

HBUS

HBUS Holdco Inc.
123 Mission Street
San Francisco, CA 94105

March 19, 2018

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Comment Letter on the Proposed Interpretive Guidance and Request for Comment on Retail Commodity Transactions Involving Virtual Currency (RIN 3038-AE62)

Dear Mr. Kirkpatrick:

HBUS Holdco Inc. (“*we*” or “*HBUS*”) is a financial technology holding company that intends to offer virtual currency related services to U.S. persons through one or more operating subsidiaries. HBUS appreciates the opportunity to respond to the request for comments from the Commodity Futures Trading Commission (the “*Commission*”) on the Proposed Interpretation of the term “actual delivery” as set forth in a certain provision of the Commodity Exchange Act (“*CEA*”) in the context of retail commodity transactions in virtual currency (the “*Proposed Interpretation*”).¹

In response to the Commission’s request, HBUS sets forth below our comments on the Proposed Interpretation and the Commission’s questions.

I. HBUS supports the Proposed Interpretation.

HBUS supports the Proposed Interpretation, one that embraces future innovation, gives present clarity and protects industry participants. We believe the Proposed Interpretation, when adopted, will facilitate the growth of a transparent and fair marketplace for virtual currency, where legitimate businesses can thrive.

¹ See Proposed Interpretation, Retail Commodity Transactions Involving Virtual Currency, 82 Fed. Reg. 60,335 (Dec. 20, 2017).

Specifically, HBUS supports the Commission’s avoidance of a bright line definition of virtual currency for purposes of the Proposed Interpretation.² The blockchain technology underlying virtual currencies is the first scalable realization of distributed trust in history. For example, used as a medium of exchange, blockchain technology enables the ability to make near instant transfers of virtual currencies at any time, from any place, to any person—all fully transparent, without the need for a central bookkeeping party. Further, used as digital tokens, blockchain technology may enable individuals to participate in centralized and decentralized organizations beyond the traditional confines of equity and debt rights, thereby creating a synthetic class of pre-sold products with commercial utility and/or investment traits. Most importantly, just as few could have foreseen the rise of social media when the Internet emerged three decades ago, the most revolutionary uses of blockchain technology are likely yet to be conceptualized. The Commission’s definition of virtual currency in the Proposed Interpretation is cognizant of blockchain technology’s evolving uses. It is therefore, in our view, thoughtful and appropriate.

HBUS supports the Proposed Interpretation’s confirmation that the CEA does not cover “typical commercial practice in cash or spot markets”³ of commodities, including virtual currencies. As a prospective virtual currency platform operator, HBUS anticipates that our activities would consist of the matching and execution of spot trades. HBUS, along with other potential service providers, would be deterred from servicing U.S. persons if spot trading of virtual currencies could trigger onerous qualification and registration obligations typically applicable to derivatives trading platforms only.⁴

Finally, HBUS supports a functional determination on “actual delivery” in the context of virtual currency. Anything less would permit fraudsters in the virtual currency market to evade the Commission’s jurisdiction through crafty platform policies or by abusing blockchain technicalities. It may also weaken Congress’s “broad *Zelener* fraud fix”⁵ by providing a how-to guide on constructing sham deliveries to fraudsters in commodity markets beyond virtual currency.

II. Suggestion for a technical change to Example 1 in the Proposed Interpretation.

We would also like to take this opportunity to suggest a technical revision to the Proposed Interpretation to provide additional clarity to and consistency with widely used industry terms. We would propose that the word “network” be omitted from the phrase “distributed ledger network” in the first sentence of Example 1 to eliminate the possible interpretation that certain reversible transfers may qualify as actual delivery. “Distributed ledger network” is often understood as the entire infrastructure backing the storage, propagation, validation and related functions of a blockchain.⁶ “Distributed ledger,” on the other hand, usually refers to the component of a “distributed ledger network” where value transfers are permanently recorded.⁷ “[A] record on the relevant public distributed ledger network” in Example 1 can therefore refer to a transient, unconfirmed transaction that has not been reduced into an entry in the

² See Proposed Interpretation at 60,338.

³ Proposed Interpretation at 60,336.

⁴ HBUS recognizes and welcomes the Commission’s authority over virtual currency spot markets in connection with its general anti-fraud and anti-manipulation powers.

