

Speech

Prepared Remarks Before the Investor Advisory Committee



Chair Gary Gensler

Washington D.C.

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Good morning. I am pleased to join the Investor Advisory Committee. As is customary, I'd like to note that my views are my own and I am not speaking on behalf of the Commission or SEC staff.

I want to start by welcoming our new Investor Advocate, Cristina Martin Firvida.

I also would like to thank this Committee with regard to one of your recent recommendations. The Financial Accounting Foundation announced recently that it will make the Financial Accounting Standard Board's accounting standards available to the public at no cost.[\[1\]](#)

I look forward to hearing about your potential recommendation today regarding customer account statements.

Now, to today's agenda. I understand that you're discussing three items: private markets, investment advisers, and open-end funds.

We look forward to your input about private markets, including the rulemaking projects listed on our Fall 2022 agenda relating to Section 12(g) and Regulation D, including possible updates to the accredited investor definition.[\[2\]](#)

We also look forward to your discussion on open-end funds.[\[3\]](#) We put out a proposal with regard to this last November and will include today's discussion in the administrative record.

Now, let me turn to your panel on the oversight of investment advisers. I am glad you are discussing advisers, because they play an expansive and expanding role in our markets and in Americans' lives. Investment advisers have 53 million separately managed accounts, of which 51 million are individual accounts. They advise hedge funds, mutual funds, money market funds, and other institutional investors. In total, they have more than \$125 trillion of assets under management.[\[4\]](#)

The Commission recently proposed a new safeguarding rule for investment advisers, building on the current, 2009 custody rule.[\[5\]](#) The proposal takes up Congress's 2010 provision for us to expand the custody rule to cover all of an investor's assets, not just their funds or securities. Congress granted us new authorities to expand the custody rule in response to the financial crisis and Bernie Madoff's frauds. The expanded custody rule would help ensure that advisers don't inappropriately use, abuse, or lose investors' assets.

I know there's been recent attention to this proposal regarding its intersection with crypto.

Make no mistake: Our current custody rule, adopted in 2009, covers a significant amount of crypto assets.^[6] Advisers, in complying with the current custody rule, are required to safeguard investors' crypto funds and securities with qualified custodians.

Make no mistake, again: Based upon how crypto trading and lending platforms generally operate, investment advisers cannot rely on them today as qualified custodians. To be clear: just because a crypto trading platform claims to be a qualified custodian doesn't mean that it is. When these platforms fail—something we've seen time and again—investors' assets often have become property of the failed company, leaving investors in line at the bankruptcy court.

The new proposed safeguarding rule—in addition to expanding the custody rule's safeguards to cover all assets—would make important enhancements to the protections that qualified custodians provide. I welcome your thoughts on the proposal, as well as the letter I understand you will be submitting regarding the crypto markets.

Turning to one other important set of developments, many separately managed accounts are advised in part through the use of predictive data analytics. No, I'm not talking about ChatGPT. I am talking about whether there are conflicts of interest inherent to an advisers' use of predictive data analytics.^[7]

When an adviser provides advice, in part through the use of predictive data analytics, do those algorithms optimize for the investor's interests, and place the investor's interests in front of the adviser's own interests? Alternatively, are they optimizing in part for the adviser's interests? I believe this may lead to conflicts relating to how they use predictive data analytics and individually tailored investment engagement. Thus, I've asked the staff to recommend how we might potentially address these inherent conflicts through rulemaking or otherwise.

I welcome your thoughts, including through the letter I understand you will submit related to ethical AI.

Thank you.

[1] See Financial Accounting Foundation, "Financial Accounting Foundation Announces Changes to Online Access to Accounting Standards Codification and Governmental Accounting Research System" (Jan. 30, 2023), *available at* https://www.accountingfoundation.org/page/getarticle?uid=faf_NewsRelease-01-30-23.

[2] See Office of Information and Regulatory Affairs, "Agency Rule List – Fall 2022, Securities and Exchange Commission" (Jan. 4, 2023) *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F. See also Gary Gensler, "Statement on Fall 2022 Regulatory Flexibility Agenda" (Jan. 4, 2023), *available at* <https://www.sec.gov/news/statement/gensler-fall-2022-reg-flex-agenda-20230104>.

[3] See Gary Gensler, "Statement on Open-End Funds" (Nov. 2, 2022), *available at* <https://www.sec.gov/news/statement/gensler-statement-open-end-funds-110222>.

[4] Per Form ADV data through December 2022.

[5] See Gary Gensler, "Statement on Proposed Rules Regarding Investment Adviser Custody" (Feb. 15, 2023), *available at* <https://www.sec.gov/news/statement/gensler-statement-custody-021523>.

[6] See Securities and Exchange Commission, "SEC Proposes Enhanced Safeguarding Rule for Registered Investment Advisers" (Feb. 15, 2023), *available at* <https://www.sec.gov/news/press-release/2023-30>. As the proposed rule states, "most crypto assets are likely to be funds or crypto asset securities covered by the current rule."

[7] See Gary Gensler, “‘Investor Protection in a Digital Age,’ Remarks Before the 2022 NASAA Spring Meeting & Public Policy Symposium” (May 17, 2022), *available at* <https://www.sec.gov/news/speech/gensler-remarks-nasaa-spring-meeting-051722>.