

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 12-81311-CIV-MIDDLEBROOKS/BRANNON

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

vs.

HUNTER WISE COMMODITIES, LLC,
et al.,
Defendants.

**SPECIAL MONITOR AND CORPORATE MANAGER'S
FOURTH STATUS REPORT**

Melanie E. Damian, Esq., the court-appointed Special Monitor and Corporate Manager (the "Monitor") for the Entity Defendants¹ in the above-captioned enforcement action, submits her fourth report (the "Report") concerning the status of the Monitorship, established pursuant to

¹ The entity defendants (collectively, the "Entity Defendants") include the following: Hunter Wise Commodities, LLC ("HW Commodities"), Hunter Wise Services, LLC ("HW Services"), Hunter Wise Credit, LLC ("HW Credit"), Hunter Wise Trading, LLC ("HW Trading"), Lloyds Commodities, LLC ("Lloyds Commodities"), Lloyds Commodities Credit Company, LLC ("Lloyds Credit"), Lloyds Services, LLC ("Lloyd Services"), C.D. Hopkins Financial, LLC ("CD Hopkins"), Hard Asset Lending Group, LLC ("Hard Asset"), Blackstone Metals Group, LLC ("Blackstone"), Newbridge Alliance, Inc. ("Newbridge"), and United States Capital Trust, LLC ("US Capital").

HW Commodities, HW Services, HW Credit and HW Trading, collectively shall be referred to herein as the "HW Entities." Lloyds Commodities, Lloyds Credit, and Lloyd Services, collectively shall be referred to herein as the "Lloyds Entities." Hard Asset, CD Hopkins, Blackstone, New Bridge, and US Capital, collectively shall be referred to herein as the "Dealer Entities" and each one as a "Dealer Entity."

Additionally, the above-captioned action also commenced against the following individual defendants (collectively, the "Individual Defendants"): Edward Martin, Fred Jager, James Burbage, Baris Keser, Frank Gaudino, John King, David Moore, and Chadwick Hopkins.

this Court's *Order Temporarily Appointing Special Corporate Monitor* (the "Appointment Order") [ECF # 77], which the Court subsequently expanded in its *Order on Plaintiff's Motion for Preliminary Injunction* ("Injunction Order") [ECF #78], covering the period from September 1, 2013 through December 31, 2013 (the "Reporting Period").

I. INTRODUCTION

a. The Initial Report

The Appointment Order and Injunction Order were entered on February 22, 2013 and February 25, 2013, respectively, following the Commodity Futures Trading Commission's ("CFTC") motion for preliminary injunction and for the Appointment of a receiver over the Entity Defendants [ECF #4]. The Appointment Order directed the Monitor to submit her conclusions and recommendations as to the viability of the Entity Defendants' operations within thirty (30) days after entry of that order (by March 22, 2013). *See* Appointment Order at ¶ 36. The Injunction Order, entered two days later, required the Monitor to submit her initial report summarizing her activities in carrying out her duties, within ninety (90) days of its entry (or by May 26, 2013). The Monitor met both of those deadlines by filing her initial report on March 22, 2013 (the "Initial Report") [ECF #102]. The Initial Report described the Monitor's initial efforts in carrying out her duties and her recommendations for the Estate.

b. The Second and Third Reports

On July 2, 2013, and September 30, 2013, the Monitor respectively filed her Second and Third Status Reports, covering the activities undertaken by the Monitor during the period from March 22, 2013 through June 30, 2013 (the "Second Report") and from July 1, 2013 through August 30, 2013 (the "Third Report"). During the reporting periods for the Second Report and the Third Report, the Monitor continued to carry out her duties under the Appointment Order and the Injunction Order. These duties included, among other things, the continued wind down of

the Entity Defendants' operations, the continued marshaling of known assets of the Monitorship estate (the "Monitorship Estate"), the continued investigation into and efforts to recover additional assets belonging to the Monitorship Estate, and the continued administration of all recovered assets. *See* Injunction Order at ¶ 21(A) – (L).

c. Monitor's Duty to File Periodic Reports

The Monitor continues to fulfill her duties under the Appointment Order and Injunction Order. Pursuant to Paragraph 24 of the Injunction Order, the Monitor is required to "periodically ... as directed by the Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the [Monitorship Estate], and otherwise perform the duties mandated by [the] Order." Accordingly, the Monitor provides herein a detailed description of her efforts and accomplishments during the current Reporting Period.

