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# Cryptocurrencies, ICOs, and the CFTC

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**CFTC**

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## **Key Takeaways**

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# **OVERVIEW OF US REGULATION OF VIRTUAL CURRENCIES**



# U.S. Regulation of Virtual Currencies

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- In the United States, two federal agencies, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), share the primary responsibility for the regulation and supervision of the U.S. securities and derivatives markets.
    - Broadly speaking, the SEC is in charge of the regulation and supervision of capital formation markets, and the CFTC is responsible for the regulation and supervision of risk transfer markets.
  - The definition of “commodity” in the Commodity Exchange Act (CEA), the CFTC’s governing legislation, is broad.
    - It can mean a physical commodity, such as an agricultural product (e.g., wheat, cotton) or natural resource (e.g., gold, oil).
    - It can mean a currency or interest rate.
    - The CEA definition of “commodity” also includes “all services, rights, and interests . . . in which contracts for future delivery are presently or in the future dealt in.”
  - The CFTC first declared that Bitcoin and other virtual currencies are properly defined as commodities in 2014.
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# ICOs, Virtual Tokens, and CFTC Oversight

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*“Recently, two of the largest CFTC-regulated exchanges listed bitcoin futures products. Although the exchanges are permitted to “self-certify” and commence trading futures products without CFTC approval, for bitcoin futures they spent significant time engaging with CFTC staff and agreed to implement risk-mitigation and oversight measures, including heightened margin requirements and a requirement that the exchanges have information-sharing agreements in place with underlying bitcoin trading platforms. As a result, the CFTC gained oversight over the U.S. bitcoin futures market and access to data that can facilitate the detection and pursuit of bad actors in underlying spot markets.*

*“The SEC does not have direct oversight of transactions in currencies or commodities. Yet some products that are labeled cryptocurrencies have characteristics that make them securities. The offer, sale and trading of such products must be carried out in compliance with securities law. The SEC will vigorously pursue those who seek to evade the registration, disclosure and antifraud requirements of our securities laws. In addition, the SEC is monitoring the cryptocurrency-related activities of the market participants it regulates, including broker-dealers, investment advisers and trading platforms.”*

*- SEC Chairman Jay Clayton and CFTC Chairman Chris Giancarlo, in a joint op-ed in The Wall Street Journal, "Regulators Are Looking at Cryptocurrency"*

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# 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 not subject to the supervision which applies to regulated exchanges. As a result, some virtual currency platforms may be missing critical system safeguards and customer protection related systems; without adequate safeguards, customers may lose some or all of their virtual assets.

## **Cybersecurity Risks**

- Depending on the structure and security of the digital wallet, some may be vulnerable to hacks, resulting in the theft of virtual currency or loss of customer assets.

## **Speculative Risks**

- The virtual currency marketplace has been subject to substantial volatility and price swings.

## **Fraud and Manipulation Risks**

- Unregistered virtual currency platforms may not be able to adequately protect against market abuses by other traders.
  - 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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# **CFTC VIRTUAL CURRENCY EDUCATION AND OUTREACH**



# Outreach Challenges

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Unlike other investment frauds that target pre-retirees, retirees, or High Net Worth individuals, cryptocurrency is very appealing to a younger demographic who are open to taking on risk.

- This poses a challenge for the CFTC on how to reach those who may be targeted, as Millennials are the generation least likely to seek guidance with their investments.
- Only one in three Millennials is currently investing in the stock market, compared with 51% of people of the prior generation, Generation X, now aged between their mid-30s and early 50s, and 48% of baby boomers.
- Despite the unpredictable nature of cryptocurrencies, many Millennials report they find investing in them less intimidating than putting money in the stock market or other traditional investments.\*

Additionally, it is important to note that the CFTC's markets feature almost exclusively institutional investors, so adapting to the needs of a retail-focused market presented additional challenges for the agency. The CFTC uses the word "customer" to mean both institutional and retail investors.

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# CFTC's Outreach and Engagement Strategy

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Given the outreach challenges, the nature of the asset class, and the demographic in question, the CFTC has 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 – a centralized web page for all virtual currency resources.

