

**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.

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**RECEIVER'S SEVENTH STATUS REPORT**

Melanie E. Damian, Esq., the court-appointed Special Monitor and Corporate Manager for the Entity Defendants and the Equity Receiver (the "Monitor" or "Receiver") for Defendants Hunter Wise Commodities, LLC, Hunter Wise Services, LLC, Hunter Wise Credit, LLC and Hunter Wise Trading, LLC in the above-captioned enforcement action, submits her seventh report (the "Report") concerning the status of the Monitorship and the Receivership. This Report covers the period from September 1, 2014, through November 30, 2014 (the "Reporting Period").

**I. INTRODUCTION**

***A. Commencement of the Monitorship***

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 appointed the Monitor to oversee and preserve assets of the Defendant Entities thereby creating the estate (the “Monitorship Estate” or the “Estate”). On February 25, 2013, the Court entered the Preliminary Injunction (the “Injunction Order”) [ECF # 78].

***B. Reporting on the Status of the Estate and the Activities of the Monitor***

Paragraph 24 of the Injunction Order requires the Monitor 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 Monitor has filed six reports prior to the instant Report. [ECF ## 102, 159, 213, 283, 302 and 317, respectively]. Those reports cover the activities undertaken by the Monitor during the period from March 22, 2013, through August 31, 2014. During that period, the Monitor has carried out her duties under the Appointment Order and the Injunction Order. These duties include, among other things, the wind down of the Entity Defendants’ operations, the marshaling of known assets of the Estate, the investigation into, and efforts to recover, additional assets of the Estate, and the administration of recovered assets of the Estate. *See* Injunction Order at ¶ 21(A) – (L).

The Monitor continues to fulfill her duties under the Appointment Order and Injunction Order and provides herein a detailed description of those efforts and accomplishments and her efforts to fill her additional duties as Receiver, as described below, 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 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 Monitor “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.*

***B. Consent Orders and Default Judgment Against All Other Defendants***

During prior Reporting Periods, the Court entered Consent Orders or Default Judgments against each of the other Defendants to this action, including the Lloyds Entities, Frank Gaudino, James Burbage, C.D. Hopkins Financial, LLC, Hard Asset Lending Group, LLC, Chadewick Hopkins, Blackstone Metals Group, LLC, and Baris Keser [ECF ## 254, 288, 289 and 304]. Those Defendants are required to, among other things, pay restitution amounts to the Receiver and are permanently enjoined from continuing to commit commodities trading fraud and otherwise violating the Commodity Exchange Act.

The Receiver has investigated the assets of those Defendants for the purpose of collecting the amounts they owe under the Consent Orders and Default Judgments. The Receiver has determined that those Defendants are either defunct entities without assets or individuals who are insolvent or otherwise lack the resources to pay their debts. Consequently, since the entry of those Consent Orders and Default Judgments, the Receiver has not collected any amounts from those Defendants. Nevertheless, the Receiver will monitor those Defendants’ assets and, to the extent any valuable assets are discovered, the Receiver will seek to recover those assets for the benefit of investors and creditors of the Estate.

*C. 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.

During the Reporting Period, the Receiver received a total of 860 claims from investors and creditors of Hunter Wise. The Receiver analyzed those claims 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 Receiver made initial determinations concerning all of the claims received and sent out letters to the claimants notifying them of the Receiver's initial determination regarding their claims. Subsequently, the Receiver received from seventy-three (73) claimants requests for reconsideration of the Receiver's initial determinations, disallowing their claims. The Receiver carefully reconsidered those claims using the new documentation provided by the claimants who had made the requests for reconsideration. The Receiver then made final determinations as to those claims and sent out letters explaining the reconsideration process, why the claim is still not allowable (if disallowance was required), and setting forth the deadline to formally appeal the Receiver's final determinations and other applicable deadlines in the claims process. Claimants were given until November 28, 2014 to file with the Court appeals of the Receiver's final determinations. The allowable claims, as determined by the Receiver, totaled \$36,964,130.28, and the average allowable claim was \$43,081.74.

Six (6) claimants whose claims were determined to not be allowable have filed appeals with the Court. The Receiver has until December 15, 2014 to file her responses to those appeals. After the Receiver has filed her responses, this Court will decide whether or not to uphold the

Receiver's final determinations and enter final non-appealable orders concerning the appealed claims. Thereafter, the Receiver will file a Motion to approve her initial distribution to the claimants with allowed claims. Based on the Receiver's final determinations and the estimated initial distribution amount of \$5,149,343.66 (80% of the cash on hand in the Receivership Estate), the Receiver estimates that the initial distribution to claimants with allowable claims would be approximately 13.39% of the total amount of allowable claims. Of course, the amount to be distributed to each claimant with an allowed claim and the percentage of that distribution would change in the event any of the appealing claimants prevail in its appeal.

