

## Cryptoassets as Commodities

Following up on our unit on cryptocurrencies as property, the question arises as to whether they are commodities as defined under the Commodity Exchange Act of 1936 (as amended). This would mean that the trading of futures or options based on a cryptocurrency (e.g., Bitcoin futures as now traded on the Chicago Mercantile Exchange (CME) and the Chicago Board Options Exchange (CBOE)) are regulated by the Commodity Futures Trading Commission (the CFTC), a federal regulator. If cryptocurrencies are treated as commodities, fraud that occurs in direct trades of a cryptocurrency (so-called 'spot trades') would also fall into the CFTC's jurisdiction.

The CFTC has been active in monitoring developments in the cryptocurrency world, and has issued consumer guidance as well as pursuing enforcement actions within its authority. Along with FinCEN, the SEC, and the IRS, the CFTC is one of the primary US regulatory agencies relevant to those in the cryptocurrency ecosystem.

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*A CFTC Primer on Virtual Currencies*, Lab CFTC, October 17, 2017.

[https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/labcftc\\_primercurrencies100417.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/labcftc_primercurrencies100417.pdf)

*In Re Coinflip, Inc.* (2015).

<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliporder09172015.pdf>

*Commodity Futures Trading Commission v. My Big Coin Pay, Inc. et al*, Sept. 26, 2018, U.S. District Court, Massachusetts.

<https://www.cftc.gov/sites/default/files/2018-10/enfmybigcoinpayincmemorandum092618.pdf>

Jeff Brown, *For brave investors there's two ways to bet on bitcoin*, June 11, 2018.

<https://www.cnbc.com/2018/06/11/the-big-bitcoin-investing-decision-coin-or-futures-contract.html>

CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets, January 4, 2018.

[https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder\\_virtualcurrency01.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder_virtualcurrency01.pdf)

Lee Reiner, *Bitcoin Futures are a Bad Idea*, The FinReg Blog, December 13, 2017.

<https://sites.duke.edu/thefinregblog/2017/12/13/bitcoin-futures-are-a-bad-idea/>

## REFLECTION QUESTIONS:

What is a commodity?

What is a futures contract? What is an option contract? What are derivatives?

Why do people want to trade in futures or options or derivatives? What purpose do they serve? How do people expect derivatives based on cryptocurrencies to affect demand for and prices of Bitcoin and other cryptocurrencies?

How is the trading of commodities regulated?

Who has oversight over the trading of commodities?

Why does the CFTC consider Bitcoin to be a commodity? What are the implications of that designation?

Are all virtual currencies or cryptoassets commodities? Why or why not?

What have we learned from recent court decisions about virtual currencies and commodities law?

Why has there been controversy over the creation of Bitcoin futures products at the CME and the CBOE? Why have some been critical of the CFTC's actions related to them? What has been the CFTC's response?