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THE FUTURE OF FINANCIAL SERVICES REGULATION: A CONVERSATION WITH CFTC
COMMISSIONER KRISTIN N. JOHNSON

Washington, D.C.

Wednesday, September 3, 2025

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FEATURED SPEAKER:

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KLEIN: Good afternoon. Thank you. I'm Aaron Klein. I am a senior fellow and the Miriam K. Carliner chair in Economic Studies here at the Center on Regulation and Markets. It is my great privilege to welcome you here today to hear from Commissioner Johnson and her thoughts on the future of financial regulation. Commissioner Johnson, who will speak with us in a second, who of the great privilege of introducing is completing her term on the Commodities Future Trading Commission.

Her term began in 2022 when she was confirmed by the United Senate unanimously. You know, we were still doing unanimous confirmations in 2022, which is a testament to where this country can be, but also a testament to who she is and where she came from. A distinguished chair, named chair, which let me tell you in the world of academia is a big deal, at both Emory and prior to that Tulane law school, Commissioner Johnson brought a combination of legal academia and critical thinking along with market experience having worked in large international firms in New York and and other places to really understand and help shape commodities regulation in America in the, which has been at the forefront of many of the biggest issues facing finance in the last 10 years. If you think about the digital asset revolution and whatever you think of cryptocurrency, passing fad or forever game changer of the future, you cannot deny the magnitude and role it is playing in our society and our politics at the moment and the CFTC, which let's be honest here, has not been at the forefront of the regulatory world in financial regulation. Was thrust therein and during our tenure was kind of flying a little bit and we'll discuss it as it relates to the regulation of digital assets as well as a host of other Dodd-Frank implementation and other commodities issues, obviously the aftermath of the COVID pandemic and other emergency changes. And it was Commissioner Johnson during our tenure who staked out a bunch of key positions was privy to that work and served this country with great distinction. And today happens to be her last day. And unless she has a public event scheduled after this, her last chance to address the American people as a sitting CFTC commissioner about her experiences then and her thoughts about the future that she leaves behind for the great CFTC and the great country of America. So joining me in both welcoming Commissioner Johnson and being excited to hear her thoughts today.

JOHNSON: Thanks so very much. Thanks, Aaron. So, so, so very much. Very kind of you to have me. It is my last day at the Commission, which I think almost means I can kind of just give my speech

and not offer all the disclaimers that come ahead of my speaking typically as a commissioner. These thoughts will definitely be my own. So you need not worry that they are anyone else's. But more importantly, I do agree, I feel the freedom of speaking again as an academic, nearing as the clock ticks toward 5 p.m. And so let me share just a last few high-level reflections from my time at the CFTC. And then I'd love to chat with you, Aaron, and then I believe Aaron has agreed that We'll open the floor for questions from you all as well.

There is no better place to close out my tenure as a commissioner at the CFTC than here at Brookings and thinking through a conversation on the future of financial regulation. It's a privilege to be here because Brookings has demonstrated an unparalleled commitment to convening stakeholders and the public to explore significant questions such as what does the future of financial markets look like? As someone who spent part of my career, as Aaron mentioned, in private practice as a lawyer, in-house as a large lawyer for a large financial institution, as an academic, and now as a regulator, I know exactly how important conversations like the one we're having today will be for developing transformative policy insights.

We gather at a critical moment in the history of our nation. And a unique time in the evolution of financial markets and the role of financial market regulation. It has never been more important for the public to engage and have a voice in financial market's regulation. The decisions that Congress and regulators will make in the next few years will shape our national economy, the global economy, and the roll of the United States in the global economy for generations to come. Simply stated, The stakes are high, and if I only have one piece of advice or wisdom to share, it would be the following. Get it right. Measure twice, cut once. Deciding the course of financial markets and financial markets regulation simply requires remembering why we regulate financial markets. We regulate because consequences can be catastrophic if we fail to regulate well.

Throughout my tenure as a commissioner at the CFTC, I've prioritized two pillars that anchor the foundation of financial markets regulation, consumer protection and market stability. Some may try to challenge the notion that these values work together, and some may argue that sustainable growth and consumer protection are inherently intention, at odds or mutually exclusive. I reject that notion.

Because I believe these anchoring values are not in conflict, quite the opposite. Instead, I would argue that each is necessary and a critical component of a healthy financial ecosystem.

Recall in 2008, September of 2008 to be specific, on a day that was as cool and crisp as the weather that we're enjoying outside in Washington D.C. Right now. Lawyers from the firm Lehman Brothers marched into a federal court building in one of the most storied financial institutions in our nation's history filed for bankruptcy protection. The filing served as a catalyst, precipitating the events of the global financial crisis. According to the New York Fed, around the same time in September 2008, the Federal Reserve extended credit to AIG to preserve the stability of an already fragile U.S. Financial markets ecosystem. And to protect taxpayers from the potentially devastating consequences of the company's disorderly failure. From that initial intervention, the New York Fed and the US Department of Treasury worked to stabilize AIG and to ensure that the company no longer posed a systemic risk to ensure taxpayer assistance was repaid. A little over a decade later, on a similar fall day in the fall of 2022. After cascading losses and multiple collapsed crypto firms unfolded in the public media, lawyers for FTX marched into a federal court building seeking bankruptcy protection.

