

**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.

RECEIVER'S SIXTH STATUS REPORT

Melanie E. Damian, Esq., the court-appointed Special Monitor and Corporate Manager for the Entity Defendants¹ and the Equity Receiver (the "Monitor" or "Receiver") for Defendants Hunter Wise Commodities, LLC, Hunter Wise Services, LLC, Hunter Wise Credit, LLC and

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

Hard Asset Lending Group, LLC, CD Hopkins Financial, LLC, Blackstone Metals Group, LLC, Newbridge Alliance, Inc., and United States Capital Trust, LLC, collectively, shall be referred to herein as the "Dealer Defendants".

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

The Entity Defendants and Individual Defendants, collectively, shall be referred to herein as "Defendants".

Hunter Wise Trading, LLC in the above-captioned enforcement action, submits her sixth report (the “Report”) concerning the status of the Monitorship and the Receivership. This Report covers the period from May 1, 2014, through August 31, 2014 (the “Reporting Period”).

I. INTRODUCTION

A. The Initial Report

On February 22, 2013, following a hearing on the CFTC’s Motion for Preliminary Injunction and Appointment of a Receiver, the Court entered an Order Appointing Special Corporate Monitor, which, among other things, set forth the powers and duties of the Monitor with respect to the Entity Defendants (the “Appointment Order”) [ECF # 77]. 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. On February 25, 2013, the Court entered the Injunction Order, which 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 the above 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 set forth her recommendations regarding the Entity Defendants and the Monitorship Estate (the “Monitorship Estate” or the “Estate”).

B. The Second Through Fifth Reports

The Monitor has filed five reports prior to the instant Report. [ECF ## 102, 159, 213, 283, and 302, respectively]. Those reports cover the activities undertaken by the Monitor during the period from March 22, 2013, through April 30, 2014. During that period, the Monitor continued to carry out her duties under the Appointment Order and the Injunction Order. These duties include, among other things, the continued wind down of the Entity Defendants’

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

C. Monitor/Receiver's Duty to File Periodic Reports

The Monitor, now the Receiver, continues to fulfill her duties under the Appointment Order and Injunction Order. Paragraph 24 of the Injunction Order requires the Monitor/Receiver 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 [Estate], and otherwise perform the duties mandated by [the] Order.” Accordingly, the Receiver provides herein a detailed description of those efforts and accomplishments during the current Reporting Period.

II. STATUS OF THE ENFORCEMENT ACTION

A. Order of Final Judgment Against the HW Entities, Jager and Martin

On May 16, 2014, this Court entered the *Order of Final Judgment, Permanent Injunction and Civil Monetary Penalty and Other Equitable Relief* in favor of the CFTC and against the HW Entities, Jager and Martin [ECF # 306] (the “Final Judgment” or “Permanent Injunction”). The Court had previously entered the Order on Parties’ Motion for Summary Judgment [ECF # 281] in favor of the CFTC on count 1 (violation of Section 4(a) of the Act – conducting illegal off-exchange transactions) and count 12 (violation of Section 4d of the Act – for failure to register). Therefore, the Court has ruled on all counts of the CFTC’s Complaint in favor of the CFTC, and no further claims by the CFTC are pending.

The Final Judgment requires the HW Entities and Jager and Martin to pay restitution in the amount of \$52,643,399.19 and a civil monetary penalty in the amount of \$55,445,892.39, and permanently enjoins those Defendants from continuing to perpetrate their commodities trading fraud and otherwise violating the Commodity Exchange Act. *See id.* The Final Judgment also

specifically grants the Receiver (previously serving as Special Monitor and Corporate Manager) “full authority to act as an equity receiver for the Hunter Wise entity defendants.” *See* [ECF # 306 at ¶ 5]. As such, the Receiver is required to pursue and collect restitution payments from the Individual Defendants and make distributions to the defrauded creditors. *See id.* Further, the Final Judgment directs the Receiver to propose a claims process and distribution plan to the Court by July 15, 2014. *See id.*

