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# The U.S. Commodity Futures Trading Commission's Approach to Virtual Currencies

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**CFTC**

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*CFTC DISCLAIMER: This presentation is being made by a representative of the U.S. Commodity Futures Trading Commission on behalf of the Commission for educational and informational purposes only. It does not constitute legal interpretation, guidance or advice of the Commission. Any opinions or views stated by the presenter are his/her own and may not represent the Commission's views.*



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# OVERVIEW OF U.S. REGULATION OF VIRTUAL CURRENCIES



# Virtual Currency Background

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Virtual currencies emerged as a new financial technology innovation in 2008.

- Definitions vary, but the U.S. Commodity Futures Trading Commission views virtual currencies as digital representations of value that function as a medium of exchange, a unit of account, and/or a store of value.
- Virtual assets are often referred to as coins, currency, or tokens. For the purposes of this presentation, I am using the term “virtual currency” as a general term for all virtual assets.



# U.S. Regulation of Virtual Currencies

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## Two primary regulators of the U.S. securities and derivatives markets

- U.S. Securities and Exchange Commission (SEC)
  - Broadly speaking: regulation and supervision of capital formation markets.
- U.S. Commodity Futures Trading Commission (CFTC)
  - Broadly speaking: regulation and supervision of derivatives markets.
  - Governing legislation: Commodity Exchange Act (CEA).
    - Commodities and futures fall under our jurisdiction.
    - Definition of “commodity” is broad.
      - Includes “all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in.”
    - In 2014 the CFTC determined that virtual currencies are commodities.



# Risks of Virtual Currencies

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While virtual currencies have potential benefits, this emerging space also involves various risks, including:

## **Operational Risks**

- Many virtual currency platforms are unregulated.
- Some may be missing critical safeguards.
- Customer funds at risk.

## **Cybersecurity Risks**

- Some wallets may be vulnerable to hacks, resulting in the theft of virtual currency or loss of customer assets.

## **Speculative Risks**

- Virtual currency markets have been subject to volatility and price swings at times.

## **Fraud and Manipulation Risks**

- Unregistered virtual currency platforms may not be able to adequately protect against market abuses.
  - There is also a risk of Ponzi schemers and fraudsters seeking to capitalize on the current attention focused on virtual currencies.
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## Technology and innovation are profoundly impacting financial markets

- As a general matter, the CFTC promotes responsible innovation to foster open, transparent, and financially sound markets.
- Principled, flexible, and thoughtful regulatory approaches are necessary.
- Must be proactive in identifying emerging opportunity and risk.



## Continued: Guiding Principals in CFTC's Approach to Virtual Currencies

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- Vast potential in distributed ledger technology (DLT).
  - Not a current global financial stability risk.
  - Most virtual currencies have elements of many different asset classes.
    - The name “coin,” “token,” or “currency” is not determinative for regulatory purposes in U.S.
    - Facts and circumstances matter.
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# **The CFTC'S Regulatory Approach to Virtual Currency**



# CFTC's Approach: Exercise of Authority

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## Exercise of Authority

- Asserting legal authority over virtual currencies.
  - Declared virtual currencies to be commodities in 2014.
- The CFTC has full regulatory oversight over commodity futures contracts (Bitcoin futures contracts).
- The CFTC only has fraud and manipulation authority over the virtual currency itself.



# CFTC's Approach: Enforcement

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## Strong Enforcement

- The CFTC is dedicated to enforcing its jurisdiction in the virtual currency space.
- The CFTC first began filing virtual currency enforcement actions in 2016.
- Recent examples of enforcement actions include the McDonnell, My Big Coin, Coin Drop Markets, The Enterprise Headquarters, Ltd. cases. Details are available on the CFTC website ([www.cftc.gov](http://www.cftc.gov))



# CFTC's Approach: Market Intelligence

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## Market Intelligence

- Gaining the ability to monitor markets for virtual currency through the gathering of trade data.
- Helps gain insight into the product and pursue enforcement actions where appropriate.



# CFTC's Approach: Global and Domestic Cooperation

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## Global and Domestic Cooperation

- The CFTC coordinates its approach to virtual currencies with other Federal regulators.
  - Primarily the SEC, but also Treasury, Federal Bureau of Investigation (FBI), Justice Department, and Financial Stability Oversight Counsel as well.
- The CFTC also coordinates with state entities, including state Attorney Generals.
  - This includes state banking regulators who oversee virtual currency through state money transfer laws.
- The CFTC coordinates with international regulators.



