Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

23 December 2024

SEC OGC Opinion No. 24-44
Re: BITCOIN

DISINI & DISINI LAW OFFICE
2nd Floor Philippine Social Science Center,
Commonwealth Avenue, Diliman,
Quezon City 1101, Philippines

Attention: ATTY. JESUS M. DISINI, JR.

Dear Atty. Disini:

This refers to your letter,[1] requesting, on behalf of your client, Bonetto Ventures, Inc., ("BVI"), the Commission's opinion on whether or not Bitcoin can be considered a security as defined under the Securities Regulation Code ("SRC") and whether or not BVI is engaged in the purchase and sale of securities, specifically derivatives.

As stated in your letter, BVI is a domestic corporation with the primary purpose of providing an online platform to facilitate the purchase and sale, on a wholesale basis, of goods such as, but not limited, to Bitcoin.

You likewise stated that BVI operates a website wherein customers may use the services offered by it, which include, but are not limited to, the following:

1. Exchanging Philippine Pesos with Bitcoin (buying Bitcoin);
2. Exchanging Bitcoin with Philippine Pesos (selling Bitcoin);
3. Transferring Bitcoin from a BTCExchange account to a Bitcoin address provided by the user;
4. Crediting the Bitcoin amounts transferred to the unique Bitcoin deposit address provided to a User in a User's BTCExchange account; and
5. Storing and safekeeping the funds in one's BTCExchange account.

You further expressed that BVI's business essentially involves receiving the money of its clients, which may be denominated in Philippine Peso or Bitcoin, which amounts are stored in the client's account.

You stated that Bitcoin is a virtual currency that is used as a medium of exchange that is electronically created and stored, and lacks the backing of a government authority, central bank, or a commodity. However, it can be used to purchase goods and services from any person or business that will accept it as a form of payment despite it not having the status of legal tender as no person is legally obligated to accept a virtual currency. You further stated that Bitcoin uses a payment network that is peer-to-peer and thus does not need an intermediary. Instead, all transactions between users of Bitcoin are recorded on a distributed ledger and settlement system called the blockchain.

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[1] Dated 11 February 2016.

Furthermore, you averred that like most jurisdictions, there are no existing procedures in government agencies regarding the regulation of virtual currencies like Bitcoin. However, you noted that this has not stopped Bitcoin from being exchanged in the Philippines and that the Philippine government has even allowed the registration and operation of Bitcoin-related businesses.

You posit that bitcoin is a security for the following reasons. The first criterion for the existence of a security, i.e., that it must be a share, participation or interest in a corporation or in a commercial enterprise or profit-making venture, is satisfied because one bitcoin represents an interest in a block chain which will produce a limited number of bitcoins, and ownership of this interest may be considered a profit-making venture like stocks or investment contracts. Secondly, the other criterion of a security, i.e., that it is evidenced by a certificate, contract, or instrument, is likewise satisfied as the wallet evidences the value of a bitcoin owned by a specific account holder and records the ownership thereof, and may be likened to a certificate of ownership of shares of stock.

You also argue that, based on the SRC's definition of derivatives, bitcoin may be considered a derivative because no money or bitcoin is really transferred, and what is actually traded is an instrument/contract representing rights over a bitcoin. The instrument's value is dependent on the price/rate of Bitcoin and is settled on a future date when a client prompts BVI of his interest in withdrawing his intended amount/account value.

Hence, your queries, which are summarized as follows:

1. Can Bitcoin be considered "Securities" under the SRC?; and
2. Is BVI engaged in the purchase and sale of securities, specifically derivatives?

I. First Query.

A. Cryptocurrency in General.

Firstly, it must be stressed that in the Philippines, cryptocurrency is neither definitively defined by statute nor by jurisprudence.

