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THE FUTURE OF FINANCIAL REGULATION
WITH SEC COMMISSIONER CAROLINE CRENSHAW

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INTRODUCTION AND MODERATOR:

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KLEIN: Good morning. Good morning. Good morning. This is a festive season. My name's Aaron Klein. I'm the Miriam K. Carliner chair and senior fellow in Economic Studies here at the Brookings Institution, and it's my privilege to welcome everybody here for the seventh and final, for this calendar year, moment in our series on the future of financial regulation. Financial regulation is incredibly important for the functioning of our society. At one point, you had to make that point a little more clearly, and the 2008 financial crisis made that point for itself. As the history of that crisis ebbs, I feel that it becomes increasingly important to remind people that like many types of regulation, when it works, you forget about it. And when it was doesn't work, it can destroy your life. And in this way, we have built a regulatory system throughout our country's history that builds upon itself generally in reaction to crises. One such crisis was the great stock market crash of 1929, which no one here remembers, but whose legacy shapes us.

As a result of that and a series of important investigative work done by the Senate Banking, Housing and Urban Affairs Committee, of which I was privileged to serve, an agency was created by Franklin Delano Roosevelt called the Securities and Exchange Commission. And this commission has safeguarded the integrity of America capital markets to the point where our capital markets are the best in the world and we all go to bed knowing that our stocks, our bonds, our investments, are safe and secure at their broker dealer. Even though I can tell you I've been on a very long quest to understand exactly where my Apple stock is and nobody can tell me, including the companies that purport to hold my Apple stock.

But that's okay because our financial system is fundamentally predicated on trust. And trust must be verified, and the verification of that occurs at the Securities and Exchange Commission. And for that, we will be joined by Securities and Exchange Commissioner Caroline Crenshaw, who will be giving her farewell remarks here, discussing our tenure, her experience, and the future of financial regulation as she sees it.

And as I introduce her, let's just take a moment to appreciate her incredible service to this country, not just starting from her time as an SEC Commissioner in 2018, but her service to all of our safety and security in a physical way as a major in the JAG department. So here we have a dedicated public servant who has served us intellectually, who has served us in the military and who continues to serve us to share her wisdom, her experience from the front lines of enforcing our nation's securities law.

So, Commissioner Crenshaw:

CRENSHAW: Good morning and thank you, Aaron. It's a pleasure to be here this morning. As of course I must start with the views I express today are my own and do not necessarily represent the views of the Securities and Exchange Commission. And I think actually probably safe to say they do not represent the views of my fellow commissioners.
So, while I won't bill it this exactly as a farewell address, I do hope that you'll indulge me a little bit, if I take the opportunity to reflect on what I've learned, what we've accomplished prior to this year, and provide commentary on where I think the markets are today and where I think they should be headed.

The securities laws as drafted were designed to provide legal structure around an intricate system of market participants with different interests and different incentives. That's why he doesn't know where his Apple stock is. It has evolved over time, including through the passage of new statutes and rules into a unique system of checks and balances. This structure, which has accommodated growth in volume, speed, and complexity over the last 90 years is far from perfect, but more or less it has worked. If those who can afford to invest, buy and hold plain vanilla diversified products based on investment advice that is provided in their best interest, those investors should get and generally have gotten more money out than they put in. And American businesses have successfully raised capital year in and year out.

Our job at the SEC is to ensure the fairness and order, improve efficiency and effectiveness, and require appropriate transparency in the markets. We must do that carefully and with adherence to certain foundational principles, including ideally the belief that this is a system for everyone and not for any special interest or market participant.

The job of the SEC is a critical one. The agency must understand the interactions between all of the participants while recognizing the interests and incentives of each of them, and ensure that the overall structure remains balanced and works for everyone.

Now, nearly five and a half years ago, I had the privilege to testify before the Senate for a hearing on my nomination. At the hearing, I explained who I wanted to be as a commissioner. I said, I carry with me today the stories of soldiers, family, and friends who give the SEC's mission real meaning. As a captain, now a major, in the United States Army Reserve Judge Advocate General Corps, that mission means making sure my fellow soldiers have a fighting chance to secure the financial futures they deserve.As a sister of an entrepreneur who's still struggling, it means making sure our markets unite job creating capital with of individuals like my brother, who recently started a small business developing 3D printing technology for military uses. As a new mother, not quite so new anymore, it means promoting a level playing field that will allow my family and millions of other American families to fund the rising cost of education by safely and confidently investing in our markets.

As a commissioner, I promised to provide tools that allow individuals to fund their retirements in safe and sustainable ways. These were some lofty goals and whether I have been successful in pursuit of those goals, history will judge, but I can say proudly today that I never lost sight of why I took this job.

Over my tenure, the commission has brought meaningful enforcement actions to recompense victims of fraud and wrongdoing, including soldiers and their families. Simplified disclosures made it harder for corporate insiders to rig the system to their benefit. Required disclosures of material information on executive compensation, climate risk, and cybersecurity risk, and put in place restrictions designed to enhance the protection of customer information.

Unfortunately, recently, my voice has become one of ubiquitous dissent. It's been unsettling to see how precipitously one commission is willing to undo the work of the commission that came before it. All without a single notice and comment rulemaking to date. I'm concerned that the fundamental precepts upon which our markets are built, tenants that have by and large kept our markets safe for both issuers and investors alike are being eroded. I fear that the very core of our intricate market structure is under attack, and instead of safeguarding our markets for investors to fund their retirements in safe and sustainable ways, we are moving in a direction where markets start to look like casinos.

