

[Securities Regulation Daily Wrap Up, ENFORCEMENT—E.D.N.Y.: CFTC's authority over cryptocurrency fraud reaffirmed, \(Jul. 18, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [Lene Powell, J.D.](#)

In reconsidering a March ruling, a federal district court again found that the CFTC had standing to exercise enforcement power in a virtual currency fraud scheme. The "actual delivery exception" did not apply because the transactions were not entered into on a leveraged, margined, or financed basis and the exception did not bar enforcement of commodity fraud under Section 6(c)(1) of the Commodity Exchange Act ([CFTC v. McDonnell](#), July 12, 2018, Weinstein, J.).

In March, a district court in the Eastern District of New York entered a [preliminary injunction](#) against Patrick McDonnell and his company, CabbageTech, Corp. d/b/a Coin Drop Markets (CDM), prohibiting the defendants from engaging in fraud and requiring them to preserve books and records and provide expedited discovery. The CFTC had [charged](#) defendants with fraud and misappropriation in connection with purchases and trading of the virtual currencies Bitcoin and Litecoin.

CFTC antifraud authority. In asking the court to reconsider denying his motion to dismiss, McDonnell argued that the "actual delivery exception" in Section 2(c)(2)(D) of the Commodity Exchange Act (CEA) barred enforcement in the alleged virtual currency fraud scheme. For support, McDonnell cited a May decision from the Central District of California, [CFTC v. Monex Co.](#), involving alleged precious metals fraud. The court rejected this argument, noting that *Monex* was not controlling authority. Also, the exception applies only to transactions entered into on a leveraged, margined, or financed basis. These transactions did not fit that exemption.

The court then went further. The *Monex* court found that Section 6(c)(1) only protects against fraud where a commodity transaction manipulates or potentially manipulates the derivatives market. Upon full consideration of *Monex*, the New York court reached a different conclusion. Without elaborating, the court reaffirmed its view that Section 6(c)(1) gave the CFTC standing to exercise its enforcement power over the fraudulent schemes alleged in the complaint. The court also reaffirmed its prior rulings regarding subject-matter and personal jurisdiction.

Because there was no valid basis for a change in the order, the court denied McDonnell's motion to dismiss.

The case is [No. 18-CV-361](#).

Attorneys: David William Oakland for the CFTC. Patrick K. McDonnell, pro se.

Companies: CabbageTech, Corp. d/b/a Coin Drop Markets

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