What should we take away from these crises? What are the lessons learned? Well I would argue that if we fail to rightly prioritize consumer protection or market stability, on the road to capturing the benefits of innovation or growth. The results can be devastating. When I share the story of Lehman or AIG or the more contemporary story of FTX, I emphasize that certain guardrails or safety measures may well have helped to prevent the financial crisis in 2008. Safety measures may well has helped to avoid the consequences and losses that markets and consumers experienced.

In part, when we think about the developing digital asset market, I would argue that similarly, there is a pathway to ensure customer protection and market integrity and market stability. What are the costs when we see risk management and corporate governance failures? Well, all of you have counted them, I'm sure. Crises have the potential to create significant costs for customers, creditors, investors, markets and the domestic and global economy. The factors that lead to corporate governance and risk management failures are often all too easily identifiable, predictable, and preventable. Firms that experience significant corporate governance and risk management failures often seek bankruptcy

protection, only to reemerge from bankruptcy, to solicit and expose new customers, and to have new devastating losses. Why? Often these firms continue to rely on the same deeply deficient and possibly non-existent Governance, compliance. And risk management programs. Unfortunately, unless these firms learn from their experience and adopt a culture of compliance that effectively alters behavior and closes gaps in risk management and corporate governance, we can find that they will be repeating the same cycles over and over.

For almost a decade, but with increasing frequency in recent years, media headlines have repeatedly highlighted weekly, almost daily, a cautionary tale. These cautionary tales woven together create a common set of threads. We've seen this movie or experienced this bankruptcy before. An almost 30-year-old CEO launches an international crypto exchange. Within a few years, the founder and the exchange have achieved crypto celebrity status. At its peak, the exchange captures significant market share, processing a sizable percentage of global coin or token transactions.

The firm, typically organized outside the United States in some other jurisdiction, lacks many aspects of traditional corporate governance including oversight by qualified informed, engaged, independent board of directors. The corporate governance and compliance systems all too often fail to include effective anti-money laundering and know your customer program protections. There may also be missing conflicts of interest policies that typically would prohibit, if not limit, certain types of transactions, like self-serving loans. To the extent that these protections exist at all, they may be weak. Like lightning striking in an instant, the exchange suspends trading. Shuts the windows for withdrawals, suspends traffic on the website, and files for bankruptcy protection, leaving customers infuriated, investors stunned, and creditors scrambling in a footrace to the courthouse.

Interconnectedness among firms in a fragile ecosystem can also trigger a series of collapses. I could run through with you the story of late spring 2022, where a run on one of the largest stable coins, Tether USD. Led to precipitous decline in the value of UST and in tandem a sell-off of Luna, its companion token. You'll remember this, right? A broad market sell-off and cascading losses followed.

Next, the onset of crypto winter. A number of highly influential and central crypto firms lunged toward bankruptcy. They included Three Arrows Capital, a Singapore-based crypto hedge fund defaulted on its loan to crypto lender, Voyager Digital. On July 1st, 2022, less than a week after. The default of 3AC, Voyager 2 filed for bankruptcy, but only after halting trades, deposits and withdrawals and infuriating customers. Shortly thereafter, Celsius Network, and the list goes on to include by November FTX and BlockFi.

A week after FTX filed for Bankruptcy in 2022, I delivered a keynote address at the annual meeting of the Chicago Federal Reserve Bank Financial Markets Group. I emphasize the need for proactive adoption of internal governance and risk management measures. I encourage the adoption of know your customer and customer identification programs, financial resource requirements, limitations on the use and treatment of customer funds, internal controls, conflict of interest policies, all designed to address transactions with affiliates. I admonish firms that have failed to implement recovery and resilience programs and celebrated those who have. Businesses operating in our markets must have a day one plan for how to address capital shortfall.

A week later, I gave a lecture at Stanford Law School's Crypto Policy Conference. In the context of that conference, I described the history and development of LedgerX, an entity that was owned by FTX, but at the time of FTX's bankruptcy was solvent, had resources sufficient to unwind if needed, and was ultimately sold. Effectively for profit, arguably, in part because of conditions that the CFTC had imposed on LedgerX at the time of its license.

I'll share with you now that increasingly the Commission is offering licenses that do not include those conditions. I've expressed how uncomfortable I am with that approach, and in part, am running out of ways to properly and politely describe my discontent. I'd say that when we think about customer protections in most markets, they look pretty similar. Don't lie, don't cheat, don't steal. Customer protection is the foundational and core principle of our market regulation, and several specific provisions of the Commodities Exchange Act and the CFTC regulations directly seek to implement these protections.

I could describe for you at length Section 4D-A2 of the CEA that describes an obligation for intermediaries to segregate all of the house money from customer funds. This is to ensure that in the event of a liquidity crisis, customer funds are preserved for customers. This ensures that no individual customer funds are wrongly used by the house to margin, secure, or guarantee contracts for the house or other customers.

Further, that same section prohibits intermediaries from using deposited funds to extend credit to any person other than the customer to whom those funds belong. Many of you who are in this room are deeply familiar with the fact that many of these regulations grew out of the failure of MF Global and Peregrine Financial Group. After those two failures, the Commission thoughtfully and meticulously supplemented protections and embedded those protections in Regulations 1.0 through 1.3 and 1.32.

I mention them to you today because there are a few hard truths that we really need to face. One of them is that all of the regulation I've just described to you may not be applicable to every form of entity that the CFTC licenses. In other words, there are pathways to avoid those customer protections. It's imperative that the Commission close those pathways and ensure that customer protections for one group of customers are available for all customers. I'd also note that governance and risk management failures can lead to crises. Individual firm government. Governance and risk management failures can trigger liquidity crises for those firms and for other firms in the ecosystem. I'd also note that apart from undermining the reputational integrity of the industry and fueling cries for harsh regulation and legislative action, these failures also impose costs that fall disproportionately on customers.