B. Opinion and Order Setting Forth Findings of Fact and Conclusions of Law

Shortly after entry of the Final Judgment, on May 22, 2014, this Court entered a revised *Opinion and Order*, finding that Defendants “profited on the backs of more than 3,200 retail customers who lost over \$52 million from July 16, 2011 through February 25, 2013.” ECF # 308 at p. 3. Further, the Court found that Defendants violated Section 4b of the Act, by defrauding customers in retail commodities transactions, violated Section 6(c)(1) of the Act and Regulation 180.1, by employing a scheme to defraud in connection with contracts for sales of commodities, and aided and abetted under Section 13(a) of the Act, 7 U.S.C. § 13c(a). *See id.* The Court had previously entered the Order on Parties’ Motion for Summary Judgment [ECF # 281] in favor of the CFTC on count 1 (violation of Section 4(a) of the Act – conducting illegal off-exchange transactions) and count 12 (violation of Section 4d of the Act – for failure to register). Therefore, the Court has ruled on all counts of the CFTC’s Complaint in favor of the CFTC, and no further claims by the CFTC are pending.

C. Consent Orders Against the Lloyds Entities, Gaudino and Burbage

As indicated in previous Status Reports, 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. The Court entered the Consent Order during the instant Reporting Period. *See* ECF # 254. The Consent Order required, among other things, the Lloyds Entities, Guadino and Burbage to pay restitution amounts to the Receiver, and permanently enjoined them from continuing to commit commodities trading fraud and otherwise violating the Commodity Exchange Act. *See id.*

D. Consent Orders and Default Judgments Against Other Defendants

During prior Reporting Periods, the Court entered Consent Orders or Default Judgments against various other Entity Defendants and Individual Defendants. On May 16, 2014, during the Reporting Period, the Court entered a *Default Judgment for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against C.D. Hopkins Financial, LLC, Hard Asset Lending Group, LLC, Chadewick Hopkins, Blackstone Metals Group, LLC, and Baris Keser* [ECG # 304]. Pursuant to that Default Judgment and the previously entered Default Judgments and Consent Orders against other Defendants, the Defendants were required to, among other things, pay restitution amounts to the Receiver and were permanently enjoined from continuing to commit commodities trading fraud and otherwise violating the Commodity Exchange Act.

E. The Claims Administration Process

On July 15, 2014, pursuant to the Final Judgment, the Receiver filed a Motion seeking to approve the Claims Administration Process and Distribution Plan proposed therein. *See* ECF # 312. On August 15, 2014, this Court granted the Receiver's Motion [ECF #314], and the Claims Process is presently under way. Indeed, the Receiver sent the Legal Notice and Proof of Claim form to all customers and creditors of the Defendant. And, numerous customers have already filled out, signed and submitted their Proof of Claim forms. The Receiver and her professionals are processing and analyzing the claims as they arrive in order to determine whether the

claimants are eligible to participate in the claims process and the extent to which, if at all, their claims should be allowed, in accordance with the criteria proposed by the Receiver and approved by this Court. The claims bar date is September 19, 2014, and the Receiver will make her claims determinations on October 9, 2014, at which time she will notify the claimants pursuant to the Plan approved by this Court.

III. STATUS OF THE MONITORSHIP AND THE RECEIVERSHIP

A. *Ongoing Administration of the HW Entities*

i. Continued Oversight of the Precious Metals

As detailed in the Initial Report and updated in subsequent periodic Reports, the Receiver identified and took control of limited quantities of physical precious metals held in the name of certain Entity Defendants at various depositories and at the Hunter Wise office in Irvine, California. The metals held at depositories remain at the following locations: 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 bailee has assured the Receiver that it will continue the freeze on these metals until further direction from the Receiver or order of this Court. A detailed report of the quantities and market values (as of August 31, 2014) of the precious metals stored at DDS is attached hereto as **Exhibit “A”**.

