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‘COMMODITY DERIVATIVES REGULATION: WHERE DO WE GO FROM HERE?

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FEATURING:

ROSTIN BEHNAM: Chairman, Commodity Futures Trading Commission

MODERATOR:

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KLEIN: Good morning. My name is Aaron Klein. I'm the Miriam K Kahlenberg, chair and senior fellow in economic studies here at the Brookings Institution, and on behalf of Brookings Center on Regulation and Markets within Economic Studies. Let me welcome you here in Washington on a still snowy Wednesday morning where we're here to talk about the future of financial regulation, particularly as it relates to commodities and futures. And, you know, when you talk about the future of regulation for futures, you're really looking out in the forward. And we're here joined by the Chairman Benham, the 15th chairman of the Commodities Futures Trading Commission. I'm going to introduce him in a second. But I just want to underscore to folks that you may think of this as abstract financial regulation in its finest derivatives futures, commodities. On the one hand, you may say this is stuff that, you know, moves markets in Wall Street but doesn't affect my life, or is this stuff that we used to read about when you're looking at cotton futures and how farmers, when we were an agrarian society dealt with that. And that history is incredibly important to understanding why the CFTC exists, why it's an independent agency, why the United States alone among major global powers in the world, separates our regulation of capital markets between commodities and futures and stocks and bonds, everything else. As one capital markets regulator, we have two. This comes from the unique role of agriculture in American society and its regulation. But I want to say something a little different to you. Everybody who flew home for Christmas or Thanksgiving flew in part because of a commodity in the future, businesses all around the world that we depend on that provide services, need to understand their cost of goods in the future. Markets need to understand pricing in the future. I released the consensus best estimate of future pricing to understand their business decisions. Our economy depends upon information about what is going to happen in the future. And those markets are incredibly important and translate into day to day activities, making our life better and more fulfilling, allowing us to buy that plane ticket and allowing the company to know how much their gas is going to cost when you hit the runway. And those markets, while they're incredibly important, are easily overlooked. And if they're not regulated, well, they can be manipulated. And I don't need to tell folks in this room or anybody who decided to tune in to spend their morning thinking about the future of financial markets and future regulation, the problems that occur in market manipulation and why we need tough and strong regulation. And that's why Chairman Benham has done such a fantastic job as the 15th chairman of the CFTC. I served as a commissioner since 2017. I'll tell you quite a bit about his role, but I just want to highlight three things. Because in Washington, people are often policy is it comes to financial regulation. And three things that the chairman prioritized during his tenure. He had the first ever heads of artificial intelligence, the first data scientist and the first diversity officer, chief diversity officer. To give you an inkling into the concepts and thoughts as he's molded this organization to tackle the challenges that behold our markets in our society today and in the future. He also had the privilege of serving as Vice chairman of the International Organization of Securities Commissioners because markets are global and if you're not interacting on a global basis, you're missing the big picture. In addition, while he has fantastic and strong New Jersey roots, having worked in the state of New Jersey, a state I hold in great respect, he has seen the wisdom and beauty of Maryland and resides in the great state of Maryland and Baltimore with his wife and children. So from one Maryland are born and bred to another who's come here. Let me say welcome you to the stage of Brookings and thank you for your service. And we're excited to hear what's in store.