However, the Bangko Sentral ng Pilipinas ("BSP") issued Circular No. 944 Series of 2017, which provides guidelines for virtual currency ("VC") exchanges and incorporated the regulation of VCs in the Manual of Regulations for Non-Bank Financial Institutions ("MORNBFI"). In the circular, the BSP defines VC as any type of digital unit that is used as a medium of exchange or a form of digitally stored value created by agreement:

> Section 1. Section 4152N.2 Definition of terms:
>
> The terms as used in this Section shall be defined, as follows:
>
> a. VC refers to any type of digital unit that is used as a medium of exchange or form of digitally stored value created by agreement within the community of VC users. VCs are not issued nor guaranteed by any jurisdiction and do not have legal tender status. VCs shall be broadly construed to include digital units of exchange that (1) have a centralized repository or administrator; (2) are decentralized and have no centralized repository or administrator; or (3) may be created or obtained by computing or manufacturing effort. In shall not be construed to include e-money as defined under Sec X780 of the Manual of Regulations for Banks, digital units used solely within online gaming platforms and are not convertible to fiat currency or real-world goods or services and limited to transactions involving a defined merchant such as rewards programs; x x x

The BSP also recognizes that a VC is a type of digital currency created by a community of online users, which are then stored in electronic wallets. It can also be transferred within its community and may be used to buy virtual items or real goods from online shops willing to receive the VCs as payment. It can also be exchanged to and from actual cash through the community.[2]

In this connection, in a report[3] published by it, the Financial Action Task Force ("FATF") defines VC as a digital representation of value that can be digitally traded and functions as a medium of exchange, unit of account, and/or a store of value but does not have the status of legal tender. It may be used for facilitating micro-payments, facilitating international remittances, and supporting financial inclusion.[4]

It is worthy to note that ***cryptocurrency is a type of VC*** that uses cryptography, which allows transactions to be carried out in a decentralized manner by its users.[5] To put it simply, cryptocurrencies depend on cryptography to verify and secure transactions and to manage the creation of new units.[6] They are not backed by any financial institution and are not liabilities of any particular entity.[7] Instead, they rely on traditional backers and underwriters with a centralized ledger. Therefore, there is decentralization and the information is open to any market participant.[8]

In order to operate without the need for intermediaries such as banks, cryptocurrencies use blockchain technology in order to monitor transactions.[9] The blockchain itself serves as a record of information where network participants may verify transactions by their peers and whenever an asset holder transacts on the blockchain, it proposes an amendment to the ledger and the network verifies if the transaction is legitimate.[10]

The first and most popular cryptocurrency to date is Bitcoin, which was introduced in 2009.

The Commodities Futures Trading Commission ("CFTC") of the United States ("US") defines Bitcoin as a convertible VC.[11] Being convertible, it may also be used as a form of payment for those that will accept it as tender as well as an asset.[12]

B. Securities as defined under the SRC.

The definition of securities in the Philippines is provided under Section 3.1 of the SRC, to wit:

> SEC. 3. Definition of Terms –

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[2] Frequently Asked Questions on Virtual Currencies. Bangko Sentral ng Pililipinas. Available at: https://www.bsp.gov.ph/Media_and_Research/Primers%20Faqs/VC.pdf

[3] FATF Report Virtual Currencies. Key Definitions and Potential AML/CFT Risks. June 2014.Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf.coredownload.pdf

[4] *Id. "Virtual currency is distinguished from fiat currency (a.k.a. "real currency," "real money," or "national currency"), which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and accepted as a medium of exchange in the issuing country. It is distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency. E-money is a digital transfer mechanism for fiat currency—i.e., it electronically transfers value that has legal tender status. Digital currency can mean a digital representation of either virtual currency (non-fiat) or e-money (fiat) and thus is often used interchangeably with the term "virtual currency."*

[5] *Id.*

[6] Harvard Law Journal. *SEC, Framework for "Investment Contract" Analysis of Digital Assets.* 123 Harv. L. Rev. 2418.

[7] Lael Brainard, Governor, Bd. of Governors of the Fed. Reserve Sys., Cryptocurrencies, Digital Currencies, and Distributed Ledger Technologies: What Are We Learning? (May 15, 2018), https://www.federalreserve.gov/newsevents/speech/brainard20180515a.htm [https://perma.cc/8DWS-CH5Q]. Last accessed November 16, 2024.

[8] Supra, Note 6.