### **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").<sup>1</sup> 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 November 30, 2014) of the precious metals stored at DDS is attached hereto as **Exhibit "A"**.

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<sup>1</sup> 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 \$16,360.00, as of November 15, 2014.

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 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.<sup>2</sup> See Initial Report, Ex. J [ECF #102-J]. Based on the decline in the spot prices of gold, silver and platinum, there has been a decline in the market value of precious metal coins, bars and collectibles. Thus, the Receiver estimates that the value of the metals at Via Mat is \$207,267.00. This estimate is based on the spot prices of the metals as of November 15, 2014 and on the market values of the same or similar items currently for sale on various online metals retailers.<sup>3</sup>

As detailed in the Third Report, the Monitor secured and removed from Defendant Martin’s 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. Those coins and metals are currently worth less than that amount in light of the decline in the spot prices of precious metals since the appraiser examined them.

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<sup>2</sup> 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 November 13, 2014, were \$1,161/oz. of gold and \$15.74/oz. of silver. Obviously, these values fluctuate, and those fluctuations affect the ultimate value of the inventory held at Via Mat.

<sup>3</sup> The Receiver utilized a methodology similar to that utilized by the appraiser to determine the current market value of the metals, rather than obtaining an updated formal appraisal, to minimize the expenses of the Estate.

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 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

With regard to the individual requesting the return of 10 silver bars held at DDS, because the individual was unable to provide the evidence necessary to establish that he is the owner of the bars and that the source of the funds used to purchase them was not any of the Defendants or their affiliates, the Receiver's counsel encouraged that individual to submit a claim in the claims process, which he did. In the claims process, the Receiver disallowed his claim and he filed with the Court a formal appeal of the Receiver's final determination.

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 that he indeed owns the funds and that Baird's should release of the funds to him. Because the individual had not

provided all of the necessary records as the deadline to file a claim in the claims process was approaching, the Receiver's counsel encouraged the individual to submit a claim in the claims process.

c. The Gold Bars Frozen at DDS

With regard to the individual requesting the release of metals (7 1-kilogram gold bars worth approximately \$266,186.83<sup>4</sup>) being held at DDS, despite several rounds of production of documents to the Receiver during prior reporting periods, the documents that the individual had provided to the Receiver did not establish the final leg of the transfer from an intermediary entity 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. During the Reporting Period, this individual provided additional documents that established the final leg of the transfer to DDS for some but not all of the gold bars. Therefore, the Receiver requested that the individual continue to search for additional supporting documents and began revising an affidavit for the individual to sign confirming the evidence he provided of his ownership of certain of the gold bars. Upon receiving a signed affidavit, the Receiver will consult with counsel for the CFTC and make a recommendation regarding the release of certain of the gold bars. Also, prior to the deadline for filing claims in the claim process, the Receiver's counsel provided this individual with a claim form and encouraged him to file a claim in the claims process.

***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

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<sup>4</sup> This is the approximate value as of November 15, 2014.



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.

During the Reporting Period, the Receiver conducted three auctions to sell the office furniture and equipment located in California, Nevada and Florida, which auctions resulted in gross sale proceeds totaling \$17,373.50 and eliminated the expense of storage of those items.

The Receiver is still 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 has been researching the prices of precious metals and methods for their sale using depositories and metals suppliers and/or Ebay and public auctions. The Receiver has determined that the spot prices for gold and silver are at four-and-a-half-year lows and the spot price for platinum is at a five-year low, therefore, liquidation of the Estate's metals at this time is not in the best interest of the Estate. The Receiver will monitor the precious metals market and liquidate the metals when the prices rise.

***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") were 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 # 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 back the Jager Transfers to the Receivership Estate, subject to final determination regarding the Defendants' liability, and agreed to submit disbursement requests to the Receiver for approval.

During the Reporting Period, Mr. Jager and HW Financial continued to submit disbursement requests to the Receiver, and the Receiver continued to carefully consider each one and, as appropriate, approved disbursements from Mr. Jager and HW Financial.