II. STATUS OF MONITORSHIP (SEPTEMBER 1, 2013 THROUGH DECEMBER 31, 2013)

a. Ongoing Administration of the HW Entities

i. Continued Oversight of the Precious Metals

As detailed in the Initial Report and subsequently updated in the Second and Third Reports, the Monitor identified limited quantities of physical precious metals belonging to certain Entity Defendants that are presently being stored at Baird & Associates ("Baird"), Delaware Depository Services ("DDS"), and International Depository Services of Canada ("IDS").² The quantity of precious metals held by each of these bailees has remained unchanged since the filing of the Initial Report, and each has assured the Monitor that it will continue the freeze on these metals until further direction from the Monitor or order of this Court. A detailed

² The bulk of the physical precious metals are stored at DDS. However, IDS and Baird each hold a single approximately 1000 oz. bar of silver, each of which has a present market value of approximately \$19,000.00, as of January 27, 2014.

report of the quantities and market values (as of September 26, 2013) of the precious metals stored at DDS is attached hereto as **Exhibit “A”**.

The precious metals that the Monitor transferred from the Irvine, California office of the HW Entities remain stored at a secure Via Mat International (“Via Mat”) facility in Miami, Florida. The quantity of the metals at Via Mat has remained the same since their arrival at the facility. As reflected in Exhibit J to the Monitor’s Initial Report, the total appraised (numismatic) value of those metals as of March 6, 2013 was \$256,057.04. *See* Initial Report, Exhibit J [ECF #102-J].

As detailed in the Third Report, upon terminating the lease of the apartment located at 9 MacArthur Place #2205 (the “Santa Ana Apartment”),³ the Monitor secured and removed from the Santa Ana Apartment a limited number of coins and precious metals that are stored in a safe deposit box located at a bank in Miami, Florida. In August 2013, the Monitor had these coins and precious metals examined by a certified appraiser, who determined their total value to be approximately \$5,000.00.⁴ The Monitor will obtain a formal appraisal in the event the Court converts the Monitorship to a receivership or otherwise authorizes the Monitor to liquidate the coins and metals of the Estate.

ii. The Monitor’s Compliance with Government Subpoenas, Requests and Notices

The Monitor routinely receives subpoenas, requests and notices from various government entities that require the Monitor to respond, provide information or records, and/or take other

³ The HW Entities leased the apartment for Defendant Edward Martin. The Monitor’s termination of the lease resulted in a reduction of the Monitorship Estate’s monthly expenses by more than \$3,800.00.

⁴ As detailed in the Third Report, prior to shipping the precious metals from the Irvine office to Via Mat’s facility in Miami, the Monitor discovered that three coins were missing. The Monitor filed an insurance claim and successfully recovered \$5,770.00 in insurance proceeds for the benefit of the Monitorship Estate.

action in her capacity as the appointed Monitor of the Entity Defendants. Accordingly, the Monitor and her professionals worked on responding to subpoenas, requests and notices from the following government entities, among others, during this Reporting Period:

- *Internal Revenue Service* - The Monitor and Lead Counsel, with the assistance of the Forensic Accountants, responded to multiple Notices and Requests from the Internal Revenue Service (“IRS”) on behalf of the various Entity Defendants.
 - *Florida Department of Financial Regulation* – The Monitor received additional Subpoenas from the Florida Department of Financial Regulation, seeking records associated with Appex Asset Advisors. The Monitor and Lead Counsel promptly responded to the Subpoenas by providing the information and records requested and asserting applicable privileges.
- iii. Requests For Release of Metals and Funds Obtained or Transferred Through Hunter Wise International Commodities, Ltd.