[9] A blockchain is defined as a distributed ledger where every participant on a network has the same copy of a record. Blockchain networks also are continually updated to reflect changes that occur. See What is Blockchain Technology? A Step-by-Step Guide for Beginners, BLOCKGEEKS, http://blockgeeks.com/guides/what-is-blockchain-technology.

[10] Ryan Surujnath, *Off The Chain! A Guide to Blockchain Derivatives Markets and the Implications on Systemic Risk,* 22 Fordham J. Corp. & Fin. L. 257 (2017). Available at: https://ir.lawnet.fordham.edu/jcfl/vol22/iss2/3. See: The Promise of the Blockchain, ECONOMIST. (Oct.31,2015), https://www.economist.com/leaders/2015/10/31/the-trust-machine.

[11] Bitcoin Basics, an article published by the U.S. Commodity Futures Trading Commission, retrieved from https://www.cftc.gov/sites/default/files/2019-12/oceo_bitcoinbasics0218.pdf

[12] Guidance For a Risk-Based Approach. Virtual Currencies, Financial Action Task Force. 2015. Available at: https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-RBA-Virtual-Currencies.pdf.coredownload.inline.pdf

3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

a) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
b) Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription;
c) Fractional undivided interests in oil, gas, or other mineral rights;
d) Derivatives like option and warrants;
e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
f) Proprietary or nonproprietary membership certificates in corporations; and
g) Other instruments as may in the future be determined by the Commission.

In the formulation of the SRC, the Legislature saw it fit to adopt the Securities Act of the U.S. Thus, when there is confusion as to the interpretation thereof, guidance may be sought with the cases decided by the courts in the U.S. This is consistent with the rule that when laws are adopted from other jurisdictions, the rulings construing those laws are accorded great weight, *viz*:

> We have previously stated that in case of laws patterned after or adopted from those of the United States, decisions of United States courts construing similar laws are entitled to great weight. Generally speaking, when a statute has been adopted from another State and such statute has previously been construed by the courts of such State or country, this statute is deemed to have been adopted with the construction so given it.[13]

Hence, when there is an issue as to whether certain products or schemes are securities, *SEC v. Howey Co.*[14] is often used as the parameter, thus:

> The term "investment contract" is undefined by the Securities Act or by relevant legislative reports. But the term was common in many state "blue sky" laws in existence prior to the adoption of the federal statute, and, although the term was also undefined by the state laws, it had been broadly construed by state courts so as to afford the investing public a full measure of protection. Form was disregarded for substance, and emphasis was placed upon economic reality. An investment contract thus came to mean a contract or scheme for "the placing of capital or laying out of money in a way intended to secure income or profit from its employment." *State v. Gopher Tire & Rubber Co.*, 146 Minn. 52, 56, 177 N.W. 937, 938. This definition was uniformly applied by state courts to a variety of situations where individuals were led to invest money in a common enterprise with the expectation that they would earn a profit solely through the efforts of the promoter or of some one other than themselves.
>
> By including an investment contract within the scope of § 2(1) of the Securities Act, Congress was using a term the meaning of which had been crystalized by this prior judicial interpretation. It is therefore reasonable to attach that meaning to the term as used by Congress, especially since such a definition is consistent with the statutory aims. ***In other words, an investment contract, for purposes of the Securities Act, means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.*** Such a definition necessarily underlies this Court's decision in *SEC v. Joiner Corp.*, 320 U. S. 344, and has been enunciated and applied many times by lower federal courts. It permits the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of "the many types of instruments that, in our commercial world, fall within the ordinary concept of a security." H.Rep. No.85, 73rd Cong., 1st Sess., p. 11. It embodies a flexible, rather than a static, principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.[15]

In summary, to determine that the transaction, contract, or scheme is within the scope of an investment contract, the following must be satisfied: (1) there is an investment of money, (2) in a common enterprise, (3) with the expectation of profits, and (4) that the profits are to be derived solely or primarily from the efforts of others.

The afore-cited case eventually found itself adopted and modified by the Philippine Supreme Court in the case of *Power Homes Unlimited Corp. v. Securities and Exchange Commission*,[16] to wit:

> Although the proponents must establish all four elements, the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable

[13] *Carolina Industries Inc., v. CMS Stock Brokerage Inc.* G.R. No. L-46908, May 17, 1980.
[14] 328 U.S. 293 (1946).
[15] Emphasis and italics supplied.
[16] G.R. No. 164182, February 26, 2008.