- It is the most frequently visited page on our website since its launch.
- Due to its 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 and tagline "U.S. COMMODITY FUTURES TRADING COMMISSION - Ensuring the Integrity of the Futures & Swaps Markets". Navigation links include "Transparency", "International", and "Cont...". A search bar is present. A blue navigation bar contains: "Industry Oversight", "Law & Regulation", "Market Data & Analysis", "Forms & Submissions", "Learn & Protect", "About the CFTC", and "News, Events & Podcasts".

**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 to warn investors about the risks of virtual currency trading, “IRS- approved” virtual currency IRAs and virtual currency pump-and-dump schemes.
- “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, such as what Bitcoin is, the CFTC’s jurisdiction, and how virtual currencies can be a target for fraud and for hackers.
- “An Introduction to Virtual Currency,” a downloadable pamphlet that is a quick guide to virtual currencies. It covers how virtual currencies can be purchased, why they are considered commodities, and what types of fraud can be found in the market.



# Digital Engagement

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

- The average number of fraud tips reported from consumers to the CFTC's Whistleblower Office is 1-2 per week.
- In the **three days** following the release of the Pump-and-Dump Customer Advisory, the Whistleblower Office received **200 tips** about potential fraud.
- The CFTC's Whistleblower Office has never had such a dramatic spike as a result of the release of a customer advisory, and it goes to show how interested and engaged people are on all things crypto.



### 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

- CFTC Chairman Giancarlo testified to the U.S. Senate Committee on Banking on February 6, 2018. The hearing was broadcast on the Cable-Satellite Public Affairs Network (C-SPAN), an American cable and satellite television network that was created in 1979 by the cable television industry as a public service.
- C-SPAN is not known for exciting content, and congressional committee hearings rarely capture the interest of the general public.
- As a result, what followed was a bit unexpected...



# Digital Engagement

FINANCE MAGNATES

NEWS

INTELLIGENCE

EVENTS

DIRECTORY

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

praises the regulator after a  
ortive 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



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

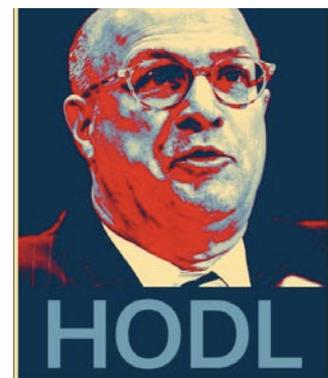


Le Mouton Noir @MoutonNoir67  
Chairman Giancarlo @giancarloCFTC , you have won the  
hearts and minds of crypto twitter.  
Please be gentle.  
11:05 AM - Feb 6, 2018  
63 See Le Mouton Noir's other Tweets



Crypto Fanboys Celebrate  
Surprising New Hero: A Washington  
Regulator

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



## 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 number of days.
- As a result, the Chairman has sought to capitalize on this interest from the crypto community to promote the CFTC's virtual currency education materials.



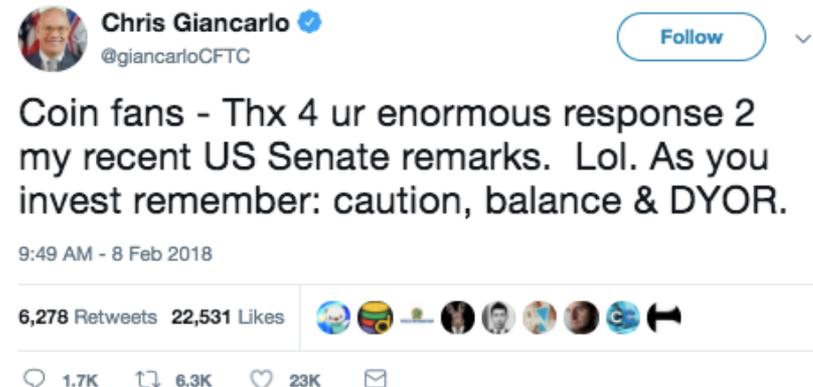
Chris Giancarlo   
@giancarloCFTC 

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 in order to amplify efforts and reach audiences who might not typically engage with the agency's communications channels.

- Even the media outlets that don't typically cover the CFTC's customer education materials or small-dollar enforcement cases are interested in covering anything related to cryptocurrency.



