

[Securities Regulation Daily Wrap Up, TOP STORY—Giancarlo testifies before Senate Ag committee on crypto, cross-border agreements, \(Feb. 15, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

Testifying before the Senate Agriculture Committee at a "State of the CFTC" hearing, the agency's chairman, Christopher Giancarlo, reiterated his warnings about how much of the cryptocurrency space has no direct overseer. The hearing touched on a wide swath of topics beyond blockchain, including the CFTC's relationship with U.S. and E.U. regulators, cybersecurity, and rule simplification.

Cross-border cooperation. In his [prepared remarks](#), Giancarlo stressed the importance of cross-border agreements such as the 2016 equivalence agreement between the CFTC and E.U. authorities. The chairman, who will meet next week with his European counterparts, expressed concern that the European Commission is using Brexit as a basis to renegotiate the issues settled in that agreement. "While we appreciate the E.U.'s need to address the ramifications of Brexit, the U.S. and its markets must not be its collateral damage," Giancarlo wrote. At the hearing, he said the agency is very concerned that the E.U. may conduct unscheduled, independent examinations of U.S. clearinghouses—an unprecedented step.

Oversight and enforcement. On questions from Ranking Member Debbie Stabenow (D-Mich) about the CFTC's oversight function, Giancarlo distinguished between the futures markets, which the CFTC directly regulates, and the underlying spot markets, over which the agency has only enforcement authority. He cited the nascent Bitcoin futures market as an example where allowing trading in futures has enabled the CFTC to collect data on the underlying spot market. Giancarlo also affirmed that he would never let the agency's oversight capability deteriorate due to underfunding or understaffing. He would triage against less critical functions or look for efficiencies, such as his having moved the surveillance branch into the enforcement branch to eliminate the lag between detecting and acting on wrongdoing.

Sherrod Brown (D-Ohio) asked the chairman to reassure committee members who are concerned about an overall decline in enforcement activity. Noting that he became chairman in the middle of fiscal year 2017, Giancarlo attributed the decline to his predecessor. Going forward, the chairman said, the enforcement agenda will reflect his priorities. In January 2018 alone, the CFTC secured \$100 million in settlements against Wall Street banks.

Cybersecurity. Giancarlo also responded to a question from Chairman Pat Roberts (R-Kan) by summarizing the agency's efforts to bolster cybersecurity. He stands by a statement he made when he joined the Commission that the greatest challenge to financial markets is cyber. The chairman meets once a month with the agency's cybersecurity officer, and the agency has just completed its second cyber drill under his chairmanship. Giancarlo also noted that while the agency receives 10,000 attempted cyber attacks each month, exchanges and other regulated entities get even more. He has called on regulated entities to put in place drills and similar protocols, and the CFTC is asking for more funding to examine their preparedness.

Project KISS. Senators Boozman (R-Ark) and Daines (R-Mont) asked the chairman about Project KISS, which he described as "a policy-neutral program about simplifying and making our rules and regulations less complex, less costly, less burdensome." Prior to the hearing, the CFTC unanimously [approved](#) an amendment that will replace subsection lettering for defined terms with a simple alphabetical list. Giancarlo said that this simplification is part of the effort to make sure the markets are accessible to smaller participants who may not have the means

to hire attorneys to make sense of the cross-references. Another element of Project KISS is making sure the rule and policy adjustments made through no-action relief become embodied in the rules themselves.

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