



U.S. COMMODITY FUTURES TRADING COMMISSION

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July 18, 2019

Via CM/ECF

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *U.S. Commodity Futures Trading Commission v. Monex Credit Co., et al.*, No. 18-55815

Dear Ms. Dwyer:

Appellant, the U.S. Commodity Futures Trading Commission (“CFTC”), respectfully submits this letter pursuant to Federal Rule of Appellate Procedure 28(j) to bring to the Court’s attention the recent decision of the U.S. District Court for the Middle District of Florida in *CFTC v. Montano*, Case No. 6:18-cv-01607-GAP-GJK (M.D. Fla. July 17, 2019) (attached).

In *Montano*, as here, the CFTC alleged that the defendants committed fraud in violation of Section 6(c)(1) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 9(1). (Slip Op. at 7.) Section 6(c)(1) prohibits the use of “any manipulative or deceptive device” in connection with certain commodity transactions. The defendants in *Montano*, like the defendants here, argued that “any manipulative or deceptive device” covers only conduct that is both “manipulative and deceptive.” Unlike the district court here, the court in *Montano* rejected that argument:

Montano contends that the Act’s prohibitions on swaps fraud [d]o not apply to him, because he did not engage in market manipulation. However, *Section [6(c)(1)] plainly prohibits the use or attempted use of ‘any manipulative or deceptive device or contrivance’ when used ‘in connection with any swap or contract of sale of any commodity in interstate commerce.’ 7 U.S.C. § 9(1). The CFTC need not allege that Montano manipulated the market***.*

(Slip Op. at 7 (emphases added).)

Montano is the sixth court to hold, contrary to the district court’s decision here, that CEA Section 6(c)(1) prohibits fraud. See *CFTC v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1325 (11th Cir. 2018); *CFTC v. Scott*, 3:18-cv-05802-RBL, 2019 WL 46115, at *3 (W.D. Wash. Feb. 6, 2019); *CFTC v. My Big Coin Pay, Inc.*, 334 F.Supp.3d 492, 498-99 (D. Mass. 2018); *CFTC v. McDonnell*, 321 F.Supp.3d 366, 367-68 (E.D.N.Y. 2018); *CFTC v. Hunter Wise Commodities, LLC*, 21 F.Supp.3d 1317, 1346-47 (S.D. Fla. 2014). On the other hand, no court has agreed with the district court in this case that “manipulative or deceptive” means “manipulative and deceptive.”

Molly C. Dwyer, Clerk of the Court
July 18, 2019

Respectfully Submitted,

/s/ Robert A. Schwartz
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cc: All counsel

Attachment