

[Securities Regulation Daily Wrap Up, TOP STORY—Senate questions nominees for SEC Commissioner role, \(Jul. 21, 2020\)](#)

Securities Regulation Daily Wrap Up

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By [Jay Fishman, J.D.](#)

Hearing unfolds with nominees Hester Peirce and Caroline Crenshaw telling Senators how, as SEC Commissioners, they would respond to the current and post-Coronavirus economy.

The U.S. Senate Committee on Banking, Housing and Urban Affairs, on July 21, 2020, held a hearing chaired by Idaho Senator Mike Crapo to re-nominate SEC Commissioner Hester Peirce for another five-year term and to nominate Caroline Crenshaw as a first-term Commissioner. Following opening statements, a number of the participating senators questioned the nominees about their current or potential handling of various SEC matters in order to determine their qualifications for appointment. Both nominees expressed their overall current desire to balance protecting investors during the Coronavirus pandemic with separately pursuing SEC rulemaking, inspection, compliance and enforcement objectives.

Priorities. When Ohio Senator Sherrod Brown asked the nominees about their Commission priorities, [Peirce](#) proclaimed the need to:

1. help the economy come out of COVID-19;
2. help the underserved communities and poorer entities better qualify for capital if they are eligible;
3. make improvements to the crowdfunding rule to ease capital-raising; and
4. make cryptocurrency safer.

[Crenshaw's](#) priorities concerned:

1. taking steps to ensure market stability;
2. improving circuit breakers;
3. providing investors with the appropriate financial information they need for sound investing;
4. protecting investors by taking more enforcement actions against fraudsters; and
5. finalizing Dodd-Frank Act-mandated rules, particularly the rule on executive compensation.

Executive compensation. When Brown asked Crenshaw to elaborate on executive compensation, she emphasized the need for transparency, to hold executives accountable for the compensation they receive in order to ensure that they do not receive money they did not earn at the expense of their investors and employees.

Reg BI. When Brown asked Peirce how she would enforce the SEC's Regulation Best Interest (Reg BI), she declared her intent to work with broker-dealer firms to ensure that they comply with Form CRS, and that they mitigate any conflicts of interest with their customers, but that they are otherwise held accountable for failures to comply with Reg BI. Regarding Peirce's statement that she would hold non-complying firms accountable, Brown pointed out that she was the SEC's lone holdout in not penalizing Wells Fargo for a seemingly egregious violation. Peirce responded that she fines firms for fraud where it's warranted but acknowledged that her decision to impose monetary penalties is derived from considering a number of factors, including whether a large fine would unjustly penalize the shareholders.

Protecting many-sized businesses across America. Senator Jon Tester from Montana was concerned with how the nominees planned to help and protect many different size businesses across the United States. Peirce mentioned the Commission's Small Business Advocate group created for this very purpose, as well as her work to improve the SEC's crowdfunding rule to make capital more accessible to small businesses. Crenshaw noted

her market integrity priority, as well as the Small Business Advocate Group as ways to ensure that the best business ideas are heard and move forward while investors are simultaneously protected.

What have you done the past six months? When asked about their Commission work over the past six months, Peirce remarked upon her work to strengthen the equity market structure and to create a framework for the digital asset market. Crenshaw mentioned her work with the stock buy-back market and with conducting inspections. When mention was made about Crenshaw's having been critical of the Dodd-Frank Act particularly pertaining to security-based swaps, she emphasized her willingness to work with everyone involved on the issue in a bipartisan way regardless of how she personally feels about the matter.

Circuit breakers. South Dakota Senator Mike Rounds asked the nominees about how they would approach circuit breakers. Peirce expressed her belief that they currently work well but need to be tweaked to prevent their being triggered so early in the morning. Crenshaw indicated the need to have processes, procedures, and back up plans in place to handle circuit breakers during a crisis such as the current pandemic.

Cryptocurrency. When asked by Senator Catherine Cortez Masto of Nevada about fraud in the cryptocurrency market, Peirce expressed the need for there to be a safe harbor and more enforcement but also clearer guidance on the issue. Crenshaw stated that cryptocurrency is a young market where violators should be held accountable but applauded SEC Chairman Jay Clayton for his current handling of cryptocurrency.

Prospectuses and accounting. Louisiana Senator John Kennedy stated his belief that current prospectuses are impossible for the average retail investor to understand, asking Crenshaw what she would do about this. She asserted that the Commission's Division of Investment Management has taken on a project to have prospectus disclosures set forth more clearly for average investors. Kennedy then asked Peirce about the need for foreign entities to be subject to our U.S. accounting and audit requirements. She acknowledged the current problem with foreign jurisdictions, particularly China, refusing to comply with our audit requirements while also admitting the difficulty in getting other country governments to comply.

Foreign investors and off exchange trading. Senator Bob Menendez from New Jersey asked how the nominees would correct the problem of foreign investors accumulating more U.S. investments than the U.S. allowed percentage because the foreign investors are not disclosing the exact percentage of accumulated wealth. Crenshaw questioned whether the rule on this matter could be changed to alter the allowed percentage and/or the current disclosure mandate. Menendez also expressed his concern with off exchange trading during COVID-19. Peirce said that she would work to increase the transparency of this trading.

Proposed proxy rule. Maryland Senator Chris Van Hollen expressed to Peirce his dismay upon discovering that the alleged comment letters Chairman Clayton said he received from main street investors on the Commission's proposed proxy rule were actually letters received from wealthy entities or trading institutions. Peirce emphasized that SEC rule proposals typically generate a number of comment letters from a wide variety of sources. She promised to review the letters received on the proxy proposal and provide Van Hollen with a copy of them.

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