The precious metals previously held at 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

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 \$19,490.00, as of August 31, 2014.

reflected in Exhibit J to the Monitor's Initial Report, the total appraised (numismatic) value of those metals as of March 6, 2013, was \$256,057.04.³ See Initial Report, Ex. 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"),⁴ the Monitor secured and removed from the Santa Ana Apartment a limited number of coins and precious metals that remain stored in a safe deposit box located at a bank in Miami, Florida. In August 2013, the Monitor had those coins and precious metals examined by a certified appraiser, who determined their total value to be approximately \$5,000.00.⁵ The Receiver will obtain an updated appraisal prior to liquidating those coins and precious metals.

ii. Requests For Release of Metals and Funds Obtained or Transferred Through Hunter Wise International Commodities, Ltd. (Cayman)

As set forth in previous status reports, the Receiver received demands from three individuals for the return of certain precious metals held at a depository (DDS) or funds held at a trading firm (Baird), in accounts under the names of Hunter Wise or entities affiliated with the HW Entities. DDS and Baird froze these accounts, pursuant to the Injunction Order, and

³ Note that the prices of gold and silver have declined since the appraisal was done in March 2013. Whereas the appraiser used a spot price of \$1,575/oz. for gold and \$28.54/oz. for silver, the spot prices on August 31, 2014, were \$1,287/oz. of gold and \$19.49/oz. of silver. Obviously, these values fluctuate, and those fluctuations affect the ultimate value of the inventory held at Via Mat.

⁴ The HW Entities leased the apartment for Defendant Edward Martin. The Monitor's termination of the lease resulted in a reduction of the Estate's monthly expenses by more than \$3,800.00.

⁵ Like all of the precious metals discussed herein, the value of these metals fluctuates. Also, 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.

informed the Receiver's counsel that the accounts would remain frozen pending the Receiver's investigation into the ownership and source of the metals and funds.

During the Reporting Period, the Receiver and her counsel continued to investigate these individuals' claims to determine whether they indeed are the true owners of the metals and funds they seek and to ensure that the source of those metals and funds is not any of the Defendants or any related or affiliated person or entity. The current status of each claim is set forth below.

a. The Silver Bars Frozen at DDS

As previously reported during the Fourth Reporting Period, the Receiver received a demand from an individual requesting the return of 10 silver bars held at DDS. The Receiver and her counsel concluded their investigation during the Fifth Reporting Period and determined that this particular individual, like all other Hunter Wise customers, should be required to submit a claim in the claims process prior to receiving any portion of the assets of the Estate.

b. The Funds Frozen at Baird & Associates

With regard to the individual demanding the return of funds held at Baird & Associates (approximately \$98,000.00), the Receiver and her counsel continued to work with the individual during the Reporting Period to obtain the records necessary to determine whether or not he indeed owns the funds. As of the filing of the instant Report, the individual has not provided all of the necessary records and, therefore, the Receiver has not been able to make a final determination as to ownership and whether to consent to Baird's release of the funds to the individual. Rather than continuing to search for the records, the individual informed the Receiver's counsel that he intends to commence an action in London to secure the release of the funds to him. Nevertheless, in the event the individual does locate and produce to the Receiver all of the documents necessary to establish his ownership and the source of the funds, the Receiver will finalize a declaration from the individual attesting to his ownership and the source

of the funds, as confirmed by the Receiver, and the authenticity of all of the documents he provided to the Receiver. Upon receipt of such signed declaration, the Receiver will consult with counsel for the CFTC and make a final determination regarding whether to consent to Baird's release of the funds to the individual. In the meantime, the individual is eligible to file his claim in the claims process.

