions and activities they are used for – would be helpful in the U.S?

*As mentioned in response to question 4 above, if confirmed, I look forward to working with the CFTC, along with other federal regulators and Congress, to facilitate innovation in the digital asset markets, consistent with established public policy frameworks.*

6) The Registration for Index Linked Annuities Act calls upon the SEC to establish an appropriate registration process for Registered Indexed Linked Annuities (or RILAs) and improve access to this innovative retirement savings product. This bill would require that a new form be designed to specifically register RILAs rather than continue to require the use of forms designed primarily for equity offerings, requiring the disclosure of extensive information that is not relevant to prospective annuity purchasers. Would you commit to have your staff take a look at what's been proposed the Registered Index Linked Annuities Act to see if the actions called for in the legislation can be implemented by the Commission?

*If confirmed, I will look at your legislation to require the SEC to devise a new form for annuity issuers to use when filing registered index-linked annuities and work with SEC staff to see what actions might be taken under existing authorities to streamline compliance while continuing to protect consumers. I understand that the information needed for equity purchasers may be different than for annuity purchasers given the differing profiles and risks of each of the products.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Chris Van Hollen:**

1) Congress has provided the SEC with authority to set its own pay and benefits in order to attract and retain a top-notch workforce that could otherwise work for big Wall Street firms. During the Trump Administration, pay adjustments at the SEC were relatively low, as they were throughout the federal workforce. This shift had a concerning negative effect on SEC employee morale, as reflected in the responses of SEC employees to the Federal Employee Viewpoint Survey. Will you commit to working with the employees of the SEC and their union on the subject of pay and benefits to ensure that the SEC is able to recruit and retain the workforce needed to protect American investors and capital markets?

*If confirmed, I will work with the Office of Human Resources and the SEC staff, including the SEC employee bargaining unit, to ensure that the agency is able to recruit and retain the workforce needed to fulfill the agency's mission within the legal and budgetary constraints set by Congress.*

2) Investors and financial analysts are increasingly calling for disclosure of key financial information on a country-by-country basis, and there is growing worldwide momentum towards requiring disclosure of this information. In the European Union, negotiations are proceeding to require country-by-country reporting, and this was also endorsed recently by the United Nations High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda. Country-by-country reporting is also among the voluntary standards set by the Global Reporting Initiative.

Country-by-country reports would shine a light on the use of tax havens, and whether the U.S. tax code is giving companies an incentive to ship jobs overseas – a major concern of mine following the enactment of the 2017 tax law. Big corporations already report country-by-country financial information to the IRS under an international OECD framework, but the reports are not public. My legislation, the Disclosure of Tax Havens and Offshoring Act, would require SEC disclosures to include country-by-country financial reports that are in line with U.S. and international standards.

As SEC Chairman, will you commit to working with us to consider the SEC's requirements as they relate to country-by-country reporting?

*If confirmed, materiality will guide my decisions as SEC Chair related to disclosure requirements under the federal securities laws. The Supreme Court has held that information is material if there is a "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." If confirmed, I look forward to learning more about this issue and working with you and others in Congress and to understand what is possible within the authorities of the SEC.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

**Questions for The Honorable Gary Gensler, of Maryland, to be a Member of the Securities and Exchange Commission, from Senator Elizabeth Warren:**

1) Earlier this year, I sent a letter to Acting SEC Chair Alison Herren Lee regarding the recent market volatility related to huge swings in the price of GameStop’s shares.<sup>6</sup> In my letter, I asked the SEC for more information about the dramatic share price swings and whether they represented a “fair, orderly, and efficient” market function.<sup>7</sup> In a letter last month, the Commission stated that the events are still being analyzed, but that the SEC staff is “diligently examining the causes of the recent dramatic shifts.”<sup>8</sup>

The SEC response also noted that the full implementation of the Consolidated Audit Trail (CAT) should be completed in 2022. The CAT would be a real-time tracking system to enhance regulators’ efforts to oversee U.S. markets by collecting data about securities quotes and orders and allow the SEC to understand trading practices. Without the CAT and other tools to more quickly analyze trading data, the SEC was unnecessarily delayed in reporting on what caused the May 2010 Flash Crash to U.S. markets.<sup>9</sup> Federal regulators took seven months to analyze and publicly report the causes of the Flash Crash, and it took an additional five years to analyze and publicly report that a London-based trader played a significant role in the crash.<sup>10</sup>

- a. What are the risks to the market if the SEC does not have fully implemented tools to quickly, efficiently, and accurately track information about trades in the event of another Flash Crash?