In my final months at the Commission, we've also witnessed a surge in new applications. Not just the crypto friends or crypto bros. This group of registered market participants and emerging firms are focused on prediction markets. These prediction markets or prediction market contracts enable investors or customers to take a position on everything from whether US elections will go in one direction or another to whether Michigan will take New Mexico in the season opener in Ann Arbor. Fortunately, because I'm an alumna of the law school, I will admit, I was glad to see. That Michigan did take New Mexico and secure the win last weekend.

Whether or not you should be allowed to take a position on it in the context of a contract, I think it's something we should definitely discuss. I'm disappointed, deeply disappointed, that during my time at the commission, we were not able to successfully advance a final rule that addressed the introduction of political contracts in our markets, or at least the flourishing of these contracts. Activity in markets in most recent months underscores my concerns and the concerns of others about prediction markets. As of today, we have too few guardrails and too little visibility into the prediction market landscape because the target audience for these contracts may well be retail customers and because we see market participants marching down path to offer leveraged margin prediction contracts to retail investors.

I believe there is urgent need for the Commission to express in a clear voice our expectations regarding these contracts. A bipartisan group of members of Congress has indicated to the CFTC that they believe we should not be the police for election contracts. These members of congress have also expressed concerns about betting on the outcomes of democratic elections. I share their concerns. There are a number of legal questions surrounding these contracts. Asking whether or not the Commission, perhaps in my opinion, should use a rulemaking process to embed a notice and comment period or at least the obligations associated with transparency related to the notice and comment process to create effective regulation to address these questions.

Finally... A new rent or buy my license series of activities has sprang up in derivatives markets. It's booming in the prediction market space specifically. Explosion of rent or buy my license in the prediction market space promises potentially to eclipse crypto markets in retail volumes or at least volumes of retail customers cash captured. In other words, we've spent several years deeply worried about individual retail investors in crypto markets. I think we may be missing something quite important. I think there's a part of the picture hidden in the shadows that we must bring to light. And that relates to retail customers engaged in prediction markets.

The Commission has recently witnessed a number of newly created and legacy firms seeking licenses to offer event contracts. In a number instances, these businesses approached the

Commission seeking licenses to offer traditional financial products, only to quickly shift once the license is in and seek to self-certify prediction market contracts. In other contexts, we've seen firms that have received a license and then quickly moved to auction themselves off or their newly minted license off to others.

I referenced the financial crisis of 2008 earlier. And as I returned to academia, I appreciate that some of my students were not yet born when Enron collapsed. Others were in elementary school during the global financial crisis in 2008. So one of my goals as a teacher is to ensure that our students are well versed in the history of financial markets regulation. I wanna ensure that they understand my personal commitment to never let a good crisis go to waste.

To that end, during my time at the Commission, I've worked diligently to ensure that we advance our understanding of innovation and cutting edge technologies that have the potential to disrupt markets and create systemic risk concerns. While I focus in my comments here on cyber threats, I've regularly advocated for financial market regulators to think critically about operational resilience, third-party risk management, concentration risks, and other concerns. As I explained earlier, innovation and market stability should work together in tandem, enabling one to foster the other. I can identify at least half a dozen valuable use cases for artificial intelligence and financial markets standing here. Surveillance and compliance immediately spring to mind. However, as we integrate AI into financial markets, we must be aware of bad actors' ability to use AI to perpetuate fraud, for example. We must be of the risks that arise as hackers integrate or embed AI into necessary technology, facilitating cyber threats. I've advocated for the CFTC and other US federal regulators to collaborate on convening conversations regarding the integration of AI in financial markets.

Earlier last year, beginning of 2024, I worked with the CFDC staff to lead the development of the commission's RFI on AI. I also supported the US Department of Treasury in the development of their RFI focused on where and how artificial intelligence is being integrated into financial markets I've also advocated for some specific policy interventions that I believe separate the wheat from the chaff.

First, for U.S. financial market regulators, coordination and cooperation are imperative. We have to harmonize our expectations with respect to the integration of AI, in part by educating ourselves and upscaling our staff to ensure that our staff is capable and prepared as we see market participants integrate AI and as we integrate AI for a variety of purposes. I mentioned surveillance earlier, enforcement might be a good example as well. Second, we should enhance information sharing. Third, we need to strengthen recovery and response. And finally, we have to tackle concentration risks and supply chain vulnerabilities.

In the end, no matter how complex the technology, I believe the adage that I offered at the outset of my remarks still applies. Get it right, measure twice. In closing, allow me to acknowledge the Commission's most significant asset, its secret weapon, a Navy SEAL-style team, in some cases literally, of the most capable and talented lawyers, economists and professionals that I've had the privilege of working with, the CFTC staff. In a moment in time when it is easy to forget, it was the CFTC Commission staff that worked around the clock during the financial crisis to help get our markets back. On track to help build a blueprint for a regulatory framework that has stood the test of not only a global pandemic but a number of significant geopolitical events. Facing these issues alongside persistent inflation, our markets have demonstrated resilience. I credit our markets' resilience, at least in part, to the regulatory reform that followed the crisis in 2008 and the individuals who built those reforms. By hand.

