

## DERIVATIVES - USA

# Federal court upholds that virtual currencies are commodities

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On March 6 2018 the US District Court for the Eastern District of New York confirmed that virtual currencies are a commodity within the anti-fraud jurisdiction of the Commodity Futures Trading Commission (CFTC).<sup>(1)</sup> The order, which came in the form of a preliminary injunction, follows the CFTC's January 18 2018 civil enforcement action against Patrick K McDonnell and his company CabbageTech, doing business as Coin Drop Markets (CDM). The order alleged that McDonnell had induced customers to send money and virtual currencies to CDM in exchange for virtual currency trading advice and purchasing on customers' behalf. The CFTC also alleged that McDonnell and CDM misappropriated investors' funds.<sup>(2)</sup>

The court considered whether virtual currencies are a commodity under the Commodity Exchange Act and whether the CFTC has jurisdiction over commodity fraud that is not tied to the sale of derivatives products. The court held that virtual currencies "fall well-within the common definition of 'commodity'"<sup>(3)</sup> and thus the CFTC maintains the jurisdictional authority to stop spot trade virtual currency fraud under the act.<sup>(4)</sup> Further, the order clarified that the CFTC may exercise jurisdiction over spot transactions in virtual currencies when there is potential fraud, even if the fraud is not in conjunction with derivatives based on virtual currencies.<sup>(5)</sup>

The ruling marks the first time that a federal court has affirmed the CFTC's 2015 determination that virtual currencies are 'commodities' as defined by the act.<sup>(6)</sup> This provides the CFTC with further standing to police fraud in virtual currency spot markets. Given the recent rhetoric from CFTC commissioners,<sup>(7)</sup> the CFTC is expected to continue to pursue similar enforcement actions.

*For further information on this topic please contact [Jay G Baris](#), [Geoffrey B Goldman](#), [Lona Nallengara](#) or [Donna M Parisi](#) at Shearman & Sterling LLP by telephone (+1 212 848 4000) or email ([jay.baris@shearman.com](mailto:jay.baris@shearman.com), [geoffrey.goldman@shearman.com](mailto:geoffrey.goldman@shearman.com), [lona.nallengara@shearman.com](mailto:lona.nallengara@shearman.com) or [dparisi@shearman.com](mailto:dparisi@shearman.com)). The Shearman & Sterling LLP website can be accessed at [www.shearman.com](http://www.shearman.com).*

## Endnotes

(1) *CFTC v McDonnell*, 1:18-cv-00361 (EDNY March 6 2018), available [here](#). For more information please refer to our earlier update, available [here](#).

(2) *Id* at 29.

(3) *Id* at 24.

(4) *Id* at 25.

(5) *Id* at 26.

(6) See *In the Matter of: Coinflip, Inc, d/b/a Derivabit, and Francisco Riordan*, CFTC Docket 15-29 (September 17 2015), available [here](#).

(7) Chair J Christopher Giancarlo, CFTC, "Written Testimony of Chairman J Christopher Giancarlo

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before the US Senate Agriculture, Nutrition, and Forestry Committee, Washington, DC" (February 15 2018), available [here](#).

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