> schemes devised by those who seek the use of the money of others on the promise of profits." Needless to state, any investment contract covered by the **Howey Test** must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices.
>
> After Howey came the 1973 US case of *SEC v. Glenn W. Turner Enterprises, Inc. et al.* In this case, the 9th Circuit of the US Court of Appeals ruled that the element that profits must come "solely" from the efforts of others should not be given a strict interpretation. It held that a literal reading of the requirement "solely" would lead to unrealistic results. It reasoned out that its flexible reading is in accord with the statutory policy of affording broad protection to the public. Our R.A. No. 8799 appears to follow this flexible concept for it defines an investment contract as a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and **is led to expect profits not solely but primarily from the efforts of others.** Thus, to be a security subject to regulation by the SEC, an investment contract in our jurisdiction must be proved to be: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) **primarily** from efforts of others.

On 25 July 2017, the US Securities and Exchange Commission ("US SEC"), in its DAO Report, applied the Howey Test and concluded that the DAO Tokens issued by the Decentralized Autonomous Organization ("DAO") can be considered as investment contracts and are securities subject to its jurisdiction.[17] The report concluded that the DAO Tokens enabled the holders to vote in the management of the enterprise and receive rewards which are considered as dividends and characteristic of stock. **Still, the US SEC ruled that whether or not a particular transaction involves the offer and sale of a security – regardless of the terminology used – will depend on the facts and circumstances, including the economic realities of the transaction.**

The DAO Report is consistent with the US case of *Securities and Exchange Commission v. Ripple Labs, Inc.*,[18] which discussed that in the application of the Howey Test, form should be disregarded for substance and emphasis must be made on economic reality and the totality of the factual circumstances surrounding the transaction itself, citing the case of *Glen-Arden Commodities, Inc., v. Constantino,*[19] thus:

> To prevail, the SEC will need to show that XRP is an investment contract under the Howey test. See S.E.C. v. W.J. Howey Co., 328 U.S. 293, 298–99 (1946) (holding that an "investment contract . . . means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of a promoter or a third party. . ."); S.E.C. v. Aqua-Sonic Products Corp., 687 F.2d 577, 582 (2d Cir. 1982) ***(finding that the Supreme Court had moved away from a literal interpretation of "solely" in the Howey test, and toward an economic realities and totality of the circumstances view of the alleged scheme);*** Glen-Arden Commodities, Inc. v. Costantino, 493 F.2d 1027, 1034 (2d Cir. 1974) ("The question therefore becomes whether . . . in light of the economic reality and the totality of circumstances . . . the customers were making an investment . . . .")[20]

Thus, in its *Framework for "Investment Contract" Analysis of Digital Assets*,[21] the Hub for Innovation of Financial Technologies ("Finhub") of the US SEC provided its views in analyzing whether a digital asset, which includes bitcoin, satisfies the Howey Test.

Here, the Finhub emphasized that in inquiring whether a digital asset is offered or sold as an investment contract, the economic reality must be considered. Therefore, it is necessary to inquire on the transaction and manner in which the digital asset is offered and sold.[22]

Finhub further highlighted that the main issue in analyzing whether a digital asset is a security is whether a person has a reasonable expectation of profit derived from the efforts of others.

Relative thereto, in inquiring if the purchaser of a digital asset expects to rely on the efforts of another (which FinHub calls 'active participant'), it must be considered whether those efforts are significant as