I'm deeply grateful to President Biden and to the many senators who supported me during my confirmation process. Thanks, Aaron, for acknowledging they were not only supportive but unanimously agreed that I and the panel of commissioners that joined me at the CFTC in March 2022 should cross the line. I am also grateful to those who supported my nomination to join the Department of Treasury. And as I close and in a very I'm tremendously thankful to everyone in my village. These folks include good friends who made tremendous sacrifices to support my work in public service. I believe that public service is a gift, both for the person who has the opportunity to serve and for the community that receives that service. I'm overwhelmed with gratitude and I'm hopeful that I made you proud. Thanks, Aaron.

KLEIN: Let's start where you left off. I felt a call to service and public service when I was a teenager in my community in Silver Spring, Maryland, and I am fond of noting that words matter. And the only two occupations that I've ever heard people have a calling for is public service and the priest or religious. I've never heard, I had a call to be an investment banker. I heard a calling. And that's not to say that those two professions are inherently better or worse than anything else. There are a lot of ways to make the world a better place. Those are two among many. Not necessarily better or worst, but it's interesting to me that they only have a call. They're the only ones that have a calling. The people who work at the commission, many of whom are true public servants, who saw a call to public service. And your decision to end on that moment, which was emotional for me, and I think it looked like for you too. Begs the question of this moment in time, where there have been major cuts at the CFTC consistent with a broader denigration of public service across the administration. What do you think those cuts mean for the future of regulation at the CFTC?

JOHNSON: So I think this is an important question. I can only emphasize that the CFTC is one of the smaller financial market regulators. So we began with a tiny demographic or population in terms of our workforce, and we punch above our weight, without question. Over the course of the last several months, we have lost a significant percentage of our work force, and we've lost a significantly percentage of our workplace. When we think carefully about sort of where the numbers have diminished in the enforcement space, if I'm to be completely honest, and other spaces where our role is critical. I said we don't want to be the election police, but we are the cop on the beat in terms of derivatives markets. There is no other. And so, in order to bring cases that successfully move from the investigation stages, to early litigation, to settlement or resolution through court process, we have to have highly skilled and trained professionals who are capable both in managing the litigation elements of those cases, but also who are deeply steeped in knowledge about how derivatives markets work.

So if I yelled out, described to me the attributes of a future swap, option or forward, there might be several people in the room who could offer up descriptions of those financial products. But once we go deeper and further into the complexities of how derivatives markets work, I want to be quite honest, Aaron. I have worked at some of the largest law firms in the country or in the world, arguably,

some of the largest financial institutions. Never has it been the case that the person who is leading the drafting of a prospectus for a public offering in securities markets is also the person who is most capable at navigating a swaps contract negotiation. And it's not because there aren't overlapping skill sets. It's because there's a different area of expertise.

What I'm worried about for our commission in this moment is that we are losing workers who are the most senior, the most storied in terms of their knowledge, institutional knowledge, with respect to derivatives markets, with respect the CFTC. And it is not particularly easy to replace that layer of leadership at the commission with the depth of expertise that those who are leaving have gathered in 10, 20, or 30 years of service. It takes that time to accumulate that depth of expertise. And if we are to be missing that senior layer of leadership, I think our markets might bear the cost.

KLEIN: Well, I mean, are we defunding the police? I mean you use the police analogy. I mean it sounds to me like you're, you know, and the jurisdiction of the CFTC has grown as you talk about political markets and crypto. It sounds like it's defunding the police.

JOHNSON: Well, I'll go even further and point out the following. You know, government has historically been a place where junior lawyers. Take on great responsibility, and have a fantastic opportunity to develop skills and expertise. It has been a training ground often for some of the most senior lawyers, litigators and transactional lawyers in our country. All too often, government is the place where some of most celebrated lawyers have cut their teeth. It is one of the feathers that you can gather in your cap that people are excited to celebrate and make you very attractive to private firms on the market.

What I wanna propose here is that I'm concerned that in thinning that layer of leadership, the senior folks at our commission, but maybe at other commissions or financial market regulators, makes it harder. For us to successfully train the next level of exceptionally capable public and private sector lawyers that would lead our nation in developing financial markets regulation and financial market products. Because I'm speaking now, not just about sort of having an exceptionally long tenure at the CFTC. I'm thinking of the lawyers who have come, spent time at the the CFPC or other federal

agencies and gone on to the private sector to be critical components. In the success of the largest financial institutions as general counsel or service in general counsel's offices or have gone on in private practice to support those businesses as outside counsel. We are possibly doing ourselves a much more significant disservice than appears at a glance when we talk about reducing the number of lawyers, the number of minds that are engaged in thinking about financial markets regulation.

KLEIN: Thinking about your experience in financial market regulation, it's easy. You gave a list of important things you worked on, on things, but when you go back, I'm always struck Thomas Jefferson put three things on his tombstone, right? None of which I think involved being president of the United States. It showed you what he was most proud of. What are the three things you're most proud off of your time as a commissioner?

JOHNSON: Well, I don't know if I could rank them, but I could definitely describe three of the things I'm most proud of. One of the thing I'm really proud of that I talked about is the AI work. And I think the work on AI is critical because, and as of January, I just began to beat the drum like. Wildly, feverishly, rock band style, if you will, right? Because what I'm a lot worried about is that we have focused in one direction to the exclusion of recognizing advances, developments, questions or concerns that are happening in emerging spaces.

