

Crypto and Carbon and Governance...Oh My! (Was There Ever Really a Kansas for Digital Assets and Environmental Commodities?)

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On November 13, 2023, Commodity Futures Trading Commission (“CFTC”) Commissioner Kristin Johnson delivered a keynote address to the Atlanta Economics Club titled “[Policing the \(Token\) Economy: Introducing Corporate Governance and Market Structure Reforms in Crypto and Environmental Commodities Markets.](#)”

The speech is an excellent resource for any market participant looking for a survey of both the historical context and potential future regulatory and enforcement landscape of the markets for digital assets and environmental commodities.

To the casual observer of the derivatives markets (should

such an observer exist), the two asset classes may seem to be unrelated. However, they share several common attributes.

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Undoubtedly, there are other common attributes. Yet, in considering just these three characteristics—intangibility, popularity, and value—it seems reasonable that Commissioner Johnson’s immediate policy concerns center on the presence of fraud in both markets, and the need for corporate governance and market structure reforms.

The historical context of regulatory and enforcement activities demonstrates that Commissioner Johnson’s policy concerns are not simply unwarranted fear, such as that exhibited by Dorothy, the Scarecrow, and the Tin Man in proclaiming “lions and tigers and bears, oh my” in the 1939 film . (More about that in the postscript below. Query: Doesn’t the presence of flying monkeys always warrant fear?)

But, rather, Commissioner Johnson is raising genuine policy concerns that she believes warrant a “whole-of-

CFTC” approach, even if a “whole-of-government” approach remains far off in the future horizon.

What would this “whole-of-CFTC” approach look like? According to Commissioner Johnson...



Returning to the 1939 film, “Toto, I’ve a feeling we are not in Kansas anymore”...assuming that such an idyllic state of Kansas ever existed in the marketplaces for these emerging and novel asset classes.

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