BENHAM: That's a hard act to follow. I do want to thank everyone who's here. I know that a lot of folks are listening virtually, but it is a cold and snowy day here in Washington, the mid-Atlantic. We've been shut down for a couple of days. So, no, it would be a low attendance, but it's a good crowd here and looking forward to these remarks. Thank you again, Aaron in Brookings for hosting today. Will, as Aaron mentioned, be my final remarks as the CFTC chairman. I think it's a little bit early to fully process and articulate in a salient way what the last seven years have meant for me. I can say without hesitation that I approach every part of the job with the. Most focus and care, always prioritized above all else, are mission critical oversight and enforcement duties aimed at protecting customers and supporting reliable and resilient markets within our largely static budget. I've insisted that we build our expertise and support necessary investments in technology, infrastructure and employee upskilling so that we can continue to proficiently fulfill all of our responsibilities by design. The exchange, traded and cleared derivatives market structure has proven not only resilient, but a beacon through challenging times. In 2010, the derivatives model provided a path forward from crisis and served as the blueprint for swaps market reform. More than a decade later, Treasury futures clearing is following suit. And looking back, the almost 15 years of organic growth in the historic markets. The introduction of new products, including the digital commodity asset class and the significant expansion of market participants, both institutional and retail through technology have not been met with calls for wholesale or even moderate regulatory reform. Rather, ongoing success has been achieved by those who recognize that we are stewards charged with building on solid foundations and not laying waste to what was never broken. With that in mind, as chairman, I've always made it my priority to always adjust the CFTC regulatory enforcement initiatives to meet the matter at hand. In my seven years alone, we moved through a pandemic, weathered wars, made it through market disruptions, realized that technological revolution welcome in the rise of climate finance, migrated to the cloud, broken ground with defi and disintermediation managed multiple crypto cycles surfaced, surfaced scandals and exercise agency and opportunity towards improving governance, margin and clearing. We've accomplished a lot more and there's still much more to do. There's always more to do. I'm going to resist the urge to reminisce too much. However, I do want to take a moment to acknowledge, reflect on the issues and accomplishments that I believe benchmark my time at the commission and will continue their own trajectory in the years to come. One of my earliest efforts as sponsor of the CFTC is Market Risk Advisory Committee, focused on interest rate benchmark reform, encouraged by the broad market participation in global cooperative and consultative efforts towards transitioning away from Libor. The market contributed through the work of the interest rate Benchmark subcommittee, which promoted Libor transition through various initiatives. The successful transition away from Libor has resulted in safer, more reliable and stable financial markets. Denmark also addressed Climate related Market Subcommittee Risk, which released a report in September of 2020 called Managing Climate Risk in the US Financial System. This was the first of its kind among a US government entity. Among the 53 recommendations to mitigate risks to financial markets posed by climate change, the Climate Risk Report identified pricing carbon as a fundamental element for financial markets to efficiently allocate capital to reduce greenhouse gas emissions. Encouraged by the tremendous support for the Climate Risk Report and cognizant that the CFTC focus on risk mitigation and price discovery put us on the front lines of the nexus between financial markets and decarbonization. I established the CFTC's Climate Risk Unit shortly after becoming chairman, which ultimately led to the Commission to finalize guidance regarding the listing of voluntary carbon credit derivative contracts. In September of 2024, since the first Bitcoin futures contract and binary options self-certified in 2017, I have urged for greater action to provide legal certainty with respect to rapidly developing fintech products like cryptocurrencies. There have been a few targeted efforts, but overall the digital asset market has continued to integrate into traditional financial institutions without comprehensive regulatory guardrails. Concerns regarding customer protections, increasing instances of fraud and market abuse, broader market resiliency and even financial stability are intensifying in the absence of federal legislation. We've seen this before in our history, where we leave large swaths of finance outside of oversight and responsibility. And we have seen time and time again that it ends badly. American investors, small and large, have demonstrated eagerness to incorporate digital assets into their portfolios. It's our duty to ensure that when they do so, the full protections afforded by our regulatory oversight are in place and that illegal and illicit conduct is swiftly addressed. For the CFTC, whose role is yet to be determined, the crypto era has highlighted the need for our rules set to address the derivatives industry's current course. As more entities seek to move away from the traditional and familiar models which have evolved over decades and withstood countless shocks toward structures that combine unique. If it is around increasingly novel products, new questions are ultimately arise issues regarding vertical integration, disintermediation and decentralization raising important questions about conflicts of interest. The strength of capital margin and segregation requirements and the role and responsibilities of self-regulatory organizations. Building confidence, supporting integrity, promoting innovation and fostering evolution all comes down to data. Indeed, the single most important lesson we learned from the financial crisis and the foundational premises of the Dodd-Frank Act is that markets are interconnected. The common language that ties and binds participants, practices and practicalities to all we endeavor to achieve is data. Focusing on my time as Chairman. The division of Data was a relatively new division that had been created from the CFTC's IT department and parts of the Division of Market Oversight. Jodi had a couple dozen talented and hard working staff. But with Dodd-Frank priorities wrapping up and a host of new opportunities, it lacked a strong vision to leverage its capabilities to benefit the agency's data analytics foundations. We made several strategic DOD leadership hires to ignite the potential the agency's analytics capabilities for years to come. Soon after, I brought in a new Chief Data Officer and DOD Director, we are the CFO, CS first Chief data scientist who leads the development of new analytics, services and tools for use across the agency. The chief data scientist duties include upskilling staff to enhance their analytics and AI capabilities. In the past year alone, 300 of our approximately 700 employees have taken a data science programing or cloud based tools training. We are laying the foundation for a sophisticated analytics program that staff from across the agency can leverage to inform policy, contribute to ongoing oversight and enhance enforcement capabilities. This work is targeting all the typical data pain points and optimizing opportunities along the data lifecycle. The I vision I often spoke about in 2023 is well on its way to realization. Last month, CFTC staff issued an advisory on the use of AI by CFTC registered entities and registrants. The advisory followed a month long effort by the staff, by staff task force that I created to engage with market participants, AI technology providers, domestic and international regulators and other stakeholders to understand existing and potential air use cases and risks in the derivatives markets. Turning to the more routine business as usual agency duties in early 2023, I outlined a commission agenda for the years 23 and 24 to consider and vote on roughly 30 regulatory and policy matters. In addition to any outstanding proposals from the prior year, I bucketed the agenda into themes enhancing risk management and resilience, strengthening customer protections, promoting efficiency and innovation, improving reporting and data policy, addressing duplicative regulatory requirements, and amplifying international comedy. The themes reflected over a decade of testing, the fitness of the post-crisis reforms, as punctuated by the recent perfect storm that culminated in branding 2022 as a historically challenging year across all commodity complexes. There was some more fine tuning to do, and certainly we needed to address several of the stopgap stopgap measures in place that fell short of providing the binding assurance of commission action. And then there were a few issues that had emerged amid the storm clouds and innovate innovative flairs that required us to consider the need for regulatory intervention. In all, we completed roughly two thirds of the initial term items on my list and made significant progress on the rest that should provide a strong foundation for future completion. I don't think any chairman or commissioner ever has the time and the tailwinds to complete all their endeavors. And indeed it is our nature as stewards to leave some business unfinished for our successors. No remarks about the CFTC can be complete without a discussion of our enforcement program. We accomplished our mission through a three pillar system of effective self-regulation, direct oversight, and a strong enforcement program. Early in my CFTC tenure, I shared my philosophy on enforcement and the relationships between the regulator and the regulated, highlighting recent enforcement trends. I focused on the needs to check in on one another to build trust and to work on relationships. Cooperation and transparency would be key to ensuring that when newcomers enter the derivatives markets, we bring them into the regulatory fold and the community. I was cautious because there were risks that the increasingly automated environment may be providing a false sense of supervision and monitoring for risky behaviors. We needed to engage directly and work towards building regulatory structures that would absorb and buffer limit and not amplify mistakes, reckless behavior and outright misconduct with enforcement as the consequent consequence and not the instigator. My philosophy remains the same, and I'm constantly reminded that as a regulator of the derivatives industry, relationships, cooperation and coordination remain our highest priorities. And though some may disagree, I believe that our enforcement program executes its mission with utmost commitment towards holding individuals and institutions accountable. Deterring bad actors and promoting confidence in US derivatives markets, which continue to be the premier mechanism for global price discovery and risk management. As I've said throughout my tenure at the commission, the best principles based rules in the world will not succeed absent clear guidance from regulators. Adequate means to measure and ensure compliance and willingness to enforce compliance and punish those who fail to ensure compliance with the rules. As chairman, I kept to my word and did not put forth a proposal, policy practice, procedure or enforcement recommendation that did anything else. I delivered my first prepared remarks as a commissioner in November of 2017 at Georgetown University. I vividly remember walking through campus on that crisp autumn evening in Washington, feeling a bit nervous about my first speech, which focused on the importance of CFTC markets, the lingering impacts of the global financial crisis and the critical role derivatives markets play in the global economy. In many respects, not much has changed. In other respects, so much has changed. With globally traded commodities, investments and all manner of transactions executed, cleared and priced off CFTC regulated entities in US dollars. CFTC derivatives markets are critical to our nation's market economy and long term national security. This position cannot be taken for granted for those of US entrusted to support and safeguard this privilege beyond our tendency for decades to come, we must act with an eye towards any wine or anything that may undermine this supremacy. Geopolitical stress is increasing our need to be vigilant in that. Macroeconomic waters remain choppy as inflation lingers as a threat and perhaps even more so as the influx of new entrants with a voracious desire to list contracts on anything and everything that may entice a growing cohort of speculators eager to participate and fearful of missing out. Innovation has changed. The modern methods of derivatives trading and our regulated exchanges bear little resemblance to those that existed even 50 years ago. When the commission's first chairman accepted his appointment. Their primary function as a means for hedging and price discovery remains paramount and continues to rely upon a fluctuating mix of speculators at the forefront of forecasting changes in the value of commodities and pure gamblers, playing the odds for the thrill of a payout. Their symbiotic relationship always in the crosshairs of legitimacy. It's of no moment that the line between the two is increasingly indistinct. What matters is the proposition that when derivatives trading occurs on an organized exchange subject to strictly enforced rules and oversight, and with a system of effective self-regulation, there should be no mistaking the experience for gaming, gambling or anything less than the bustling throes of commerce. I say this now because there is much to distract the CFTC from what is important from what we are charged with doing today. Technology is driving change in the financial markets faster than it ever has. Products and structures are evolving not only to meet demand from a growing customer base that is diverse in terms of geography, sophistication and objectives, but also to attract participants from the broader population whose interest is piqued by the promise of financial inclusion and prosperity made possible by the tech driven ease of access to regulated markets. To that end, we increasingly find ourselves poised to make decisions that blow past our historical roots in the agricultural markets and leave us at the threshold of the increasing expansion, transformation and sometimes gamification of the derivatives markets. Change continues to push markets and regulators into areas ripe for exploration. It's exciting. There are some changes in the rhythm, but familiar cycles, scenery and people keep us grounded as we advance towards creating greater efficiencies, heightening protections, improving risk management and welcoming new players. Also designing new products and ultimately building new structures. Of course, however swiftly we navigate, we can never do so without caution. Deliberation and maneuvering around a fair share of unseasonable conditions. Fortunately, however, as we've seen time and time again, we have the wisdom of the past as we forge our future. I'm stepping down as chairman at noon on January 20th, and I look forward to working with President Trump's team in supporting an orderly transition between now and inauguration. And as I noted in a public statement yesterday, my final day at the CFTC will be shortly thereafter on Friday, February 7th. Meeting demands for accuracy, legitimacy and transparency require responding to market participants. And we cannot do that effectively if we are preoccupied with falling into a spiral of uncertainty or sealing the gates of government from fear of public engagement. I hope my successors trust their instincts. Trust one another and trust the process, the cycles, the seasons, the eras as they bring us someplace new, but always with a nod to where we have been. Thank you very much.

