



## Hester M. Peirce

Commissioner, U.S. Securities  
and Exchange Commission

### Braided bread and boiled beer

Thank you for the opportunity to address you today. It is a particular pleasure for me to be here in Helsinki as I have Finnish ancestry. My grandmother's parents made their way from Finland to the United States and eventually settled in Fitchburg, Massachusetts, a community that was home to many other Finns who also had made the journey. My father has a lot of wonderful stories from this part of the family, and I still regularly make braided Finnish coffee bread from a family recipe. That bread features cardamom seed, something I am able to buy in my local Indian grocery store. It must have been harder to come by that southern Indian spice at the time that my ancestors were baking here in Finland.

Thus, as I braid the Finnish bread, I can revel in the richness brought to our lives by the amazing way our markets are similarly braided together across national borders. The value of this interconnection is an important lesson for us to bear in mind as we talk about financial markets and how to regulate them. Financial markets, including derivatives markets, play a central role in uniting the global marketplace. Before I go any further, I must give my standard disclaimer: the views I express are my own and do not necessarily reflect the views of the U.S. Securities and Exchange Commission or my fellow Commissioners.

Although we often think about our national financial markets as distinct and each certainly has its own characteristics, we share an integrated, international financial market. This market, when working properly, sends capital to its most efficient use and shifts risks to those most able to bear them, regardless of location. We must work together to be good stewards of our shared financial marketplace.

There are a number of things regulatory caretakers of the global derivatives markets can do. First, we should recognize appropriate jurisdictional limitations. We all make choices about how to protect investors and other market participants in transactions that occur within our borders. Second, regulators should make accommodations to allow foreign firms to compete in their markets. Third, we should eliminate immaterial but market-fragmenting differences in our rules. Fourth, mutual recognition is valuable. Our rules need not be identical to achieve nearly identical objectives. In fact, a diversity of approaches can be healthy; if one regulator's approach engenders problems within its limited jurisdiction, the consequences will be less severe than they would have been if a single regulatory approach governed everyone everywhere.

Regulators around the world have implemented reforms in response to a shared post-crisis commitment to financial stability, but these reforms have sometimes produced results that are inconsistent with the equally important shared commitment to a unified, well-functioning financial system. Sometimes regulatory obligations are so onerous that firms take steps to avoid being subject to them. For example, in an appendix to a recent IOSCO report on market fragmentation, the Commodity Futures Trading Commission described how policy choices led to fragmentation "into separate trading and liquidity pools: those in which U.S. persons participate and those in which U.S. persons are shunned". In other instances, fragmentation is a result of seemingly small regulatory differences that seem not to have any obvious justification. For example, in a recent white paper, ISDA pointed to different data and reporting requirements as a source of fragmentation<sup>2</sup>.

In some cases, regulators have built unnecessary barriers to their own markets by dismissing the approaches taken by their fellow regulators as inadequate. The preference for one's own approach and suspicion of the approaches taken by others is not unique to our area of financial regulation. I am reminded again of my Finnish family. My father remembers the smell of beer as it simmered on the stove in his grandparents' house; his great aunt preferred her beer warm, perhaps a habit carried over from Finland. I am not a beer drinker, but a frequent response when I tell others of my great aunt's preference for warm beer is "That's just wrong!" Maybe it is wrong for some people, but it seemed to work for her. We should be wary of our own tendency to condemn other regulators' approaches as "just wrong" simply because they do not suit our own preferences. As long as nobody is forcing you to drink warm beer, you should not worry about the fact that someone else is not drinking her beer at your preferred temperature.

I understand that Mr. Himino of the JFSA touched on these themes in his panel remarks on Wednesday<sup>3</sup>, and I wholeheartedly endorse his insistence that we confront and address unintended negative consequences of difference in our regulations. Avoiding fragmentation both domestically and abroad is one theme that is guiding our efforts at the SEC as we finalize the framework for security-based swaps. In the United States, regulatory authority over the derivatives markets resides at multiple regulators, including the SEC, Commodity Futures Trading Commission, and the banking regulators. The SEC—with the benefit of the insights of the CFTC, including Commissioner Brian Quintenz from whom you heard earlier this week—recently finalized our rules on capital, margin, and segregation for security-

based swap dealers.<sup>4</sup> I expect that we will soon release final rules on security-based swap dealer recordkeeping and reporting. We also are working on finalizing some changes to and guidance for our cross-border rules with the help of comments we received on a proposal that came out earlier this year.<sup>5</sup> These changes are designed to allow firms to serve clients effectively across borders without compromising investor and market protection. At the same time, we are trying to be more sensitive to the potential distortions that can arise when we impose requirements on transactions that technically occur within our borders but involve two counterparties outside those borders.