*The CAT, once fully up and running, will be a valuable tool for the SEC to help maintain fair, orderly and efficient markets. The Flash Crash of 2010 and recent market turmoil highlight the need for accurate and timely market data. The absence of tools to quickly, efficiently, and accurately track information about trades could undermine the Commission’s ability to assess and respond to market events in a timely manner.” I share the commitment of former SEC chairs in both Republican and Democratic administrations to make sure the CAT is fully implemented. I*

---

<sup>6</sup> Office of Senator Warren, “NEW THIS AM: Warren Calls on the SEC to Address Stock Market Gamesmanship Amid Volatile GameStop Trades,” press release, January 29, 2021, <https://www.warren.senate.gov/newsroom/press-releases/new-this-am-warren-calls-on-the-sec-to-address-stock-market-gamesmanship-amid-volatile-gamestop-trades>; Letter from Senator Warren to Securities and Exchange Commission Acting Chair Alison Herren Lee, January 29, 2021, <https://www.warren.senate.gov/imo/media/doc/01.29.2021%20Letter%20from%20Senator%20Warren%20to%20Acting%20Chair%20Lee.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Letter from Securities and Exchange Commission Acting Chair Alison Herren Lee to Senator Warren, February 25, 2021.

<sup>9</sup> Reuters, “Factbox: After the flash crash, changes to U.S. markets,” Jonathan Spicer, September 1, 2011, <https://www.reuters.com/article/us-financial-regulation-algos-factbox/factbox-after-the-flash-crash-changes-to-u-s-markets-idUSTRE7806QS20110901>.

<sup>10</sup> Reuters, “SEC urges completion of long-delayed trading database,” John McCrank, August 27, 2018, <https://www.reuters.com/article/us-usa-stocks-regulation-cat/sec-urges-completion-of-long-delayed-trading-database-idUSKCN1LC2FA>.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

*also understand that the CAT is a complex project involving multiple stakeholders. If confirmed, I will work with my fellow Commissioners, SEC staff and market participants to move the development of the CAT forward while working to ensure the security and confidentiality of information collected.*

2) Last year, I introduced S. 2155, the Stop Wall Street Looting Act of 2019, to reform the private equity industry and end abusive leveraged buyouts.<sup>11</sup> Private equity transactions are fueled by risky loans that are immediately securitized and sold.<sup>12</sup> A provision in my bill would help protect the economy from risks stemming from excessive debt imposed on private equity firms' target companies. It would require arrangers of corporate loan securitizations to retain risk by clarifying that managers of collateralized debt obligations are subject to risk retention requirements established in the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>13</sup>

- a. How, if at all, would you mitigate risky corporate lending and the ability of lenders to spread irresponsible private equity debt across financial institutions? How would you ensure that regulators have the appropriate information to assess the exposure of financial markets to leveraged loans?

*If confirmed, I look forward to working with other members of the Financial Stability Oversight Council on leveraged lending, particularly exposures in the non-bank sector where information is less readily available. In addition, I look forward to working with my fellow Commissioners and SEC staff, if confirmed, to examine asset-back security rules in light of recent market developments, including in relation to securitization of leveraged loans and loan portfolios.*

3) In September, I wrote a letter to then-Chair Clayton regarding troubling reports of inflated bond ratings and the perverse incentives within the bond rating industry and urged the SEC to take immediate action to protect the economy from risky lending propped up by conflicts of interest between bond issuers and rating agencies. My letter described the flows in the incentive structures of bond ratings firms' through the "issuer-pays" model used by major firms like S&P and Moody's. Under the issuer-pays model, bond issuers pay the agencies for their assessments of the products they hope to sell, ultimately giving the rating firms an incentive to give better ratings, regardless of the risk, since bond issuers might otherwise go to their competitors.<sup>14</sup> In Chair Clayton's November response, he stated that the Commission shared my

---

<sup>11</sup> Office of Senator Warren, "Warren, Baldwin, Brown, Pocan, Jayapal, Colleagues Unveil Bold Legislation to Fundamentally Reform the Private Equity Industry," July 18, 2019,

<https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-brown-pocan-jayapal-colleagues-unveil-bold-legislation-to-fundamentally-reform-the-private-equity-industry>.