During the Third Reporting Period, the Monitor communicated with and investigated the demands of two individuals, both citizens and residents of the United Kingdom, for the return of certain precious metals being held at a depository (DDS) and funds being held at a trading firm (Baird), in accounts under the names of entities affiliated with the HW Entities. These individuals claim that they had purchased the metals or transferred the funds through Hunter Wise International Commodities, Ltd., a Cayman Islands limited company (“HWIC Cayman”), and that neither they nor the metals and funds at issue have any connection to any of the Defendants to this action. DDS and Baird are aware of these individuals’ demands and claims, but, pursuant to the Monitor’s demands and in an abundance of caution, have frozen the accounts pending the Monitor’s investigation into the ownership and source of the metals and funds.

During the Third Reporting Period, the Monitor and Counsel obtained and carefully examined further information and documentation from the two individuals in an effort to confirm that they indeed are the true owners of the metals and funds they seek and that the source of those metals and funds is not any of the Defendants or any related or affiliated person or entity. Lead Counsel also investigated the entities through which these individuals purchased the metals or transferred the funds and endeavored to trace the metals and funds to their source and investigate those sources.

Although the Third Report stated that the Monitor with her counsel had determined that the individual demanding the return of the funds being held at Baird (approximately \$98,000.00) was entitled to have the funds released to him, upon further examination and analysis of the information provided by that individual, the Monitor and Lead Counsel have determined that additional information and documentation is needed for the Monitor to authorize the release of the funds. Upon receiving and analyzing the additional information and documentation requested by the Monitor, the Monitor and Lead Counsel will consult with the CFTC and make a final determination regarding whether to consent to Baird's release of the funds.

With respect to the metals (7 gold bars worth approximately \$282,000.00⁵) being held at DDS, after detailed analysis and review of the documents purporting to support the individual's ownership of the metals, the Monitor and Lead Counsel have determined that the individual demanding their release is in fact the owner of the 7 gold bars, that the gold bars were acquired exclusively through HWIC Cayman and that neither the Defendants nor their affiliates or principals were the source of the funds used to purchase the gold bars. Upon receiving a sworn declaration or affidavit from this individual attesting to the foregoing, the Monitor will consult

⁵ This is the approximate value as of January 27, 2014.

with counsel for the CFTC and make a final determination regarding whether to consent to DDS's release of the metals.⁶

In addition, since the Third Reporting Period, the Monitor has received a demand from an individual requesting the return of certain precious metals (10 silver bars) being held at DDS. The Monitor and her Counsel are investigating the demand to determine whether the Defendants or their affiliates were the source of the funds used to purchase the metals, or have any other connection thereto.

b. Demands to Banks Regarding Frozen Assets

During the Reporting Period, the Monitor and her professionals sent demand letters to financial institutions maintaining bank accounts held by various Defendants and/or their wholly owned entities or affiliates containing funds previously frozen pursuant to the Injunction Order. In response to the Monitor's demands that the financial institutions transfer the frozen funds to the Monitor, as required by the Injunction Order, the Monitor received \$13,520.45 from the frozen accounts of certain individual Defendants at J.P. Morgan Chase Bank and \$92.52 from the frozen accounts of Defendant Burbage and his wholly owned entity Excel Financial, LLC at Citibank. The Monitor deposited said funds into the Monitorship fiduciary account maintained and controlled by the Monitor. In total, \$339,620.99 in funds and securities remains frozen in various accounts in the names of certain Defendants and/or their wholly owned entities or

⁶ The declaration or affidavit will also provide that the individual shall not transfer the metals to (i) any of the Individual Defendants or those defendants' family members, friends, associates or affiliates, or (ii) HWIC Cayman or any of its principals, associates, employees, subsidiaries or affiliates.

affiliates, as detailed in **Exhibit “B”** attached hereto, the majority of which is held by South Peak Texas Investments, Inc., a company owned by Defendant Jager.⁷

c. Assistance in Other CFTC Investigations

The Monitor and her professionals continued to assist the CFTC in connection with its investigation of certain non-defendant dealers and their principals who did business with the HW Entities or otherwise had a connection to any of the Defendants. In particular, the Monitor and Lead Counsel located, reviewed and produced to the CFTC correspondence and documents related to a dealer and its principal and prepared and provided to the CFTC an analysis and summary of information pertinent to the CFTC’s investigations.

