

Alert

LabCFTC Releases Primer on Virtual Currencies

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Yesterday, LabCFTC, an initiative by the U.S. Commodity Futures Trading Commission to promote FinTech innovations, released a “Primer on Virtual Currencies.”¹ In the Primer, LabCFTC made several points that are consistent with the current market understanding of the regulatory status of virtual currencies, related derivatives and initial coin offerings.

While the CFTC generally does not oversee spot markets (meaning the CFTC does not believe it has jurisdiction over Bitcoin), the Primer makes clear that it *would* assert jurisdiction over virtual currency derivatives or where there is fraud or manipulation involving the virtual currencies themselves. (While not stated in the Primer, the CFTC would presumably also assert jurisdiction over virtual currencies that are themselves deemed to be derivatives.) Importantly, the Primer also expressly confirmed that “there is no inconsistency” between the views of the U.S. Securities and Exchange Commission, based on a *Howey* analysis, that certain digital assets (such as DAO tokens) are securities and the views of the CFTC on the regulatory classification of virtual currencies as commodities.² It is LabCFTC’s view that the CFTC *does not* have jurisdiction over “DAO-like” tokens that are effectively securities.

This is part of continuing regulatory focus on virtual currencies from both the U.S. and non-U.S. regulators. We should expect this trend to continue, both in the form of new informational releases and enforcement actions.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

¹ http://www.cftc.gov/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf. The Primer cautions that it is not intended to describe the official policy of the CFTC or to limit the CFTC’s current or future positions or actions. While LabCFTC statements are not considered formal statements of the CFTC or CFTC staff, the Primer provides some useful insights into LabCFTC’s view on the CFTC’s jurisdiction over virtual currencies.

² The CFTC stated this position in 2015, in a settlement with Coinflip Inc.; In the Matter of: Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan, CFTC Docket No. 15-29, available at <http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliporder09172015.pdf>.

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