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. 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. Jager and his other companies 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 initial reporting period, Jager had disclosed that he held ownership interests in various companies. During the instant Reporting Period, the Receiver continued 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. Meanwhile, the Receiver and her counsel continued 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 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. To confirm the existence and value of the Jager's assets and the source of the funds that Mrs. Jager had received over the previous two years, the Receiver took Mrs. Jager's deposition, performed a physical inspection of the Jager's residence and the contents thereof with a licensed appraiser, obtained documents concerning Mrs. Jager's assets, requested other financial records to confirm certain testimony that she provided during her deposition, reviewed certain additional documents provided by Mrs. Jager, and requested further details regarding the documents provided.

During the Reporting Period, the parties also commenced negotiations of the terms of a related agreement (the "Voting Agreement") that the Jagers Agreement requires the parties to enter into, which agreement will transfer to the Receiver voting rights of the Jagers and their family trusts to facilitate the Receiver's obtaining funds (in excess of \$520,000) from certain bank accounts. As soon as the terms of that Voting Agreement are finalized, and Mrs. Jager provides the requested details and those details confirm certain of her deposition testimony, the parties will execute both agreements and the Receiver will present them to this Court for approval.

In anticipation of finalizing the Voting Agreement with the Jagers and their family trusts (and similar agreements with other parties) for the transfer of voting rights necessary to transfer funds from certain bank accounts to the Estate, the Receiver's counsel prepared a corporate resolution and related documents granting the Receiver the authority necessary to have the funds transferred to the Receiver.

***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, including jewelry and coins, pursuant to this Court's order approving the sale of the remaining personal property of the Estate.

During the Reporting Period, the Receiver negotiated with counsel for Martin regarding the transfer of those shares and ownership interests in Great Western to the Receiver. The Receiver is also negotiating with Martin and the trustees of certain family trusts the terms of agreements similar to the Voting Agreement being negotiated with the Jagers for the purposes of granting the Receiver the necessary authority have funds in certain accounts transferred to the Estate.

***E. Asset Recovery from Defendant Burbage***

Because the discharge that Defendant Burbage obtained in his bankruptcy case did not eliminate his obligation under the Consent Order to pay the restitution amount to the Receiver (or the civil monetary penalty to the CFTC), the Receiver continued her efforts to recover his restitution obligation under the Consent Order. The Receiver's investigation of Burbages assets has revealed that he presently lacks the means to pay any portion of his restitution obligation. The Receiver will monitor Burbages assets and, to the extent any valuable assets are discovered, the Receiver will seek to recover those assets for the benefit of investors and creditors of the Estate.

***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. During the Reporting Period, the Receiver's counsel sought out buyers for that watch by contacting several jewelry stores and watch dealers in South Florida and monitored online auction sales of pre-owned Rolex Submariners in similar condition to gauge the marketability of Gaudino's watch and determine the optimal means of liquidating it and maximizing the recovery for the Estate. The Receiver intends to sell Gaudino's watch during the upcoming holiday season when the demand for similar watches should be at a high point.

***G. Efforts to Recovery Funds Frozen in Accounts of Defendants' Affiliates***

During the initial reporting period, counsel for the Receiver sent demand letters to Standard Bank and Baird & Associates, among other metals brokers and suppliers, requesting that they freeze all account in the name of the HW Entities and their subsidiaries and affiliates. Accordingly, Standard Bank and Baird & Associates froze all such accounts based on the connection between the account holders and the HW Entities and the substantial transfers of funds from the HW Entities to those account holders that the Receiver's forensic accountant discovered in the HW Entities books and records and confirmed in bank statements. In particular, Standard Bank froze an account containing \$19,478.54, and Baird & Associates froze an account containing in excess of \$500,000. Since then, the account holders ceased doing business. Standard Bank and Baird & Associates have indicated that they will continue to freeze those accounts until they receive instructions from authorized representatives of the account holders and the Receiver, or an order from a court of competent jurisdiction.

As discussed above, during the Reporting Period, the Receiver's counsel prepared voting agreements between the Jagers and their family trusts and the Receiver and between Martin's family trusts and the Receiver, a corporate resolution, and related documents for the limited

purpose of obtaining the authority necessary to direct the transfer of funds in certain accounts to the Estate. The Receiver also negotiated the terms of similar voting agreements with other parties. Assuming all of the foregoing voting agreements are finalized and executed, the Receiver will have sufficient authority to direct the transfer of the balances of certain accounts at Standard Bank and Baird & Associates to the Estate, in accordance with requirements of those financial institutions.

*H. Recovery of Funds in Account of Defendants' and Their Companies*

In total, \$402,775.63 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 majority of those funds and securities will be transferred to the Estate following the execution of the Jagers Agreement discussed above.

