

A Classic Commodity Ponzi Scheme Raising Novel Issues for Pools and Carbon Credits

August 8, 2024



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The Federal U.S. District Court for the Northern District of Illinois entered an [Order](#) granting summary judgement for the U.S. Commodity Futures Trading Commission on July 1, 2024 and ordered \$83 million in restitution and \$36 million in disgorgement against Sam Ikkurty and his affiliated companies. This would have been a garden variety “classic Ponzi scheme” case but for two novel issues.

First, the court agreed with the CFTC’s interpretation that for an investment vehicle to qualify as a “commodity pool” it need not actually “trade” any “commodity interests,” i.e., derivatives – such as commodity swaps, futures or options. Instead, merely the “solicitation of funds” from participants to invest in a vehicle for purposes of trading in derivatives (e.g., in the future) – would be enough to qualify this vehicle as a “commodity pool.” Thus, the court agreed with the CFTC that Ikkurty’s investment vehicles were “commodity pools” even though they had no positions in derivatives, and therefore the operator of the pool acted as an unregistered commodity pool operator (“CPO”) and as such committed fraud.

The court found that investment vehicles operated by Ikkurty invested in Bitcoin, Ethereum and other cryptocurrencies, that under [CFTC v. My Big Coin Pay, Inc.](#) 334 F. Supp. 3d 492, 498 (D. Mass 2018) would qualify as “commodities,” triggering the CFTC’s anti-fraud jurisdiction under § 180.1 of the CFTC regulations.

Secondly, the court also agreed with the CFTC that certain carbon credits also qualify as “commodities” and that Ikkurty had misappropriated customer funds through a “carbon offset program” that resulted in a \$20 million shortfall for carbon offset program participants. The Order does not provide a lot of detail on how the carbon offset program operated, but it is notable that this Order is the first instance where the CFTC was able to successfully prosecute fraud in connection with trading environmental commodities, such as carbon credits.

This enforcement action is significant because it confirms the CFTC’s position that even if an investment vehicle may not have any positions in derivatives, merely stating (orally or in writing) that it may establish these positions in the future, would qualify as a “commodity pool” and the operator would become a CPO with all attendant compliance obligations.

Further, this Orders confirms the CFTC’s view that carbon credits are “commodities” and that the CFTC will continue investigating and prosecuting fraud in related carbon credits and other environmental commodities.