c. The Gold Bars Frozen at DDS

With respect to the individual requesting the release of metals (7 1-kilogram gold bars worth approximately \$317,844.80⁶) being held at DDS, the Receiver and her counsel, during the Reporting Period, resolved the issue regarding the source of the funds used to purchase the metals at issue and narrowed the scope of the investigation into the ownership of the metals to the final transfer in the transaction involving multiple parties and transfers, from the individual to Hunter Wise International Commodities, Ltd. to at least two other entities, and finally to DDS. It took nearly one year for the individual to locate and produce (in a series of productions) to the Receiver's counsel the documents necessary to trace the funds from the individual to certain intermediary entities, however, those documents do not establish the final leg of the transfer from one of those intermediary entities to DDS. Therefore, the Receiver requested that the individual continue to search for documents that would allow the Receiver to trace the final leg of the transfer and has assisted the individual in that endeavor. If the necessary documents are located and produced to the Receiver, the Receiver will prepare a declaration from the individual attesting to his ownership of the metals and the source of the funds used to purchase them, as confirmed by the Receiver, and the authenticity of all of the documents he provided to the Receiver. Upon receipt of such signed declaration, the Receiver will consult with counsel for the

⁶ This is the approximate value as of August 31, 2014.

CFTC and make a final determination regarding whether to consent to DDS's release of the metals to the individual.⁷ This individual is also eligible to file a claim in the claims process and has been encouraged to do so.

B. Prospective Sale of Personal Property of the Receivership Estate.

On August 29, 2014, this Court granted the Receiver's Motion to Approve the Sale of All Personal Property of the Receivership Estate [ECF #315]. *See* Court's Order Granting the Motion at ECF #316. In that Order, the Court approved the Receiver's proposed plan to sell all of the personal property held by the Receiver (described above), including: (1) all of the precious metals held in accounts at various depositories and stored by the Receiver at ViaMat's secure facility in Miami, Florida; (2) all of the precious metals and jewelry formerly belonging to Ed Martin and seized from the apartment in Santa Ana, California; (3) a Rolex Submariner watch turned over to the Receiver by Frank Gaudino and stored by the Receiver in a safe deposit box; (4) the furniture and equipment from the Defendants' offices that the Receiver is holding in storage in California, Nevada, and Florida; (5) all tangible and intangible personal property, including stocks, shares, membership interests and other interests in any company, which the Receiver recovers from Fred Jager and any company he owns or otherwise has an interest, including without limitation South Peak Texas Investments, Inc., Hunter Wise Holdings, LLC, and Hunter Wise Financial Group, LLC; and (6) any tangible or intangible personal property that the Receiver recovers from any other defendant and/or any company they own.

Accordingly, the Receiver initiated the process of making arrangements to sell the Estate's personal property pursuant to the Court's order. In particular, the Receiver's counsel is

⁷ As previously explained, 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) Hunter Wise International Commodities, Ltd. (Cayman) or any of its principals, associates, employees, subsidiaries or affiliates.

coordinating the scheduling of the three auctions for the office furniture and equipment in California, Nevada and Florida, conducting research to determine the fair market value of the jewelry, soliciting offers to purchase the jewelry from reputable jewelers, and investigating the costs and benefits of selling the items through online auctions. Finally, the Receiver is obtaining proposals from depositories and metals suppliers for the liquidation of the precious metals at market price.

C. Asset Recovery from Defendant Jager, Hunter Wise Financial Group, LLC, Hunter Wise Holdings, LLC, Hunter Wise Securities, LLC, and South Peak Texas Investments, Inc.

After the entry of the Injunction Order, the Monitor and her professionals learned that, prior thereto, at least \$2,659,804 in member distributions (the “Jager Transfers”) was transferred from the HW Entities’ accounts to Individual Defendant Fred Jager (“Jager”) and his entities, South Peak Texas Investments, Inc. (“South Peak”), Hunter Wise Holdings, LLC (“HW Holdings”) 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 No. 93], which this Court approved in an Agreed Order Unfreezing Certain Bank Accounts, entered on March 7, 2013 (the “Unfreeze Order”) [ECF No. 94]. Pursuant to the Jager Stipulation and the Unfreeze Order, Jager, HW Financial, and HW Holdings agreed to pay back the Jager Transfers to the Receivership Estate, subject to final determination regarding the Defendants’ liability.

