

October 3, 2018

Federal Court Finds that Virtual Currencies Are Commodities

Court Denies Defendants' Motion to Dismiss in Commodity Fraud Case Involving the Virtual Currency My Big Coin

Washington, DC — On September 26, 2018, Senior Judge Rya W. Zobel of the U.S. District Court for the District of Massachusetts, entered an order holding that the Commodity Futures Trading Commission (CFTC) has the power to prosecute fraud involving virtual currency and denying the defendants' motion to dismiss the CFTC's amended complaint.

CFTC Director of Enforcement Comments

James McDonald, CFTC Director of Enforcement, commenting on the ruling, stated: "This is an important ruling that confirms the authority of the CFTC to investigate and combat fraud in the virtual currency markets. This ruling, like the one in *McDonnell* from Judge Weinstein in the Eastern District of New York, recognizes the broad definition of commodity under the CEA, and also that the CFTC has the power to prosecute fraud with respect to commodities including virtual currencies. We will continue to police these markets in close coordination with our sister agencies."

Summary of Order

Agreeing with the CFTC's arguments, the Court held that the CFTC had sufficiently alleged that the particular virtual currency at issue, **My Big Coin** (MBC), was a commodity under the Commodity Exchange Act (CEA) because the CFTC alleged that MBC "is a virtual currency and it is undisputed that there is futures trading in virtual currencies (specifically involving Bitcoin)." According to the Court, the term "commodity" "includes a host of specifically enumerated agricultural products as well as 'all other goods and articles . . . and all services rights and interests . . . in which contracts for future delivery are presently or in the future dealt in.'" The Court specifically agreed with the CFTC that "Congress' approach to defining 'commodity' signals an intent that courts focus on categories—not specific items." The Court found that "[t]his broad approach also accords with Congress's goal of 'strengthening the federal regulation of the . . . commodity futures trading industry,' . . . since an expansive definition of 'commodity' reasonably assures that the CEA's regulatory scheme and enforcement provisions will comprehensively protect and police the markets."

The Court also rejected Defendant's argument that the CFTC's anti-fraud authority over MBC extended only to fraudulent market manipulation, holding that the "broad language in the statute" "explicitly prohibit[s] fraud even in the absence of market manipulation."

These holdings are consistent with the decisions obtained by the CFTC earlier this year in the case of *CFTC v. McDonnell* in the Eastern District of New York (see CFTC Release [7702-18](#), March 6, 2018; CFTC Release [7774-18](#), August 24, 2018).

The order arises from a CFTC federal court enforcement action charging defendants Randall Crater; Mark Gillespie; John Roche; Michael Kruger; My Big Coin Pay, Inc.; and My Big Coin, Inc.; and relief defendants Kimberly Renee Bengé; Kimberly Renee Bengé d/b/a Greyshore Advertisement a/k/a Greyshore Advertiset; Barbara Crater Meeks; Erica Crater; Greyshore, LLC; and Greyshore Technology, LLC with commodity fraud and misappropriation related to the solicitation of customers for the virtual currency MBC.

The CFTC's amended complaint alleges that since at least January 2014, the defendants operated a fraudulent virtual currency scheme in which they solicited customers to purchase a fully-functioning virtual currency, MBC, by repeatedly making false and misleading claims about its value, usage, trade status, and financial backing. As alleged in the amended complaint, Defendants lied that MBC could be bought, sold, donated, used to make purchases, and was actively trading. To give the illusion that MBC was a safe bet, Defendants also lied that MBC was backed by millions of dollars in gold, and would be used to stabilize the economies of twenty-two countries, as alleged in the amended complaint. The amended complaint also alleges that Defendants misappropriated customer funds by conning people into giving them more than \$6 million for what Defendants represented was a fully-functioning virtual currency. Defendants allegedly used these misappropriated funds to purchase a home, antiques, fine art, jewelry, luxury goods, furniture, interior decorating and other home improvement services, travel, and entertainment.

In its continuing litigation, the CFTC seeks civil monetary penalties, restitution, rescission, disgorgement of ill-gotten gains, trading and registration bans, and permanent injunctions against further violations of the federal commodities laws, as charged.

CFTC Division of Enforcement and CFTC Virtual Currency Task Force staff responsible for this case are Traci Rodriguez, Jonah McCarthy, Patricia Gomersall Hillary Van Tassel, Dan Ullman, John Einstman, and Paul Hayeck.

* * * * *

CFTC's Customer Advisory on the Risks of Virtual Currency Trading

The CFTC has issued a [Customer Advisory on the Risks of Virtual Currency Trading](#) to inform the public of possible risks associated with investing or speculating in virtual currencies or recently launched Bitcoin futures and options. The CFTC has also issued several other customer protection [Fraud Advisories](#) that provide the warning signs of fraud.

Also, before investing or trading with a firm, check the firm's registration status and disciplinary history, if registered, with the National Futures Association. A company's registration status can be found at: www.nfa.futures.org/basicnet.

Customers can report suspicious activities or information, such as possible violations of commodity trading laws, to the CFTC Division of Enforcement via a Toll-Free Hotline 866-FON-CFTC (866-366-2382) or [file a tip or complaint](#) online.