

美國紐約東區聯邦地區法院裁定加密貨幣屬商品交易法中的大宗商品

美國商品期貨交易委員會 (Commodity Futures Trading Commission, CFTC) 在2015年09月宣布將比特幣等加密貨幣歸類為美國商品交易法 (Commodity Exchange Act, CEA) 中的大宗商品 (commodity)，與黃金、原油或小麥的歸類一樣，受到委員會的監管，範圍包含在衍生商品契約 (derivatives contract) 中使用比特幣，或在州際貿易中使用比特幣為詐欺或人為操作 (manipulation)，自此CFTC開始追查從事加密貨幣衍生商品交易行為，卻沒有註冊的公司。

2018年01月時CFTC起訴Coin Drop Markets公司和其執行長Patrick K. McDonnell利用經營加密貨幣期權投資顧問公司，向投資人行銷若接受其投資建議將可獲得200%以上的報酬，卻從未於收取顧客諮詢費後提供任何諮詢服務，並接著關閉公司網站與社群媒體，該公司亦未向CFTC申請註冊，違反美國商品交易法。

對此美國紐約東區聯邦地區法院 (Eastern District of New York) 的法官Jack Weinstein於2018年03月06日裁定，認定加密貨幣屬市場交易時能保有一致的品質與價值的貨品 (goods)，具有價值保存 (store of value)、金融交易 (monetary exchange) 的特質，且價格跟大宗商品一樣隨著人們的需求而有起伏變動，符合商品交易法對「商品」包含有形與無形的貨品、服務、權力與利益等的廣泛定義。

由於加密貨幣屬於商品交易法的適用對象，CFTC可對涉及衍生商品市場與現貨市場 (Spot Market) 的詐欺或操縱行為進行監管。基於以上理由，法院同意CFTC對Coin Drop Markets公司和執行長Patrick K. McDonnell的預防性禁制令 (preliminary injunction) 請求，禁止其繼續參與大宗商品交易。

相關連結

- [Brendan Pierson, Virtual currencies are commodities, U.S. judge rules, REUTERS, Mar. 7, 2018](#)
- [Federal Court in New York Enters Preliminary Injunction Order against Patrick K. McDonnell and His Company CabbageTech, Corp. d/b/a Coin Drop Markets in Connection with Fraudulent Virtual Currency Scheme, COMMODITY FUTURES TRADING COMMISSION](#)
- [Bitcoin, COMMODITY FUTURES TRADING COMMISSION](#)

相關附件

- [COMMODITY FUTURES TRADING COMMISSION \[CFTC\], Memorandum & Order \(2018\) \[pdf\]](#)
- [COMMODITY FUTURES TRADING COMMISSION \[CFTC\], Complaint for Injunctive and Other Equitable Relief and For Civil Monetary Penalties Under The Commodity Exchange Act and Commission Regulations\(2018\) \[pdf\]](#)
- [COMMODITY FUTURES TRADING COMMISSION \[CFTC\], Order instituting Proceedings Pursuant TO Sections 6\(c\) and 6\(d\) of The Commodity Exchange Act Making Findings And Imposing Remedial Sanctions \(2015\) \[pdf\]](#)

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阮韻蓀

副法律研究員 編譯整理

上稿時間：2018年03月

資料來源：

COMMODITY FUTURES TRADING COMMISSION [CFTC], Memorandum & Order (2018), <https://www.courtlistener.com/recap/gov.uscourts.nyed.411995/gov.uscourts.nyed.411995.29.0.pdf> (last visited Mar. 26, 2018) .

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