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## CFTC Calls Virtual Currencies 'Goods' At Boston Hearing

By **Alison Noon**

Law360, Boston (June 14, 2018, 9:16 PM EDT) -- The U.S. Commodity Futures Trading Commission told a federal judge in Boston on Thursday that virtual currencies fall within the definition of "goods and articles" it can regulate, arguing for jurisdiction over the expanding industry where the agency says scams are flourishing.

The CFTC, in its fraud suit against one such cryptocurrency, asserted that virtual currencies "operate" as goods and should be included in that "very broad term."

The agency sued My Big Coin, its founder Randall Crater and salesman Mark Gillespie in January, claiming they stole \$6 million from 28 people between 2014 and June 2017 to bankroll luxury Las Vegas shopping trips and pay down their debts.

The definition of "commodity" under the Commodity Exchange Act and CFTC regulations lists 30 specific agricultural products ranging from cottonseed to livestock, and explicitly encompasses all goods, services, rights and interests "in which contracts for future delivery are presently or in the future dealt in."

"This is simply a digital representation of those items," McCarthy said.

Counsel to several relief defendants, Laura Greenberg-Chao of Henshon Klein LLP, said in court Thursday that the "goods" argument deviates from the agency's previous public guidance.

In a 2015 settlement with another defunct cryptocurrency provider, the CFTC **asserted** that virtual currency frauds fall within its jurisdiction because virtual currencies fit the "services" part of the agency's definition of a "commodity." The agency also relied on the "services" portion of the definition in other enforcement actions against cryptocurrency companies.

"The CFTC now is saying that it's within the second category of commodities, goods and articles," Greenberg-Chao said. "This is the first time that it's said that."

"Maybe they changed their mind," U.S. District Judge Rya W. Zobel said.

"They may have changed their mind, but it's a flip-flop," Greenberg-Chao said.

Crater focused an April motion to dismiss on that explanation, saying My Big Coin **does not offer futures** contracts on its services, so it does not fall under the "commodities" the CFTC can regulate.

"The qualifier is that 'if there are futures contracts,' and that's what is missing here," Greenberg-Chao said in court.

State attorneys general are the only regulatory bodies with jurisdiction over cryptocurrencies, Crater's counsel Katherine Cooper of Murphy & McGonigle PC argued.

Filings in the Boston case were postponed earlier this year while a similar lawsuit played out in the Eastern District of New York, where the CFTC accused cryptocurrency adviser Patrick McDonnell of

defrauding people trading in virtual currency.

U.S. District Judge Jack B. Weinstein **ruled against McDonnell** in March, definitively stating that virtual currencies are commodities under the "common definition" as well as the CFTC's regulatory definition of the term. Attorneys **watching the case** considered the ruling a turning point and expected it to carry weight in other jurisdictions.

Judge Zobel issued a restraining order freezing the company's assets the same day, and the company **agreed** to an injunction in April.

The CFTC is represented in-house by Traci L. Rodriguez, Jonah E. McCarthy, Paul G. Hayeck and John C. Einstman.

My Big Coin and its employees are represented by Ray E. Chandler of Chandler & Jennings LLC, Steven N. Fuller of Markun Zusman Freniere Compton LLP, Katherine Cooper of Murphy & McGonigle PC, and Laura Greenberg-Chao of Henshon Klein LLP.

The case is CFTC v. My Big Coin et al., case number 1:18-cv-10077, in the U.S. District Court for the District of Massachusetts.

--Editing by Adam LoBelia.

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