So this conversation about crypto and crypto markets oversight is an important question and issue, but it's part of a broader ecosystem of questions and issues. And if we were to be really thoughtful, we could layer the complexity of crypto and AI in together and think hard about the ways that relying on AI for purposes of facilitating financial market transactions might not only be really critical for traditional financial markets, but it's also going to be important and integrated into crypto markets, right?

So we have to think about the cross-cutting themes and not simply each asset class and not simple sort of each novel innovation in terms of a financial product. We also have to keep our eye on that systemic risk ball at all times. I think one of the major concerns I have about the current moment in time is that we're all slightly distracted. We are all finding it difficult to rise above some of the activity in

markets or some of conversations around markets or some of conversation around independent federal agencies. And remember that markets as they move forward are deeply impacted by many things. And so we have to keep our eye on that systemic risk ball at all times as we think about markets.

And to my mind, while AI is a tremendous benefit in many contexts, we also have to be thoughtful about where it might lead to detriment. I'd say the same thing about the developments across financial markets generally in terms of digital advantages or digital advances. And the potential that cyber threats are made easier now that everything is digitized and therefore might be a bigger threat than we had calculated for as of the last financial crisis, right? So I don't want us to look back at the last crisis and misperceive what the threat is. And I also don't want us to be so distracted in this moment that we walk into the trap of a new crisis when again, as I said, from the podium, all too often, there are some predictions, there are some moments that we can look to and foresee where threats might be coming from.

KLEIN: So AI.

JOHNSON: AI is something I'm tremendously proud of.

KLEIN: Before we go to two.

JOHNSON: Yep.

KLEIN: You mentioned something about incorporating AI into regulation and I I'm kind of quite intrigued like You know, I don't think it would have taken an artificial intelligence to cease at Silicon Valley Bank on collapse I think a third-grade intelligence could have told that and somehow the entire Federal Reserve lacked that level of intelligence for regulating SVB. But I do think if you believe in AI and you believe that it really can see these connections go, was it move 32 or all these things about new levels of thought, they could provide that. I'm also cognizant of the fact that it is unrealistic to

believe that regulators will be the first adopter of technology. I think when I started at the U.S. Treasury Department, we were using, like, Lotus Notes.

JOHNSON: And Abacus?

KLEIN: And, you know, in generally speaking, you want to realistically arm what you have. And so how do you think regulators can realistically incorporate AI with the understanding that they're going to be, at best, one beat behind the markets? More likely, six generations.

JOHNSON: I don't think we're one beat behind markets, but I do think that there are two things I'll say about integrating AI into financial markets regulation. The first is I think our market participants beat us there for sure. They're already there and they're there because in part the way our markets are structured, we expect certain market participants to regulate themselves or at least to surveil the activity on their platforms to ensure against market manipulation and fraud. It's explicitly stated in the licenses we grant them, you must work hard to avoid or at least attempt to identify instances of fraud or market manipulation on the platforms that you run. Therefore, AI has actually been a tremendously valuable tool for those intermediaries as they facilitate transactions. I think it's also been a useful tool for purposes of ferreting out money laundering and other types of criminal activity.

KLEIN: So you've seen AI catch bad guys.

JOHNSON: I think AI can absolutely be used to catch bad guys.

KLEIN: Ah, so that's different. It can be used versus it is being used.

JOHNSON: I think it is being used, I'm being a little cheeky here, one, because I have to be careful about what is publicly available in terms of information regarding any of our market participants. And then the other piece I'll share with you that is public knowledge, but again, there's probably more information that I would love to share that we would all love to see developed as well. And that's how we at the CFTC are using artificial intelligence in our surveillance, right? So, part of our ability to

identify certain types of harder-to-detect cases. Might arise in part from the use of AI, right? So certain types of cases that the commission brings, spoofing cases, for example, spring to mind, a variety of types of cases are easier to make when you have the capacity to crunch significant volumes of data in order to see how the transactions might be related in markets.

KLEIN: AI is one. We're back to the next two things you're most proud of.

JOHNSON: Well, one thing that I'm tremendously proud of that is something that I developed over the course of my time supporting the commission. Is a regulators round table. So over the last three years annually, I've gathered regulators together who are US regulators, but also regulators from other jurisdictions that in this moment in particular, I feel it is critical to emphasize are our allies, right? These are regulators that we directly engage with for purposes of enforcing our regulation. In other words, we have information sharing agreements, we identify the bad guy in country B, we call the regulators in country B and say, hey, we think these folks are sitting in your jurisdiction and they're doing something that we don't think is acceptable. We'd like your help in facilitating some efforts to gather information about what's happening and to launch an investigation with respect to this particular platform. So I think we have regularly relied on our allies and our friends in the regulatory environment across different jurisdictions to be successful in enforcing our regulations. But we've also collaborated with them in building and developing financial markets regulation.

KLEIN: So on this roundtable on the international coordination, we had a question come in. Please use our hashtag, future of regulation, and people sent in these questions the night before, and one of them talked about this tension in international cooperation. I wanted to raise this question, because on the one hand, we want to cooperate. But usually when you cooperate, it's a little bit of give and take. I want you to do what we're doing. Oh, you want us to do what you're doing, and the United States is increasingly taking a less cooperative position. It used to be when you listed our allies. I assume you started with Canada and England. And now when you list our enemies, I assume you start with Greenland. It's it's it a more complicated situation. So during your tenure, you've noticed this change. In how we are, one, how did you see that, if at all, play out in the roundtable? And two, going forward to your successor, who hopefully will keep this roundtable going, how do you see the tension playing

out on the global stage of international coordination in the face of nasty tweeting? I mean, I don't know what else to call it.