d. Potential Claims Against Third Parties

i. Potential Malpractice Claims Against Professionals

During previous reporting periods, the Monitor and Lead Counsel obtained certain records from former counsel to the HW Entities, the Lloyds Entities and/or Defendants Martin and Jager, requested copies of their malpractice liability policies, entered into tolling agreements with former counsel to investigate the Monitor’s claims against them, requested additional documents from former counsel, and obtained from them, after litigating certain objections based on asserted privileges, various documents that the Monitor and the CFTC had requested, along with a privilege log for the work product documents not produced, and coordinated with the CFTC the scheduling of the depositions of the three former counsel to the HW Entities, the Lloyd’s Entities, and/or Defendants Jager and Martin.

⁷ This balance of frozen assets no longer includes the \$11,594.42 that was frozen in one of Defendant Gaudino’s accounts as of the filing of the Third Report. Those funds were transferred to the Monitor’s fiduciary account during the Application Period; however, pursuant to an agreement among the CFTC, the Monitor and Defendant Gaudino, which this Court approved, the Monitor will be transferring those funds back to Defendant Gaudino. *See* note 12, *infra*.

During the instant Reporting Period, the Monitor and her Counsel conducted an extensive review and analysis of the voluminous documents that former counsel produced in preparation for the depositions of Timothy Carey, of WS LLP and J.B. Grossman of the law firm of J.B. Grossman, P.A. The Monitor and counsel for the CFTC conducted the depositions of Mr. Carey and Mr. Grossman on October 30, 2013 and November 5, 2013, respectively.⁸

During the Third reporting period, the Court approved employment of Jason Mazer, Esq. and the law firm of Ver Ploeg and Lumpkin, P.A. (“Insurance Counsel”), as special insurance counsel to the Monitor, to advise and assist her and Lead Counsel to investigate and pursue potential claims covered by the insurance policies, to negotiate with insurance carriers, and for related matters. Insurance Counsel has provided and will continue to provide advice and assistance to the Monitor and Lead Counsel in connection with analyzing the professional liability insurance policies of former counsel to the Entity Defendants.

ii. Hunter Wise Financial Group, LLC, Hunter Wise Holdings, LLC, Hunter Wise Securities, LLC, and South Peak Texas Investments, LLC

After the entry of the Injunction Order, the Monitor and her professionals learned that prior thereto, at least \$2,659,804 (the “Jager Transfers”) was transferred from the HW Entities’ accounts to Individual Defendant, Fred Jager (“Jager”), and his entities, Hunter Wise Holdings, LLC (“HW Holding”) and Hunter Wise Financial Group, LLC (“HW Financial”). Subsequently, the Monitor entered into a stipulation with Jager, HW Holdings, and HW Financial (the “Jager Stipulation”) [ECF # 93], which this Court approved in an Agreed Order Unfreezing Certain Bank Accounts, entered on March 7, 2013 (the “Unfreeze Order”) [ECF #94]. Pursuant to the Jager Stipulation and the Unfreeze Order, Jager, HW Financial and HW Holdings agreed to pay

⁸ The deposition of the third former counsel to the HW Entities was cancelled due to his passing away. Neither the CFTC nor the Monitor has scheduled the deposition of another attorney at such former counsel’s firm.

back the Jager Transfers to the Monitor and were required to make certain initial payments to the Monitor.

As detailed in the Initial Report, within days after entry of the Unfreeze Order, Jager, HW Financial and HW Holdings, each made initial payments to the Monitor towards the sums owed.⁹ During subsequent reporting periods, Jager and his companies made payments to the Monitor totaling \$137,264.00.¹⁰

Further, pursuant to the Jager Stipulation and the Unfreeze Order, HW Financial and HW Holdings were required to obtain authorization from the Monitor for all disbursements made by either company. In keeping with this requirement, during the Reporting Period, HW Financial and HW Holdings continued to submit numerous disbursement requests to the Monitor and the Monitor continued to carefully consider each one and approve various disbursements from HW Financial and HW Holdings.