The problem with casinos, of course, is that in the long run, the house always wins. This approach flies in the face of the work I set out to do. Here's how: first and foremost, we're seeing a trend towards devaluing investor rights. It's pervasive and already worn deep. For example, the commission has made it harder for investors to communicate their preferences to issuer management. It has shown outright hostility to investor proxy proposals, and we are dismantling private rights of action by allowing public issuers to force their shareholders into arbitration.

These actions seem fueled by the fictitious notion that we need to punish investors in order to revitalize public markets or purportedly to make IPOs great again. But IPOs can only be revitalized with investor money. Treating investors as a nuisance is shortsighted at best, while part and parcel of the devaluation of investors.

A separate and pervasive trend of this commission is moving markets out of the light and into the darkness, intent on reducing industry's perceived burdens. This commission is reducing transparency. For example, its stated plans to reduce the cadence of public issuer filings. This means investors will have less access to timely information, including audited financial statements, less analysis from management, fewer disclosures about evolving risk, less analyst coverage, and it will be easier to smooth earnings shortfalls among other potential effects. Investment decisions will inevitably be based on either stale data, data voluntarily released by companies that lack uniformity at best, or are cherry-picked at worst, or on information other than company metrics such as social media posts, promotions, hype, or even just vibes. The commission has also made clear that it intends to roll back the universe of people who must register and what information must be disclosed.

Transparency is also important for ensuring our equity markets work fairly and efficiency efficiently. One of the great strengths of our US equity markets is the use of displayed bid and offer prices by exchanges, which we call lit trading. Lit trading matters because it provides an important and central public source of price transparency that can directly benefit investors. Displayed quotes are used for many purposes, such as informing trading decisions, establishing security valuations, and performing index calculations. In addition, exchange trading is important for maintaining high investor protection standards, since exchanges are subject to comprehensive regulation.

However, in recent years, there's been a shift of market activity away from lit trading on exchanges to dark markets. There is increasing evidence that this shift is obscuring the true prices of stocks, raising the cost of trading, and by extension, damaging investor confidence. For this reason, it's fundamentally important to support displayed liquidity and carefully consider any interventions that might impact transparency in our equity market structure, such as limiting or rescinding the order protection rule, which this commission seems poised to do.

The commission has also been shrouding its policymaking in darkness, shunning public comment, and instead relying on hidden voices to drive its agenda in a mad dash to implement its policy preferences. The commission again and again has implemented a new vision through staff statements and extensions of compliance dates of commission rules without dating to ask investors what they think or what they want. This, this approach flouts Notice and Comment rulemaking requirements under the Administrative Procedure Act. Moreover, is a different approach than my colleagues advocated when policies they did not favor were on the table.

What is lost when the commission does not solicit public comment? Well, obviously the commission loses out on the benefit of the public flagging blind spots that the commission did not see, but the public also loses the opportunity to identify the industry voices driving the policy decisions and to evaluate their motives. The public deserves to know who is really behind the policy choices that will impact their financial futures. Perhaps most perniciously this retreat from public comment, denigrates investors sending the clear message that the commission does not value their perspectives and that it knows better than investors do what is best for them. The commission's approach to non-transparent policymaking has treated investors like silly children to be ignored rather than fully formed persons with ideas and concerns worth hearing and considering. Investors deserve better.

This brings me to another trend. The commission is opening the private markets to Main Street investors' pockets, including their retirement assets. This is a harmful policy choice, not just because it undermines the safer, more transparent, and more efficient public markets. The private markets expose retail investors to more risky investments, ones that were specifically crafted for non-retail investors. To justify this irresponsible departure from foundational pillars of the securities laws, my colleagues use lots of buzzwords: freedom, diversification, democratization.

Call it what you will, at bottom, it's risky and it's reckless. Private markets do not offer the same guardrails that our public markets do for a level playing field for retail investors. There's limited transparency. Investors don't get the same standardized disclosures as in the public market. The commission does not have the same tools to detect fraud or other wrongdoing before it happens. Investors are kept in the dark about certain fees and expenses and valuations are opaque and inconsistent. In the private markets, smaller investors almost certainly will be subject to higher fees and therefore lower returns than large investors with the power to negotiate. Unleashing the private markets' insatiable hunger for capital on retail investors' wallets will come back to bite regulators, but not before Main Street American savings have been looted.

As the commission dismisses investors reduces transparency and sends retail into the private market's wilderness, it cedes important tools. Its enforcement tools. We see this in multiple ways. The commission has dismissed SEC enforcement actions left and right, undermining the credibility of our lawyers and the agency overall. It has brought fewer enforcement actions. Civil penalties, when assessed, are purposely lower. The purveyors of massive white collar fraud are being pardoned or having their sentences commuted by the president, leading the commission to drop its parallel litigations as an "exercise in discretion." Whistleblower awards have all but grounded to a halt. And as I mentioned earlier, the commission has given permission to issuers to enforce mandatory arbitration provisions against their shareholders, meaning less private enforcement of the law and confidentiality provisions that will keep corporate wrongdoing in the shadows.
Deterring misconduct is a public good. Without deterrence, there is no accountability. Corporate actors comply with the rules because failing to do so under normal circumstances is costly. When we remove the tools that detect fraud and make it less costly to commit

fraud, people will commit more fraud. It's as simple as that. Taken together, these trends embody a sort of chaos that I think has characterized this past year.

