

[Securities Regulation Daily Wrap Up, COMMODITY FUTURES—CFTC defines Bitcoin as a ‘commodity,’ shuts registered options exchange, \(Sept. 17, 2015\)](#)

Securities Regulation Daily Wrap Up

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By John M. Jascob, J.D., LL.M.

In a ruling of first impression, the CFTC has held that Bitcoin and other virtual currencies are properly defined as “commodities” under the Commodity Exchange Act. The CFTC’s ruling came in an administrative enforcement action against San Francisco-based Coinflip, Inc. and CEO Francisco Riordan for offering Bitcoin options and operating a swaps trading facility without registering. Without admitting or denying the CFTC’s findings, Coinflip and Riordan agreed to cease and desist from further violations of the Act and CFTC regulations ([In the Matter of Coinflip, Inc.](#), September 17, 2015).

“While there is a lot of excitement surrounding Bitcoin and other virtual currencies, innovation does not excuse those acting in this space from following the same rules applicable to all participants in the commodity derivatives markets,” said CFTC enforcement Director Aitan Goelman in a [news release](#).

The CFTC’s ruling follows the Commission’s [approval](#) on September 11 of LedgerX LLC’s application for temporary registration as a swap execution facility. LedgerX purports to be the first federally-regulated bitcoin options exchange to list and clear collateralized, physically-settled bitcoin options for the institutional market.

Derivabit platform. The CFTC’s order found that, from approximately March 2014 to August 2014, Coinflip and Riordan operated an online facility named Derivabit, offering to connect buyers and sellers of Bitcoin option contracts. According to the CFTC, Coinflip designated numerous put and call options contracts as eligible for trading on the Derivabit platform. Coinflip listed Bitcoin as the asset underlying the option and denominated the strike and delivery prices in US Dollars. Premiums and settlement payments were to be paid using Bitcoin at a spot rate determined by a designated third-party Bitcoin currency exchange. During the relevant period, Derivabit had approximately 400 users.

Virtual currencies as commodities. With a brief three sentences of analysis, the CFTC found for the first time that Bitcoin falls within the definition of a “commodity” under the Act. Observing laconically that the “definition of a “commodity” is broad” under Section 1a(9) of the Act, the Commission concluded that Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities. As the respondents’ activities related to commodity option transactions and were not conducted in compliance with the Act’s registration provisions, the Commission held that Coinflip and Riordan violated Sections 4c(b) and 5h(a)(1) of the Act and CFTC Regulations 32.2 and 37.3(a)(l).

The proceeding is CFTC Docket [No. 15-29](#).

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