After filing the Initial Report, the Monitor discovered that Jager also received transfers from the HW Entities through South Peak Texas Investments, LLC (“South Peak”), an entity owned by Jager whose accounts, like those of Jager’s other companies, were frozen pursuant to the Injunction Order. As explained in the Monitor’s Third Report, the Monitor and Lead Counsel investigated South Peak and its assets and determined that the majority of its assets are non-liquid equity holdings in private companies focused on natural resources. As such, in order to facilitate the transfer of additional funds from Jager and his companies to the Monitorship

⁹ On March 8, 2013, the Monitor received three (3) wire transfers into her fiduciary account in the total amount of \$200,000.00 in satisfaction of the initial payment requirement under the Unfreeze Order.

¹⁰ On June 3, 2013, HW Financial wired \$37,500.00 to the Monitor’s fiduciary account. On August 16, 2013, HW Holdings wired \$20,000.00 to the Monitor’s fiduciary account. And on September 3, 2013, HW Financial wired \$28,000.00 to the Monitor’s fiduciary account. On February 14, 2014, HW Financial wired \$52,264.00 to the Monitor’s fiduciary account.

Estate, including repayment of the amounts Jager received through South Peak, the Monitor commenced negotiations with Jager, HW Financial, HW Holdings, HW Securities, and South Peak for such repayment in regular periodic installments. During this Reporting Period, the Monitor continued to negotiate with Jager regarding the repayment of the amounts Jager received through South Peak and his other companies and the establishment of a process to streamline the Monitor's consideration and approval of disbursement requests.

e. Ancillary Litigation / Stay of Proceedings

The Appointment Order provides for a stay of all litigation ("Ancillary Proceedings") against the Entity Defendants. *See* Appointment Order at ¶ 25. To date, the Monitor has negotiated stipulations with respect to the majority of the Ancillary Proceedings, as detailed in the Second Report and subsequently approved by this Court [ECF # 151]. The Monitor has continued to negotiate with counsel for the plaintiffs in the remaining Ancillary Proceedings, for the purpose of entering into stipulations substantially similar in form and substance to that which the Court previously approved.

On September 6, 2013, the Court entered its *Omnibus Order* [ECF # 211], approving, among other things, the Monitor's initial recommendation [ECF #168] with respect to the Sabertooth Litigation.¹¹ As reported in the Third Report, after extensive consideration of the Sabertooth Litigation and its merits, the Monitor determined that if she can locate counsel who would represent the Estate on a contingency fee basis, she would recommend the Court the continued prosecution of this litigation. During the Third Reporting Period, Lead Counsel

¹¹ The action styled, *Lloyds Commodities, LLC v. Sabertooth Interactive, LLC*, Case No. CV-13-00375-JEM (the "Sabertooth Litigation"), pending in the United States District Court for the Middle District of California, was commenced by the Lloyds Entities against a media company that Lloyds Commodities, LLC engaged to create an online game that the principals of Lloyds believed would generate substantial revenues.

conducted a thorough search for such counsel but the only attorney they could locate who would consider representing the Estate on a contingency fee basis was the Lloyds Entities' former counsel who filed the action and was familiar with the merits of the claims. Lead Counsel is still in the process of negotiating the specific terms of the proposed contingency fee agreement while searching for other potential contingency counsel. Upon reaching an agreement with prospective counsel, the Monitor will consult with the CFTC and file an application with this Court to employ such counsel pursuant to the terms of that contingency fee agreement.

Further, during the Reporting Period, the Monitor's Lead Counsel invited counsel for the Defendant in the Sabertooth Litigation to participate in mediation. While counsel seemed amenable to mediate the dispute, mediation has not been scheduled. The Monitor and her counsel will continue to pursue mediation in an effort to resolve claims against Sabertooth expeditiously and avoid costly, protracted litigation.

f. Status of the Declaratory Action Pending in Northern District of Illinois

Prior to the commencement of this enforcement action, HW Commodities had filed the action for declaratory relief against the CFTC in the U.S. District Court for the Northern District of Illinois (the "Illinois Court") styled *Hunter Wise Commodity, et al. v. Futures Trading Commission*, Case No. 1:12-CV-07656. On September 18, 2013, the Illinois Court transferred the case to this District and the Clerk of the Court assigned it Case No. 13-CV-80945-Ryskamp/Hopkins (the "Declaratory Action").

