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Toomey: Gensler's Refusal to Give Crypto Regulatory Clarity Hurt Consumers

SEC Failed to Act Before Crypto Lending Products Went Bankrupt

Washington, D.C. – Ahead of Thursday's U.S. Senate Banking Committee hearing on risks and scams in the cryptocurrency market, Ranking Member Pat Toomey (R-Pa.) said investors have suffered from a continued unwillingness by the Securities and Exchange Commission (SEC) to give regulatory clarity to the cryptocurrency community and consumers.

In a letter to SEC Chairman Gary Gensler, Ranking Member Toomey wrote that the SEC's adoption of the "regulation-by-enforcement" method is a capricious and ineffective approach to consumer protection that's chilled financial innovation and contributed to financial losses for American consumers.

"In recent weeks, several companies whose crypto lending services were arguably within the SEC's purview have collapsed," Sen. Toomey wrote. **"These firms often promised enormous, seemingly unsustainable interest rates to depositors, and at least one business allegedly engaged in risky practices. One of these enterprises, Celsius, reportedly had nearly $12 billion in assets under management, using funds from thousands of Americans to make loans to entities making short-term crypto investments. Customer funds have been frozen since mid-June, leaving in question the status of billions of dollars worth of deposits.**

"Had the SEC responded to calls for clarity on how it would apply existing securities laws to novel digital assets and services, things could have been different. Companies could have adjusted product offerings accordingly, preventing investor losses today, and the SEC would have been free to focus enforcement efforts on the worst actors."

"Instead, the SEC is choosing to regulate by enforcement, selectively deciding to apply its opaque position on when digital assets and services are securities,"

Ranking Member Toomey wrote, citing the SEC's recent insider trading charges against a former employee of cryptocurrency exchange Coinbase and two other persons, claiming they illegally traded nine digital asset securities. **"In this circumstance and elsewhere, the SEC ostensibly had a clear opinion on why it thinks these digital assets are securities, yet it did not disclose that view publicly before launching an enforcement action."**

As Senator Toomey points out, the SEC's lack of regulatory clarity doesn't only pose a challenge to well-intentioned companies seeking to comply with SEC regulation, but it also fails to protect consumers. In the recent case of crypto lending platform Celsius, the SEC failed to act before the failure of their risky investments, resulting in billions of dollars in losses for consumers. The SEC's failure to act comes as states like New Jersey have **taken matters into their own hands**.

Ranking Member Toomey concluded by asking Chairman Gensler to answer a number of questions regarding crypto lending companies, including which companies the SEC determined were offering securities, and whether the SEC is planning additional guidance for companies seeking to comply with existing laws and regulations.

To read Senator Toomey's full letter to Chairman Gensler, **click here**.

Background

- During a Senate Banking Committee hearing with Chairman Gensler on September 14, 2021, Senator Toomey raised concerns over the SEC's regulation-by-enforcement approach to cryptocurrencies.
- On September 24, 2021, Ranking Member Toomey followed up by formally requesting Chairman Gensler answer detailed questions on the SEC's regulation of cryptocurrencies to give clarity to Congress, industry, and investors.
- Chairman Gensler's December 2021 response refused to answer which cryptocurrencies the SEC views as securities and which it views as commodities. Some questions went completely unaddressed.

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