The appetite to deregulate has been rapacious. The analysis of the costs and benefits of our policies has been non-existent, and the repercussions, I would argue, could be dire. We live in an echo chamber where politicians and policymakers make their own truth through repetition, but the markets have a way of correcting themselves, not always immediately, but over time. So I think the true advisability of these policies will reveal themselves eventually, but I certainly wouldn't be alone in analogizing the trend toward deregulation in the current environment to the period prior to the stock market crash of 1929.

And our ability to understand and respond to market events of all kinds is only as good as our best resource. The staff. Staff numbers across the board are down by 15 to 20%. I cannot overemphasize how harmful the overnight loss of decades of institutional knowledge, knowledge, and securities expertise has been to our agency generally, and how significantly it will impair our ability to respond nimbly in times of tumult.

We have lost experts of all stripes who have weathered past market events, brought reform from calamity, guided recovery efforts, and have instituted protections that decrease the risk that similar disasters might happen again. Of late, we have frequently been told that today is a "new day" at the commission, but anyone aware of our place in the calendar knows that with each successive day, the night grows longer. I fear that the darkest depth of winter still lie ahead for America's capital markets.

So that's the doom and gloom part of the speech. Out of the rubble, I believe that we can find opportunity, clarity, purpose. I believe we will have a chance to rebuild and we will rebuild it better than before. And of course, I'm here at Brookings, so I need to bring some big ideas. I challenge each of you to envision, debate, and importantly, build consensus around those ideas so the best of them can be implemented when the time comes. But I think the big question we're likely to have to answer is, how do we make markets work for the American people? The government is responding to big industry's wishlist at the moment, but our focus should be on everyday Americans.

First, let's return to market fundamentals. We need to promote policies that encourage trading based on actual fundamentals, issuer, operations, cash flows. Real financial metrics of companies, not tweets. Policies should favor long-term buy-and-hold investing.
People invest in crypto because they see some others getting rich overnight. Less visible are the more common stories of people losing their shirts. One thing that consistently puzzles me about crypto is what are cryptocurrency prices based on? Many, but not all crypto purchasers are not trading based on economic fundamentals. I think it's safe to say they're speculating, reacting to hysteria from promoters, feeding a desire to gamble, wash trading to push up prices, or as one Nobel laureate has posited, betting on the popularity of the politicians who support or stand to benefit personally from the success of crypto. Regardless of asset class, our legal framework, including our tax framework -- I'm looking at you Congress -- must promote long-term investing based on sound economic principles.

Second, government should be more nimble and interdisciplinary. The world looks very different than it did when our financial agencies were created. We may have to reimagine financial regulatory agency structure, or at least come up with a framework where real collaboration, with real collaboration, that looks different than today. Does it make sense that some lending is overseen by banking regulators and some lending is overseen by the SEC? And all while neither regulator has real insight into how exposed our banks are to private credit. Does it make sense that the commodity based swaps are regulated by the CFTC and the security based swaps are regulated by the SEC? Do these products look sufficiently different to require different regulatory regimes?

And Congress may have to ask normative questions about the way the economy is structured. Private equity is buying up single family homes, healthcare, and even the very accounting firms that may be signing off on the financial health of their portfolio companies. We need to look carefully at whether robust guardrails are needed around these practices. Third, we must confront the changing face of the American economy. Artificial intelligence is here. It may well upend the labor force. We need to revisit our rule book with AI in mind. Specifically at the Securities and Exchange Commission, many of our securities laws require evidence of bad intent to prove a violation, but how will we prove intent if no human is involved? And what are the real risks involving the use of AI by issuers and intermediaries that investors should know about? Is shifting compliance obligations to to AI tools resulting in appropriate internal reviews? We will need to build a more rigorous scaffolding around the markets to address AI.

Next, let's pursue policies that actually promote our small businesses. We should be a resource to them as they seek to raise capital by helping them understand our disclosure regimes and helping them get information to investors about their businesses. And let us reimagine our exemptions from the public company registration system, including Regulation D, which has effectively become an economic subsidy for large private issuers to the disadvantage of our small businesses. We should revisit this. Let's take a look at what small really means, not just reflexively provide loopholes and exemptions and rollbacks for larger and larger businesses.

And finally, let us govern with ethics and meaning. Let us respect and support our public servants, not punish them. Let us give regulators the tools they need to oversee markets in a meaningful way and to help prevent the all too predictable mistakes of the past from repeating themselves. Let us rebuild with the purpose of ensuring that the American economy works for everybody, not just those able to buy political influence, so my fellow soldiers have a fighting chance to secure the financial futures they deserve. So our markets unite job creating capital with small business owners like my brother. So families can fund the cost rising cost of education, and so Americans can find their, fund their retirement in safe and sustainable ways.Thank you.

KLEIN: Commissioner, come and and join me. I think we all need a moment after that speech, which just had a tremendous amount to unpack. And I want to start with something that you discussed a little bit regarding crypto. 'cause it came up and it was not surprisingly, the number one source of questions that we were received ahead of time online.
One of those questions was, what do you foresee happening in crypto? And another question from Keely Aislinn at Law 360 wanted you to respond to the taxonomy that commissioner chair Atkins laid out at the Philadelphia Federal Reserve, another conference that, that, that Brookings and, and I helped organize.

And I think those kind of two questions are interrelated in terms of what you foresee and what the taxonomy comes out. And then maybe, maybe we can turn a little bit towards kind of some solutions there. But, but what do you, where's this -- I mean, you laid out a dark path --

CRENSHAW: Yeah.

KLEIN: -- on where we were going, right? I'm watching Stranger Things and like you were in the upside down, but then you also had winter is coming from Game of Thrones. I appreciated the Game of Thrones reference. Like where, are we really headed to crypto implosion?