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[17] Report of Investigation Pursuant to Section 21 (a) of the Securities Exchange Act of 1934: The DAO (Release No. 81207, 2017).
[18] 20 Civ. 10832 (AT), (S.D.N.Y. Oct. 3, 2023).
[19] 493 F.2d 1027, 1034 (2d Cir.1974). "x x x The Supreme Court has stated that the test whether a contract constitutes an investment contract within the Securities Act is "what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect." SEC v. C. M. Joiner Leasing Corp., 320 U.S. 344, 352-353, 64 S.Ct. 120, 124, 88 L.Ed. 88 (1943) [quoted approvingly in SEC v. United Benefit Life Insurance Co., 387 U.S. 202, 211, 87 S.Ct. 1557, 18 L.Ed.2d 673 (1967)]."
[20] Emphasis and italics supplied.
[21] Securities and Exchange Commission, Framework for "Investment Contract" Analysis of Digital Assets, available at: https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets.
[22] *Id.*

opposed to ministerial ones. The strong presence of the following instances indicates a purchaser's reliance on efforts of others: the active participant performs tasks necessary for the network or asset to achieve or retain its intended purpose; there is a creation or support by the active participant for a market or the price of the digital asset; the active participant plays a lead role in deciding governance issues, code updates, or how third parties participate in the validation of transactions on the digital asset; the active participant has a continuing managerial role in making decisions concerning the network or the rights the digital asset represents as opposed to those tasks being performed by unaffiliated and dispersed community of network users; and the active participant retains a stake or interest in the digital asset, or his commission is tied to the price of the digital asset in the secondary market, or he owns or controls ownership of intellectual property rights of the network or digital asset.[23]

On evaluating if there is a reasonable expectation of profit, the Finhub gave circumstances where it may be said that there is a reasonable expectation of profit, namely: the digital asset gives the holder rights to share in the enterprise's income or profit or to realize gain from capital appreciation of the asset; the digital asset is traded on or through a secondary market, or is expected to be in the future; there is little apparent correlation between the price of the digital asset and the market price of the particular goods or services that can be acquired in exchange for the digital asset; there is little apparent correlation between quantities the digital asset typically trades in and the amount of the goods or services a typical consumer would purchase for use or consumption; the digital asset is offered broadly to potential purchasers as compared to being targeted to expected users of the good or services; the digital asset is marketed using the expertise of the active participant to grow the value of the network, or in terms that indicate it is an investment, or wherein the key selling feature is the marketability or profitability of the asset; the active participant is able to benefit from its efforts as a result of holding the digital assets; and the active participant expends funds to enhance the functionality or value of the digital asset.[24]

It is important to note that the FinHub clarified that the factors it provided in determining whether a digital asset is an investment contract is not exhaustive and that no single factor is determinative.[25]

From the foregoing, depending on certain circumstances, Bitcoin may be considered an investment contract, hence, a security.

That said, Bitcoin per se does not bear the indicia of shares of stock because it does not necessarily carry with it the rights accorded a person owning a share in a corporation, i.e. right to vote, right to receive dividends, and the right to receive the assets of the corporation in liquidation, as provided under the Revised Corporation Code ("RCC"). An interest in the blockchain does not necessarily entail these rights or that there is a profit-making venture. Further, a Bitcoin wallet could not be akin to a stock certificate. Under Section 62 of the RCC a stock certificate is defined, to wit:

> SEC. 62. Certificate of Stock and Transfer of Shares. – The capital stock of corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the bylaws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner, his attorney in-fact, or any other person legally authorized to make the transfer. x x x

It is clear that the RCC requires that a stock certificate must be signed by the president or vice president, which must also be countersigned by the secretary or assistant secretary, and issued in accordance with the By-Laws of the corporation. The Supreme Court has ruled that a certificate is a tangible evidence of ownership of stock.[26] Even a scripless security holder is assured of this tangibility as he has the right under the law to demand a tangible certificate if he wishes to. Hence, absent the feature of tangibility and the right thereto, the Bitcoin wallet is not akin to a stock certificate.

Considering the numerous factors to be considered on a case to case basis as above-mentioned, the Commission cannot give a definitive answer due to the limited facts provided.

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[23] Supra, Note 21.
[24] *Id.*
[25] *Id.*
[26] *Anna Teng v. SEC and Ting Ping Lay.* G.R. No. 184332, February 17, 2016.

