

Cftc keeps its eyes
wide open



**ASSIGN
BUSTER**

The United States Commodities Futures Trading Commission (CFTC) has been actively watching bitcoin derivatives platform and enunciated that the digital currency was indeed a commodity.

This legal qualification suggests that bitcoins cannot be considered as securities anymore, even though the SEC seems to have been endorsing that classification.

However, keep in mind that the CFTC competency area is not preventing other regulators and FinCEN to oversee bitcoin.

Last year, the CFTC did already shared its view on bitcoin, when commissioner Mark Wetjen made clear that bitcoin matched the legal definition of a commodity, and that the CFTC has authority to regulate it.

Thus, most of the bitcoin derivatives platform did start working to comply with the CFTC requirements.

Nevertheless, Coinflip was not of those companies and was charged by the CFTC, because it conducted activity related to commodity options, without registering with the agency, neither meeting rules for exemption.

The CFTC Orders Bitcoin Options Trading Platform Operator, Coinflip operating under the domain name Derivabit, to Cease Illegally Offering Bitcoin Options and to Cease Operating a Facility for Trading or Processing of Swaps without Registering.

On 17th September 2015, the CFTC announced a settlement with Coinflip for marketing bitcoin derivatives without being properly registered with the CFTC.

The classification does not mean the CFTC could also take enforcement actions against police fraudulent activities on bitcoin exchanges, without any specific connection to commodities derivatives markets.

The CFTC will look to shut down unregistered bitcoin derivatives platforms.

Bitcoin derivatives are becoming more and more popular in the bitcoin industry, as the volatility remains high, they allow to cover against BTC prices fluctuations and/or to speculate on a trend with a leverage.

Stabilizing the value of bitcoin investment is necessary for the industry to protect their margin and also for investors who want to use bitcoin as a store of value.

It appears possible that non-US based companies who sell derivatives to US residents could be subject to this enforcement risk, even though it is not likely to happen, as the CFTC is not known to conduct extraterritorial actions in that area.

CFTC regulations broadly prohibit fraud in connection with any transaction under its jurisdiction.

Technically, the language of one of the provisions reaches any cash commodity transaction in interstate commerce, although it is unlikely the

CFTC wants to become the general overseer of fraud in all commercial marketplaces.

The CFTC has broad authority to police for manipulation. Here, the CFTC will look at manipulation not only directly in the derivatives market, but also in the "cash" market where it believes there is the potential for a price distortion effect on a related derivatives market.

The CFTC does not need to prove actual intent to manipulate, but simply recklessness. And it has jurisdiction to seek serious sanctions, including fines of \$1m per violation, and for attempted manipulation, which requires only evidence of the necessary state of mind (intent or recklessness) and an act that it can say was taken in furtherance of the manipulation.

However, as Coinflip decided to cooperate with the CFTC, it was not and the fact that they didn't even pay a fine likely reflects this.

Still, this enforcement action suggests that, without something more flagrant, criminal punishment for these types of offenses is not especially likely.

Even small unregistered sellers of bitcoin derivatives are wise to make plans to deal with potential enforcement actions.

Another bitcoin swap company, TeraExchange, was facing charges from the CFTC, for allowing a bitcoin swap trade that was both a "wash trade" and "prearranged trade" in violation of US law and regulations.

However, force is to note that neither this case was fined or that any serious scantions were taken, which seems to be more like a " warning" to the digital FX swap industry.

As a result, bitcoin derivatives traders need to follow the regulatory framework of the CFTC.

Besides substantial civil monetary penalties, the CFTC can seek cease-and-desist orders or injunctions against further misconduct, disgorgement of proceeds and/or restitution to injured parties, and registration and trading bans and suspensions.

Unlike the SEC in the securities markets, the CFTC can actually suspend or ban people from trading in derivatives markets, whether or not the person is a registrant.