CRENSHAW: I don't, I I wouldn't actually say it's specifically a crypto implosion. You know, crypto, 1%, or sorry, single digit percentage of households of even touched crypto, some recent data suggest. The, the crypto market at this point is significantly, significantly smaller than the rest of the markets we oversee. It is a tiny piece of the markets. So candidly, I think we should be spending our time at the agency looking at the pieces of the market that really have a true impact on investors, that have economic consequences, that have meaningful assets that we can look at, that we can regulate. So I think we should be spending much more of our time on the rest of the markets and I think, I think that will serve investors in the markets well

I I, I do worry that as the crypto rules are, are perhaps implemented or perhaps we just put out more guidance on unclear where we say they are not securities, where we loosen the basic fundamentals of the securities laws so that they can operate in our system, but without any of the guardrails that we have in place. I do worry that that can lead to more significant market contagion combined with all of the other things we're doing about, which I spent time talking about in the speech today. I, I, I, well, we all know where I think that will end well.

KLEIN: So, so, what you're saying is you think we're headed towards a world where crypto gets some sort of exemption from the rules that made America's security markets great. And we're gonna end up with what, like a lot of hawk tuah meme coins where you can, you know, things that blow up and collapse and real people lose money. Your point about 1% or small single digit percent, that's true, but I've also seen data that show that 25% of men of color under the age of 30 have invested crypto. And then tell me what share of those people own stock.

CRENSHAW: Sure, yep.

KLEIN: And I don't mean this own stock in this, like I'm a teacher and my defined pension plan own stock, and then you pretend like I own it. 'cause you don't, you own a claim against a defined plan. You don't own any of the, their assets are just there to help the management pay for you. It's not yours. What like that's a much, that's a big deal when you talk about helping small investors. The share of small investors that own crypto, relative to the, you know. So what's the solution for this problem?

CRENSHAW: Absolutely. Well, I've long thought, and I've talked about it in, in the years since I took this job, I think there are ways to build bridges. There are ways to support this type of innovation with the, with guardrails in place that are necessary to protect retirement assets. A lot of these exposure is coming through ETFs and ETPs which are all marketed the same, even though they're actually very different products. And I think there are ways to build those bridges, but they're gonna have to accept some some different regulatory regime. And the SEC is gonna have to work with them to, to build that out.

And I think if, for example, you cannot meet, say, A, B, and C part of the disclosures, why not? What is the purpose of that for investors? And then think through, okay, so then disclose X, Y, and Z instead. And it gets at the same purpose. Our, our rules have been flexible like that for 90 years to allow innovation, to allow other things to, to-- and it hasn't always worked. There's been bubbles, right? We've seen but we have allowed innovation. Cars have not not developed with innovation because of our securities laws. There are ways to innovate in, in, in our markets. And I think I think that we, we could do that if we were willing to actually have that dialogue and put the right guardrails in place.

KLEIN: Well, like, I kind of will defend bubbles for a second, right? I mean, nobody, when you look at the .com bubble right? You said, I, you know, we want to do buy and hold. We want to do, like, nobody knew what the long-term value of a click on the internet was. And Netscape and pets.com at one moment were the darlings of Wall Street. And this stupid bookseller called Amazon had like reached its finite point. And like, people like going to the bookstore, just like Blockbuster told us, we like going to, to the, to the video store. And lo and behold, the market worked. It turns out pets.com not great. Amazon, like, you know, I have problems with parts of Amazon, but like the amount of stuff that comes to my door every day, that makes my life easier from Amazon.

And at one point, if you bought Amazon at the peak, in a year, you lost 90% of your value. Right. Let the market figure out what things are worth. But that was very different than what happened in Enron. And Tyco and WorldCom, when the accounting people cooked the books in firm after firm after firm, and people lost confidence of our markets.

That was a very different implosion than a bubble. You talked about, you raised a concern about private equity buying auditors. You also raised a concern about darkness and loss of staff and things that are going on behind closed doors. So I wanna open up that door on the PCAOB. Because this is an important agency created by a landmark bill, Sarbanes-Oxley Act—

CRENSHAW: Bipartisan

KLEIN: 99 to nothing, I believe in the Senate. I see some folks in here worked on it more so than I did, but it was a big effort, I was proud to be a part of it. What's going on at the PCAOB? Because there are all sorts of bad rumors flying all around this town. What's happening?

CRENSHAW: Well, I'm worried. You know, we've, we've obviously put out an announcement for, to hire a new, new board construct. So depending on what that board is gonna look like I am, I'm worried that with that board, we're gonna roll back staff at the PCAOB, the experts in this area, we're gonna roll back their budget.

KLEIN: So is their budget actively being cut? Are there conversations going on about cutting their budget? Right. Because one of the weird things about the PCAOB is it's kind of part of the government, kind of isn't. But it reports to you, the Securities and Exchange Commission, doesn't it?

CRENSHAW: That's right.

KLEIN: Right. So you guys get to oversee its budget. The CFPB, which is part of similarly kind of like situated within the Federal Reserve, but independent, they're just refusing to fund it. Being litigated in court.

CRENSHAW: Yep.

KLEIN: PCAOB, it's not clear to the outside, I mean, whatever you wanna say about what they're doing in the CFPB, right, and I need like a garbage can to, to throw up in about it. At least they're telling people what they're doing. What's happening at the PCOB? Tell us.

CRENSHAW: Well, so obviously there's internal discussions at this point. There's always, there's a process on how the budget works. They send us a letter, we send a letter back, they send us another proposed budget, and then ultimately it, it gets voted on. That's the process. That's the process every year.