II. Second Query.

Under Section 3.1.9 of the Implementing Rules and Regulations of the SRC ("SRC-IRR"), derivatives are defined as follows:

> 3.1.9. Derivative is a financial instrument whose value changes in response to changes in a specified interest rate, security price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or similar variable or underlying factor. It is settled at a future date. This term shall include, but not limited to the following:
>
> 3.1.9.1 Options or contracts that give the buyer the right, but not the obligation, to buy or sell an underlying security at a predetermined price called the exercise or strike price, on or before a predetermined date, called the expiry date; and
>
> 3.1.9.2. Warrants or rights to subscribe or purchase new or existing shares in a company on or before a predetermined date.

In other jurisdictions, there are several types of derivatives such as forward agreements, futures contracts, options, swaps, commodities, etc.[27] Forwards and future contracts are similar in that an agreement exists to buy or sell a specified quantity of asset at a specific price with delivery at a specified date in the future.[28]

In the US, derivatives are usually described or defined as a financial instrument whose value depends on or is derived from the performance of a secondary source such as an underlying bond, currency, or commodity or a financial instrument whose value depends on the value of other, more basic, underlying variables.[29] To be classified as a derivative, the common characteristics are:

(1) they are agreements or contracts between two counter parties;
(2) the value of a derivatives contract stems primarily from the rights to which one is entitled, and;
(3) the obligations one owes to one's contractual counterparty.[30]

Other characteristics that derivatives may, but need not, possess, are deliverability and risk-hedging.[31]

As previously mentioned, forward agreements and commodity futures contracts are types of derivatives in other jurisdictions.

In the Philippines, the SRC-IRR defines commodities under Section 11.1.2, Rule 11, thereof:

> Section 11.1.2. **Commodity** means any goods, articles, agricultural and mineral products, services, rights and interests, financial instruments, foreign currencies including any group or index of any of the foregoing, in which commodity interest contracts are presently or in the future dealt in.

Relative thereto is the Commodity Futures Contract as defined under Section 11.1.1 of the SRC-IRR, viz:

> 11.1.1. Commodity futures contracts means a contract providing for the making or taking delivery at a prescribed [time] in the future of a specific quantity and quality of a commodity or the cash value thereof, which is customarily offset prior to the delivery date, and includes standardized contracts having the indicia of commodities futures, commodity options and commodity leverage, or margin contracts.

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[27] Supra, Note 10.
[28] Chui, Michael. *Derivatives Markets, Products, and Participants*, in IFC BULLETIN NO. 35: DATA REQUIREMENTS FOR MONITORING DERIVATIVE TRANSACTIONS 3, 4 (2012): Page 5. Available at: https://www.bis.org/ifc/publ/ifcb35.pdf
[29] Timothy E. Lynch, Derivatives: A Twenty-First Century Understanding, 43 Loy. U. Chi. L. J. 1 (2011). Available at: http://lawecommons.luc.edu/luclj/vol43/iss1/3
[30] Supra, Note 28.
[31] *Id.*

A Commodity Futures Contract is generally standardized with respect to all terms save for the price and must specify the underlying asset, amount of the asset to be exchanged, the place and month for the delivery, and the price.[32] As such, there is also a need to have a comprehensive or fundamental understanding of what the underlying asset is.

From the foregoing, a Bitcoin may be the subject of a derivative, particularly a Commodity Futures Contract. However, to determine whether a Bitcoin is a derivative and what type of derivative it is, more information is required which includes but is not limited to, the terms, maturity date, rate, the underlying asset, etc.

Thus, considering the limited facts provided in the letter, we again cannot give a definitive ruling.

Nonetheless, please be reminded that under Section 11.2, Rule 11 of the SRC-IRR, the public trading of commodity futures contracts and the Commission rules on futures trading shall remain suspended until ordered otherwise by the Commission, without prejudice to the applicable rules and regulations issued by the BSP on commodity futures contracts for entities under its jurisdiction.

On a final note, the Commission reserves the right, in its sole and absolute discretion, to change and/or modify its stance on the matter should there be any future issuances or rules promulgated regarding this subject matter.

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[33] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Very truly yours,

Romuald C Padilla
General Counsel

[32] Shadab, Houman B. *Regulating Bitcoin and Block Chain Derivatives.* Commodities Futures Trading Commission. Available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/gmac_100914_bitcoin.pdf
[33] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.