During the Reporting Period, in keeping with the latter requirement under the Unfreeze Order, HW Financial and HW Holdings continued to submit disbursement requests to the Receiver, and the Receiver continued to carefully consider each one and, as appropriate, approved various disbursements from HW Financial and HW Holdings.

With respect to the payment requirements under the Unfreeze Order, to date, Jager and his companies made payments to the Receiver totaling \$443,983.27, including two payments totaling \$106,219.27 made during the instant Reporting Period by or on behalf of HW Financial. Although, with its last payment to the Estate, HW Financial has paid the entire amount that it was required to pay in the Unfreeze Order, HW Financial's total debt to the Estate is not necessarily satisfied. Indeed, during the Reporting Period, the Receiver, with the assistance of her forensic accountant, determined that Jager and his companies actually received a total of \$4,222,673.61 from the HW Entities and that the amounts set forth in the Unfreeze Order, which reflected the CFTC's initial determination of the amounts transferred from the HW Entities, were not necessarily the total amounts transferred. The Receiver is presently investigating the nature and purpose of all of the transfers that the HW Entities had made to HW Financial for the purpose of determining whether HW Financial has satisfied its entire obligation or whether it still owes money to the Estate. With respect to Jager and his other companies, they have not satisfied their debts to the Estate according to the Unfreeze Order and the Receiver's independent investigation and, thus, the Receiver is seeking to collect the amounts owed.

During the Reporting Period, the Receiver and her counsel commenced negotiations with counsel for Jager regarding his and his wife's turnover of funds and assets pursuant to Jager's restitution obligation under the Final Judgment and negotiated an agreement to which both of the Jagers and the Receiver would be parties (the "Jagers Agreement"). Jager and his wife are now parties to a divorce proceeding in Orange County, California where they reside. On June 20, 2014, the Jagers filed with the family court a *Stipulation to Modify Judgment Filed May 28, 2014 and Order Thereon*, which, among other things, provided for the award and confirmation of community property and separate property. The Receiver sought certain of the assets designated

to Mrs. Jager and the parties have reached an agreement as to such assets. The parties are finalizing the agreement and will seek Court approval shortly.

Also during prior Reporting Periods, the Receiver discovered that Jager owned shares in a company called Great Western Iron Ore Properties, Inc. (“Great Western”). During the Reporting Period, the Receiver’s counsel discovered that J.B. Grossman, former counsel for Jager and other Defendants, was holding in trust 1,912,500 shares of common stock in Great Western on behalf of Jager. The shares are titled in the name of South Peak, which is wholly owned by Jager. The Receiver demanded turnover of the stock certificates to the Estate, Mr. Grossman complied, and the Receiver is now in possession of the stock certificates. Further, Jager had previously reported that he held ownership interests in various companies. The Receiver is working on determining the validity and extent of those ownership interests and how to execute thereon and liquidate them for the benefit of the Estate.

D. Asset Recovery from Defendant Martin

As previously reported, the Receiver and her counsel successfully obtained the turnover of the majority of Defendant Martin’s assets (the “Martin Assets”). Pursuant to this Court’s order, the Receiver liquidated the depreciating items of the Martin Assets, including the furnishings from the Santa Ana Apartment, a car and a boat. The Receiver intends to liquidate the remaining Martin Assets pursuant to this Court’s recent order approving the sale of the remaining personal property of the Estate.

During the Reporting Period, the Receiver discovered that Martin owns 500,000 shares in Great Western. Further, the Receiver confirmed the ownership interests of Martin and various family members’ and trusts in other companies. Receiver is negotiating with counsel for Martin regarding the transfer of those shares and ownership interests to the Receiver.

