

## Securities Regulation Daily Wrap Up, VIRTUAL CURRENCIES—CFTC seeks public input on Ether virtual currency, (Dec. 12, 2018)

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In a new Request for Information, the CFTC is requesting public feedback on the virtual currency Ether and the Ethereum network that produces it. In seeking to understand Ether, one of the top three virtual currencies by market capitalization, the CFTC [asked](#) 25 specific questions about purpose and functionality, technology, governance, markets oversight and regulation, and cyber security and custody. The CFTC also seeks input on similarities and differences between Ether and Bitcoin.

**What are Ether and Ethereum?** Launched in 2015, Ether is the virtual currency that powers the Ethereum network. Like Bitcoin's blockchain, Ethereum is a distributed ledger that uses a "proof of work" consensus mechanism in which "miners" are compensated for processing transactions and validating the ledger. The Ethereum Foundation plans to switch to a "proof of stake" mechanism in the future to increase efficiency. The network can run decentralized applications and smart contracts, and the Ethereum [website](#) specifically mentions futures contracts as a type of smart contract that may develop. (See the CFTC's recent [primer](#) on smart contracts).

In June 2018, Bill Hinman, the SEC director of the Division of Corporation Finance, gave a [speech](#) in which he stated his personal view that, based on his understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions.

**Questions for the public.** The CFTC asked questions on the following topics:

- *Purpose and functionality.* Among other questions, the CFTC asked what use cases are anticipated and how many confirmations on the Ethereum blockchain are sufficient to wait to ensure that the transaction will not end up on an invalid block.
- *Technology.* Questions relate to comparisons to Bitcoin, scalability, transition to a proof of stake consensus model, and capability to support smart contracts. The CFTC noted reports of disagreements in the Ether community over the proposed transition to a proof of stake model, and asked if this might result in a fragmented or diminished Ether market if the disagreements are not resolved.
- *Governance.* The CFTC asked how Ethereum's governance compares to governance of the Bitcoin network and whether there are potential issues that could make Ether's underlying blockchain vulnerable to future hard forks or splintering.
- *Markets, oversight and regulation.* Questions include the potential for disruption, impediments, or risks in the conversion of Ether to legal tender and how the introduction of derivative contracts on Ether could impact the network.
- *Cyber security and custody.* The CFTC asked about any security issues peculiar to Ethereum or Ethereum-supported smart contracts, and best practices for Ethereum wallets and independent audit of Ether deposits.

In considering the relation of Ether to Bitcoin, the CFTC briefly discussed its 2017 [Primer on Virtual Currencies](#) and Bitcoin's characteristics as a virtual currency. Futures contracts and

options on Bitcoin first [emerged](#) in December 2017 via a self-certification process by several exchanges, including the Chicago Mercantile Exchange (CME). Some including the [FIA](#) and CFTC Commissioner [Rostin Behnam](#) have criticized that process, saying it did not allow for sufficient public comment.

**Comment period.** The comment period will be open for 60 days after publication in the Federal Register.

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