Securities Regulation Daily Wrap Up, SEC NEWS AND SPEECHES—Commissioner Peirce urges 'humility' in response regulatory response to cryptocurrency, (Sept. 18, 2018)

Securities Regulation Daily Wrap Up

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Seeming to embrace the new moniker of "CryptoMom," SEC Commissioner Hester Peirce told attendees of the Cato Institute's FinTech Unbound Conference that she would likely be a "free-range" mother that would encourage a child to learn and explore with limited supervision. This approach requires acceptance of a certain level of risk, she acknowledged, but achievements are often only possible with a certain level of risk-taking. Citing her recent dissents from decisions to block exchange-traded products designed to give investors access to bitcoin, Peirce noted that the capital markets are all about risks and suggested that the SEC "helicopters in with good intentions, but often without sufficient concern for the way its blades roil the markets, frustrate innovation, and potentially expose investors to greater risks." Investors should have access to a wide variety of investment options and be able to evaluate risks for themselves, the commissioner opined.

The problem with an over-protective regulatory approach is that something will always inevitably go wrong, Peirce noted, and technological and financial losses associated with prohibiting risk-taking by investors are also real. To outlaw driving would save people's lives but cost far too much in terms of quality of life; thus, the government doesn't ban the activity and instead imposes reasonable restrictions on the process, she stated. In the same vein, Peirce argued, regulators should not prevent investors from investing in cryptocurrencies and related products but take a reasoned approach in allowing a variety of products to be made available to investors and encouraging innovation while ensuring that investors have the information necessary to make informed decisions.

To become more agile in dealing with fintech innovations, Peirce suggested that the Commission should respond to innovative financial solutions with an appropriate degree of humility. Most regulators are not entrepreneurs or technical geniuses, she noted, and they should avoid supplanting market testing with their own judgments. "We should resist the temptation to treat uncertainty as a disqualifier, and we should welcome the opportunity for investors to determine the value of these innovations for themselves," the commissioner explained. The Commission must either make space for innovation in regulated markets or risk investors seeking out new products in less-regulated environments, Peirce opined.

In addition, the Commission and its staff need to provide innovators with clarity and certainty while ensuring that regulatory determinations do not overburden in a manner that stifles innovation, Peirce explained. Innovation can be crowded out by regulatory resource expenditures, and regulators need to think about the costs when deciding to impose new rules or data and filing requirements. While formal exemptive and no-action relief can provide some room for industry participants to test new approaches, the process can be slow and inflexible, she opined. The commissioner suggested instead allowing firms to self-certify that their fintech experiments are consistent with the purposes of regulatory obligations and reiterated her call for an Office of Innovation at the SEC to help the innovators work through the agency's processes.

"I do not know which technologies will succeed and fail. It is not my job to assess the relative merits of different products and services. Humility is also important as we think about how our attitudes and processes need to change to make the U.S. a comfortable home for the next generation of innovators," Peirce concluded.

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