

Ether's Legal Status Clarified? CFTC Scores Win as Court Backs Agency's Commodity Classification

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In a victory for the Commodity Futures Trading Commission (CFTC), a federal court has granted summary judgment in favor of the agency in its case against Sam Ikkurty and his company Ikkurty Capital LLC. The ruling, issued by Judge Mary M. Rowland of the US District Court for the Northern District of Illinois on July 1, 2024, affirms the CFTC's broad authority to combat fraud in cryptocurrency markets and explicitly declares Ether to be a commodity subject to CFTC oversight.

The case stems from allegations that Ikkurty and his company operated a fraudulent cryptocurrency scheme, misappropriating investor funds and making misleading statements about trading profits. The court's decision not only entitles the CFTC to disgorgement against the defendants but also addresses several key issues that have been the subject of ongoing debate in the crypto regulatory landscape.

Ether Declared a Commodity

Perhaps the most headline-grabbing aspect of the decision is the court's explicit declaration that Ether is a commodity subject to CFTC jurisdiction. While the CFTC has long maintained this position and has even allowed futures contracts on Ether to be traded on regulated exchanges, this appears to be the first time a federal court has directly addressed the issue in a ruling.

The court stated unequivocally: "In its complaint, the CFTC identified two cryptocurrencies, Bitcoin and Erethreum [sic], as commodities that Defendants invested in. Through discovery the CFTC also identified two additional cryptocurrencies, OHM and Klima. . . [T]he Court finds that there is no genuine dispute that Defendants transacted in cryptocurrencies that qualify as commodities under the CEA."

This declaration provides legal backing to the CFTC's longstanding position and may influence future court decisions and regulatory approaches. However, it is important to note that this ruling does not

preclude other agencies, such as the Securities and Exchange Commission (SEC), from also asserting jurisdiction over Ether or other cryptocurrencies in different contexts.[1]

The court's ruling also addressed the status of wrapped Bitcoin (WBTC) and wrapped Ether (WETH), which are tokenized versions of Bitcoin and Ether on the Ethereum blockchain. The defendants had argued that they did not invest in Bitcoin itself, but rather in wrapped Bitcoin. The court dismissed this argument, stating that the distinction between wrapped and unwrapped versions of the cryptocurrencies was immaterial for the purposes of commodity classification. This interpretation suggests that the CFTC's jurisdiction extends not only to the base cryptocurrencies but also to their wrapped counterparts.[2]

Fraud Allegations and Misrepresentations

The court found that the CFTC had made a *prima facie* showing of fraud, detailing several misrepresentations allegedly made by Ikkurty and his company. These included false statements about historical fund performance, mischaracterizations of investment returns as "net profits" when they were merely redistributions of investor funds, misrepresentations about the use of investor funds and investment risk, and false claims about Ikkurty's background and experience.

Ikkurty Acted as an Unregistered CPO

Another significant aspect of the Ikkurty case is the court's ruling on commodity pool operator (CPO) registration requirements. The CFTC alleged that Ikkurty and his company operated as CPOs without proper registration, a violation of the CEA. The court agreed with the CFTC's position, finding that the defendants met the definition of a CPO under the CEA.

Importantly, the court rejected the defendants' argument that they were not required to register as CPO, because they primarily dealt in spot transactions rather than futures or derivatives. The court clarified that the CPO registration requirement is triggered by the act of operating a commodity pool, regardless of whether the pool engages in futures, derivatives or spot transactions. In examining the defendants' activities, the court found that they met all the criteria of a CPO because they solicited, accepted, and pooled funds from multiple participants *for the purpose* of trading commodity interests.

Looking Ahead

While this ruling represents a victory for the CFTC, it is unlikely to be the final word on cryptocurrency regulation. The rapidly evolving nature of the crypto industry, coupled with ongoing debates about the appropriate regulatory framework, suggests that we can expect continued developments in this area. By affirming the CFTC's broad authority over crypto fraud and explicitly declaring Ether a commodity, the court has provided important clarity while also potentially setting the stage for future regulatory debates.

The Ikkurty opinion is available [here](#).

[1] See CFTC Office of the General Counsel, Letter at 1, *SEC v. Telegram Group Inc.*, No. 1:19-CV-09439 (PKC) (S.D.N.Y. Feb. 18, 2020) ("[T]he [CEA] . . . provides that many securities *are* commodities to which the securities laws apply. Thus, any given digital asset may or may not be subject to the securities laws, but that does not depend on whether the asset is a commodity. It depends on whether the asset is a 'security' within the meaning of the '33 Act itself.") (emphasis in original).

[2] Note that in charging Terraform Labs and its founder Do Hyeong Kwon with securities fraud, the SEC alleged that wrapped LUNA (wLUNA), which is a representation of the LUNA token on the Ethereum blockchain, is a security because the LUNA token is a security under the Howey test and wLUNA thus is a “receipt for” a security under Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934. See *SEC v. Terraform Labs PTE Ltd.*, No. 1:23-cv-1346 (S.D.N.Y. Feb. 16, 2023). The District Court for the Southern District of New York, however, found that wLUNA was a security under the Howey test without addressing the SEC’s novel theory. See *SEC v. Terraform Labs PTE Ltd.*, No. 1:23-cv-1346 (S.D.N.Y. Dec. 28, 2023).

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