KLEIN: Well, Mr. Chairman, thank you for those remarks. And it's an honor and a privilege to to sit and reflect for a moment before we talk about the future. Yeah, I'm what you accomplished. You described having achieved two thirds of your stated objectives, which I want to say is pretty impressive because one thing that really has always stayed with me when I was a young staffer in the Senate where I know you spent some time as well. I worked for the great senator from Maryland, Senator Paul Sarbanes, who had been the head Democrat, the ranking member on the Banking Committee for six years. When I joined in the Senate, was 5050 at the time. And a lot of people were speculating had Senator Strom Thurmond died, the party would control would change. And we spent a whole brainstorming session for months coming up with our agenda. And sure enough, the Senate flipped. In May, Senator Jim Jeffords switched and we became chairman to what Congressional Quarterly called the largest ideological swing of any committee in the Senate, from conservative Phil Gramm to liberal Paul Sarbanes of Maryland. And we had a 12 page, thoughtful agenda. Senator Sarbanes was a Rhodes Scholar and a gentleman, and he had 12 pages of what he was going to accomplish in his chairmanship that he'd been waiting six years for. You can Google search the document. You will not find the word accounting, which is probably what Senator Sarbanes chairmanship in the Sarbanes-Oxley Act is best known for were. Why accounting wasn't one of the top issues expected to confront America in May of 2001. You also won't find the word terrorism. I worked on the Terrorism Risk Insurance Act and other major bill. The unexpected comes. So I want you to talk for a second about what it is on that two third list that you did accomplish that you were so proud that you were focused on, but also reflect for a second on the unexpected things that weren't on your list when you started. But now you look back on it and say, Wow, we rose to that challenge. Yeah.