In all of these rulemakings, we have worked closely with the CFTC to harmonize our rules, and where harmonization is not possible, to reduce the differences. We are now entering another stage in our implementation process, a stage where it is important for us to work, and to work efficiently and diligently, with our international regulatory counterparts. Once the two remaining pieces of our rulebook that I just described are finalized, the clock for registration will begin running. Depending on when we complete these rules, security-based swap dealers may be required to register with us as early as the second half of 2021. To help firms make decisions about registration and about how to structure their businesses, it is critical that we provide clarity to firms as soon as possible whether substituted compliance will be available and, if so, for what requirements. Accordingly, when the Commission proposed its cross-border amendments in May of this year, we announced that we were inviting our counterparts to talk with us as soon as possible about substituted compliance for one or more of our rules.<sup>6</sup>

We are eager to hear about what kind of relief firms will need. As we begin this process, I want to assure other regulators that I will be advocating for an approach to substituted compliance that respects both our different approaches and our shared objectives. Substituted compliance determinations will not be based on rule-by-rule assessments of foreign regulatory regimes, but on a broader look at whether the alternate regime achieves the same objectives as ours, even if it does so differently. Being able to defer to our regulatory counterparts can strengthen our respective regulatory frameworks and our markets, as it not only lowers burdens for the firms we regulate but also allows each of us to focus our limited supervision, examination, and enforcement resources on the firms that are most active in our markets. I hope that the SEC can play an important role in proving that a technical, outcomes-based, non-political approach to these determinations can work in these markets.

I am not saying that the work will be easy, which is why we have already begun and must work diligently. We may receive requests from several jurisdictions, and conducting the legal analysis to make a comparability determination will take time and staff resources. Our staff will have to understand other jurisdictions' regulatory objectives, legal requirements, and approaches to examination and enforcement. Preparing these applications will take time, and it will take time for us to review them. We also will need to enter into a memorandum of understanding with each jurisdiction that receives a comparability determination. I am optimistic that the SEC staff will be able to complete this work quickly; indeed, conversations are already underway. If you have not yet reached out to us, now is the time to do so. Time is of the essence.

Shared concern for global derivatives markets serves not only to help those markets function well, but to deepen cross-border relationships. I know that we will learn much from each other in the process and expect that the end result will be a system in which we all work together—each within our own jurisdiction—to achieve the goal of a shared financial market that is robust and focused on facilitating, not undermining, the broader economy. I thank you for the chance to be here with you in Europe and welcome those of you who find your way to the United States to stop by for a visit. I might even serve you some braided Finnish bread, but, rest assured, I will not be serving boiled beer. ■

<sup>1</sup> Int'l Org. Of Securities Comm'ns, Market Fragmentation & Cross-border Regulation app. A (Case Study 1: OTC Derivatives Trading (Prepared by the U.S. CFTC)) (2019) available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf>.

<sup>2</sup> See Int'l Swaps and Derivatives Ass'n: Regulatory Driven Market Fragmentation (Jan. 30, 2019), available at <https://www.sec.gov/info/accountants/ocafaqaudio080607.htm>.

<sup>3</sup> Ryozo Himino, Vice Minister for Int'l Affairs, Fin. Serv. Agency of Japan, Exchange of Views: Can Global Cooperation on Financial Services be Deepened in the Foreseeable Future?, Eurofi Financial Forum 2019 (Sep. 11, 2019).

<sup>4</sup> See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, 84 Fed. Reg. 43872 (Aug. 22, 2019), <https://www.sec.gov/rules/final/2019/34-86175.pdf>.

<sup>5</sup> See Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, SEC Release No. 34-85823 (May 10, 2019), <https://www.sec.gov/rules/proposed/2019/34-85823.pdf>.

<sup>6</sup> See generally Press Release, U.S. Securities and Exchange Comm'n, SEC Proposes Actions to Improve Cross-Border Application of Security-Based Swap Requirements (May 10, 2019), available at <https://www.sec.gov/news/press-release/2019-69>.