JOHNSON: So I think this is a fair question. One thing I want to point out here is that our market participants are global in the sense that we have a number of US-based financial market participants, those who are organized in the United States, whose activities are largely in the United States. And for those entities, I think our oversight is obvious. But I also want to point out that we create regulation and rules that would also govern entities organized outside the United States that are facilitating transactions, facilitating engagement with U.S. and non-U.S. Market participants. I think this is really important, Aaron, to the point you raise in the moment because we are at a crossroads where I think as a nation, we're signaling to others or indicating to other jurisdictions. What our position is, what our perspective is about the regulations that they've developed or our willingness to cooperate with them as you've described to either develop regulation or to engage in enforcement. In fact, there are something even more baseline that's sort of brewing at our commission in the current moment that really does ask a hard question about something you've hinted at which is sort of more protectionists oriented policies.

In my opinion, and our acting chair has raised at least this particular issue that's pending before the commission, and that will likely be pending when I leave the commission. I'm not someone who would usually share that kind of information, but I will explain why. My perspective on the specific issue that's before our commission is that it really should be subject to a rulemaking process. So we at the commission have many ways to speak to the broader community. One of them is explicitly through a rule making process. I think the rule making is critical and it's a cornerstone of our democratic institutions and particularly of a democratic bipartisan commission because it invites notice and Sorry, it invites comment, it creates notice, invites comment for market participants, for public interest advocates, for the general public to express their perspectives about how our rules work and operate and how we engage or don't engage with other jurisdictions or market participants in other jurisdictions. And so for this particular matter, while I think it's a really important question, I don't think it is a question that, and I guess I should have led with this, that only two, there are two of us now,

one acting chair in the majority and myself as a minority commissioner at our commission. I think this is a question that really begs a broader conversation.

And I even think what you're describing in terms of our engagement with other jurisdictions, there are lots of questions and too few answers right now regarding how this administration might proceed with those questions. What I've tried to do up through last week or earlier last month was to sort of continue to engage with those I think that we have been aligned with or simpatico with in terms of our regulatory framework and those who are actively engaged in our markets or support market participants who are actually engaged in markets.

So I'm not sure where the administration will expressly go. I don't know that there's been an explicit perspective. But I do know that we're sitting with a matter before us that really does ask those hard questions that you presented. And I think those hard question deserve good answers and those good answers can only come from being transparent, from having a bipartisan commission that is, I would argue, fully staffed. We worked as a commission of five commissioners in the previous administration. It would be optimal if we saw some nominations for commissioners for our commission.

KLEIN: So let's talk about that for a second, because when you leave, there will be a commission of one. There will be commission of one? The Supreme Court, in invalidating the constitutionality of the Director of FHFA and the Director of the CFPB 2 laws, full disclosure, I helped write, when I was in the U.S. Senate, banking committee staff, laws that were signed by presidents of both parties that votes of members of both parties. And the Supreme Court created some fictional theory distinction nowhere found in the Constitution that these originalists purport to believe in distinguishing between single agency heads and multi-member bipartisan commissions, it becomes very difficult to call your commission a multi- member bipartisan commission when there's one member.

JOHNSON: This is true.

KLEIN: The same thing is true in the National Credit Union administration at this moment. One of your predecessors who spoke before here was fired. Reinstated by the courts, so I could say illegally

fired. Now the courts have not instated them for the moment. And so while this works out, there's another multi-member agency. There's been nothing explicit said that no Democrats will be nominated for any of the minority positions, yet that seems to be the zeitgeist throughout town. You worked with Republicans who are in the minority. What do you see as the benefits to not having minority members in a commission? What are the drawbacks and what, is this a good or a bad thing if this is the future of multi-member commissions, that it's just vacancies?

JOHNSON: So let me just say, I have grave reservations about interference with the work of multi-member independent agencies. And I'm going to go back to a very specific moment related to an example I offered in the remarks. And that is, ahead of the financial crisis in 2008. Congress considered whether or not the CFTC should have jurisdiction over the OTC swaps markets. And in the context of thinking through that question, a former chair for the CFTC, Brooksley Born said, this is a question that we should investigate. And simply by sort of acknowledging that it was worth looking into this question, she found herself at the center of a firestorm. And I think it really illustrates Because if we follow the thread through the very thing she thought we should investigate led to a global financial crisis, right? And I think...

KLEIN: Which Fed Chairman Greenspan told her not to investigate and had so much political power, like many things he quashed, like the requirement to put out subprime mortgage regulations was Congress put on the Fed in 1994 and they never did until 2007, quashed. Because you're a small agency and the Fed has a \$6 billion budget and I think more and you have entire staff.

JOHNSON: Yes, they probably have more economists than we have in China.

KLEIN: Right they squashed Brooksley Born like a bug and calamity ensued. So what's what's the takeaway from that?

JOHNSON: I think there are several. I think there are several.