E. Asset Recovery from Defendant Burbage

As previously reported, 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"). During the Reporting Period, after being granted an extension of time to file a complaint to deny dischargeability of Burbage's debt pursuant to the Consent Order, the Receiver determined that there was no need to file such a complaint, based on the non-dischargeability of that debt pursuant to the express terms of the Bankruptcy Code. Burbage's bankruptcy case is now closed, and the Receiver may continue her efforts to recover his restitution obligation under the Consent Order.

F. Asset Recovery from Defendant Gaudino

With respect to Defendant Gaudino, the Receiver previously reported that her counsel had secured the turnover of all funds in his bank accounts (except a small sum pursuant to a Court-approved agreement with the CFTC) and all funds in the accounts of his company Gaudino Financial. Further, the Receiver's counsel had 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 Receiver is storing in a safe deposit box. The Receiver will sell that watch pursuant to the Court's order authorizing the Receiver's sale of all personal property of the Estate.

G. Recovery of Funds Frozen in Accounts of Defendants and Their Companies

During the previous Reporting Period, the Receiver and her counsel 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, seeking the transfer of the account balances to the Receiver. In response, during the Reporting Period, the Receiver 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 Receiver deposited those funds into the Receivership fiduciary account.

During the initial reporting period, counsel for the Receiver had sent demand letters to Standard Bank and Baird & Associates, among other metals brokers and suppliers, requesting that they freeze all accounts in the name of the HW Entities and their subsidiaries and affiliates. Accordingly, Standard Bank and Baird & Associates froze all such accounts, including an account at Standard Bank in the name of Hunter Wise International Commodities, Ltd. (a Cayman limited company) (“HWIC Cayman”) containing \$19,478.54, and an account at Baird & Associates in the name of Hunter Wise International Trading, Ltd. (a Cayman limited company) (“HWIT Cayman”) containing approximately \$500,000. Former counsel for HWIC Cayman had requested that those accounts be unfrozen because HWIC Cayman and HWIT Cayman were not defendants to the CFTC enforcement action, however, Standard Bank and Baird & Associates refused to do so given the connection between those entities and the HW Entities and the substantial transfers of funds from the HW Entities to those entities that the Receiver’s forensic accountant discovered in the HW Entities books and records and confirmed in bank statements. Since then, HWIC Cayman and HWIT Trading ceased operating and their counsel ceased representing them. Standard Bank and Baird & Associates continue to freeze those accounts pending joint instructions from HWIC Cayman, HWIC Trading and the Receiver, or an order from a court of competent jurisdiction.

In total, not including the approximately \$500,000 in HWIC Cayman’s account at Baird & Associates, \$401,358.91 in funds and securities remains frozen in various accounts in the names of certain Defendants and their wholly owned entities and affiliates, as detailed in **Exhibit**

“B” attached hereto. The Receiver is in the process of pursuing those funds for the benefit of the Receivership Estate.

H. Asset Recovery from Members of the HW Entities

Following the entry of the Final Judgment, during the Reporting Period, the Receiver sent demand letters to all of the members of the HW Entities that had received member distributions from the HW Entities since the inception of the companies, seeking the return of those distributions. Several members, through counsel, responded and produced documents evidencing that they had invested more money in the HW Entities than they had received in distributions. The Receiver’s counsel and forensic accountant reviewed all of those documents, conducted independent investigations in the claimed investments, and were able to confirm that some of those members were, in fact, net losers. Accordingly, the Receiver withdrew her demands to those members. The Receiver’s counsel and forensic accountant continue to investigate other members’ claims to having invested more than they received in distributions. Once that investigation has been completed, the Receiver will either withdraw her demand to, or pursue recovery of any net gain from, each member, as appropriate.