⁵ Proposed Interpretation at 60,336-37, fn. 22.

⁶ See, e.g., Proposed Interpretation at 60,338, fn. 47.

⁷ See, e.g., Nakamoto, Satoshi, Bitcoin: A Peer-to-Peer Electronic Cash System, pp. 1, 3, *available at* <https://www.bitcoin.com/bitcoin.pdf> (for Bitcoin, its “distributed ledger” would be “an ongoing chain of hash-based proof-of-work, forming a record that cannot be changed,” and its “distributed ledger network” would include this “ongoing chain” along with broadcasting, proof-of-work, and validation components).

applicable distributed ledger for permanent recordkeeping.⁸ A record as such can arguably meet all qualifications in the Example 1. It can also be reversible. Removing “network” from the phrase “distributed ledger network” in the first sentence of Example 1 will make certain that only permanent records reduced as entries in a public distributed ledger can support an “actual delivery” claim in the context of the example. The removal can also improve the internal consistency of Example 1 because it references “[a] virtual currency’s public distributed ledger” without the word “network” to express a similar concept in the second sentence.⁹

III. HBUS supports the Commission’s engaging of Congress to consider an adjustment to section 2(c)(2)(D) of the Commodity Exchange Act if the Commission were to determine that a shorter actual delivery exception period would be more appropriate in the context of virtual currency.

When setting the actual delivery period to 28 days for almost all commodities, Congress was likely contemplating unusual scenarios in the transportation of bulk commodities.¹⁰ While we do not seek to presume Congressional intent, it seems unlikely that Congress sought to establish an assumption that retail commodity transactions in all cash or spot markets can take up to 28 days for actual delivery.¹¹ Even assuming the worst of network congestion, it generally takes much fewer than 28 days for a virtual currency transfer to complete.¹² A 28-day actual delivery period may therefore be outside the spirit of the actual delivery exception. Accordingly, if, after evaluating appropriate data, the Commission determined that a shorter timeframe was appropriate, we would support the efforts by the Commission to engage Congress to consider an adjustment to the 28-day actual delivery period.

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⁸ See Sedgwick, Kai, 200,000 Unconfirmed Transactions Pile Up in Another Crazy Day for Bitcoin (Dec. 7, 2017), available at <https://news.bitcoin.com/200000-unconfirmed-transactions-pile-another-crazy-day-bitcoin/> (for Bitcoin, transient, unconfirmed transactions are stored in the “mempool” of network nodes).

⁹ See Proposed Interpretation at 60,340 (“When a matching platform or other third party offeror acts as an intermediary, the virtual currency’s *public distributed ledger* must reflect the purchased virtual currency”) (emphasis added).

¹⁰ See Hearing to Review Implications of the *CFTC v. Zelener* Case Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture, 111th Cong. 52–664 (2009) (statement of Feigin) (“The Model Code started with the 7 day delivery period and after some testimony from an outfit that I don’t think is around anymore called the Industry Council for Tangible Assets the NASAA people were convinced to extend it to 28 days for various circumstances. That number, it is in there. That is less of a problem than the concept in itself”) (statement of Roth) (“[W]e have no problem with 28 days. We picked 7 days. If it was 28 days, I think it would achieve the same effect what we are trying to achieve.”).

¹¹ See, e.g., 7 U.S.C. § 2(c)(2)(C)(i)(II)(bb)(AA).

¹² See, e.g., <https://etherscan.io/chart/blocktime>, and <https://etherscan.io/chart/pendingtx>.

HBUS thanks the Commission again for considering our views on the interpretation of “actual delivery” in the context of virtual currency. We sincerely hope the Commission would consider HBUS as a resource as it continues to develop a clear regulatory framework that both encourages market-enhancing innovation and protects retail investors. Please contact the undersigned at kailong.cai@hbus.com if HBUS can be of any further help to the Commission on the Proposed Interpretation or other issues.

Respectfully submitted,

A handwritten signature in black ink that reads "Kailong Cai". The signature is written in a cursive, slightly slanted style.

Kailong Cai
Chief Executive Officer
HBUS Holdco Inc.

cc: Jeffrey L. Steiner, Gibson, Dunn & Crutcher LLP