

# **PUBLIC STATEMENTS & REMARKS**

## **Statement of Commissioner Rostin Behnam Regarding COVID-19 and CFTC Digital Assets Rulemaking**

**March 24, 2020**

We are collectively facing uncertainty in all aspects of our personal and professional lives as a result of COVID-19, and I am confident we will get through these trying times. While I voted to approve today's action in connection with digital assets, as a financial leader, I believe the Commodity Futures Trading Commission ("CFTC") should instead solely focus on mission critical matters that address the real and rapidly developing challenges that our financial markets, the economy, and the American public are now facing on a daily basis.

I am very pleased, and commend the Chairman, my fellow Commissioners, agency Division Directors and staff, who are themselves adjusting in real-time to the new realities of social distancing and teleworking, for issuing, in the past week, no-action relief aimed at providing market participants and registrants with necessary relief.<sup>[1]</sup> These important actions enable market participants and registrants to focus their efforts on business continuity, market stability, and personnel management in these turbulent times. On that note, for the immediate future, and until financial markets demonstrate signs of stability and normalcy again, I believe the CFTC should temporarily table all non-critical policy work, shifting all our efforts and resources towards monitoring market and institutional stability and resiliency, prioritizing surveillance and enforcement, working with other regulators, and exhaustively engaging with market participants to consider necessary agency action that will alleviate market disruptions and support stable financial markets.

Above all else, the CFTC should protect retail customers and members of the public who are feeling the effects of the current economic uncertainty. I applaud the Chairman's action last week to issue a Customer Advisory, notifying the public to be on high alert for fraudsters that are seeking to profit from recent market volatility related to COVID-19.<sup>[2]</sup> Finally, as the CFTC actively engages with market participants and the public to address the current market environment, I would strongly support extending all current open comment periods on rule proposals, which will allow commenters to solely focus their efforts on the immediate needs of the day, and ensure – after we get through these uncertain times – that the CFTC receives fulsome comments to these important policy proposals.

Regarding today's action, the interpretive guidance that we are finalizing today was proposed in December 2017 – nearly two and a half years ago.<sup>[3]</sup> The public comment period ended on March 20, 2018 – more than two years ago.<sup>[4]</sup> In the rapidly developing world of digital assets, two years is a lifetime. I am concerned that the views of market participants and the needs of the public may have changed during the past two years, and would have preferred to reopen the comment period, allowing for riper input. In fact, there are likely multiple new market participants who never had an opportunity to comment. I am hopeful that today's action provides market participants with further clarity as to how the Commission views actual delivery in the virtual currency context. However, I would prefer to be certain.

As a general matter, today's action represents a small step forward in the broader policy discussion surrounding financial technology, and the regulatory patchwork that currently governs it. The patchwork is our greatest hurdle to integrating virtual currency and the many new opportunities that financial technology more generally has the potential to provide financial markets and the global economy. The CFTC can address specific issues like actual delivery, but alone it cannot address the regulatory patchwork.

I have long advocated for a more inclusive conversation regarding the advent of financial technology, believing that a thorough examination and discussion of the technology within our current legal and regulatory framework will best serve technologists, market participants, and customers. I am still hopeful, and will continue to advocate —at the appropriate time— for this larger conversation, convened by policymakers, to hash out a path forward that will ensure that technologists, and logically the technology they create, stays in the United States, supporting American innovation, jobs, and national security.<sup>[5]</sup>

I would like to again thank the Chairman, Division Directors, LabCFTC, and all CFTC staff for their hard work on this final interpretive guidance, and the other matters discussed above that the CFTC has taken swift action on in the past week, particularly under trying circumstances as we operate within the new realities of communication and the work environment.

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<sup>[1]</sup> CFTC Provides Relief to Market Participants in Response to COVID-19 (March 17, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8132-20>; CFTC Issues Second Wave of Relief to Market Participants in Response to COVID-19 (March 17, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8133-20>; CFTC Issues Third Wave of Relief to Market Participants in Response to COVID-19 (March 20, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8136-20>.

<sup>[2]</sup> CFTC Issue Customer Advisory on COVID-19 (March 18, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8134-20>.

<sup>[3]</sup> Retail Commodity Transactions Involving Virtual Currency, 82 FR 60,335 (Dec. 20, 2017).

<sup>[4]</sup> *Id.*

[5] See Rostin Behnam, How the White House Can Help Mainstream FinTech, Bloomberg (May 21, 2019), <https://news.bloomberglaw.com/tech-and-telecom-law/insight-push-us-past-inertia-how-the-white-house-can-help-mainstream-fintech>.

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