I can't talk about the internal discussions about their, their budget. But what I can point you to is all of my fellow commissioners' statements, when we approved budgets in the past, that questioned the value of the budget we were providing them, that really wondered about what was the true work that was going into all of these things. And, and really I think highlighted that they were very skeptical about the budget that we have provided the past four years. So—

KLEIN: Do, are you concerned that the PCAOB will get a budget that is too little for it to effectively do its job?

CRENSHAW: I, that's certainly a concern.

KLEIN: And will that be, will that conversation occur transparently or will it just be a fait accompli plopped out there?

CRENSHAW: There'll, there'll be a, well, I don't know. Oftentimes there's an open meeting around the budget so at least the public can see the dialogue between the commission and the PCAOB board members. I may, I, that's one of the tools I would have if I were still at the commission. I could demand that be in the public. I dunno if it will be when I'm not there. I might just move just on paper and there may be nothing about it.

KLEIN: That's terrifying. Let's talk, you raised multiple times in your speech about independent agencies. And this issue was litigated in front of the Supreme Court this week discussing Humphrey's Executor, which, which is the landmark case where FDR lost, frankly, kind of helped shape the the, the SEC in, in a way, in this concept of a bi -- I'm old enough to remember when Justice Kavanaugh pretended to believe that there was a difference between bipartisan commissions and protected the SEC from single agency heads like the CFPB and FHFA. Now, the Supreme Court seems to be acknowledging that

that was just judicial la la land. And they didn't really believe what they said. It was politically expedient, then.

They're gonna-- one, as a lawyer, do you think they will overturn Humphrey's Executor? And two, what will that mean for an agency like the SEC if you are all fired by, Donald Trump viewed that he could have fired you day one and, and, and come the next president, they can fire-- what, what does that mean?

CRENSHAW: Well, I'll, there's many more constitutional scholars focused on that question than, than I am. That is, that is not my specific area of expertise. But the, you know, it certainly looked like they had real questions. It looked like maybe the Fed will be carved out somehow, but it did look like—

KLEIN: The big moneyed interests that give a lot of money to a lot of justices on the court and other causes seem to say, protect the Fed with another judicial la la land statement. But I'm gonna, the, you know, let, let, let's hold aside the special power that the Fed seems to have over the universe, and we'll talk, we'll, what strings they pull. But let's talk about the SEC to CFTC, your world.

CRENSHAW: Yeah. I think it's a, I think, I think the structure of the agencies as a bipartisan commission is an important one. There's been criticism that maybe it hasn't worked all that well. Maybe you can't get as much done as you would like. That's sort of the point. And I think that's one of the important values of the bipartisan commission. All during the last administration, you saw my colleagues putting out statements wondering why we did things. Sending, you know, giving a a roadmap for folks to take us to court. That's how the process works.

We pass a rule and then if people don't like it, they can take us to court. And the court decides. That's, that's how these agencies work. And the chair man, chairwoman chair is usually somebody appointed by the president of that party. But you get to hear the diversity of views. And it really does moderate the, the work the agency does even internally before things come out. If there are voices putting comments in it, really, it really can have an impact on the trajectory of the work coming out of the, out of the agency.

And markets like predictability, markets like consistency. What markets don't like is rules changing every four years and having to build up something and try to implement it and spend all the money doing that. And then having that rule change. That's not good for the markets and it's not good for businesses, it's not good for investors. And what you're gonna see with a three member purely partisan commission is much, much, much greater swings than you have seen historically.

KLEIN: So, so one of the questions we got online talked about the change in how you saw the SEC by administration over your tenure from Trump one to Biden, to to Trump two. And I feel like you kind of, you kind of answered that a bit, but let me push at you because there's a little chattering around town that says the SEC has long been a growing dysfunctional agency that's constant three to two partisan bickering, and they kinda hold up the Federal Reserve with these seven board members who all agree on everything as a unanimity of thing. Now, I, I, I tend to think. You know, it's funny how you have a unanimity of governors voting at a higher percent approval than, than what Putin got in his last election while we have crazy monetary policy that maybe made some mistakes. But if you have unanimity, you can protect groupthink when you have this thing.Some people say the SEC's dysfunctional is a word that's not. How do you respond to that?

CRENSHAW: I don't think we're dysfunctional. I think we're doing exactly what we're designed to do. And most of the actions the commission takes are actually bipartisan. A lot of those aren't seen. What you do see are when there is divisiveness, because commissioners have tools to bring them to the public to make sure there's an open meeting, to have the discussions so that we can have all the input so that all the views can be seen, so that businesses have an op opportunity to, to have a real dialogue, so that investors have an opportunity to have a real dialogue. It's the point of the administrative procedure act. It's the point of transparency and all. Yes, I, but I think yes, there's differing views, but I don't think the differing views suggest, suggest dysfunction.

KLEIN: So what is, what's gonna happen to that when you're gone and there are no Democrats and Donald Trump says, I'm not gonna point to a single Democrat to any bipartisan agency. Is that gonna, how's that gonna affect the functionality of the agency?

CRENSHAW: I think it will not function. I mean, it, it'll appear to function great. It'll appear to have unanimous decisions and it will appear that there's group think and it will, this is the, the unquestioned policies that are right for everybody. But I think you're gonna be missing, sorely, sorely missing different perspectives that I think are gonna send the market as we've discussed in the, in the wrong direction.