*I. Asset Recovery from Members of the HW Entities*

As previously reported, following the entry of the Final Judgment, the Receiver sent demands to members of the HW Entities that had received member distributions from the HW Entities since the inception of those companies, seeking the return of those distributions. Most of those members have responded to the Receiver's demands providing information and documents evidencing additional transfers that were not reflected in Hunter Wise's books and records. The Receiver's counsel and forensic accountant have carefully examined the responses, information and documents provided, conducted further investigation into the transfers between the HW Entities of the members, and determined that many of them had transferred more to the HW Entities than they had received back, making them net losers. Therefore, the Receiver will not be seeking to recover the distributions those members had received from the HW Entities.

Other members, however, did not claim or demonstrate with documents or otherwise that they had invested more than they received back from the HW Entities in member distributions.

Therefore, the Receiver engaged in negotiations with those members for the return of the net gains they had received on their investments with the HW Entities. If the Receiver is unable to reach an agreement with those members, the Receiver will pursue recovery of the net gain from, each such member, as appropriate.

One member of the HW Entities, David Manners, who was also a former director of the companies, had, through counsel, agreed with the Receiver's determination of the amount of member distributions (and net gain) that he had received. Accordingly, the Receiver's counsel and Mr. Manners' counsel negotiated a settlement pursuant to which Mr. Manners would return 100% of the member distributions he had received from the HW Entities in four installment payments over a period of approximately four months. The terms of that settlement were memorialized in a written agreement but the parties were unable to agree to the release language incorporated in that agreement. In the midst of negotiations of the release terms, Mr. Manners's counsel ceased representing him and the Receiver's counsel has been unable to contact Mr. Manners's or any replacement counsel he may have obtained. In the event negotiations resume and the parties are able to reach an agreement, the Receiver will submit that agreement to this Court for approval. If the parties are unable to reach an agreement within the next few weeks, the Receiver will either amend her complaint in the pending action against Mr. Manners and two other control persons of the HW Entities for breach of fiduciary duty and aiding and abetting breach of fiduciary duty (*see infra* Section L.i.), adding a fraudulent transfer claim against Mr. Manners to recover the member distributions he had received, or by commencing a separate fraudulent transfer action against Mr. Manners.

***J. 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 certain dealers and their principals.

***K. Recovery from Delaware Depository Services, LLC***

On September 26, 2014, the CFTC issued an *Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions* against Delaware Depository Services Company, LLC ("DDS"). As reflected in that Order, DDS made an offer of Settlement, which the CFTC accepted, pursuant to which DDS agreed to, among other things, pay \$500,000 to the Receiver for the benefit of the claimants of the Estate with allowed claims. Accordingly, on October 7, 2014, DDS wired \$500,000 to the Receiver's fiduciary account for the Estate.

***L. 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]. 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. The plaintiff did submit a claim and the Receiver administered that claim in the Court-approved claims process.

Prior to the commencement of the Receivership, Lloyds Commodities, LLC commenced the action styled, *Lloyds Commodities, LLC v. Sabertooth Interactive, LLC*, Case No. CV-13-00375-JEM (the “Sabertooth Litigation”), in the United States District Court for the Central District of California, against a media company that Lloyds had engaged to create an online game that the principals of Lloyds believed would generate substantial revenues. That action was stayed pursuant to this Court’s Appointment Order and Injunction Order. After the entry of the Consent Order against the Lloyds Entities and their principals, the Sabertooth Litigation resumed. Because the Receiver could not locate counsel in California that would take the case on a contingency fee basis, the Receiver engaged and this Court approved local counsel on a reduced hourly basis, and focused on scheduling a mediation for the purpose of resolving the matter at minimal cost to the Estate.

During the Reporting Period, the Receiver’s counsel continued negotiating with counsel for Sabertooth a possible settlement of Lloyds’s claims, seeking to schedule mediation, and investigating the financial condition and collectability of Sabertooth. Sabertooth had claimed that it lacks the financial resources to pay settlement amount or even to pay a mediator to assist the parties to resolve the dispute. Therefore, the Receiver’s counsel requested that Sabertooth provide a financial affidavit evidencing Sabertooth’s dire financial condition and inability to pay any settlement amount. In addition, to save the parties the mediator’s fee, the Receiver’s counsel proposed to Sabertooth’s counsel a settlement conference before a U.S. Magistrate Judge. Upon obtaining Sabertooth’s consent to such a settlement conference, the Receiver will file a joint motion to have the court appoint a U.S. Magistrate Judge to hold a settlement conference and participate in that settlement conference. In the event the parties reach a settlement, the Receiver

will seek this Court's approval of such settlement. If the parties fail to reach a settlement and Sabertooth fails to demonstrate its inability to pay a reasonable settlement amount, the Receiver will pursue the litigation.