## Self-Certification of Virtual Currency Products

- In December 2017, Chicago Mercantile Exchange Inc. (CME) and the CBOE Futures Exchange (CBOE) self-certified new contracts for bitcoin futures products.
- This self-certification process is one that the U.S. Congress promulgated. It is not new.
- It is important to note that the product self-certification process does NOT provide for public input or value judgments about the underlying spot market.



## Heightened Review

CFTC staff worked collaboratively with CME and CBOE, and engaged in a “heightened review” of the Bitcoin futures.

At the heart of the heightened review was extensive visibility and monitoring of virtual currency futures and underlying markets.



# Self-Certification of Virtual Currency Products and Heightened Review

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## Heightened review includes the following:

- Derivatives clearing organizations (DCOs) set substantially higher initial and maintenance margins for cash-settled Bitcoin futures;
- Designated Contract Markets (DCMs) set large trader reporting thresholds;
- DCMs enter into direct or indirect information sharing agreements with spot market platforms to allow access to trade and trader data;
- DCMs monitor data from cash markets;
- DCMs agree to engage in inquiries, including at the trade settlement level;
- DCMs agree to regular coordination with CFTC surveillance staff on trade activities, including providing trade settlement data upon request; and
- DCMs coordinate product launches so that the CFTC's market surveillance branch can carefully monitor minute-by-minute developments.



# **CFTC VIRTUAL CURRENCY EDUCATION AND OUTREACH**



# Outreach Challenges

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## Outreach To the Younger Generation

- Many non-virtual currency frauds target pre-retirees, retirees, or the wealthy. Virtual currency frauds often target a younger demographic.
- Challenge: How do we reach the younger generation? Millennials are the generation least likely to seek guidance with their investments.
  - Many Millennials report they find investing in virtual currency *less* intimidating than the stock market or other traditional investments.\*
  - Only one in three Millennials is currently investing in the stock market, compared with 51% of the generation between their mid-30s and early 50s, and 48% of baby boomers.

## Retail Investors

- CFTC markets feature primarily institutional investors, and meeting the needs of new retail market participants has become important.

\*see generally: *MarketWatch*, "Millennials are afraid stocks are too risky, so they're investing in bitcoin." February 12, 2018  
<https://www.marketwatch.com/story/millennials-are-afraid-stocks-are-too-risky-so-theyre-investing-in-bitcoin-2018-02-06>

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# CFTC's Outreach and Engagement Strategy

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In response to the challenges, the CFTC launched a multi-prong outreach and engagement strategy:

- Digital engagement
- Earned media
- Print materials
- In-person engagement
- Strategic partnerships



# Digital Engagement

CFTC launched CFTC.gov/bitcoin

- The most frequently visited page on our website.
- Because of the simple web address, 50% of all traffic that has come to our site has been generated through direct entry of the web address – not click-throughs from other sources.

The screenshot shows the CFTC website header with the logo, navigation menu, and search bar. Below the navigation menu, there are two columns of content. The left column is titled 'Learn & Protect' and contains links for 'Bitcoin', 'Submit a Tip', 'Avoid Fraud', 'Ask CFTC', and 'Learning Resources'. The right column is titled 'Bitcoin' and contains a paragraph of text about FinTech innovation and a link for 'Bitcoin Basics'.

**U.S. COMMODITY FUTURES TRADING COMMISSION**  
Ensuring the Integrity of the Futures & Swaps Markets

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**Learn & Protect**

- Bitcoin
- Submit a Tip
- Avoid Fraud
- Ask CFTC
- Learning Resources

**Bitcoin**

Today, FinTech is driving innovation in financial markets across the globe. New technologies are wide-ranging in scope, from cloud computing and algorithmic trading to distributed ledgers to artificial intelligence and machine learning to network cartography, and many others. These technologies have the potential for significant or even transformational impact on CFTC regulated markets and the agency itself. One of the most recent marketplace developments driving a lot of interest is the rise in prominence of virtual currencies, specifically bitcoin. Below are resources for market participants and customers on virtual currency and the CFTC's role in oversight of this emerging innovation.

[Bitcoin Basics](#)



# Digital Engagement

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## Resources on [CFTC.gov/bitcoin](https://www.cftc.gov/bitcoin) include:

- Customer Advisories - warn investors of the risks of virtual currencies.
- “CFTC Talks” podcasts on Virtual Currencies at [CFTC.gov/Media/Podcasts](https://www.cftc.gov/Media/Podcasts).
- Fact Sheet on the CFTC’s role in regulating virtual currencies.
- “Bitcoin Basics,” a downloadable brochure that provides basic information about Bitcoin.
- “An Introduction to Virtual Currency,” a downloadable pamphlet that is a more general guide to virtual currencies.