KLEIN: Alright. Like your speech, I feel like I need a shot of positivity. You discussed the rebuild. You talked about, and you raised the point about the swaps and the distinction between the SEC and CFTC. I'm looking down in the audience at Tim Massad, Brookings senior fellow, former chairman of the CFTC, who had the courage to come out and write and say the SEC and CFTC should be merged. And have one capital markets regulator. What do you say to Tim?

CRENSHAW: I say that's for Congress and Tim to decide not me in my current role at the Securities and Exchange Commission.But you know, I think the, the market's evolved. You know, as I talked about a little bit, they were different. You know, the registration system at the SEC is designed for retail investors. It's designed with the disclosure regime in place. It's designed to give that information and, and to folks, you know, with the CFTC cows can't file. So it's a different regime. You know, commodities historically are, are different from securities. But, that, that sort of, some of those distinctions as products have changed over time. I really do think some of those distinctions are starting to fade away as, as some of the products I mentioned on the security based swaps and the commodity based swaps. And do those distinctions make sense anymore?

And as we shift into a world with crypto where we've seen sort of a perhaps a leverage of the industry between the two agencies more than ever before, I do think it's, it's certainly certainly worth thinking whether or not that distinction makes sense anymore and whether they could, they could be one and the same. But again, that's a, I'll leave, I'll leave the, the, that up to the Congress.

KLEIN: Yeah. But I mean, look, Congress ultimately decides, but it's our job here at Brookings, as you said in your speech, to come up with big ideas to, to present. Look, when I was a kid, the only time I'd ever heard of commodities trading was Trading Places where they're speculating in orange juice futures. Right, and nowadays I could buy orange juice futures on my laptop when I go home.

CRENSHAW: Yep.

KLEIN: Right. Different world than Dan Akroyd in, in 1984. Don't we need different agency structure?

CRENSHAW: You know, do we, do we need different agency structure? I, I, I think if the agencies, I mean, one of the things I talked about is the agencies working better together. And I think there's a couple of ways you can look at it.

I think you can look at potentially needing entirely new structure. If you do entirely new structure, you're inevitably gonna have new problems. Maybe those problems are, are different or better, maybe not. So I'm, I'm certainly not opposed to actually sort of combining them.

At the same time, if, if the agencies are actually doing their jobs and also working together so that there aren't sort of jurisdictional fights, if there's a way to think through that, I, you know, maybe that solves problems as well.

KLEIN: If you can find a place without jurisdictional fights, I'll, I'll gladly move there. Won't be Washington. You talked about one of your disclosures. You listed some of proud accomplishments. One you described disclosures on executive compensation. By the way, that was a law, right? In, in Dodd-Frank, it was. That the Federal Reserve has not done that, right. They, they've, Chairman Powell said he doesn't like that law, so he is not gonna follow it.

CRENSHAW: That section, yeah. 956, the incentive based compensation.

KLEIN: Right. You guys, guys followed the law. They, the, Chairman Powell said he didn't, he thought --

CRENSHAW: Well, we haven't implemented 956 either, because it's a joint rulemaking. Speaking of a dialogue—

KLEIN: Right, you've done your thing, but the other people that you need to work with have decided they're not gonna follow the law. Tell me some more of your proudest accomplishments that you've done. Maybe, you know, take a moment and reflect on the three things that you're, you're proudest of.

CRENSHAW: I think maybe not everyone in this room knows the name Caroline Crenshaw, but probably they know there's a lone Democrat at the SEC. So I think you know, I am the lone Democrat at the SEC and I hope what that means is that I've been a voice of reason, a voice for investors, a voice on the other side of these questions using the tools that I have to keep as much transparency on all the work that's happening as I can. So I think that's really sort of first and foremost the, the lone Democrat.

In addition to that, I do think we've talked about crypto. I, I do think I am hopefully a voice in the, in the world of crypto, of we can innovate, but still have appropriate guardrails in place for investors, for the markets. And hopefully those, those views will have some impact somewhere along the line as, as that continues to move forward. So I think, I think that's one thing.

And then I hope the views I've put out on the public private market divide and ways we can really think through some of the exemptions that we've put in place that I, I really fear sort of started to swallow the whole can be rethought. I've, I've given many, many talks on that in my time and I, I haven't necessarily gotten folks to, to put those in place yet, but I, I hope some at some point that those will be ideas that folks can think about and think through and, and put in place to make a meaningful difference.

KLEIN: Speaking of difference, right? I often wish I could Benjamin Button my career and take everything I know back and go into my first job, which is probably my best job, on the Senate Banking Committee, and I would wreck havoc. What would you do, I mean, you've now had a lengthy tenure. Can you, a couple things, two, three things you would do differently?

CRENSHAW: Certainly. One, it's also crypto, weirdly. Crypto is as, as I say, I don't want it stealing the, you know, the whole voice in the room, but it, it has a tendency to do that. I regret sort of the, that the dialogue devolved the way it did. I think we had an opportunity to really put in place some, some guardrails, some rules especially in the wake of FTX. I think it was a, was an opportunity to put in place a system that worked for everybody. And so I, I, I think we, we missed an opportunity there.

I think we missed an opportunity on AI. We put out a proposal, i, I was a bit skeptical of the proposal that we put out and so was the public audience. But I think we could have really had, had we sort of thought through that a a little bit differently and, and earlier on in the, in the tenure, really I think made a difference in some of the AI stuff before we end up in a spot where it moves forward and we're left decades behind already in, in the regulation.
So those are, those are two things. And then I regret not being able to, for retail investors, just work on the fee disclosures on registered funds, or RIC fees. I think it was something we really could have done to provide meaningful tools for investors to look at what they're spending in an a way they can truly understand see, compare, between funds. And I, I really wish we'd gotten to RIC fees.