In her Initial Report, the Monitor provided her preliminary assessment of the Declaratory Action, explaining that she believed it should be dismissed or transferred to this District for the reasons expressed by the CFTC in its motion to dismiss. After fully assessing the claims alleged in the Declaratory Action, the Monitor expressed in her Third Report that it should be dismissed because those claims and the underlying issues are substantially similar to the claims and issues

in this action, Defendants Martin and Jager have preserved their rights and claims in their Eleventh Circuit appeal of the Injunction Order and the Appointment Order, and pursuing the Declaratory Action while this enforcement action is pending, and set for trial (to commence in less than two weeks), would result in costly duplicative litigation and possible inconsistent legal determinations in the same District Court. Accordingly, pursuant to the authority and powers that the Court granted to her as corporate manager of HW Commodities, the Monitor, during the instant Reporting Period, filed a notice of voluntary dismissal of the Declaratory Action on September 30, 2013 and an Order Closing the Case was entered on October 8, 2013.

g. Miscellaneous Claims and Enforcement of Stay Provision

During this Reporting Period, the Monitor and Lead Counsel continued to prevent creditors and other third parties from collecting debts from and/or enforcing rights and filing claims against the Entity Defendants. Indeed, in response to certain demands, Lead Counsel invoked the stay provision of the Appointment Order and forwarded copies of that Order and the Injunction Order to the parties making the demands. No action has been filed against the Entity Defendants in violation of the stay provision during or prior to this Reporting Period.

h. Depositions Conducted and Attended

As mentioned above, during the Reporting Period, counsel for the CFTC and the Monitor took the depositions of Timothy Carey and J.B. Grossman, former counsel to the HW Entities, the Lloyds Entities, and/or Defendants Martin and Jager. The depositions of Mr. Carey and Mr. Grossman took place on October 30, 2013 and November 5, 2013, respectively.

After the depositions of Defendants Martin, Burbage and Gaudino, taken during previous reporting periods, the Monitor and her professionals, during the instant Reporting Period, continued to analyze the financial disclosures, bank statements and other documents and correspondence involving those Defendants and their entities. Further, the Monitor secured the

transfer to her fiduciary account of funds frozen in various accounts in the names of certain of these individual Defendants, based on the information the Monitor obtained during their depositions.

i. Marshaling and Sale of Personal Property

During the Third Reporting Period, the Monitor and Lead Counsel successfully obtained the turnover of the majority of Defendant Martin's assets that he acquired using funds he received from the HW Entities (the "Martin Assets"). The Monitor and Lead Counsel worked with an auctioneer to liquidate the Martin Assets for the benefit of the Monitorship Estate. The Martin Assets were sold at auction generating net proceeds of \$48,542.56 for the Monitorship Estate. During this Reporting Period, the Monitor and Lead Counsel resolved certain issues related to the transfer of a boat and an automobile from Defendant Martin to the winning bidders at auction.

As previously reported, the Monitor and Lead Counsel also successfully negotiated the turnover of Defendant Gaudino's Rolex Submariner watch, estimated to be valued between \$5,000.00 and \$6,000.00, which the Monitor is storing in a safe deposit box. Further, Lead Counsel secured the transfer to the Monitorship Estate of the \$48,386.38 that was frozen in an account of Gaudino Financial at Bank of America. During the instant Application Period, J.P. Morgan Chase Bank, N.A. transferred the \$11,594.42 that was frozen in Defendant Gaudino's account to the Monitor's fiduciary account.¹²

¹² After the Application Period, the CFTC, the Monitor and Defendant Gaudino reached an agreement for the return of these funds to Defendant Gaudino, which agreement the Court approved in its Order Authorizing the Corporate Monitor to Return Certain Previously Frozen Funds to Defendant Frank Gaudino [D.E. 255]. Therefore, the Corporate Monitor will be transferring the \$11,594.42 back to Defendant Gaudino.

