



March 20, 2018

Mr. Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: RIN 3038-AE62: Retail Commodity Transactions Involving Virtual Currency

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the proposed interpretation issued by the Commodity Futures Trading Commission (the Commission) on December 15, 2017. The proposed interpretation addresses the meaning of the phrase "actual delivery" set forth in Section 2(c)(2)(D)(ii)(III)(aa) of the Commodity Exchange Act (the Act) with respect to retail commodity transactions involving virtual currency. NFA supports the proposed interpretation and the Commission's goal of protecting retail participants engaged in the virtual currency market from fraudulent schemes and abusive practices. We respectfully request that the Commission consider the following comments.

We fully support the Commission's continued use of its jurisdiction to enhance the regulatory oversight of the nascent market for virtual currencies. NFA recognizes that the Commission has determined that virtual currencies, such as bitcoin, fall within the definition of a commodity set forth in Section 1a(9) of the Act. Under the Commission's proposed interpretation, leveraged, margined or financed virtual currency transactions involving retail customers that do not fall under the actual delivery exception are treated as futures contracts and are subject to Sections 4(a), 4(b) and 4b of the Act. NFA believes that leveraged transactions in any commodity including virtual currency products should be subject to the Commission's existing regulatory framework and, where appropriate, treated as futures contracts. The Commission's existing regulatory framework provides meaningful protections to retail investors and is well-suited for retail commodity transactions involving virtual currencies.

NFA encourages the Commission to review the applicability of Section 2(c)(2)(D)(ii)(III)(aa)'s 28-day time period for actual delivery to virtual currency products with an eye toward reducing this time period. While we understand that reducing this time frame may require Congressional action, we are concerned about a growing number of leveraged virtual currency products that are being made available to retail investors through virtual currency exchanges that are not subject to regulatory oversight

at the federal level. We believe that narrowing the exception to Section 2(c)(2)(D)'s applicability by reducing the time frame permitted for the actual delivery of leveraged virtual currency products is appropriate because these products are offered primarily for speculative investment purposes, are extremely volatile and have attracted a large number of retail participants. By shortening the time frame permitted for actual delivery, the Commission would treat leveraged virtual currency products comparable to other leveraged commodity transactions and subject them to comprehensive, stable and well-developed regulatory oversight programs designed to manage risk and protect customers.

NFA also supports the Commission's proposed interpretation that actual delivery in the virtual currency context means the transfer of possession and control of the virtual currency to the customer in a manner that allows the customer to use it freely in commerce without the offeror and counterparty seller retaining any interest in or control over the virtual currency. We believe the examples of actual delivery set forth in the proposed interpretation are appropriate. NFA recognizes the importance of ensuring a depository's independence from the counterparty seller for a transaction to result in actual delivery. We encourage the Commission to further clarify the term depository in a manner that addresses conflicts of interest and provides the highest possible level of customer protection. The Commission should also consider whether it needs to clarify the meaning of possession and control in the context of a virtual currency.

The Commission should also consider clarifying the potential impact that the proposed interpretation of actual delivery may have on virtual currency exchanges that purchase virtual currencies for their own account on the public ledger and allocate them to customers through internal bookkeeping entries. Under this structure, virtual currency exchanges collect large amounts of customer funds for the purpose of buying and holding virtual currencies on behalf of those customers. These purchases are not actually allocated to the client on the public ledger and the virtual currency exchanges through which they occur are not subject to the same level of regulatory scrutiny that exists for other depositories, custodians and intermediaries that hold customer funds. We are particularly concerned where virtual currency exchanges allow retail market participants to purchase virtual currencies in this manner using a credit card or other form of leverage.

Christopher J. Kirkpatrick

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If you have any questions concerning this letter, please do not hesitate to contact the undersigned at (312) 781-1409 or [cwooding@nfa.futures.org](mailto:cwooding@nfa.futures.org) or Blake Brockway at (312) 781-1553 or [bbrockway@nfa.futures.org](mailto:bbrockway@nfa.futures.org).

Very truly yours,



Carol A. Wooding  
Vice President,  
General Counsel and Secretary

/bjb/actual delivery comment letter