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Another Federal Court Rules That Virtual Currency Is a Commodity

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Last week, in a denial of a motion to dismiss, a Massachusetts district court ruled that virtual currencies are commodities under the Commodity Exchange Act (the “CEA”) and that therefore the CFTC has authority to prosecute fraud with respect to virtual currencies (see *CFTC v. My Big Coin Pay, Inc.*, No. 18-10077-RWZ, 2018 WL 4621725 (D. Mass. Sept. 26, 2018) (“*My Big Coin Pay*”). The CEA states that commodities include:

goods and articles, except onions (as provided by section 13-1 of this title) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.”

(Section 7 U.S.C. § 1a(9), emphasis added).

The defendants argued that because no futures were traded in connection with the particular virtual currency at issue, such virtual currency (“My Big Coin”) was not a commodity within the jurisdiction of the CFTC. Although no contracts for futures were traded with regards to the specific virtual currency, My Big Coin, the District Court determined that My Big Coin was a commodity because of the existence of futures trading in other virtual currencies. Specifically, the District Court stated that “Congress’ approach to defining ‘commodity’ signals an intent that courts focus on categories – not specific items – when determining whether the ‘dealt in’ requirement is met” (*My Big Coin Pay*, 2018 WL 4621725, at *4). In other words, all virtual currencies are commodities because futures contracts trade on the broad category of virtual currency.

The decision also noted the defendants’ argument that the laws under which the CFTC’s claims were brought “were meant to combat fraudulent market manipulation” as opposed to pure fraud. The District Court disagreed and stated that both Section 6(c)(1) of the CEA and CFTC Regulation 180.1 explicitly prohibit fraud even in the absence of market manipulation.

My Big Coin Pay further underscores the CFTC’s [assertion](#) of jurisdiction over virtual currencies and falls in line with a ruling earlier this year (see *CFTC v. McDonnell*, 287 F. Supp. 3d 213 (2018), holding that virtual currencies are commodities subject to the CFTC’s regulatory jurisdiction). James McDonald, the CFTC Director of Enforcement, [noted](#) the importance of the ruling in *My Big Coin Pay*, stating that it “confirms the authority of the CFTC to investigate and combat fraud in the virtual currency markets . . . We will continue to police these markets in close coordination with our sister agencies.”

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