BENHAM: Thanks, Aaron. And again, it's great to be here and to reflect a little bit on the past seven years, but really, you know, three and a half years as chair and the unique position I had and I think this is fairly unique relative to other chairs is, as you mentioned, I was a commissioner since 2017, appointed by Trump early on in that administration and then confirmed in September of 17. So as a minority commissioner for three plus years. And then, as you pointed out also, I worked in the Senate as counsel for six and a half years with one of my responsibilities after Dodd-Frank to oversee the implementation of Title seven of that bill, which was the derivatives title. So seeing that the agency evolve over, you know, 15 critical years, if you think about today, going back to 2000, ten, 2008 and the changes that it went through, I mentioned this in my prepared remarks how the futures model, the exchange traded, cleared model, served our structure, served as a model for swaps reform. And then as some of you know, in the audience and probably listening to that were going through at the SEC and Treasury, Treasury market reform to clear those products as well. Again, the futures model serving as the basis for it. And as I thought about what my agenda would be, I reflected on the agency and where it had been, where it was today, what it had been able to resist in terms of market volatility and and challenges. And this was certainly Covid and massive commodity price fluctuations in the spring of 2020, hitting obviously the physical commodities, but also the financial complexes like interest rates and effects and credit as well. And seeing that resilience in the cleared space a year later, we saw, you know, the invasion of Ukraine by Russia and again, a direct impact on commodity prices. So as I thought about the agenda when I got confirmed as the permanent chair in 22, it was what do we need to do to strengthen our markets but not also undermine what they've proven to be, which is quite resilient and quite effective. So we worked around, as I mentioned in my prepared remarks, enhancing customer protections, enhancing risk management, focusing on cyber and data policy, and I focusing on governance issues and conflicts of interest, again, areas that I mentioned in the speech which didn't necessarily require major market reforms or market structure reforms because the market structure is sound. It was really just surveying my directors, my leadership team and saying, where can we tighten up the rules that are otherwise maybe slightly weaker than we want and to strengthen markets and build consensus with both the Commission and the stakeholder community so that we can can we can get this done. Now, this is, you know, my thought in 2022, when President Biden puts me as acting, I was very cautious about being aggressive in that first. Only one year because I was still trying to become the permanent chair. Very difficult and dicey political position because you want to get that spot, but you've got to be careful.

KLEIN: It's a big difference between acting and confirm.

BENHAM: Yeah, it's big time. And you know, my staff is here and they are hugely responsible for my success over the past couple of years. But very much remember those first, you know, having the privilege and honor to be acting was a huge success. On January 21st, 2021, and having that responsibility. But ultimately I was trying to get the permanent position and I wasn't appointed until September of 2021. So quite a bit of time, a little bit longer than typical for a CFTC chair.

KLEIN: And better than the OCC.

BENHAM: Better. CC That's true.

KLEIN: Sorry, Washington joke. President Biden never confirmed the Comptroller of the Currency in just four years.

BENHAM: But we have a great acting comptroller and we are lucky to have him. But point being is, you know, you're in this position and it is in fact acting and you have to respect that, right? You have to respect that title and understand that you are not in that position to necessarily push policy and make change because you truly are a steward, right? We're always a steward, permanent or acting. But when you're acting, you truly are a steward and you've got to be cautious. So I get that. I get the nod. Finally in September, I get confirmed in late December of 21, sworn in the first probably literally to the day, if not close to the day. Three years ago, four years ago. And we roll into 2022 and we start rolling out the agenda. I start during the rulemaking process, which we should talk about is very laborious. It's very time consuming, it's very recess resource consuming, and you got to go through it and you have to do it very prescriptive early and methodically because if you don't, you're violating the law. Ultimately, as 2022 emerge and this is the second part of your question, you knew you knew crypto and digital assets were going to be an issue. Right. And we knew this at the CFTC going back a decade, essentially, when we brought our first enforcement case. But when we had the futures contracts listed, which I mentioned in my prepared remarks in 2017, it really put the agency on the map in terms of the eight the regulated Federal market agency that was overseeing a crypto type of financial contract, albeit a futures contract, but still a regulated futures contract. With that and with the end, if you think about the ebbs and flows of the crypto cycle over the past ten years, you know, as we got into 2017, you started to have a little bit of a price burst up to 2020 5000, and then you started to see an escalation close to 60 70,000.

KLEIN: This Bitcoin.

BENHAM: Bitcoin? Right. Sorry to. Yeah, to clarify that. And ultimately, one of the unexpected things was, you know, dealing with the FTC's implosion in late 2022. And also, many folks don't know this, but they had an application before us as a regulated entity that was very, very novel in its market structure proposal. And we had to deal with it. And we were very public and deliberative about it asking for comment. There was a congressional hearing called in the House. So it consumed a lot of time and then the crypto market continued to grow. We brought a lot of cases in 2022, obviously imploded, but in that same year we had a number of failures in the hedge fund space, in the crypto space. So it started to really, you know, to your point, create an issue and a set of issues that you don't plan for. And I ended up testifying a number of times over the past four years, specifically on crypto crypto legislation. And, you know, I enjoyed it. It was a moment where you wanted to demonstrate to the larger public what the agency is capable of, what we were observing as a frontline regulator and cop on the beat. And this is the enforcement cases I talk about. But ultimately, you know, again, to answer your question, you have this agenda. You put it into a silo. You ask your staff to keep moving on it, to stay focused. Even though if you read the daily news clips in the CFTC, as we discussed, you probably saw over the past 24 hours, everything tends to be about the hot, sexier issue, which in this case is crypto, some prediction markets and other things. So it is difficult. You expect it. I talk to my predecessors, you get advice. We all know it. You and your former boss dealt with it 25 years ago, but you can plan as much as you want, but ultimately you're going to deal with so many different crises and issues, whether it's geopolitical wars, Covid returning to work, and some of the domestic things you have to deal with agency. But I do think that the key way to succeed and to actually get the agenda done is to make sure you can essentially multitask but keep everyone focused on the task at hand and do things in multiple streams. And ultimately, I think getting that two thirds number crisis or none is still an accomplishment because you always will deal with headwinds and barriers. But we were able to deal with a lot of different issues, some expected, many not expected. And in the end, very proud of what we were able to come out with.

KLEIN: So let's dig into the digital asset situation because there's something that you said and I want to quote to you from your prepared remarks. You said that you stand with the CFTC to fill this gap. There's a regulatory gap that's been created by digital assets in crypto who, depending on which agency you are or what side you can argue, really don't fit nicely into this 20th century distinction between security and commodity, between future An and an asset. And Washington has been a buzz about with different legislative proposals. The outgoing former chairman, now McHenry, had a bill on Stablecoins, the CFTC, the SEC, the Federal Reserve, have all been involved in regulatory turf debates about who's in charge, who should be in charge, who, who is currently in charge, who should be in charge, who they who they can convince Congress to put in charge. And you said in your prepared remarks you think the CFTC should fill this gap and you're prepared both. You've you said during your tenure and you said in there and after that, you're going to be an advocate for the CFTC. Why? Why should the CFTC, which is generally viewed you know, you can tell me I'm wrong, in fact, but you can't tell me I'm wrong in stating the opinion that the CFTC is viewed as a smaller, more junior agency, certainly to the Federal Reserve and the SEC are. Why should the CFTC fill this gap?

