

[Securities Regulation Daily Wrap Up, TOP STORY—Stump cautions against 'regulatory grab' in bitcoin, other cash markets, \(Apr. 20, 2021\)](#)

Securities Regulation Daily Wrap Up

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In remarks at a bitcoin conference, the CFTC commissioner drew a distinction between exercising enforcement authority over commodity cash markets and directly regulating those markets.

CFTC Commissioner Dawn Stump, in virtual remarks at Texas A&M's Bitcoin Conference, spoke about the need for clarity about the CFTC's role in regulating bitcoin-based derivatives and enforcing the underlying cash markets. Stump also [emphasized](#) the agency's role in enabling innovation in the financial markets and praised SEC Commissioner Hester Peirce's work towards balancing investor protection with regulatory flexibility to allow room for innovation.

Defining the CFTC's role. Stump began by clarifying the CFTC's jurisdiction over bitcoin. As she explained, the CFTC regulates commodity futures, even where another regulatory body has jurisdiction over the underlying commodity itself. "We regulate futures on bitcoin because bitcoin is a commodity—but we do not regulate bitcoin itself, much like we regulate cattle futures because cattle are commodities, but we do not regulate the sale of cattle at auction barns throughout the country," Stump said. However, while the CFTC does not regulate the cash market in the underlying commodity, it does have enforcement authority to bring civil actions for fraud or manipulation in these markets, including the bitcoin cash market.

The commissioner said that the agency's broader enforcement authority makes sense because transactions in the cash market may be a way to manipulate prices of CFTC-regulated derivatives. What worries Stump is when the public conflates the agency's enforcement authority with regulatory authority and takes away the impression that the CFTC is the frontline regulator of the underlying cash market. This may give a false sense of security that transactions in digital assets are subject to CFTC regulation when they are not. Last month, Stump [concurred](#) in an action against Coinbase, writing separately to make a clear statement that the CFTC does not regulate digital asset exchanges.

Furthermore, confusion between enforcement and frontline regulation may "potentially lead to a slippery slope of ever-expanding and ill-defined priorities for the CFTC," Stump said. The commissioner pushed back on suggestions that the CFTC should regulate benchmarks on cash aluminum or the cash market for RINs on ethanol production. "This is not what the CFTC is designed to oversee, and regulatory grab is not the objective," she said.

Encouraging innovation. In contrast to what the CFTC is not about, Stump turned to its role in encouraging innovation in the financial markets. The futures market itself began as an innovative solution to problems of commodity trading and delivery, and innovation continues to drive demand in the markets, as seen in 2017 when two exchanges listed bitcoin futures. The exchanges used the self-certification process, an alternative to the other route for listing, which is asking the CFTC to approve the new product. But even self-certification is not a hands-off process, Stump said: CFTC staff still work with registrants to answer the questions that the agency and the listing exchanges are required to consider. While Stump is always open to suggestions about making the self-certification process more workable, she said that people should not judge it without understanding why it exists in the first place.

Stump observed that the bitcoin market is global and that coordination between IOSCO and the Financial Standards Board is an important way to understand each jurisdiction's approach and receptiveness to innovation. But she cautioned against generalizing regulators' positions because the finer details of their

positions can be misreported. The role of U.S. regulators in encouraging innovation requires them to be active participants abroad, whether in a position of leadership, as with the CFTC's work with IOSCO, or a supporting role as in talks about privacy and other issues at the 2019 G-7 summit.

Stump closed her speech by mentioning the SEC's litigation against Ripple and two executives for conducting an unregistered \$1.38 billion securities offering of XRP tokens. The commissioner is watching the case closely because the determination of whether XRP is a security will help establish the scope of SEC authority over digital assets. In particular, Stump highlighted the work of SEC Commissioner Hester Peirce in discussing the application of the *Howey* test to digital assets. Stump also praised Peirce's conception of a safe harbor that balances investor protection with regulatory flexibility to encourage innovation.

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