

CLIENT ALERT

Virtual Currency Update: CME, CBOE and Cantor Exchanges Self-Certify Bitcoin Futures and Options to the CFTC; SEC Halts ICO Scam

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The Commodity Futures Trading Commission last week issued a statement confirming that the Chicago Mercantile Exchange and the CBOE Futures Exchange self-certified new bitcoin futures contracts and that the Cantor Exchange (collectively, the “Exchanges”) self-certified a new bitcoin binary option contract.¹ In another matter involving virtual currency, the Cyber Unit of the Securities and Exchange Commission announced on December 4, 2017 that it obtained an emergency asset freeze to halt an Initial Coin Offering (“ICO”) that allegedly raised \$15 million in five months by falsely promising investors a profit of more than 1,000% in less than 29 days.² The CFTC Statement and SEC complaint demonstrate that Federal regulators are busy addressing the appropriate regulation of trading in, and sales of, multiple virtual currency-related products.

The CFTC Statement is a rare occurrence since the CFTC generally does not issue statements in connection with an exchange self-certification of a new product. It indicates that the CFTC considers the review of bitcoin futures and options contracts a high priority. The CFTC disclosed that extensive discussions with the Exchanges took place prior to the Exchanges self-certifying their bitcoin derivatives contract. The CFTC Statement noted that the Exchanges “agreed to

¹ A copy of the December 1, 2017 CFTC statement (the “CFTC Statement”) is available [here](#).

² *Securities and Exchange Commission v. PlexCorps, Dominic Lacroix and Sabrina Paradis-Royer*. A copy of the December 4, 2017 press release and a link to the SEC’s complaint is available [here](#).

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significant enhancements to contract design and settlement, and CME [agreed to enhancements to] margin.” It also noted that the CFTC may revisit certain aspects of contract design as trading on the Exchanges evolves.

The CFTC expects the Exchanges to monitor cash market trading in bitcoin through information-sharing arrangements with the relevant cash platforms that trade bitcoin. The CFTC did not describe the type of information-sharing arrangements, but given the limited information available on virtual currency holdings, effective monitoring of cash market activity may be difficult to accomplish. The CFTC also made clear that it plans to closely monitor trading in the contracts, including reviewing the trading activity of market participants and the functions of clearing members and the Exchanges. The National Futures Association (the “NFA”) will also work with the CFTC to monitor NFA member firms that trade virtual currency futures and options.

Significantly, as part of the CFTC Statement, Chairman Giancarlo noted that the Exchanges’ oversight of bitcoin trading is important “given the [CFTC’s] **limited** statutory ability to oversee the cash market for bitcoin.”³ In this regard, however, it should be noted that the Commodity Exchange Act provides the CFTC with the authority to pursue fraud and manipulation in the cash market, and the CFTC asserts that because bitcoin is a commodity, its authority extends to the bitcoin cash market.⁴ On September 17, 2017, the CFTC filed a complaint in Federal Court in the Southern District of New York alleging fraud against Gelfman Blueprint, Inc. and its principal for activity related to the bitcoin cash market.⁵ Given that the complaint does not allege any connection with derivatives trading, the complaint highlights the CFTC’s view of its broad jurisdiction over the cryptocurrency cash market.

In the ICO case, the SEC alleges that Dominic Lacroix, his partner Paradis-Royer and his company PlexCorps violated the anti-fraud provisions of the securities laws through their false promises in connection with the ICO. The SEC also alleges that Lacroix and PlexCorps violated the registration provision of the federal securities laws. This allegation by the SEC provides additional support for the view that certain ICOs may have to register under the federal securities laws or qualify for an exemption from such registration. In its complaint, the SEC is seeking permanent injunctions, disgorgement plus interest and penalties and an officer-and-director bar, and a bar from offering digital securities against Lacroix and Paradis-Royer.

³ Emphasis added.

⁴ See CFTC Order: Coinflip, Inc., d/b/a Derivabit *et al.*, 15-29 (9/17/15); and CFTC Order: BFXNA Inc., d/b/a Bitfinex, 16-19 (6/24/16).

⁵ A copy of the CFTC’s complaint is available [here](#).

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