BENHAM: So I want to address that first. We're certainly smaller. I mean, it's like quantitative. That's just math, thousand people. But there's a reason we have a thousand people, appropriators, congressional appropriators and authorizers, as any American taxpayer would expect, gives us the money that we need. And that's the money where we're largely within a 10% range of what I think my budget request is. But like, you shouldn't expect Congress to give us any more money than we need. We have a very large regulated market we oversee, but we have generally the right number of people, and it is concurrent with the number of registrants we have. Jr Totally take issue with that characterization. We we have a responsibility. We have a number of experts in the derivatives industry, which is arguably the most complex and complicated financial market among many financial markets. And, you know, we have our role you said this in your remarks. The US is very unique. We have a patchwork of regulators and it is because of history. Going back with the CFTC in 1922, the Federal Reserve in 1913, the SEC in 33, 34, FDIC, Cfpb, or recently, yada, yada, yada. Right. We all know the story. But the bottom line is, it is unique. We have the biggest markets in the world, and each part or segment of the market has essentially a dedicated regulator. I know this frustrates a lot of people. There's been a lot of policy discussions about merging different agencies even in the past couple of weeks, both on the prudential side and the market side. Ultimately, I think it's a net positive. I think we need dedicated regulators for markets that literally are exponentially bigger than any other market across the globe. And as you pointed out in your remarks, so critical to everyday Americans, whether it's food on the table, fuel for homes and traveling, interest rates for student loans and mortgages, etc., the idea that we would fold agencies with each other when they have such important mandates and responsibilities I think is a little careless. And we should think very hard about doing that before we take action.

KLEIN: What should we do? I mean, digital assets are exploding?

BENHAM: Digital assets is in a unique situation where you have a legacy statute. Both the Commodity Exchange Act, the Securities Act of 33 and 34 that address different parts of the market, securities and commodities. These technologies, these assets have emerged will focus on Bitcoin that is technically under current law, defined as a commodity. We are a derivatives regulator. We only focus on a specific part of the financial markets, not the actual physical commodity itself, but a financial contract that sits on top of the commodity. So we find ourselves over the past four years in a situation where between two market regulators there's a gap and, you know, not a huge surprise. When you have multiple regulators, it's like arbitrage, but we have a gap. And this is where and why I've been calling on Congress to fill this gap and to define the tokens in a way that one of the regulators and I've called for us to be the regulator, to be able to have the authority to oversee and regulate this new financial asset.

KLEIN: Do you think there's specific parts of that filling the gap that need to be that that Congress, that your successors need to be focused on both in terms of. Fixing something or managing the world in which they haven't fixed something. Because these current. These you know, it's not like stocks that are just being randomly listed or going on. I mean, you know, I'm getting text messages all the time from random people about fart coin and hawk tu ah coin. Yeah. Right. I mean, these sound like jokes until you look at the dollar amounts and get invested in these things and they're real. They're out there and people are today dealing with that. What should we.

BENHAM: And that's the point I think that I've tried to make over the past couple of years, because in this four year cycle of ebbs and flows and and peaks and troughs, there have been moments where the naysayers and the cynics had said, I was right, you know, this stuff should just go away. And the idea of legitimizing it through federal regulation is absolutely preposterous. Why would you do that to the imperator of a US federal agency over fart coin? I mean, come on, why would we do that? But in essence, this market has persisted. It is at its arguable peak right now. There is large scale adoption by traditional financial institutions and many retail investors. And proof is in the enforcement actions both the CFTC and the SEC have been bringing for the better part of a decade. And I think as a regulator and as chairman of the agency in this binary choice, I see this often between legitimizing and an asset class that is relatively new and perhaps questionable by some versus leaving us and American investors vulnerable to fraud, manipulation and losing their net worth. I take legitimizing it and protecting US investors all day long. Because, one, I think that's what our responsibility, our core responsibility is as a regulator and the government is. But also, we've seen this, too, in history. When you have regulation and you have you can shine the light on something that's otherwise in the dark and opaque, that sort of cream will emerge and come to the top. Everything else will kind of go away. And I think among hundreds, if not thousands of tokens that probably exist, if there are going to be some or many that persist in time and are traded as commodities or securities regulation will expose and prove that.

KLEIN: All right. Well, let's talk a little more then about that theme, because you discussed in your things about an allowable contract. And I think the line the quote that I had was the line is increasingly indistinct between what ought to be allowable and what isn't. And you talk about the gamification, and I'm old enough to remember that at one point we didn't have gambling other than in Atlantic City and Las Vegas, and now we have it in our pocket. You know, you can be betting almost anything on your phone at any time. And this gamification, you know, these contracts have popped up. I mean, I mean, you talked about the law says that you're not allowed to do anything that's called gaming. The CFTC is supposed to stop gaming and the public interest now and quote, there was a contract out there about what was going to happen to a, you know, one of the worst Marylanders I can think of, Luigi Mangione, the person who allegedly assassinated the CEO. You know, I have people start speculating and writing contracts on his extradition. I mean, is that are we going to become a society where people are wagering on whatever horrific acts occurs on and on the television? And how is the CFTC going to stop that within the existing statute or should they or should we be in that situation where the public is is betting on everything?

BENHAM: So in addition to gaming and public interest, that that sort of series of prohibit prohibited contracts or financial products includes war, assassination, terrorism, gaming, anything that's against the public interest and also anything that's illegal at the federal or state law. Paraphrasing a little bit, but that's generally why.

