Bitcoin Futures Expected to Begin Trading on Two Major U.S. Exchanges this Month

December 05, 2017

Amid a surging price for bitcoin, the CBOE Futures Exchange ("CBOE") has announced that it will list bitcoin futures for trading starting on Sunday, December 10, 2017, making it the first regulated U.S. exchange to support the trading of bitcoin futures (or any other cryptocurrency-derived futures product). According to CBOE, the bitcoin futures will trade under the ticker symbol 'XBT' and will be cash-settled contracts based on Gemini Trust Company, LLC's U.S. dollar auction price for bitcoin. The Chicago Mercantile Exchange ("CME") will also be listing bitcoin futures for trading, beginning on Monday, December 18, 2017. The CME's bitcoin futures will also be cash-settled, based on the CME CF Bitcoin Reference Rate ("BRR"), which serves as a once-a-day reference rate of the U.S. dollar price of bitcoin and relies on the global average price of bitcoin based on four cryptocurrency exchanges.

These developments are seen by many as "legitimizing" bitcoin — moving it from a virtually unregulated environment to a regulated one, and bringing more oversight and safeguards to the developing digital currency market.

Measures Undertaken by the U.S. Regulator

The December launch of bitcoin futures trading on CBOE and CME follows the announcement by the U.S. Commodity Futures Trading Commission ("CFTC") on December 1, 2017 that CBOE and CME self-certified the bitcoin futures contracts under the *Commodity Exchange Act*("CEA"). The CFTC also announced that the Cantor Exchange ("Cantor") self-certified a new contract for bitcoin binary options.

Under the CEA, prior to listing new contracts, designated contract markets ("DCMs") must either:

- submit a written self-certification to the CFTC that the contract complies with the CEA and CFTC regulations, or
- voluntarily submit the contract for CFTC approval.

When a DCM self-certifies a new contract, it must determine that the offering complies with the CEA and the CFTC's regulations, including that the new contract is not readily

susceptible to manipulation. This is the same standard that the CFTC uses when reviewing products for approval.

According to the CFTC, prior to the self-certifications, CFTC staff engaged in many discussions with CBOE, CME and Cantor, as well as the derivatives clearing organizations ("DCOs") that will be clearing the bitcoin futures for CBOE and CME. Each DCM also provided CFTC staff with advanced draft contract terms and conditions for their bitcoin contracts, which CFTC staff evaluated to determine whether any aspect of the contracts raised questions regarding compliance with the CEA and CFTC's regulations. CFTC staff also assessed potential risk of defaults in these futures contracts on the DCOs.

Further Developments on the Horizon

Not to be left behind, there are plans for an as-yet-unnamed exchange, currently going by the code name Virtuoso, to offer trading of contracts based on the ether digital currency. According to reports, Virtuoso will be overseen by the CFTC and aimed at institutional investors and corporations that have exposure to ether's price swings. Virtuoso plans to offer futures, non-deliverable forwards, swaps and forwards on ether, and may be operational as early as the first quarter of 2018.

It is also expected that Nasdaq will launch bitcoin futures for trading in 2018. According to media reports, Nasdaq may introduce the products as early as the second quarter of 2018, with the contracts trading on its NFX market.

Impact on Canadian Investment Funds and Other Investors

Over the last few months we have seen a number of players in the cryptocurrency asset class entering the investment fund space. Currently, these cryptocurrency funds are only available to accredited investors and may not be held by Canadian mutual funds. Canadian regulators do not appear ready to allow cryptocurrency funds to be available to retail investors until certain issues, such as custody, valuation and anti-money laundering, have been adequately addressed.

With the launch of bitcoin futures and other derivatives based on cryptocurrencies, Canadian mutual funds and other regulated investment funds will now have full access to this digital currency asset class, subject, of course, to the rules and investment restrictions that govern these types of funds. Similarly, other investors may now have an easier way to access the performance of bitcoin and other digital currencies.

We expect that listed futures are just the beginning. Over the next few months, it is likely that we will see the launch of a number of other investment products based on, and trading platforms for, cryptocurrencies, as investors in Canada and globally try to benefit from this new asset class.

Registration Requirements for Securities Registrants — Dealers, Advisers and Investment Fund Managers

For registered firms that plan to establish, manage, advise and/or trade in securities of investment funds with portfolios of bitcoin and/or other cryptocurrencies, cryptocurrency assets and coins and token offerings, we remind you of the requirement to report such

changes to your business activities to your principal regulators by completing and filing *Form 33-109F5 Change of Registration Information* and updating information previously reported in *Form 33-109F6 Firm Registration* to include cryptocurrency products and/or services.

For IIROC-regulated firms, we would note that any new venture in the digital asset space is also likely to trigger a Change in Business Model submission with IIROC.

Please contact us if you need assistance with this disclosure and developing policies and procedures to minimize regulatory risk.

Contact Us

If you have any questions about digital currencies or derivatives on digital currencies and whether you may trade in such instruments, please contact one of the authors of this alert or any member of the BLG Derivatives Group.

About BLG's Derivatives Group

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