One member of the HW Entities, David Manners, who was also a former director of the companies, disputed the amount that the Receiver had requested in her demand letter but admitted that he did receive certain member distributions. Upon further investigation into the accounting records of the HW Entities, the Receiver’s counsel and forensic accountant determined that Mr. Manners had received member distributions in an amount less than the amount the Receiver had initially requested in her demand letter, and Mr. Manners agreed with that determination. Accordingly, the Receiver’s counsel and Mr. Manners’ counsel negotiated a settlement pursuant to which Mr. Manners agreed to return 100% of the member distributions he received from the HW Entities in four installment payments over a period of approximately four

months. The settlement has been memorialized in a written agreement which the Receiver intends to present to this Court for approval within the next week.

I. Restitution from Non-Defendant Dealers and Their Principals

The CFTC has entered into consent judgments with various dealer entities and individual owners of those entities in administrative proceedings brought by the CFTC. Those consent judgments require, among other things, the dealers and principals to pay certain restitution amounts and authorize the Receiver to collect the restitution amounts from those dealers. Accordingly, during previous reporting periods, the Receiver's counsel investigated the assets and liabilities of the dealers and principals against which the consent judgments were entered to determine whether they have any unencumbered or non-exempt assets to seek to recover. Thus far, counsel's investigation has not uncovered any recoverable assets. Nevertheless, during the Reporting Period, the Receiver's counsel continued searching for assets to marshal for the benefit of the Receivership Estate and sent demand letters to the dealers and their principals.

J. 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 Receiver has negotiated stipulations for the dismissal of the Entity Defendants from the majority of the Ancillary Proceedings, as detailed in the Second Report and subsequently approved by this Court [ECF # 151]. As previously reported, the Receiver continues to negotiate with counsel for the plaintiffs in the remaining Ancillary Proceedings in which Entity Defendants are still defendants, for the purpose of entering into stipulations substantially similar in form and substance to that which the Court previously approved. During the Reporting Period, the Receiver entered into a Stipulation with a plaintiff in one of the remaining Ancillary Proceedings involving the Lloyds

Entities, pursuant to which the plaintiff would dismiss the Lloyds Entities from that proceeding and submit a claim in the claims process.

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.⁸ That recommendation was that the Monitor be permitted to continue her search for counsel who would represent the Estate on a contingency fee basis in that litigation, and that, upon locating such counsel, she would recommend the continued prosecution of this litigation.

During the instant Reporting Period, the Receiver determined that rather than hiring contingency counsel, the Estate would be better served by having the Receiver's lead counsel seek to resolve the matter through mediation. Meanwhile, because the attorneys that Lloyds Entities had engaged for the Sabertooth Litigation requested that the Receiver substitute in other local counsel for the matter, the Receiver located and obtained this Court's approval to employ on an hourly basis new local counsel to assist the Receiver and lead counsel to resolve the matter through mediation or otherwise. The Receiver's counsel is working with Sabertooth's counsel to schedule mediation.

K. Claims Against Third Parties

The Receiver continues to investigate and formulate her claims against third parties, including former directors and officers of the HW Entities and former counsel to the HW Entities to recover (i) the losses sustained by the HW Entities as result of their misconduct, and (ii) the

⁸ 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.

funds paid to those parties by the HW Entities. The Receiver is also exploring her potential claims against insurance policies covering such misconduct. The Receiver expects to finalize the complaints and commence actions stating such claims during the next reporting period.

IV. END-CUSTOMERS, CREDITORS AND DEALERS

During the Reporting Period, the Receiver and her professionals 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 Receiver and the enforcement action. The Receiver and her professionals have made every effort to answer their questions and address their concerns and continue to refer them to the Receiver website located at www.hunterwisemanager.com and send them periodic letters. The website is regularly updated with recent court filings, including the Monitor/Receiver's Status Reports and the Court's orders, and the website and the Monitor/Receiver's periodic letters to end-customers and creditors provide information regarding the Monitorship, the Receivership and the enforcement action, important dates and deadlines, questions frequently asked by end-customers, creditors and dealers, and the Receiver's answers thereto, and other updates regarding the Receiver's efforts to fulfill her duties under the Court's Orders. The Receiver's professionals recently mailed and emailed correspondence to all known end-customers and creditors of the Receiver, providing an update regarding the enforcement action, and specifically informing them of the Court's recent Orders, including the Final Judgment, the Opinion and Order, and the Order approving the claims process. Further, claims packages have been sent to all known claimants and have been posted on the website.

