

## CFTC: Bitcoin a “Commodity” Subject to Dodd-Frank Swaps Rules USA (National/Federal) Related Content

*The CFTC issued an order settling charges against an online platform and its CEO for conducting activity related to bitcoin transactions without complying with CEA and CFTC swap rules added under Title VII of the Dodd-Frank Act. This is the first time the CFTC has asserted that bitcoin is a “commodity” under CEA Section 1(a)(9), and subject to its jurisdiction. The CFTC also authorized the first bitcoin SEF.*

On September 17, 2015, the CFTC issued an [order](#) settling charges against Coinflip, Inc. and its CEO, Francisco Riordan, for offering bitcoin [options](#) without registering as a swap exchange under Sections 4c(b) ([7 U.S.C. 6c\(b\)](#)) and 5h(a)(1) ([7 U.S.C. 7b-3\(a\)\(1\)](#)) of the [Commodity Exchange Act](#) (CEA) and CFTC Regulations 32.2 ([17 CFR 32.2](#)) and 37.3(a)(1) ([17 CFR 37.3\(a\)\(1\)](#)).

This is the first time the CFTC has asserted that bitcoin falls within the “commodity” definition under CEA Section 1(a)(9) ([7 U.S.C. 1a\(9\)](#)), which broadly defines “commodity” to include, among other things, “all services, rights, and interests in which **contracts** for future delivery are presently or in the future dealt in.” According to the CFTC, this definition encompasses bitcoin and other virtual currencies.

Between March 2014 and at least August 2014, Coinflip and its CEO operated an online facility called Derivabit, offering to connect buyers and sellers of bitcoin option **contracts**. The operation of this online facility violated Sections 4c(b) and 5h(a)(1) of the CEA and CFTC Regulations 32.2 and 37.3(a)(1) because Coinflip was not registered as a [swap execution facility](#) (SEF) or [designated \*\*contract market\*\*](#) (DCM).

The CFTC found that Coinflip and its CEO violated:

- **Section 4c(b) of the CEA and CFTC Regulation 32.2.** Section 4c(b) of the CEA makes it unlawful for any person to “offer to enter into, enter into or confirm the execution of, any transaction involving any commodity . . . which is of the character of, or is commonly known to the trade, as an ‘option’ . . . ‘bid’, ‘offer’, ‘[put](#)’, [or] ‘[call](#)’ . . . contrary to any rule, regulation, or order of the [CFTC] prohibiting any such transaction.” CFTC Regulation 32.2, in turn, provides that it is unlawful for any person to “offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction” unless that transaction is conducted:
  - in compliance with and subject to the provisions of the CEA, including any CFTC rule, regulation, or order otherwise applicable to any other swap; or
  - under CFTC Regulation 32.3 ([17 CFR 32.3](#)).
- **Section 5h(a)(1) of the CEA and CFTC Regulation 37.3.** Section 5h(a)(1) of the CEA forbids a person from operating a facility for the trading or processing of swaps unless the facility is registered as a SEF or DCM. Similarly, CFTC Regulation 37.3(a)(1) requires that any person “operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform” must register the facility as an SEF or DCM.

Under the CFTC order, Coinflip and its CEO have agreed to cease and desist from further violations of the CEA and the CFTC Regulations.

This order demonstrates the CFTC's emphasis on enforcement as well as the fact that, despite the excitement surrounding bitcoin and other virtual currencies, innovation in this area does not exempt market participants from CFTC regulations.

Separately, on September 10, 2015, the CFTC issued a [temporary approval order](#) (CFTC Staff Letter 15-49) to Bitcoin derivatives startup LedgerX for its application to register as a SEF. This is the first time the CFTC has approved a SEF application for an organization seeking to use [forward option contracts](#) to hedge exposure to bitcoin.

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