# Digital Engagement

## CASE STUDY: PUMP-AND-DUMP CUSTOMER ADVISORY

- Average number of fraud tips reported to the CFTC's Whistleblower Office is 1-2 per week.
- Within **three days** of the release of the Pump-and-Dump Customer Advisory, the Whistleblower Office received **200 tips** about potential fraud.
- Most dramatic spike following the release of a customer advisory the CFTC's Whistleblower Office has ever had.



### Customer Advisory: Beware Virtual Currency Pump-and-Dump Schemes

The U.S. Commodity Futures Trading Commission (CFTC) is advising customers to avoid pump-and-dump schemes that can occur in thinly traded or new "alternative" virtual currencies and digital coins or tokens. Customers should not purchase virtual currencies, digital coins, or tokens based on social media tips or sudden price spikes. Thoroughly research virtual currencies, digital coins, tokens, and the companies or entities behind them in order to separate hype from facts.

Pump-and-dump schemes have been around long before virtual currencies and digital tokens. Historically, they were the domain of "boiler room"

**Blow the whistle on pump-and-dump schemers**

Virtual currency and digital token pump-



# Digital Engagement

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## CASE STUDY: TWITTER

- On February 6, 2018, CFTC Chairman Giancarlo testified about virtual currency before the U.S. Senate Committee on Banking.
- The hearing was broadcast on the Cable-Satellite Public Affairs Network (C-SPAN).
  - Congressional committee hearings on C-SPAN rarely capture the interest of the general public.
- What followed was unexpected to say the least...



# Digital Engagement

FINANCE MAGNATES

NEWS INTELLIGENCE EVENTS DIRECTORY

## Giancarlo 2020? Crypto World Has a New Hero – the Head of the CFTC



FlipHodl @FLIP\_HODL  
This guys is too good to be @giancarloCFTC #Bitcoin #ETH Thanks to his niece. The description pretty good too! :)



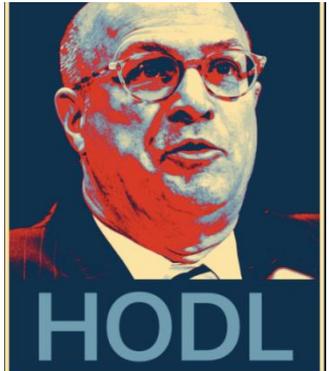
praises the regulator after a rtrtve speech - all coins...

Coin Center @coincenter  
CFTC Chairman Giancarlo: "We owe it this new generation to spect their enthusiasm about virtual currencies with a thoughtful and balanced response, not a dismissive one."  
Feb 6, 2018

Crypto Fanboys Celebrate Surprising New Hero: A Washington Regulator

Replying to @DesiCryptoHodlr  
He is going down as the GOAT! #GreatestOfAllTime #GiancarloForPresident @giancarloCFTC

Le Mouton Noir @MoutonNoir67  
Chairman Giancarlo @giancarloCFTC , you have won the hearts and minds of crypto twitter.  
Please be gentle.  
11:05 AM - Feb 6, 2018  
63 See Le Mouton Noir's other Tweets



## CFTC Chairmen Chris Giancarlo Is A Top Dad & He Loves Bitcoin

On The Advice Of His Teenage Children, Giancarlo Pitches Crypto





# Digital Engagement

## CASE STUDY: TWITTER

- Chairman Giancarlo's twitter followers grew from 3,000 followers to almost 50,000 followers in a few days.
- As a result, the Chairman has sought to capitalize on this interest from the virtual currency community to promote the CFTC's virtual currency education materials.



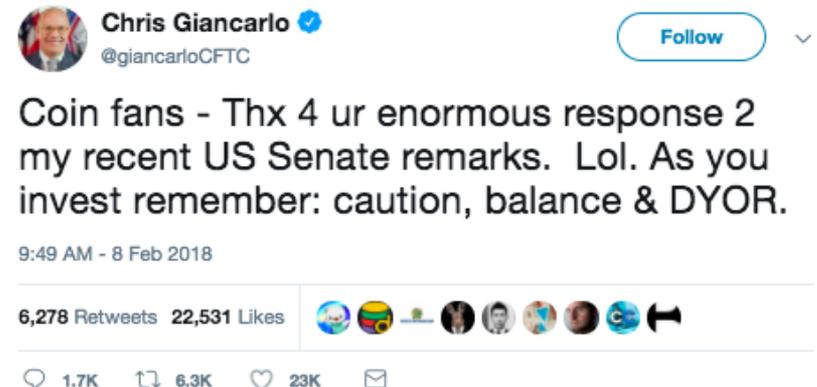
Chris Giancarlo   
@giancarloCFTC 

Is [#crypto](#) [#FOMO](#) your [#FridayFeeling?](#)  
[#DYOR](#) at [cftc.gov/Bitcoin/index....](https://cftc.gov/Bitcoin/index....)  
[#CryptoDad](#)