JOHNSON: I mean, in the first instance, I think independent federal regulatory agencies are sacred in many ways. And part of the magic of independent federal agencies, particularly financial market regulators, is that we have this iron sharpens iron conversation that is happening at the commission even when either party is in the minority. So, in other words, that is to say, um, the conversation around what regulation should look like is continuously being informed, shaped, guided by members or commissioners who are reflecting the members from both parties. That leaves us with an outcome that in the first instance likely mitigates the pendulum swing, right? We will not go from administration to administration watching regulation shift far in one direction and far in the opposite direction. A kind of outcome that costs businesses. Money as they try to comply with the ever shifting regulatory landscape, it could potentially create those types of crises that we've talked about that really create catastrophic consequences potentially, not just for markets, but for consumers and taxpayers or investors and taxpayers. And so ideally what happens when you have a bipartisan commission noting that one party is in the minority is that you still likely have outcomes in terms of regulatory design. Regulatory decisions that are reflective of the values that either party might emphasize or that any of the commissioners might seek to bring forward. That was my experience serving as a member of the majority on a five panel commission, a bipartisan commission at the CFTC.

In the current moment, we do not have exactly that at all. It's quite different in large part because... In the first instance, to be fair, the Sunshine Act prohibits my directly engaging with our acting chair on substantive issues. We are not allowed to sit and deliberate together except in instances where we are deliberating in a public meeting or deliberating at a closed commission meeting. The closed commission meetings historically have been reserved for resolution of enforcement matters. We use those private spaces where the commissioners express their concerns or questions to the staff and to one another to help identify and land on. The right outcomes in enforcement cases. I'm really disturbed to have discovered recently that information from closed commission meeting transcripts has been shared outside the commission. It's something that I never would have expected to happen and I'm disheartened beyond measure that that is a kind of thing that could happen at our commission. And I'm real hopeful that we have some resolution as to how it has come to pass. I've raised that question, I'm hopeful that that we some resolution. The closed commission-

KLEIN: The Fed needed to call in the FBI to catch their leaker because they couldn't find it. It was the president of the Bank of Richmond. Do you guys need to call in the FBI?

JOHNSON: I will leave that in the current moments for our acting chair, particularly because I guess I'm minutes away from departure. But I will point out that there's a chilling effect to much of this, right? If we talk about the NCUA and or the FTC, I see that Commissioner Slaughter was reinstated last night overnight and maybe at work today and that was a DC Circuit Court decision that we imagine will potentially be appealed. All of this creating a lot of uncertainty, a lot uncertainty for not just the individuals who are appointed individuals.

I am very grateful and take to heart that However difficult this might have been for me, the last several months of service and some uncertainty. Hundreds of people at the CFTC are coming to work every day. With tremendous uncertainty around what will happen next for them in the context of their employment, how they will pay mortgages, how they'll provide food or pay rent, or be able to take care of other responsibilities they've taken on. Carefully, after measured thoughtfulness and carefulness in budgeting, and with the presumption that they would continue to be employed because they're doing the work they've been asked to do that's consistent with the mission of the mission, and they're executing it effectively, right? Never would they have imagined this nightmare. Of some, you know, summarily being sort of asked to leave.

KLEIN: So I want to turn to the audience, but before I turn, everybody start thinking of good questions because we're not going to have time for too many. You've started to raise on issues that commission is going to face on your departure.

JOHNSON: That's right.

KLEIN: What's the single biggest one and what's your advice to whichever commissioner succeed you in your seat or the one that's still there acting or there's a lot of, you know, debate about the potential nomination of a chairman I think has been He's nominated, but pending a committee and

maybe pending a withdrawal, rumors in the press circulate. What's the biggest issue the Commission's going to face in the next five years and what's your advice to them?

JOHNSON: Hmm, so I wanna say just a little bit about the crypto markets because my speech was really about governance and risk management that I believe are critical, it's a critical framework. These are critical regulations or reforms that should exist in all markets. But I didn't say a lot about who should regulate crypto markets. And I've generally shied away from directly discussing this in public spaces in light of the fact that I really strongly believe the commission as an independent agency should defer to Congress and Congress is the authority that should decide how financial market regulation or oversight. Is effectively divided or allocated among existing financial market regulators. Very recently, a number of announcements have gone out describing what the CFTC's jurisdiction might be with respect to explicitly the spot markets for cryptocurrency.

I think one of the first things I teach my students in securities regulations every year is the definition of a security under Section 2A1 of the Securities Act of 1933. And I teach that definition largely because it exempts out certain types of transactions from essentially what would otherwise be the Commodity Exchange Act sort of oversight or reach for those same assets potentially as commodities. When we think about what Congress intended the jurisdiction of the CFTC to be and when we look at the actual statutory text of the Commodities Exchange Act, it's quite clear that the commission has not historically exercised.

Under the current language of our statute, spot market jurisdiction over any asset class. We don't have spot market jurisdiction over crude oil, petroleum, natural gas, corn, pork bellies, cattle. Name a commodity for which there are many derivatives contracts traded every day in the world. Hard red wheat. We don't directly oversee the market for the underlying assets. We do exercise authority over derivatives contracts. If we're going to exercise spot market authority over any asset class, I believe Congress must explicitly grant the commission that authority. And when granting that authority... Everything I said earlier applies, Congress should bring forward all of the regulatory reforms and developments that we've carefully articulated and carefully integrated in our oversight and that the SEC has integrated in their oversight over the last nearly 100 years, right?

And so I share that because in the next several weeks, if not the next few months, Congress will turn to deciding who should exercise authority. Over certain types of assets. And they will be faced with the limitations and the definitions of security and commodity for each of the statutes with one Supreme Court decision, SEC versus Howey, and with the realities of the limitations of each of the commissions as they're currently staffed. This is back to the earlier point. To the extent that CFTC is taking on new or additional jurisdictional authority, resources by way of human resources, and additional resources - the AI that we talked about earlier - or other technologies should be immediately made available to the commission staff. And there should be advocacy by the commissioners to ensure that there is an adequate representation at the commission level.