KLEIN: And what is it? Onions.

BENHAM: Onions, Yes.

KLEIN: And boxoffice movie futures.

BENHAM: And those are those are more explicit because onions were tried to I someone tried to corner the onion market, I think in the 60s. And that as you remember well box office futures from Dodd-Frank and also olive oil. By the way.

KLEIN: Some of these things like specific carve outs and others feel like conceptual. Yeah. I mean situations. And how do you handle that? So how should how should they handle Very.

BENHAM: Difficult because and what you're speaking of are derivatives called event contracts that are essentially, you know, payouts based on an event occurring or not occurring. And there there is utility to these markets and they've been around for quite some time. And you could be a commercial and user or someone who relies on power production or power consumption and need to know what the temperature is on any given day or over a period of months. There are event contracts on what the Federal Reserve will do in terms of interest rates and the FOMC, in terms of what it will do at its next meeting. But as I said and as you noted, the line is becoming increasingly blurred because the statute that we have identifies a series of events that are prohibited. But we have because of phones and because of access to markets, all things like I mentioned in my remarks, we have, you know, new cohort of market users who really want to bet on everything and anything. So political elections is one thing that has come up. I've spoken about that a lot. We're in the middle of litigation, so I won't get too far into it. But there was a district court decision in the D.C. Circuit, a D.C. district court in September that ruled against the CFTC and said that at this point, these contracts are permissible. Fine, I'm going to respect that decision.

KLEIN: You fought against betting on the election, against contracts, on election futures and the just as being not in the public interest. And this specific judge said, no, no, no, you know, it. Everybody wants to know who's going to win. And, you know, seeing futures on who's going to win is is permissible.

BENHAM: So more technical than your sort of synopsis of.

KLEIN: I'm an economist, not a lawyer, forgive me,

BENHAM: But essentially, you know, that's not gaming. And and these are permissible. So you can now bet on elections. On CFTC regulated markets, you mentioned this contract about Mangione. And, you know, again, a step that that the contract was listed for a while and then it was pulled. But my point is, is as every day goes by, it is very important, I think, for my successor to think about that the the origins of the agency and the origins and the reasons for the products that exist. And you mentioned this. You know, our markets date back to the 18th to the 19th century, the 1850s in Chicago. Board of Trade, where you are trading agricultural futures so that farmers can manage risk. That has obviously ballooned and expanded into a variety of commodities that are extremely important to everyday life, whether, again, it's interest rates, credit effects or any number of other financial instruments on top of agriculture, energy, metals and other commodities. It is fine and I have no huge opposition to us moving into a different direction. We need to innovate. We need to evolve. This is my thesis on crypto, but ultimately there are social issues that we have to consider and contemplate as these contracts start to go into areas that are not clearly delineated, delineated in statute and would and could have a negative impact in terms of incentives and disincentives for market users. One of my cases for the elections of why I oppose these is one. It's against the law. I think my interpretation of the law is that it is gaming and it's against the public interest. But I've also made a case that if we do have these contracts, as we do right now, if there's an allegation of fraud or manipulation in the contract or an election, the CFTC would have to be pulled into that allegation of fraud or manipulation, whether it's a voting box, whether it's social media, news about a candidate doing something or not doing something. Because if there is an action at that sort of underlying level with the A candidate, it's going to potentially impact the price on a CFTC market. And we have an obligation to investigate that. So you can think about extradition of a criminal allegation or any other thing around sports and gambling. Again, we are of the same era where I remember driving down the Garden State Parkway to go to Atlantic City. Now everything is accessible by phones. And I think we have to rethink collectively as an executive branch, as Congress and, you know, as a society, where do we want regulated markets to exist and what we want traded on them versus what we want in the gambling sphere?

KLEIN: Look, when I ran for the Maryland House delegates, the first question people say was, How do I know that you're serious? How do I think you're going to win? And if I could have spent a little bit of my fundraising money bowstring, a tiny traded contract to show me as a frontrunner, that would have been the best campaign finance decision I could have made in in a pretty thin market. And you know, the public interest to me. But you don't. This judge overruled you. And I want to talk about the future of regulation, because you're regulated mostly in an era where the Supreme Court had a case called Chevron, which gave deference to agency regulators. And very famously, this most recent Supreme Court overturned that precedent in a case called Loper Brite. So I guess we're going to have it now. We've moved from a post Chevron World to a Loper Brite World. And the CFTC in the future is going to have to adapt. How do you think what advice do you have for your successors for how to adapt in a world where the judiciary is going to feel a lot more empowered to define the public interest relative to the five commissioners appointed by the president, confirmed by the Senate with a thousand person regulatory body of deep expertise in all this. And instead we're going to get a judge, in whatever case, whatever places has gotten. What's that going to do? You know.