<sup>12</sup> Washington Post, "The shadow banks are back with another big bad credit bubble," Steven Pearlstein, May 31, 2019, [https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f\\_story.html](https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f_story.html).

<sup>13</sup> Securities and Exchange Commission, "Asset-Backed Securities," October 23, 2014, <https://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml>.

<sup>14</sup> Council on Foreign Relations, "The Credit Rating Controversy," CFR Staff, February 19, 2015, <https://www.cfr.org/background/credit-rating-controversy>.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

concerns about conflicts of interest in rating agency compensation models and said that the Commission was awaiting recommendations or advice from various advisory committees.<sup>15</sup>

Chair Clayton's response also referenced some work that the SEC has done to respond to the conflicts of interest in the issuer-pays model.<sup>16</sup> An August Wall Street Journal report, however, stated that "Inflated bond ratings were one cause of the financial crisis. A decade later, there is evidence they persist. In the hottest parts of the booming bond market, S&P and its competitors are giving increasingly optimistic ratings as they fight for market share."<sup>17</sup>

- a. In your view, have the SEC's efforts to respond to the bond ratings agencies' conflicts of interest successfully prevent them from artificially inflating bond ratings? If not, what would you do as chair to strengthen the SEC's efforts?

*Weaknesses at credit rating agencies contributed to the 2008 financial crisis as the "issuer pays" model led to conflicts and potentially misaligned incentives. If confirmed, I will work with fellow commissioners and SEC staff to examine the Nationally Recognized Statistical Ratings Organization regulatory framework implemented by the Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.*

4) The most recent volume of the National Climate Assessment, a scientific report issued by 13 federal agencies in November 2018, stated that climate change may cause losses of up to 10 percent of the U.S. economy by 2100.<sup>18</sup> Additionally, a 2015 report from The Economist Intelligence Unit wrote that, of the world's current stock of manageable assets, the expected losses due to climate change are valued at \$4.2 trillion by the end of the century.<sup>19</sup> Last year, I asked then-Chair Clayton whether the SEC has a mandatory, uniform standard for climate risk so that investors can compare companies head-to-head.<sup>20</sup> He declined to answer my question directly, instead broadly stating that the SEC has a materiality standard.<sup>21</sup> In an October letter, he also stated that "investors must have the information necessary to understand the material risks

---

<sup>15</sup> Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, November 21, 2019.

<sup>16</sup> *Id.*

<sup>17</sup> Wall Street Journal, "Inflated Bond Ratings Helped Spur the Financial Crisis. They're Back.," Cezary Podkul and Gunjan Banerji, August 7, 2019, <https://www.wsj.com/articles/inflated-bond-ratings-helped-spur-the-financial-crisis-theyre-back-11565194951>.

<sup>18</sup> New York Times, "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy," Coral Davenport and Kendra Pierre-Louis, November, 23, 2018, <https://www.nytimes.com/2018/11/23/climate/us-climate-report.html>.

<sup>19</sup> The Economist Intelligence Unit, "The cost of inaction," 2015, p. 41, [https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction\\_0.pdf](https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction_0.pdf).

<sup>20</sup> Office of Senator Warren, "Senator Warren to SEC Chairman Clayton: You Have Done Nothing to Protect the Economy from Climate Change Risks," press release, November 17, 2020, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-to-sec-chairman-clayton-you-have-done-nothing-to-protect-the-economy-from-climate-change-risks>.

<sup>21</sup> *Id.*

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

posed to an issuer’s business and financial performance.”<sup>22</sup> Furthermore, last summer, 40 major investors who collectively manage over a trillion dollars in assets joined with nonprofits, businesses, and former regulators in sending the SEC a letter arguing that the climate crisis is material and a systemic threat to our economy and asking the Commission to mandate corporate climate risk disclosure.<sup>23</sup>

During your confirmation hearing, I asked you whether there are any reasons as to why companies should be able to hide their climate risks from their investors, and you responded that “I think that particularly material – materiality is a point here – but no, they should not be able to hide their risks.”<sup>24</sup>

- a. Please elaborate on this point. Do you believe it would be useful for investors to understand public companies’ contributions to greenhouse gas emissions and their exposure in the event of a government- or market-mandated transition towards a lower-carbon economy?