So to your point about nominations regarding Dem or Republican commissioners, at this point, our commission is probably in need of both. So the idea that we should have effective representation at the top. In leadership at the commission, but also sufficient resources throughout to effectively execute on any mission that Congress gives us. That's one of the most critical things I would share must be on the agenda for the commission in the next several years to come.

KLEIN: Excellent. Great. Well, let's Justin, and let's try to be fast on these, because we could talk all day.

AUDIENCE MEMBER: Thank you. You hit on my question right at the end there, which is about staffing, and Aaron and I worked together years ago on a project where we suggested the CFTC should have independent funding. I still believe that. But let's say the Clarity Act, or some version of that, passes, gives a lot of new work to the CFTC, and you don't get additional resources, which also seems like a reasonable bet. What are you concerned about. That will get lost, where the holes will crop up. If you have to do all that extra work with the same staff, what in the existing work will get lost and then what are you also worried about on the digital asset side that you're going to you may miss?

JOHNSON: So let me just begin with the rulemaking process. So any any additional jurisdiction or any broader remit or mandate for the CFTC with respect to for example cryptocurrency would require

the Commission to engage in the rule making process, so Traditionally, in the rulemaking process, a proposed rule comes forward after consultation and engagement across industry, through the halls of Congress, and with some discussion at the commission, both at the commissioner level and at the staff level. And so whatever the proposed rule is, it's later refined, right? It's refined in part through comments that we receive externally, but also through deep engagement, that can be pretty spirited among the commissioners themselves.

I don't know how we find a substitute for that if we're working from a place where there are not a sufficient number of commissioners to actually facilitate. That kind of debate. And that kind of debate could, in some context, even arise if we were looking at a multi-member panel, but not necessarily a sufficiently diverse panel, so a panel where, for example, now you have the SEC, three majority commissioners, one minority commissioner. There are many ways that we could get some debate and discussion emerging. But I'm deeply concerned that even in the rulemaking context at the commissioner level, there would be some deficiencies in the process. That might make it hard to actually craft the very best rules.

I think developing those rules at the staff level will be made more challenging, because again, I've mentioned to you, we've had something I might describe as brain drain. Some of the most senior. And capable and sort of historied members of our staff are no longer at the commission. And losing a significant number of people at that more senior level makes it very difficult to quickly elevate or replace those that we've lost. And so I think there are a number of challenges that would present my earlier comment about shrinking the Division of Enforcement or reorganizing it in ways that might make it harder for the division to be successful in executing its mission could also play a part in. Our ability to actually carry out whatever mandate or mission Congress authorizes us to take on.

KLEIN: Gentlemen, yes, yes. I'm in favor of people in pink shirts.

AUDIENCE MEMBER: Ah, hi. Kind of continuing off of the past question, as we've seen coming from Congress and also from recent statements from the SEC and the CFTC, the trend definitely is going towards a joint regulatory regime. And it seems that the CFTC will be bearing the brunt of many of

these regulations. Do you think this is coming from just an interpretation of digital assets as not being your traditional security or investment contract. And so it would be inappropriate to regulate this under the SEC, or do you see some sort of regulatory capture or some other reason for why they're almost being treated as a, you know, they are novel, but they're getting sort of a special treatment in some ways.

JOHNSON: This is a great question in part because I think a lot of the conversation I'm hearing when I put my ear to the ground and engage with the crypto industry more recently and broader digital asset ecosystem, I would say, particularly because... With the Genius Act having passed, the stable coin community, I think, is moving in some ways that the digital asset community is not yet completely liberated to move in the absence of legislation.

There's a lot of conversation around consolidation in the industry. There's a lot of conversation around what. Crypto coins or tokens or cryptocurrency looks like as the stablecoin market matures and grows. And so one I think really important question that will remain is what we do with those crypto coins are tokens that now have become an established part of the ecosystem in is that it'd be very difficult to unwind or to. Sort of take a different tact or approach. So here I'm thinking about Bitcoin, ETH, et cetera. And when we talk about what is a security, what is the commodity, I think part of the conversation is just framed at the outset by how the assets have come to be part of our ecosystem and what they're doing in the current moment.

And so I think there's a lot for the chair of the SEC and an incoming chair we aspire or hope will be sorted out for the CFTC. There's a lot for those two leaders to sit down and work on, but I'll refer you back to the swaps markets again and say, at the close of the adoption of the Dodd-Frank Act, Title VII in particular of the dodd-frank act, the SEC and CFTC had to agree to collaborate on regulatory oversight or the jurisdiction for oversight of swaps market.

And in the end, the definition of non-security based swaps was created as a mechanism to begin to distinguish between. Which types of assets each of the two agencies might oversee. It's imperfect in many ways, but it's worked significantly well, or it's been relatively successful. There are, it isn't a

case where there are zero points of disagreement, but the limited points of disagreements that have arose under that regime really are a testament that there could be sort of a great pathway with the SEC and CFTC working in collaboration to sort out sort of what fits in which buckets.

KLEIN: Well, I was gonna ask whether we should merge the two of them, but I think we've run out of time. Can you join me in thanking Commissioner Johnson for her thoughts today and for her service to this great country?

JOHNSON: Thank you, thank you, thank you.