The Receiver has updated her lists of all known end-customers, creditors and dealers of the Receiver.⁹

V. ACCOUNTING OF RECEIVERSHIP FUNDS AND TOTAL VALUE OF ASSETS OF RECEIVERSHIP ESTATE

The Receivership Estate currently has cash on hand in the amount of \$5,924,404.75¹⁰, which the Receiver is holding in the Estate's fiduciary accounts at Gibraltar Private Bank & Trust. *See* Receivership 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 (\$914,869.07¹¹), the present market value of the two (2) silver bars being stored at IDS and Baird (together, approximately \$39,890¹²), and the numismatic value as of March 6, 2013 of the metals being stored at Via Mat (\$256,057.04¹³), the total value of the assets of the Receivership Estate is approximately \$7,135,220.86¹⁴

⁹ Although the Receiver has attached to her previous reports lists of end-customers who had active accounts with Hunter Wise's dealers at the time the Monitor was appointed, the Receiver has decided not to attach the updated list of all end-customers to this Report to protect those customers. The Receiver has learned that certain companies have been contacting Hunter Wise's end-customers and soliciting their payment of fees to participate in the claims process, and making misrepresentations to encourage such payment. The Receiver has reported such conduct to several different government authorities and has posted a warning to end-customers at the top of the home page of the Receivership website (www.hunterwisemanager.com).

¹⁰ This is the balance reported as of August 31, 2014.

¹¹ This is the approximate value as of August 31, 2014.

¹² This is the approximate value as of August 31, 2014.

¹³ This value is based on an appraisal of the metals as of March 6, 2013. *See* Initial Report, Exhibit J [ECF #.102-J]. As noted above, the Receiver is working on determining the current fair market value of these metals.

¹⁴ 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 Receivership Estate's fiduciary accounts or nominal amounts frozen in accounts of certain individual Defendants. *See* Exhibit B.

VI. ADMINISTRATIVE EXPENSES

The administrative expenses of the Receivership 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 Receiver and her professionals. All administrative expenses of the Estate are reflected in the Receivership Receipts and Disbursements (Exhibit "C").

VII. CONCLUSION

The Receiver will continue to work with her team of professionals to locate, marshal, preserve, and liquidate all known and potential assets of the Receivership Estate. Further, the Receiver will continue to investigate existing and potential claims against third parties and, as appropriate, will pursue those claims that are viable on behalf of the Estate. The Receiver will also continue to investigate and gather information regarding the Defendants' assets and transactions, through subpoenas, depositions and other inquiries to persons and entities with any connection to the Defendants, to discover potential claims against third parties and other sources of recovery for the Estate. Further, the Receiver and her professionals will continue analyze the documents obtained from the Defendants and third parties and will trace all transfers of the Defendants' funds for the purpose of determining the propriety of such transfers and, to the extent appropriate, recovering them. The Receiver and her professionals will continue to analyze the end-customers and creditors' claims as they arrive and will carry out the Court-approved Claims Administration Process and Distribution Plan. Finally, the Receiver will liquidate all remaining personal property of the Estate in accordance with the Receiver's Court-approved proposal for doing so. Of course, the Receiver will continue to perform all other duties as mandated by the Appointment Order, the Injunction Order, and the Final Judgment and will

continue updating the Court on a regular basis as to the status of the Monitorship and the Receivership.

Respectfully submitted this 15th day of September, 2014.

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/s/ Kenneth Dante Murena
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FLORIDA BAR NO. 0068063

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Receiver's Sixth 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 15th day of September, 2014.

/s/ Kenneth Dante Murena
KENNETH DANTE MURENA, P.A.
FLORIDA BAR NO. 147486

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