*If confirmed, materiality will guide my decisions as SEC Chair regarding to disclosure requirements under the federal securities laws. The Supreme Court has held that information is material if there is a “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” If confirmed, I will follow the law with respect to policies that come before the Commission related to disclosure. There is significant and growing investor interest in climate disclosures, and many companies already publish information about how climate risks affect their business. If confirmed, I will examine existing frameworks for disclosure, with an eye towards minimizing any compliance burden for issuers while providing investors with the material information they need for investment decisions. The best course for the SEC to accomplish that goal is by taking an approach that listens to all stakeholders and following all legal obligations for stakeholder feedback under the Administrative Procedure Act and other laws.*

5) It has been reported that the SEC has opened an investigation into whether Boeing made materially false statements about its finances in relation to the devastating Boeing 737 Max crashes in Indonesia and Ethiopia that killed hundreds. The parents of one of the victims are my constituents. They lost their daughter, 24-year-old Samya Stumo, in the second crash while she was traveling in East Africa for lifesaving work in public health. To date, despite the many investigations of what went wrong, there has been no accountability for top management at Boeing. The Justice Department entered into a Deferred Prosecution Agreement with Boeing

---

<sup>22</sup> Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, October 13, 2020.

<sup>23</sup> New York Times, “Climate Change Poses ‘Systemic Threat’ to the Economy, Big Investors Warn,” Christopher Flavelle, July 21, 2020, <https://www.nytimes.com/2020/07/21/climate/investors-climate-threat-regulators.html>.

<sup>24</sup> Office of Senator Warren, “At Banking Hearing, SEC Nominee Gensler Commits to Efforts Recommended by Warren to Protect Investors and Make Markets More Honest and Transparent,” March 2, 2021, <https://www.warren.senate.gov/newsroom/press-releases/at-banking-hearing-sec-nominee-gensler-commits-to-efforts-recommended-by-warren-to-protect-investors-and-make-markets-more-honest-and-transparent>.

**Committee on Banking, Housing, and Urban Affairs**  
**Nominations of The Honorable Gary Gensler and The Honorable Rohit Chopra**  
**March 2, 2021**

that placed all the blame at the feet of two low-level pilots, thereby shielding the senior executives from responsibility. I welcome the SEC investigation because it could provide our first opportunity to find out what high-level officials knew and when they knew it; and to hold them accountable for any wrongdoing that occurred.

- a. If you are confirmed, will you commit to keeping this committee informed of the progress of the investigation, within the bounds of your legal responsibilities?
- b. Will you follow the facts wherever they go?
- c. Will you commit that you will not negotiate a deal with Boeing that exculpates senior management, unless that is where the facts lead?

*As Chair of the CFTC, I was honored to lead a civil law enforcement agency that endeavored every day to bring the facts and the law together in front of courts and held people accountable. While I am not able to prejudge any individual case and am bound by the law in terms of the confidentiality of enforcement proceedings, if confirmed, I will bring this same commitment to accountability to the SEC.*

Boeing may not have been forthcoming with its investors about the financial impact of the crashes. In 2020, the company disclosed, initially, \$6 billion in costs, and by the end of 2020, a total of \$9.1 billion. In January 2021, Boeing said the total costs for 737 Max would surpass \$18 billion, more than 3 times the initial disclosure. And Boeing's management bled these accumulating billions from operations, not management compensation. If Boeing had had to come clean about that amount – which may still go up – its management might have been forced to take a haircut on executive compensation.

On the contrary, the Boeing Board did the opposite of penalizing its directors or executives for the company's safety failures or for its material misrepresentations. For example, instead of firing then- CEO Dennis Muilenburg, he was allowed to "retire" and take with him an extra \$38 million. As I understand it, between 2011 and 2019, Muilenburg received more than \$120 million in compensation for his roles at Boeing.

- a. Will you commit to take appropriate action against Boeing executives if you find that they illegally misled investors about the financial impact of the crashes on the company?

*While I am not able to prejudge any individual case and am bound by the law in terms of the confidentiality of enforcement proceedings, if confirmed, I will uphold the enforcement mission of the SEC as set forth by Congress. My enforcement philosophy is that it is the agency's responsibility to follow the facts and the law where they take you and to stamp out fraud and manipulation in the markets.*