

[Securities Regulation Daily Wrap Up, TOP STORY—CFTC staking its ground in fast Bitcoin market, \(Dec. 15, 2017\)](#)

Securities Regulation Daily Wrap Up

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CFTC staffers, by all appearances, have been burning the midnight oil in an effort to keep pace with rapidly evolving developments in Bitcoin and cryptocurrency related markets. The Commission has taken two separate actions, both geared to provide greater clarity to the market users and the investing public considering the cryptocurrency realm. In one initiative, the CFTC [launched a virtual currency resource web page](#). In another action, the Commission [announced a proposed interpretation](#) regarding its view of the "actual delivery" exception as it might apply to virtual currency transactions, and ultimately the CFTC's jurisdictional authority.

CFTC Chairman J. Christopher Giancarlo recently stated, "Bitcoin, a virtual currency, is a commodity unlike any the Commission has dealt with in the past." The Commission's actions reflect this view combined with ever growing public interest in the virtual currency markets, along with extraordinary price gains and volatility in these instruments.

Virtual currency resource page. The Commission's [newly launched web page](#) covers an ever-expanding collection of high quality resources and is designed to educate and inform the public about these commodities, including the possible risks associated with investing or speculating in virtual currencies and recently launched Bitcoin futures and options.

The web page provides quick access to the following resources:

- the [CFTC's virtual currency primer](#);
- [CFTCTalks podcast](#) episode featuring CFTC staff discussing virtual currencies;
- [LabCFTC](#), the Commission's FinTech effort;
- [Self-certification fact sheet](#) explaining the CFTC's role in oversight of virtual currencies; and
- Customer Advisory, titled "[Understand the Risks of Virtual Currency Trading](#)."

Proposed interpretation of "actual delivery" in connection with virtual currency transactions. [The CFTC's proposed interpretation](#) sets forth the Commission's view regarding the "actual delivery" exception as it may apply to virtual currency transactions. In the proposed interpretation, the Commission notes that Section 2(c) (2)(D) of the Commodity Exchange Act (CEA) provides the CFTC with direct oversight authority over "retail commodity transactions." Such a transaction is subject to the CEA "as if" it were a commodity future. The CEA contains an exception for contracts of sale that result in "actual delivery" within 28 days from the date of the transaction.

The CFTC's proposed interpretation establishes two primary factors necessary to demonstrate "actual delivery" of retail commodity transactions in virtual currency as follows:

1. a customer must have the ability to: (i) take possession and control of the entire quantity of the commodity, whether it was purchased on margin, or using leverage, or any other financing arrangement; and (ii) use it freely in commerce (both within and away from any particular platform) no later than 28 days from the date of the transaction; and,
2. the offeror and counterparty seller (including any of their respective affiliates or other persons acting in concert with the offeror or counterparty seller on a similar basis) may not retain any interest in or control over any of the commodity purchased on margin, leverage, or other financing arrangement at the expiration of 28 days from the date of the transaction.

In the event actual delivery is established, the CFTC's direct oversight of such transactions is less clear cut. The CFTC's proposed interpretation will be open for public comment for 90 days from publication in the Federal Register.

The CFTC's actions regarding its proposed interpretation on actual delivery for virtual currencies, as well as its virtual currency web page rollout, come in the wake of Bitcoin futures contracts having launched on the CBOE Future Exchange on December 10, and in anticipation of Bitcoin futures trading at the CME commencing on December 17, 2017.

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