11:08 AM - 2 Mar 2018

876 Retweets 3,090 Likes 

 199  876  3.1K 



Chris Giancarlo   
@giancarloCFTC 

Coin fans - Thx 4 ur enormous response 2  
my recent US Senate remarks. Lol. As you  
invest remember: caution, balance & DYOR.

9:49 AM - 8 Feb 2018

6,278 Retweets 22,531 Likes 

 1.7K  6.3K  23K 



# Earned Media

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The CFTC proactively promotes customer education, enforcement, and policy efforts to print, TV, radio and digital media outlets.

- Amplifies efforts and reaches new audiences.
- Even the media outlets that don't typically cover the CFTC's efforts are interested in covering anything related to virtual currency.



**My Big Coin Ends Up Being My Big Con as CFTC Files Fraud Charges Against Randall Crater, Mark Gillespie and Ongoing ICO**



JANUARY 19, 2018 / 10:45 PM / 3 MONTHS AGO

**U.S. CFTC sues three virtual currency operators for fraud**  
**FORTUNE**

THE LEDGER • BITCOIN

**Cryptocurrencies Like Bitcoin Are Commodities, Federal Judge Says. Here's Why That Matters**

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# CASE STUDY: PROMOTING ENFORCEMENT ACTIONS

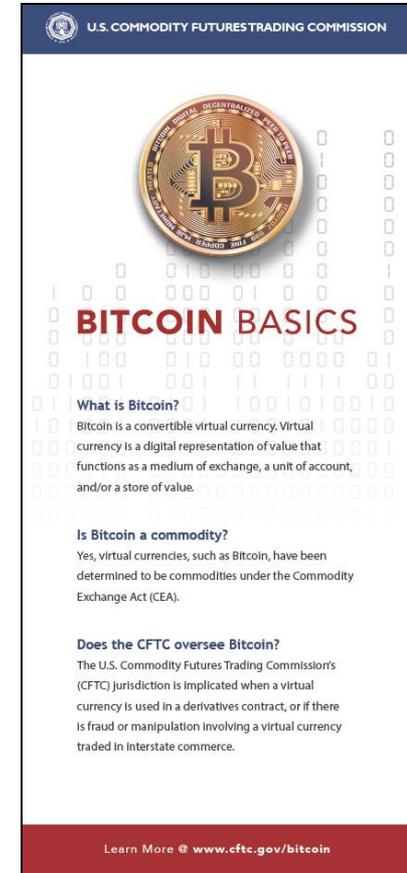
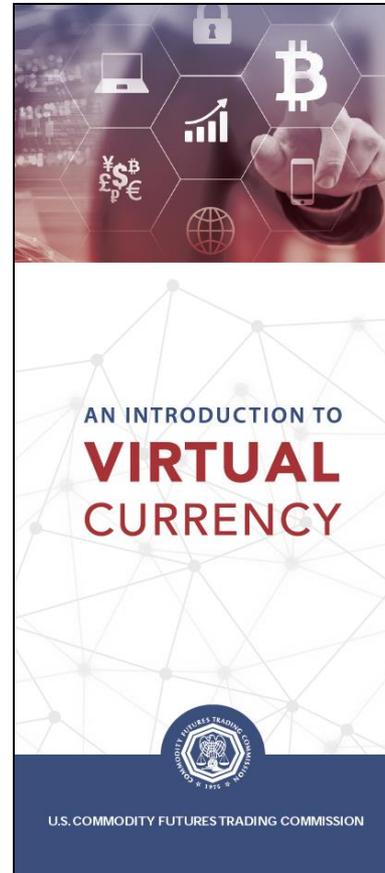
- Enforcement actions can be an important tool in educating the public about virtual currency related Ponzi schemes and other scams.
- Publishing these enforcement actions is important, whether through the media or press releases.



# Print Materials

The CFTC produces printed materials (available at <https://orders.gpo.gov/cftcpubs.aspx>) to reach those investors less likely to engage with digital materials.