BENHAM: It makes me think about your first question. And like as I thought about my agenda, I mean, I'm an attorney by trade, spent time in Congress, as you said, as a as a counsel, and then came as a commissioner. And you knew with the new alignment of judges in the Trump administration that Chevron and this 84 Supreme Court case would certainly be challenged and most likely overturned, which it was, with a lower right. And this really is giving less deference is the really the key word to the executive branch and independent agencies to right rule. If there is a sort of gap between what the statute descriptively says and what an agency does from a conduct perspective. So as I thought about my agenda, this was top of mind, right? Whatever you do and however you do it, you have to realize there are risks on that sort of spectrum and that curve. And one of the biggest risks is litigation risk. And along that curve, as I said, you have all these resources. You're expanding to write rules, propose, get comments, finalize, and the last thing you want to do is write this rule that you spent years on and then it get challenged in court and you lose. And then you're like, okay, what was that for? Ultimately, I'll say this about financial markets and for financial market regulators, and specifically I'll speak about the CFTC. Obviously, given my, my, my, you know, role here. But we are principles based regulator embedded within the statute, the Commodity Exchange Act. And I had testified in the Senate in July. Senator Ernst has been a huge advocate for this this case, and I speak about that in a very positive way. I think she's led a caucus on lower right and asked very important, thoughtful questions. And we did a fair amount of work at the agency to be responsive to her and other. Senators who wanted to know, what are you doing about this case and how is it affecting your agency and what have you done that might fly in the face of labor? Right. And in the end, we concluded that because we are principles based regulator and much of the statute is built around deference to the agency, Chevron deference has not actually come up on too many, if any, occasions. So on the one hand, I feel like we're in a generally safe position as an independent agency, as a financial market regulator that has a principles based regulatory structure. And I think that is extremely important because as we're seeing with digital assets and other new products, markets evolve overnight. They cannot Congress and the agencies cannot keep up with markets at the clip they go. It is so important for the agencies to have as much authority and deference to be able to adapt to evolving markets. And this is a net positive not only for the agency but also investors, customers and then the market itself. Right? We need to be able to adapt as the market moves because they benefit from a strong, comprehensive regulatory structure. All that said, regardless of the deference and what I view as relative principle based regulatory structure that gives us authority, I would certainly pass on to my successor. As you think about your rules, set your agenda. Everything should be thought about through the lens of low or bright, because as much as I think there is an opportunity for the agency to take action independently, if a market participants, stakeholder, whoever it is, has issue with a rule, lope or bright will give that entity institution individual a pretty strong standing to make a case that if it is not a direct byproduct, the rule is not a direct byproduct of the statute that the words, the prescriptive words of the statute, it could be challenged and there's a decent chance there'll be success that the agency would be overturned.

KLEIN: So let me ask you one question before turning to the audience here, because you talk about the future of the markets and you've had this international background and this experience, and the dollar is so important, right? One of the reasons the CFTC and the SEC in the US markets are so important is dollar hegemony and the dollar's place as the world reserve currency. And I think it's pretty well agreed that we need to protect that. On the other hand, on the other hand, part of protecting that status is allowing for innovation. And another part of that is protecting the integrity of our markets. I remember another former boss of mine, Senator Chris Dodd, Chairman Chris Dodd, would say to me, you know, and one of the reasons I believe that the dollar will it will always be the world head your money. Nobody's ever lost sleep thinking about that. Our markets are not being guarded. And the financial crisis rattled that and was one reason why we needed to come back strong with Dodd Frank to reassure the world that our markets were in fact the most protected while allowing for that innovation. How do you handle that balance and what did you learn from your time and what do you think the future of regulation should be as this clip of innovation seems to be moving, you know, on a on an exponential curve?

BENHAM: I so I couldn't agree more with Senator Dodd. And I think that's absolutely right that markets us markets are the most liquid, transparent, deepest and desired in the world because of regulation. And there's always going to be issue around the margins of what's right, what's wrong, fixing the regulation here or there. But ultimately the comprehensive regulatory structure, perhaps the multi regulatory landscape is the reason that the US markets are the best IT part, partly the best in the world and most desired in the world. On the head Timoney Point, I have actually you said this, right? Commodity markets are priced in dollars. This is this is oil. This is WTI. Right. This is all our agricultural complexes, corn, beans, wheat, everything in between the metals complexes as well. This is extremely, extremely high. And Bitcoin and Bitcoin, right.

KLEIN: The future of the past in that.

BENHAM: There's an argument to be made about the health of the Treasury markets and the Treasury Department's ability to issue debt because of stablecoins and, you know, them being tether tied to the US dollar. That's a separate conference tether.

KLEIN: Tethered to the US dollar.

BENHAM: Like that slip. Point being is over my four years with the pandemic and then the invasion of Ukraine by Russia and some Middle East. Obviously issues over the past couple of years we've seen some transactions and this should not be a surprise of of energy products oil in non US Fiat, Right. And I think about evolving and developing futures markets across the globe. Some adversaries, Some allies. And what does that mean for the fact that we have the largest derivatives exchanges that price these core commodities that are essential to the US economy? And what if these core commodities start to be priced in non-US fiat? That changes leverage for trade. That changes leverage from a national security perspective. As I said in my prepared remarks, and this is not something that's going to happen anytime soon. Right. But I have definitely thought about it with some of my staff as well as we look out deep at the curve. Right. Because we have to think about that. I think as policymakers, as citizens, as regulators, what is going to happen in 20, 30, 40, 50 years if this shift actually does happen? And what does it mean for US dominance? I think from an economic standpoint, but also from a national security standpoint, Our if you look at our budget, right, any economists would say, given the amount of money we spend and collect, it doesn't quite make sense that an investor would allocate capital to the US government. But we still maintain and manage to raise debt without a problem at a pretty healthy interest rate because of the confidence in the US and being backed by the US government. We need to maintain that. And part of that is the commodity markets both being traded here but priced in dollars. And there is no doubt in my mind, as every element of our economy and our country is constantly being tried to be poked or attacked or undermined. This is probably one area. Again, it's going to be very far out the curve. But I've mentioned this in a number of speeches over the past four years. We've done some thought, thoughtful work at the agency. But it is an area that we have cannot take for granted. That's the phrase I used in my in my prepared remarks. And we have to think about in the long run, because whether it's agricultural exports, whether it's energy exports or energy independence, and then obviously having the dollar reserve currency status, these are all key, key components of our success as a country, both economically but also from a national security perspective.

KLEIN: Excellent. That's who in the audience. That's a question they want to ask the chairman, sir. Michael Sam with the Wall Street. David Michaels with The Wall Street Journal. The crypto market.

BENHAM: Seems to think at the moment that the SEC is likely to.

KLEIN: Stand down from trying to regulate that market through enforcement of the.

BENHAM: Securities laws and rules as they are today.

KLEIN: That's kind of been the theme of crypto.

BENHAM: Regulation for the past several years.

KLEIN: I'm curious, Herman, how do you think about the next 6 to 12 months? 18 months? Of the crypto market.

BENHAM: A digital asset? Is it going to be kind of a free for all.

