

CFTC Can Regulate Cryptocurrencies as Commodities

By Benjamin B. Coulter

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The regulation of virtual currencies, or cryptocurrencies, is evolving. In an important new [decision](#) from the United States District Court for the Eastern District of New York, the Court held, among other things, that the Commodity Futures Trading Commission (CFTC) may regulate virtual currencies pursuant to the Commodity Exchange Act (CEA).

In *McDonnell*,¹ the CFTC brought suit against Patrick McDonnell and CabbageTech, Corp. d/b/a Coin Drop Markets, alleging that the Defendants operated a deceptive and fraudulent scheme and misappropriated investor funds after promising virtual currency trading advice and virtual currency purchases and trading. Customers paid the Defendants for membership in virtual currency trading groups, and the Defendants represented that the investors would realize massive profits. Instead, after the Defendants received the investments, they allegedly shut down their social media accounts and websites and stopped communicating with their customers. When the customers asked for a return of their membership fees/investments, the Defendants refused.

On January 18, 2018, the CFTC filed a [civil enforcement action](#), [alleging](#) that Defendants were guilty of fraud and misappropriation. It sought a preliminary injunction, and on March 6, 2018, Senior United States District Judge Jack B. Weinstein granted a preliminary injunction in favor of the CFTC. In reaching its decision, Judge Weinstein held, among other things: (1) the CFTC can regulate virtual currencies as commodities as "'goods' exchanged in a market for uniform quality and value" and "fall well within the common definition of 'commodity' as wells as the CEA's definition of 'commodities' as 'all other goods and articles . . . in which contracts for future delivery are presently or in the future dealt in"; (2) the CFTC's jurisdiction over virtual currency fraud is based in 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1, which "establish the CFTC's regulatory authority over the manipulative schemes, fraud, and misleading statements alleged in the [CFTC's] complaint."; (3) the CFTC had made a prima facie showing of fraud by the Defendants; and (4) the CFTC was entitled to a preliminary injunction to prevent the Defendants from continuing to violate the CEA.

The *McDonnell* case is one of three recent cases brought by the CFTC. While the enforcement environment will continue to evolve, it appears likely that the CFTC will move forward to regulate virtual currency and virtual currency derivatives. As Chairman Giancarlo himself explained, "One thing is certain: ignoring virtual currency trading will not make it go away. Nor is it a responsible regulatory strategy. The CFTC has an important role to play."²

¹ *Commodity Futures Trading Comm'n v. McDonnell*, No. 18-CV-361 (E.D.N.Y. Mar. 6, 2018)

² https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo34#P46_12428

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