KLEIN: I on that disclosure point, Bill Alpert from Barron's wrote a question in where he, he, he, you know, you, you, in your speech you talked about increasing disclosure on executive compensation, climate and security, cyber risks, et cetera, right? And kind of the premise of the, our regime is more disclosure based than heavy handed regulatory, right? You could just imagine a world where you say, you, you know, you have to do X, Y, and z. Europe may be a little more on the regulatory, then we're a little more on the disclosure, and then let the wisdom of crowds do—

CRENSHAW: Well, the statutes also say that.

KLEIN: Yeah, no, I, right. Like, like, like, like in the US it's like, keep your coffee at a reasonable point, and if it's too hot, you can get sued.

CRENSHAW: Yeah.

KLEIN: Europe is like, your coffee must be at 37.8 degrees, and we're gonna send a, a person with a thermometer to around and check, right. You mentioned something about a decrease in simplifying disclosures. Which, you know, I'm, I'm personally, I'm very sympathetic to, you know, a disclosure that's unreadable unless you have a law degree. Is that really a retail disclosure.

CRENSHAW: Even with a law degree?

KLEIN: I, I don't, I also don't know what I've, I think, I think I gave Apple permission to name my grandchild in, in my iTunes. Bill Alpert kind of asked a question about like, where does, like, how do you view the disclosure balance between privileging, you know, you know, the big money corporate hedge fund PE folks that you said and, and, and, and retail and, and where do you see that regime going? You kind of talked about a little bit, you know, on, on disclosures you might do differently on RIC fees versus regulate RIC fees.

CRENSHAW: Yeah. Well, one of the challenges with that is that the, the big hedge funds, the big moneyed interests, they get entirely different disclosures than what retail gets. Yeah, that's sort of this difference between the public market and the private market. It's why the private markets, one of the reasons I'm worried the private markets is so poorly situated for retail investors.

We did propose a rule in the last four years that actually would've provided significantly more transparency and disclosure to investors in the private markets. We were sued in the Fifth Circuit and told that, no, it's just for sophisticated investors, so your rule doesn't make sense. It was a disclosure rule and we were told it doesn't make sense.

But maybe it's time to revisit that as more and more if we open up the space to retail investors, actually, that rule seems to, to have been more prophetic than then perhaps even we knew given sort of the court's ruling. But I, I, I think that transparency is available to some and not others. And I think not only does it need to be simplified, but I think more transparency across the board should, should be available.

KLEIN: So you talked a lot about rebuilding. And you will have a successor. Maybe there'll be a lone Democrat back on the SEC at some point, maybe there, maybe there won't. But the history of our society and our country is that things go around and the history of bubbles, hopefully not crises, is that there will be rebuilds. What recommendations do you have for that person who will come into that moment, either as the lone Democrat in this point or in a future situation, based on your experience? What would you, what wisdom would you leave them in that note in the desk that, I guess you can't, presidents get to do, but SEC commissioners don't.

CRENSHAW: I don't think anyone would read my note in the desk. I think my desk goes down to the basement.

KLEIN: I hope that whoever goes to be the SEC goes and reads your speech because I think that will explain to them a lot about what they've inherited.

CRENSHAW: Yep.

KLEIN: If you don't understand the past, you're doomed to repeat the mistakes. That's one of the reasons, you know, I was asking you about the PCAOB and accounting and, and disclosure. I, you know, I think we're gonna find that tethered stable coin had digital gold backed by physical gold. Which somehow, you know, is an innovation. You know, your successor, just imagine that somebody sits him down and says, I want you to watch this, you know, two, three, you know, this little clip on YouTube from Brookings, from Commissioner Crenshaw, what would you say?

CRENSHAW: Yeah. I think, you know, one of the advantages I had, I believe was an advantage, was I had been on staff for about 10 years before I became a commissioner. I'd had various, I've, I've never worked on the Hill. So securities laws was my, was my bailiwick. It's what I did. It's what I did in private practice. And, and so one of the things that I had an opportunity to do before I took this job was learn. I learned the ins and outs. There's, as we talked about, it's incredibly intricate. We have an ex--, we have a, a single expert in variable annuity fund disclosures. That's a tiny, tiny piece of the market that we have experts in just that piece. We have experts in our issuer disclosures. We have experts in the ETP space, in the ETF space, in the accounting world, in the international rules and regimes, in small businesses, we have, it's incredibly broad. So anyone who comes in needs to listen and learn. First and foremost, they need to understand what the agency does and they need to look at those intricate relationships because one policy you're gonna have here is gonna create all new incentives over here. And you have to be able to understand as you're writing policy what the different implications are going to be and how all the different incentives are gonna change. And ideally, you can write policy that incentivizes the behavior you want through all the different interests. Do we always succeed at that? Meh. But we can try and, but you have to be able to understand that. So to listen and learn I think that's thing one.

And thing two, do the job. Don't worry about what you're gonna do next. Actually do, do the job that's in front of you. And don't worry about if you put out a statement, if you're gonna say something, what that's gonna mean. I think you're gonna only be able to do the job if you're focused on the, the, the job at hand. Otherwise you're not gonna say the things that you think ought to be said or, or do the job that the way it should be done.

And I think last, trust the staff. The staff know so much and are there to do the job that the commission asks them to do. And they can be such a resource and they are a resource to either political party. They are not there to have, be part of partisan politics. It's they're there to do their job that the commission tells them to do. So trust the staff, learn from the staff, and be guided by the information and the knowledge and the expertise that the staff have.