III. ACCOUNTING OF MONITORSHIP FUNDS AND TOTAL VALUE OF ASSETS OF MONITORSHIP ESTATE

The Monitorship Estate currently has cash on hand in the amount of \$5,987,909.80¹³, which the Monitor is holding in the Estate's fiduciary accounts at Gibraltar Private Bank & Trust. *See* Monitorship Receipts and Disbursements attached hereto as **Exhibit "C"**. Upon adding the cash on hand to the present market value of the metals being stored at DDS (\$882,758.92¹⁴), the present market value of the two (2) silver bars being stored at IDS and Baird (together, approximately \$37,769.20¹⁵), and the numismatic value as of March 6, 2013 of the metals being stored at Via Mat (\$256,057.04¹⁶), the total value of the assets of the Monitorship Estate is approximately \$7,164,494.96¹⁷

IV. STATUS OF ENFORCEMENT ACTION

Due to Defendant Martin's health condition, the recent disqualification and termination of Defendants Martin and Jager's counsel, J.B. Grossman, and their retention of new counsel,

¹³ This is the balance reported as of 12/31/2013.

¹⁴ This is the approximate value as of January 27, 2014.

¹⁵ This is the approximate value as of January 27, 2014.

¹⁶ This value is based on an appraisal of the metals as of March 6, 2013. *See* Initial Report, Exhibit J [ECF #102-J]. In order to conserve costs to the Monitorship estate, the Monitor has not had the metals re-appraised.

¹⁷ This amount does not include any of the frozen funds or the value of the frozen shares at South Peak, which have not yet been transferred to the Monitorship Estate's fiduciary accounts or nominal amounts frozen in accounts of certain individual Defendants. *See* Exhibit B. The balance does reflect \$13,520.45 transferred from certain individual Defendants' frozen accounts at J.P. Morgan Chase Bank and \$92.52 transferred from the frozen Citibank accounts of Defendant Burbage and his wholly owned entity to the Monitorship Estate's fiduciary accounts during this Reporting Period.

Holland & Knight, the trial date was re-scheduled three times, and is presently scheduled to commence on February 24, 2014.

The CFTC moved to strike Defendants Jager and Martin's jury demand as to the issue of damages. On November 19, 2013, Jager and Martin filed a notice voluntarily withdrawing their jury demand.

In addition, on November 15, 2013, defaults were entered against Defendants Blackstone Metals Group, LLC, Baris Keser, John King and Newbridge Alliance, Inc., for their failure to appear, answer or otherwise respond to the CFTC's Complaint.

During the Reporting Period, counsel for the CFTC and Counsel for the Lloyds Entities and Defendants Gaudino and Burbage negotiated the principle terms of a Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief against the Lloyds Entities, Gaudino and Burbage, resolving the CFTC's claims against these Defendants for their actions as a recruiter of dealers and an intermediary between dealers and Hunter Wise Commodities, LLC in violation of the Commodity Exchange Act, but such order was not submitted to or entered by the Court until after the instant Reporting Period. [ECF #248].

On November 1, 2013, Defendant Burbage and his wife filed a Voluntary Petition for Bankruptcy in the United States Bankruptcy Court for the Southern District of Florida (the "Burbage Bankruptcy Case"). The Monitor subsequently filed a *Motion for Extension of Time to Object to Debtors Claimed Exemptions, Discharge and/or Dischargeability of Debt* ("Motion for Extension of Time") in the Burbage Bankruptcy Case. On January 14, 2014, after this Reporting Period, the Bankruptcy Court entered an Agreed Order granting the Monitor's Motion for Extension of Time. The Agreed Order provides that the Monitor and any other party to the Enforcement Action, including the CFTC, shall have through and including ten days after the District Court enters Judgment, or other Order of final determination of the claims alleged

against Burbage in the Enforcement Action, to object to the Debtors' claimed exemptions, and to file a complaint to deny the Debtors' discharge and/or dischargeability of debt. [Burbage Bankruptcy Case, ECF #32].

