

Fireside Chat with Former Chairmen of the US Commodity Futures Trading Commission

Wharton Future of Finance Forum

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Moderator:

- Sarah Hammer, Executive Director at the Wharton School and Adjunct Professor at the University of Pennsylvania Law School

Speakers:

- J. Christopher Giancarlo, Co-Chair of the Digital Practice at Willkie Farr & Gallagher LLP and Executive Chairman of The Digital Dollar Project, Former Chairman of the U.S. Commodity Futures Trading Commission
- Timothy Massad, Research Fellow at the Harvard Kennedy School of Government, Former Chairman of the U.S. Commodity Futures Trading Commission
- Heath Tarbert, Chief Legal Officer and Head of Corporate Affairs at Circle, Former Chairman of the U.S. Commodity Futures Trading Commission

CFTC's Adaptation to Innovations in the Financial Landscape

- The rapid evolution of the financial industry due to emerging technologies has demanded agility from regulatory agencies. With the rise of digital currencies, the CFTC distinguished itself by promptly recognizing the potential and implications of Bitcoin, categorizing it as a commodity. Such measures not only bolstered market trust but also showcased the CFTC's

readiness to adapt and stay ahead of technological advancements, ensuring that regulatory approaches remained contemporary and in sync with market realities.

Operational Responsiveness and Regulatory Gaps

- Beyond mere recognition, the CFTC's prowess lies in its capacity to address potential regulatory voids arising from the fragmented nature of modern financial systems. Such fragmentation can sometimes lead to unclear jurisdictions and oversight gaps. However, the CFTC, by leveraging its authority and resources, has consistently worked towards bridging these gaps. Their active involvement in the initiation and regulation of Bitcoin futures exemplifies this agility and foresight.

CFTC vs. SEC: The Need for Independence

- While collaboration between regulatory bodies is crucial, it's equally vital that each agency maintains its distinct identity and operational independence. The CFTC, for instance, has its roots deeply embedded in serving the agricultural communities, offering it a unique perspective compared to agencies primarily focused on traditional financial services. This distinction, far from being a limitation, has been a strength, allowing the CFTC to approach market innovations with a fresh lens.

Regulatory Philosophy: Principles vs. Rules

- Balancing principles with explicit rules has been a cornerstone of the CFTC's regulatory philosophy. While broad principles provide a guiding framework, the intricacies of the modern financial world, especially when

dealing with behemoth financial institutions, often demand specific, well-defined rules to ensure market compliance. The CFTC's dual approach in this regard ensures a comprehensive oversight that's both adaptable and stringent when needed.

Dual Classification of Financial Instruments

- The fluidity of today's financial instruments sometimes poses challenges to traditional classification systems. An instrument can now simultaneously exist in multiple financial categories, highlighting the need for regulatory bodies to adopt a more nuanced approach. Recognizing and addressing such complexities is crucial for creating a clear, predictable market environment, and the CFTC's approach to such dual classifications has been commendably proactive.

LedgerX Controversy: Setting Precedents

- The LedgerX case was a watershed moment, illuminating the CFTC's commitment to a nuanced, adaptable regulatory approach. While initial hurdles arose, the eventual resolution not only emphasized the robustness of the CFTC's framework but also set a precedent for engagements with emerging financial technologies, offering lessons and insights for future regulatory endeavors.

Principle-Based Regulation & Jurisdictional Challenges

- The CFTC's belief in principle-based regulation has fostered a dynamic where rules can evolve organically, reflecting market changes. However, challenges persist, particularly regarding the jurisdiction of digital

commodities. Addressing these challenges requires innovative thinking, and the CFTC's ongoing efforts in this domain demonstrate its commitment to shaping a coherent, inclusive regulatory landscape.

Inter-Agency Coordination: A Path Forward

- In an increasingly interconnected financial world, coordination between agencies is paramount. Such synergies can lead to holistic solutions, especially when faced with instruments that defy traditional classifications. As the financial landscape grows more complex, the collaborative efforts of regulatory bodies will be a key determinant of market stability and trust.

Climate Policy & The Role of CFTC

- In acknowledging the intertwined nature of finance and climate change, the CFTC's move to establish a climate task force underscores its visionary approach. This proactive step is indicative of the CFTC's broader perspective, recognizing global challenges and aligning its strategies to address emerging financial-environmental intersections.