**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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# Earned Media

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## CASE STUDY: PROMOTING ENFORCEMENT ACTIONS

Increased public interest in virtual currencies has provided new opportunities for bad actors, however, as the sample cases filed in January 2018 demonstrate, fraudsters are using the same old tricks. Promoting these cases helps raise public awareness, and sends a message to fraudsters that the CFTC is serious about taking action.

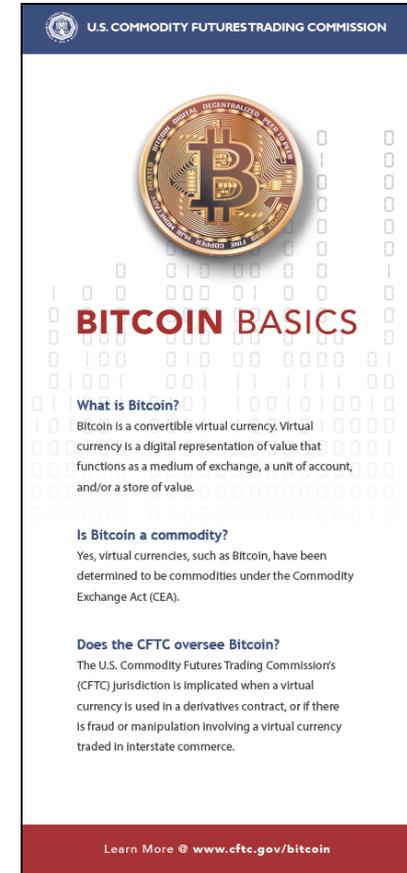
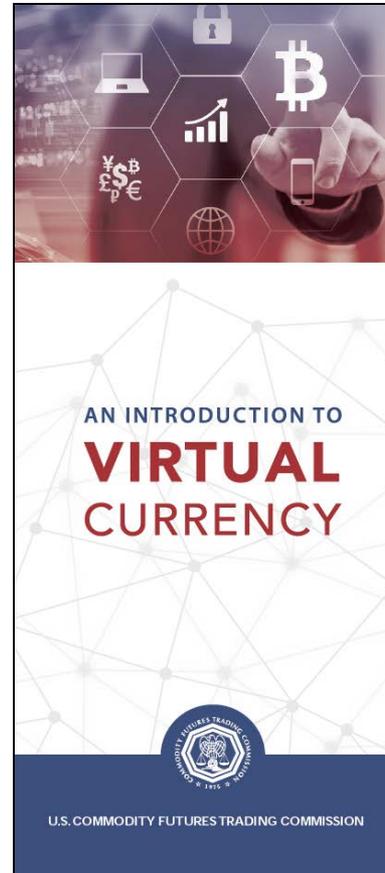
- **My Big Coin.** Charges: fraud and misappropriation related to the ongoing solicitation of customers for a virtual currency known as My Big Coin, including transferring customer funds into personal bank accounts, and using those funds for personal expenses and the purchase of luxury goods.
- **Coin Drop Markets.** Charges: deceptive and fraudulent virtual currency scheme to induce customers to send money and virtual currencies in exchange for real-time virtual currency trading advice and for virtual currency purchasing and trading. CDM used fraudulent solicitations to obtain and then misappropriate customer funds.
- **The Entrepreneurs Headquarters, Ltd.** Charges: fraudulent scheme to solicit Bitcoin, misrepresenting that customers' funds would be pooled and invested, making Ponzi-style payments to commodity pool participants from other participants' funds.



# Print Materials

The CFTC has produced printed materials (also available for download or free order at <https://orders.gpo.gov/cftcpubs.aspx>) for use in outreach efforts to those investors that are 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 get outside of the agency's physical geography to engage companies, investors, and potential investors on virtual currency. These efforts include:

- 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 work streams:

## **GuidePoint: Engaging with Innovators**

- **Objective:** 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

## **CFTC 2.0: Facilitating, Testing, and Incorporating Emerging Technologies**

- **Objective:** 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

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

- **Objective:** To foster regulatory approaches that facilitate market-enhancing innovation; collaborate with key stakeholders, including US 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.** Commissioners and staff regularly participate in events at universities in order to reach younger audiences.