KLEIN: Where regulators are not really. CFTC or SEC aren't really trying to apply current law or current rules other than dealing with the anti-fraud authorities that they have. And at what point do you see that a regulatory framework.

BENHAM: Kind of passed by Congress that the regulators like your.

KLEIN: Agency or the CFTC, are going to implement? And then kind of a second, a related question. You talked about litigation. What risk when you guys pass rules. Right. And you said if if the.

BENHAM: Rules are then sued.

KLEIN: Into oblivion. What was the point of doing that? I mean, there is a way to think about what's going on with crypto.

BENHAM: And more of the.

KLEIN: Youth in your agency. With the enforcement.

BENHAM: Actions because the commission that commission is under pressure.

KLEIN: Now to stand.

BENHAM: Down from all those lawsuits. I think it's natural to ask or what was the point of all that? What do we get from all this? You know, all this.

KLEIN: Litigation, all this enforcement since the Dow report in 2017?

BENHAM: Could you trust that?

KLEIN: What good you think came of 78 years of hard core enforcement?

BENHAM: Well, I'm I'm going to speak for the CFTC and our perspective and obviously news you covered Dave and others in in the press. The and I said this earlier that the enforcement actions and some of the fraudulent conduct speaks for itself. And I think what we've seen over the past decade merits action by enforcement agencies, civil enforcement agencies and criminal authorities, which we we've worked with Justice on on a number of occasions. So. What the problem is, I think in part is there are multiple interpretations of existing law. There have been a number of court decisions over the past, call it seven years that have clearly delineated Bitcoin for sure, in my view, and others. And also ether as commodities. But there is a debate. I think it's open. I have my own feelings, but I think there's a debate about the other literally hundreds of other tokens and how we are to classify them under, again, 100 year old securities test or just interpretation of what we view as a commodity or security. So this leaves the market in a place where it's unsure where it can participate in play, and it leaves the regulator in a position where it wants to maintain its number one mission and responsibility of customer protections and doing what it can to ensure that you don't have fraud and manipulation, leading to folks losing money in terms of legislation. And I'll get to your few questions. You know, I said this in my statement. There have been a number of efforts that I've been a part of in Congress over the past couple of years, both Chair McHenry, Chair Thompson in the Ag committee, Senator Stabenow, Bozeman and others and Lummis and others have put forward bills over the past couple of years. Not all perfect, but I think really good efforts that try to clarify the sort of space in the playing field, give authority where it was necessary and move that conversation forward. I don't think the status quo, i.e. where we are now with existing statutes, is going to solve the problem. I've made this argument even if you have just a few tokens as non securities, it is the vast majority of the market from a market capitalization perspective, whether it's Bitcoin and Ether and some other tokens as well. So we have to move forward on legislation and that naturally takes time. You have a new Congress, a new president. You know, my my guess is as good as anyone's, perhaps, but you would have to imagine it's going to take 6 to 10 months at least to get legislation done if it goes through regular order. And then the executive branch responsibility of the rulemaking will take a year at least, to get that statute, that new amended statute, into the rules. But I assume, you know, we're going to go through a transition that the potential candidate for the SEC has been named. No successor of mine has been named. Typically, you get the SEC chair in sometime between April and June, CFTC chair sometime between June and September. I was a little bit past that. But ultimately, you know, I think about this a lot. You know, four years is a long time, but you don't really have four years. And I do think there will be a shift in the approach on day one with the acting heads of how they approach regulation. There's been a lot of talk from members of the commissions, the existing commissions about sandboxes and creating environments where the crypto participants can essentially, you know, do their business without what they view as fear of enforcement or regulation because it's a controlled environment. You know, perhaps that will be an idea that bears fruit and manifests itself in a in a new administration. But I do think it's important and I stand by what I said earlier, that there's the risk of litigation challenge. That doesn't mean you should stand back and not move forward with an agenda. You've got to be aggressive. You've got to be thoughtful. But I think in this loper bright environment, you have to be so calculating and so deliberative about what you do and when you do it and how you do it. Because in the end, yes, you will look at yourself and say, wow, we just expended an inordinate amount of resources on a rule that went nowhere. And you also then there's other components of this, too. There's reputational risk. There's appropriators thinking twice about what you do and how you spend your money. So it's not just a simple like, let's put a bunch of people on a rulemaking team and try to get it done. And, you know, if it gets done, great. If it does and it doesn't, there are unintended consequences that I have to be very mindful of.

KLEIN: So so, Mr. Chairman, we're at time you've had a tremendous run in tenure. Quickly. Yeah. One thing that you would tell your successor to do and one thing you would tell them not to do, because sometimes I think the advice of what not to do in academia, there's a dearth of publication of great hypotheses that failed to prove fruit. And so that's frequently replicated. We don't really know how many people try to replicate the same idea. What would you say to your successor very quickly? One thing they should do and one thing they shouldn't do.

BENHAM: One thing you should always do is, you know, be aggressive. Do what? You feel is right. But make sure you engage the stakeholder community and you don't let the regulator dictate markets right, in the sense that market regulation will obviously have a direct impact on markets. But as you work through that process and that curve, getting people engaged, asking questions and finding consensus is a huge, huge component of success. Doing it any other wise, any other way risks having an unintended impact on markets that are outside of the domain of sort of supply and demand and market functionality. And I think it's very inappropriate to have the market regulator step in to aggressively. So just be deliberate, patient, cautious and get people. And what not to do is not to think you have four years. It's less than that. You think about what I said in response to Dave's question. You know, you can shave. You can almost shave six months off the front end in six months, off the back end. And then you as we discussed earlier, you're always going to have a crisis or an issue that you can't plan for, which always shakes your agenda and your your process. So think about it in a compacted way. Get a team together, get a plan and execute well.

KLEIN: One thing you can plan for is the second of Brookings Center on Regulation of Markets events on the future of financial regulation, which will we will host FDIC Chairman Gruenberg here next week. But join me in thanking Chairman Barnum for his thoughts today and his turn term and tenure at the CFTC.