Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—Panelists at SEC-CFTC roundtable agree that agencies must gel for everyone's benefit, (Sep 30, 2025)

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Remarks by Commissioners Uyeda and Peirce, which bookended the panel, included anecdotes that illustrated the value of this meeting and others that will follow.

At the SEC-CFTC roundtable on regulatory harmonization Sept. 29 in Washington, D.C., a panel of market participants, despite differing views on priorities, agreed that greater alignment between the agencies would improve understanding and enhance compliance efficiency, ultimately freeing up time and resources for core market activities.

Uyeda's remarks. Leading into the panel, SEC Commissioner Mark Uyeda noted that in 2012 the CFTC—which had opted not to regulate mutual funds and ETFs employing limited amounts of commodities futures—eliminated that exclusion, requiring investment companies with low thresholds to register as commodity pool operators, demanding that they double up on registration, filings, fees, and reporting, with different rules and standards. It was a "jurisdictional land grab," Uyeda said, expressing his hope that the SEC and CFTC can "align their oversight when new ideas cut across jurisdictional lines" by looking past technical definitions.

"We have a generational opportunity here to further strengthen the preeminent position of U.S. capital markets for both investors and issuers and to pave the way for future market evolution integrating new technologies into our markets and unleashing innovation with respect to new products … and we can do this without either SEC or the CFTC losing sight of their core missions," Stephen Berger, managing director of government and regulatory policy at Citadel LLC, said. Although there are good reasons to keep the two agencies separate, duplicative efforts, such as dual registration and dual reporting, are a "de facto tax" on issuers and investors, he said, but also cautioned that past attempts at addressing this issue have given rise to other problems.

Crypto catch-up. There is also a jurisdictional divide when it comes to digital asset classification, noted Ryan Louvar, chief legal officer at WisdomTree, Inc. When launching an exchange-traded product holding a digital asset, the question arises: is it properly categorized as an SEC-registered "1940 Act" fund that invests in securities, or is it a "'33 Act" fund holding commodities? There are also challenges as we begin tokenizing real world assets, Louvar added, as it is still unclear where that sort of asset should fall. Practically speaking, we are forced to delay product launches to allow for the requisite *Howey* analysis with its "30-40 factors," he said.

"We have to design exemptions that are allowing for innovation, that are safe and controlled, and for the benefit of the customer," said Nick Lundgren, CLO of Crypto.com. "But if we're gonna fall behind on this, Europe and Asia [are] gonna come in and kick our butts," he cautioned. "As we move toward the tokenization of equities, toward 24/7 trading, that is a must."

Dave Olsen agreed with Lundgren, explaining that when Jump Trading Group was faced with uncertainty over a crypto asset in the past, it determined that the U.S. was "not a viable market" for that asset. Olsen, president and CIO of Jump Trading, said they found it necessary to move trading offshore where the rules were clear.

To exemplify low-hanging fruit for the two agencies, Olsen noted that when transacting in swaps or security-based swaps, one must identify as either a U.S. person, or an offshore, non-U.S. person not under SEC or CFTC purview. The agencies each have a different test for this, Olsen said; the CFTC test asks where the "center of gravity" of the institution is located, whereas the SEC asks where the transaction was "arranged, negotiated, and executed." Olsen expects that the agencies could mesh on this question and eliminate the uncertainty.

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Building infrastructure. Sonali Theisen, Bank of America's global head of e-trading for fixed income, currency, and commodities, agreed with her fellow panelists that the agencies should extend exemptive relief for innovation. However, it is important to ensure that the infrastructure is in place before "unleashing" something new, such as 24/7 trading, on the market. We should consider risk management, leverage, futures commission merchants, and clearinghouses in the calculus, to avoid unintended consequences such as "margin spiral or selloff that's exacerbated in a market with really thin liquidity," she said.

Opportunities exist for streamlining and optimizing without negatively impacting investors, Brad Tully, global head of corporate derivatives and private side sales for J.P. Morgan Chase & Co. proposed. For example, it would be more efficient to apply one initial margin to swaps, security-based swaps, futures, and cash positions with similar market risk. "That then enables us to continue to reinvest in innovation in our clients [and] our infrastructure," Tully said.

Tully also observed that trade reporting requirements have become increasingly complex and expensive. He proposed that the CFTC and SEC could work together to determine what information is "truly necessary for regulatory oversight." Further, the data fields could be harmonized with international standards.

Peirce remarks. Following the panel, Commissioner Peirce revealed that after Auburn University played Oklahoma in football, a drunk fan displeased by the outcome left a message on her voicemail, clearly intending to call the other SEC (Southeastern Conference). Similarly, market participants do not always know which agency to call, Peirce said. "Blurry jurisdictional lines, petulant agency tribalism, and sometimes aggressive agency power grabs have fostered uncertainty-fueled regulatory arbitrage and impeded the efficient functioning of the markets," and therefore Peirce was pleased to see all of the cooperative ideas voiced at the roundtable. She hopes that the cooperation will continue, so that ambiguity is avoided, regulation is coordinated, and exemptions are properly qualified. She also believes we can "get to a better place" with the Financial Data Transparency Act.

"We should recommit ourselves to sharing information about the markets and the entities that we jointly oversee and conduct joint tabletop exercises to prepare for firm failures and other market events," Peirce said.

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