- Last week, the CFTC partnered with Kansas State University to host a conference about the challenges fraud poses in the agricultural markets, titled “Protecting America's Agricultural Markets: An Agricultural Commodity Futures Conference.” Virtual currency’s impact on the agriculture industry was among the topics discussed.
- Last night, Chairman Giancarlo gave a lecture at Concordia College in New York, and on Friday, Chairman Giancarlo will be speaking at Vanderbilt Law School in Nashville, Tennessee. He addresses virtual currency in both speeches.
- Tomorrow, Commissioner Rostin Behnam will speak at George Mason University's Mercatus Center in Washington, DC on the implications of cryptocurrencies for policymakers and regulators.
- In January 2018, the CFTC's Chief Innovation Officer and Director of LabCFTC, Daniel Gorfine, spoke at Stanford University’s Advanced Financial Technologies Laboratory, and in late April, he’ll be speaking at the Massachusetts Institute of Technology, specifically conducting outreach to the next generation of innovators, as well as investors.
- The CFTC will also be shortly unveiling dates for a Fall 2018 College Campus Tour.



# In-Person Engagement

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## **Presentations to retail investors and industry professionals.**

Commissioners and staff regularly participate in events attended by retail investors and industry professionals to promote education materials and anti-fraud messages to those that might not seek out these materials. Examples of these events include:

### **Singapore FinTech Festival** *(November 2017)*

- Chairman Giancarlo spoke about fostering market-enhancing innovations while also ensuring market integrity and customer protection to a conference that draws 13,000 participants from across 60 countries.

### **Consumer Tech Association's CES Digital Money Forum** *(Jan 2018)*

- CFTC Enforcement staff presented on CFTC's regulatory role, areas of concern for customers and how to best avoid fraud to an audience of 1000, featuring retail investors and industry professionals.

### **The MoneyShow's TradersEXPO in New York** *(Feb 2018)*

- CFTC Enforcement staff presented on trading cryptocurrencies to an audience of 200 retail investors and industry professionals.



# Strategic Partnerships

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

- **U.S. Congress.** In addition to meeting one-on-one with Members of Congress and providing testimony in congressional hearings, the CFTC provides educational materials to Members' offices for use in educating their constituents about topics like virtual currencies.
- **Other U.S. Regulatory Agencies.** The CFTC regularly works with the SEC, CFPB, FINRA and other agencies on outreach initiatives and to share educational materials. As an example, 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.
- **International Regulators.** The CFTC collaborates regularly with international partners. In February 2018, the CFTC announced a cooperation agreement with the UK's Financial Conduct Authority.



# Virtual Currency: Strategic Partnerships

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

- **State and Local Government.** The CFTC partnered with the National Attorneys General Training and Research Institute (NAGTRI), the research and training arm of the National Association of Attorneys General (NAAG), to provide training and inform State Attorneys General about the availability of CFTC's virtual currency resources.
- **Associations and Organizations.** The CFTC partnered with the American Association of Retired Persons, a US-based non-profit with a membership of over 37 million people, to promote CFTC resources and content.



# KEY TAKEAWAYS



# Key Takeaways

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- **Ignoring virtual currency trading will not make it go away.** The CFTC believes the responsible regulatory response to virtual currencies is consumer education, asserting regulatory authority, prosecuting fraud, abuse, manipulation and false solicitation, and active coordination with fellow regulators.
- **Regulators and organizations can lead with education.** It could take months or years to get the regulations, laws and rules written, but regulators and organizations can start educating now. Education can lead regulatory efforts and drive enforcement tips.
- **Capitalize on crypto 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. YouTube, Facebook groups, Twitter, Telegram, Reddit — participate in conversations, drive followers to resources, and inform them on how to submit tips and complaints.
- **Don't be intimidated by the technology.** Fraudsters are using the same old tricks and schemes, but using virtual currencies as the hook. There is a lot of material available discussing the common red flags of fraud — not just from the CFTC but from FINRA, the SEC, CFPB and others. Many victims don't fully understand the tech either, so focus on educating them on how to spot and avoid fraud.