

Part 3: CFTC Finalizes Guidance on Digital Assets in the Context of Retail Commodity Transactions

This is the third and final part of our update series on the CFTC's recent Guidance related to the "actual delivery" of a digital asset for purposes of the retail commodity transaction provisions of the Commodity Exchange Act. We conclude this series with an overview of the Guidance.

The Scope of the Interpretation—Applicable to Virtual Currencies, But Not All Digital Assets

As a threshold matter, the interpretation applies to the actual delivery of a "virtual currency," which is defined for these purposes as a "digital asset that encompasses any digital representation of value or unit of account that is or can be used as a form of currency (i.e., transferred from one party to another as a medium of exchange); may be manifested through units, tokens, or coins, among other things; and may be distributed by way of digital 'smart contracts,' among other structures." [1] The Commission specifically noted that the term "virtual currency" for purposes of the interpretation was synonymous with "digital currency" and cryptocurrency, and more generally any digital asset that satisfies these conditions. [2]

Further, the Commission clarified the scope of the application of the interpretation by stating, "In regards to other digital assets that are commodities, but do not serve as a medium of exchange or otherwise fall within the scope of this [Guidance] at the time of the transaction, the Commission would continue to refer to the 2013 Guidance to determine whether actual delivery has occurred." [3] Unfortunately, the Commission did not further clarify or provide concrete examples of digital assets that would fall within this category.

Appendix: Interpretation, Commission Guidance, and Additional Analysis and Considerations

[Review our Appendix](#) which contains the actual text of the Commission's interpretation of the term "actual delivery" with a "side-by-side" view of: (1) the Commission's commentary in respect of select elements of this interpretation; and (2) additional analysis and considerations in respect of the Guidance.

Read the entire series covering the regulation of retail commodity transactions and the CFTC's final interpretive guidance:

[Part 1: Commentary on the Significance of the Guidance for the Industry](#)

[Part 2: CFTC Finalizes Guidance on Digital Assets in the Context of Retail Commodity Transactions](#)

Endnotes

[1] Guidance at p. 27.

[2] Guidance, footnote 148 at p. 27.

[3] Guidance at p. 11, footnotes omitted.

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