KLEIN: Well, that's fantastic advice, I think, for a commissioner of any agency, whether we have independent agencies or not in the future. Let me turn, turn and pause for the audience. I see Justin has a question. Aiden, if you can go over to, to Justin and, and we have time for a few questions.

AUDIENCE QUESTION: Hi commissioner. There's been reporting that there may be an executive order coming soon on proxy, voting, proxy advisors, mirror vote, whatever it might be. What do you see happening in this area and are there things that you've heard people call for that you think that SEC does not have the authority or the jurisdiction to do in that area?

CRENSHAW: Well, I think there's a, a attack across the board, much like on investors, on the, the proxy advisory firms. I think in the first Trump administration, there were some reforms around the, the proxy advisory firms. We then actually in the next administration also did some reforms around those reforms. We were then sued around those reforms that we did on those reforms. We won. So I, you know, I, I, but I think, I think there's going to be all sorts of new and innovative attacks on, on the proxy advisory firms. What exactly an EO looks like that says, I, I don't know. I don't know what the commission would decide to, to do in that regard, but I think you can be certainly sure that there will be attempts to reduce the influence of the proxy advisor firms.

KLEIN: All right. Other questions? In the back?

AUDIENCE QUESTION: Commissioner, do you see us moving away from notice and comment period and going strictly to a interim final rules and guidance and just kinda moving that direction?

CRENSHAW: I don't see them being internal final rules necessarily, but I think I, you know, I, I do think so far it's been a year, there hasn't been a single notice and comment rule proposal. There's been exemptive relief, there's been no action letters. There's been commission interpretations. There's been, but no actual rules and none of that has gone through notice and comment. Now some of my colleagues will say, but we've done roundtables. We have done a lot of roundtables. A lot of roundtables. So, but, but that is not, that is not the same, right? You have people talking on a panel where their questions are curated. You don't get the true outside voice and opinion and perspective that you do when you have a proposal and then you invite everybody, the whole, anyone who wants to, to, to comment on it.

And so I think I think there will be notice and comment rulemaking but it's a slow process. And so, anything that can't, you know, that can be done otherwise will be they now have to send all of the economic analysis to OIRA in addition to our own economic analysis, which will make it an even slower process.

KLEIN: That's the Office of Management and Budget in the White House that does something, economic, it does something we'll, we'll, we'll, we'll debate what it does, but that was—

CRENSHAW: Fair enough.

KLEIN: --was one of the ways in which the Trump administration curtailed independence and authority.

CRENSHAW: So, right. So that's gonna make the process even longer. And, and it, in addition to that, you, they're counting the, sort of the deregulatory rules versus the regulatory rules. Well, any rule we write is probably gonna have some costs because it's gonna change something. So, you know, industry's gonna have to change, which is gonna cost money. So how do we count the deregulatory versus regulatory? So they've made it very hard to write rules.

Additionally, rules give people standing to challenge them. So I think there is a, a real move away from notice and comment rulemaking for all of those reasons in order to get stuff done. That being said, I think there are certain places where even this commission will feel that it needs to do notice and comment rulemaking. And I, I think you'll see particularly in, in this year, between the '26 midterms and now probably a real push to, to get as much done as possible through every avenue.

KLEIN: We have time for one more question because I think we're close to time. Sir? Hold on. Hold, hold on for the, for the microphone.

AUDIENCE QUESTION: Question about severability and the independence. Of course the SEC, SEC was, you know, nominally somewhat independent as a bipartisan agency. So if, if if the independence is completely gone should should the agency still exist or is it, or is it too much of a temptation to try and extort funds from the private sector if the, if a president has unlimited power there?

CRENSHAW: I tend to think the agency will continue to exist. I think markets want the agency to exist. I think markets, at some point, as as Aaron was suggesting with the Fed, there's moneyed interest saying to the courts, no, no, leave the Fed. There's, I think at some point enough, enough folks want the agent to ex agency to exist, understand that our markets are the gold standard of the world because of a baseline of regulation and transparency. I think if the agency were to go away and even sort of that, that imprimatur of legitimacy went away, I think I think that would be sort of incredibly detrimental to our markets, to investors.

And I think you would see money just move massively away from the United States. And I think, I think members on the, on the Hill as well as sort of current leadership probably I think would feel the same way on that point. And I think do believe in, in the mission of the agency, even if it's just sort of preventing Ponzi schemes, but do believe in the mission of the agency to, to bring some enforcement actions and to, to provide some guardrails.

KLEIN: Yeah. It, it amazes me that you see a deregulatory voice like Bill Ackman running around on Twitter screaming about regulation, and the minute his moneyed interests are at stake in Silicon Valley Bank. He is crying like a 3-year-old running, screaming, bail me out, bail me out! The world will collapse if I lose money!

And it is just amazing to watch that 180, that one minute, when regulation is harming my quarterly earnings, it is a threat to global society. And the minute that I need it to protect my position in the hierarchy and to protect my moneyed interest. It is critical, critical for society. And you know, I think as you've gone through in your career, seeing both sides of these, you have done a tremendous amount of public service to our country to which I want to thank you.

I want to invite the rest of the audience to thank you, and I want to wish you a wonderful vacation into whatever. I know you haven't thought about what's future because that was one of the things you said, but I hope that you have a long and bright future in whatever way you serve yourself and take a little time with your family.

CRENSHAW: Thank you.

KLEIN: So thank you all, thank you for joining us.