V. END-CUSTOMERS, CREDITORS AND DEALERS

During the Reporting Period, the Monitor and Lead Counsel continued to receive numerous telephone calls, mail and e-mail correspondence from end-customers, creditors and dealers, and/or their respective counsel, seeking information concerning the status of the Monitorship and the enforcement action. The Monitor and Lead Counsel have made every effort to answer their questions and address their concerns and continue to refer them to the Monitorship website located at www.hunterwisemanager.com. This website is regularly updated with recent filings, including the Monitor's status reports and the Court's orders, information regarding the Monitorship and the enforcement action, important dates and deadlines, questions frequently asked by end-customers, creditors and dealers, and the Monitor's answers thereto, and other updates regarding the Monitor's efforts to fulfill her duties under the Court's Orders.

The Monitor has compiled lists of all known end-customers, creditors and dealers of the Monitorship. The most current lists are attached hereto as **Composite Exhibit "D"**. The Monitor and her professionals recently mailed and emailed correspondence to all known end-customers and creditors of the Monitorship, providing an update regarding the enforcement action, and specifically informing them of the rescheduled trial date.

Further, the CFTC entered into consent judgments with various dealer entities and individual owners of those entities in administrative proceedings brought by the CFTC. The Monitor and Lead Counsel are assisting the CFTC in the collection of the amounts due under the consent judgments.

VI. ADMINISTRATIVE EXPENSES

The administrative expenses of the Monitorship Estate comprise the expenses that the Estate has incurred in connection with marshaling, maintaining, and preserving the Defendants' assets, including the fees and costs incurred by the Monitor and her professionals. All administrative expenses of the Estate are reflected in the Monitorship Receipts and Disbursements (Exhibit "C").

On November 6, 2013, the Monitor filed her *Third Interim Application for an Order Approving and Authorizing Payment of Fees and Expenses of Monitor and her Professionals* (the "Third Fee Application") [ECF #216], seeking approval and authority to pay the fees and costs incurred by the Monitor and her professionals during the period of July 1, 2013 through August 30, 2013. On December 6, 2013, this Court entered an Order approving the Third Fee Application [ECF #240]. The fees and costs that the Monitor paid pursuant to the Court's Order are reflected in Exhibit "C".

VII. CONCLUSION

The Monitor will continue to work with her team of professionals to locate, marshal and preserve all known and potential assets of the Monitorship Estate. Further, as authorized by the Appointment Order and the Injunction Order, the Monitor will continue to investigate and as appropriate pursue existing and potential claims against third parties on behalf of the Monitorship Estate. The Monitor will also continue to investigate and gather information regarding all Defendants' assets and transactions through subpoenas, depositions and other inquiries to financial institutions, and other entities and persons with any connection to the Defendants to discover potential claims against third parties and other sources of recovery. Further, the Monitor and her professionals will continue to analyze all documents obtained and, with the assistance of her Forensic Accountants, will trace all transfers of funds for the purpose

of determining the propriety of such transfers and, to the extent appropriate, recovering them. Of course, the Monitor will continue to perform all other duties as mandated by the Appointment Order and Injunction Order, and will continue updating the Court on a regular basis as to the status of the Monitorship.

Respectfully submitted this 19th day of February, 2014.

DAMIAN & VALORI, LLP

Counsel for Special Monitor / Corporate Manager
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: (305) 371-3960
Facsimile: (305) 371-3965

/s/ Kenneth Dante Murena

KENNETH DANTE MURENA, P.A.
FLORIDA BAR NO. 147486
SARA M. PARIS, ESQ.
FLORIDA BAR NO. 55024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Special Monitor's and Corporate Manager's Fourth Status Report was served upon all counsels of record via CM/ECF, and via Email and/or U.S. MAIL, to all parties listed in the Service List below, this 19th day of February, 2014.

/s/ Kenneth Dante Murena

KENNETH DANTE MURENA, P.A.
FLORIDA BAR NO. 147486

SERVICE LIST

Chadewick Hopkins

(LAST KNOWN ADDRESS)

646 Flower Ave., Apt. 3
Venice, CA 90291-6711
Via U.S. Mail

John King

140 Belle Grove Lane
Royal Palm Beach, FL 33411
Jaking82@me.com