- The CFTC provides these materials directly at events, as well as to partners, in order to expand agency distribution channels.





# In-Person Engagement

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The CFTC Commissioners and staff make a concerted effort to engage companies, investors, and potential investors on virtual currency outside of the office. These efforts include the following three means of engagement:

- LabCFTC, the agency's FinTech initiative launched in May 2017
- Engagement and outreach on college campuses
- Presentations to retail investors and industry professionals



# In-Person Engagement

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## LabCFTC has three components:

### (1) GuidePoint: Engaging with Innovators

#### Objectives:

- To learn about technology-based market developments;
- assess how innovations square with existing rules and regulations or may inform policy;
- and identify future regulatory opportunities, challenges, and risks to enable proactive regulatory planning.
- Recent Example(s): LabCFTC Primer on Virtual Currencies;  
nationwide office hours



# In-Person Engagement

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## (2) CFTC 2.0: Facilitating, Testing, and Incorporating Emerging Technologies

### Objectives:

- To identify, test, and foster FinTech/RegTech that can help make the CFTC and its markets more efficient and effective;
- coordinate with internal stakeholders to help inform agency technology strategy;
- Recent Example(s): Science Prize Competition Act (SPCA) RFI and Enforcement Surveillance Tool.



# In-Person Engagement

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## **(3) DigitalReg: Help Build a 21st Century Regulator (Educate & Collaborate)**

### Objectives:

- Foster regulatory approaches that facilitate market-enhancing innovation;
- Collaborate with key stakeholders, including U.S. and International regulatory bodies and leading research universities, in order to share best practices.
- Recent Example(s): CFTC-FCA Cooperation Arrangement on Financial Technology Innovation and Internal Educational FinTech Repository



# In-Person Engagement

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## College Outreach.

- Reaching the younger generation is very important.
  - The CFTC recently partnered with Kansas State University to host a conference about the challenges frauds pose in our markets.
  - Chairman Giancarlo recently lectured at Concordia College in New York and at Vanderbilt Law School in Tennessee. He addressed virtual currency in both speeches.
  - In January 2018, the CFTC's Chief Innovation Officer and Director of LabCFTC, Daniel Gorfine, spoke at Stanford University's Advanced Financial Technologies Laboratory, reaching out to the next generation of innovators and investors.
  - The CFTC will continue its college campus tour in fall 2018.
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# In-Person Engagement

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**Commissioners and Staff regularly present to retail investors and industry professionals.**

- **Singapore FinTech Festival** (*November 2017*)
- **Consumer Tech Association's CES Digital Money Forum** (*Jan 2018*)
- **The MoneyShow's TradersEXPO in New York** (*Feb 2018*)



# Strategic Partnerships

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The CFTC maintains strategic partnerships to maximize resources and reach broader and more diverse audiences. Examples of partnerships include:

## **U.S. Congress.**

- one-on-one meetings with Members of Congress;
- testifying in congressional hearings;
- providing educational materials to Members' offices for use in educating their constituents.



# Strategic Partnerships

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## Other U.S. Regulatory Agencies.

- We regularly work with the SEC, CFPB, FINRA and other agencies on outreach initiatives and to share educational materials.
  - The CFPB has included CFTC staff at many of the events they do across the country as part of their library outreach program.
  - The Chairmen of the CFTC and SEC wrote a joint op-ed in the *Wall Street Journal* in January 2018 on virtual currency.



# Strategic Partnerships

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## International Regulators.

- The CFTC collaborates regularly with international partners on virtual currency issues.
- For example in February 2018, the CFTC announced a cooperation agreement with the UK's Financial Conduct Authority.



# KEY TAKEAWAYS



# Key Takeaways

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- **Ignoring virtual currency trading will not make it go away.** Regulators can no longer afford to ignore it.
- **Principled, flexible regulatory approach is crucial.** It is impossible to guess what the next innovation will be.
- **Regulators and organizations can lead with education.** It could take months or years to get regulations, laws and rules written, but regulators and organizations can start educating now.
- **Capitalize on virtual currency interest to drive interest in education.** Whether it's reporters or investors, the appetite for information on virtual currency seems insatiable, so feed it with education.



# Key Takeaways

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- **Don't be afraid to engage on social media.** Victims are online, the scammers are online and regulators and investor protection organizations need to be engaging there too.
- **Don't be intimidated by the technology.** Fraudsters are using the same old tricks and schemes, but using virtual currencies as the hook. Many victims don't fully understand the technology, so focus on educating them on how to spot and avoid fraud.



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# Questions?