***M. Claims Against Third Parties***

During prior reporting periods, the Receiver investigated and formulated 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 funds paid to those parties by the HW Entities. The Receiver also investigated, submitted claims against, and made formal demand upon insurance policies covering such misconduct. During the Reporting Period, the Receiver finalized the complaints and commenced the actions described below.

i. Action Against Directors and Officers

On September 19, 2014, during the Reporting Period, the Receiver filed a complaint against directors and officers of the HW Entities -- David Manners (former Manager of HW Commodities), Tracy Luu (former CFO and Controller of the HW Entities) and Susan Morales (former Director of Operations of the HW Entities). In her complaint, the Receiver demands judgment against Manners, Morales, and Luu, for the total amount of the HW Entities' damages resulting from their breaches of their fiduciary duties and from their aiding and abetting others' breaches of fiduciary duties to the HW Entities, plus costs and interest, and attorneys' fees.

Also during the Reporting Period, the insurer for the directors and officers liability policy formally responded to the Receiver's demand for payment of the policy limit, denying coverage and declining to pay the amount demanded. The Receiver's special insurance counsel investigated the insurer's asserted bases for denying coverage and worked on formulating a strategy for responding to the insurer.

ii. Action Against Former Counsel

On September 19, 2014, the Receiver filed a complaint against Jay Bruce Grossman a/k/a J.B. Grossman, J.B. Grossman, P.A., Timothy Carey, and Winston & Strawn, LLP, all former counsel to the HW Entities. The HW Entities retained such counsel to guide and counsel them concerning the implications of changes to the Commodities Exchange Act (that became effective in July of 2011) for their business model and regarding the subsequent CFTC investigation and enforcement action against the HW Entities. The HW Entities' former counsel knew or should have known that the HW Entities' business model was illegal, and they negligently failed to warn the HW Entities that they should make changes or stop operating. Former counsel also knew or should have known that the ongoing operations of the HW Entities in light of the CFTC investigation and enforcement action was counter to the best interests of the HW Entities.

In her complaint, the Receiver asserts claims for legal malpractice, breach of fiduciary duty and breach of contract. The Receiver demands judgment against the HW Entities former counsel for the total amount of damages resulting from (i) their legal malpractice, (ii) their breaches of their fiduciary duties to the HW Entities, and (iii) the breach of contract committed while acting as the HW Entities' counsel, plus all attorneys' fees and costs.

**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](http://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 has updated her lists of all known end-customers, creditors and dealers of the Receiver.<sup>5</sup>

During the Reporting Period, the Receiver and her counsel assisted the Federal Trade Commission ("FTC") to gather information concerning a telemarketing fraud committed by a company named Consumer Collection Advocates Corp. ("CCA"), which targeted victims of this receivership case, among other receivership cases. As soon as the Receiver's counsel discovered this telemarketing fraud, they sent a cease and desist letter to CCA, contacted the principal of the company demanding that it cease doing business with and soliciting funds from Hunter Wise end-customers, and notified the FTC and the Florida Attorney General to protect those end-customers from CCA's illegal activities.

On November 3, 2014, the FTC filed a *Complaint for Permanent Injunction and Other Equitable Relief* in the United States District Court for the Southern District of Florida against Consumer Collection Advocates Corp. ("CCA") and Michael Robert Ettus as an individual and as an officer of CCA. The FTC enforcement action seeks recovery of the large up-front fees that consumers paid to CCA for recovery services. The recovery services were purchased by

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<sup>5</sup> 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 is not attaching the updated list of all end-customers to this Report to protect those customers from potential telemarketing frauds such as the one discussed *infra*. The Receiver has posted a warning regarding telemarketing fraud to end-customers on the home page of the Receivership website ([www.hunterwisemanager.com](http://www.hunterwisemanager.com)).

consumers who previously suffered losses from telemarketing fraud related to timeshare resale and precious metals investment schemes, including without limitation Hunter Wise. The Court presiding over the enforcement action against CCA appointed Melanie E. Damian as the Receiver of CCA.

**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 \$6,447,453.76,<sup>6</sup> 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 (\$567,289.20<sup>7</sup>), the present market value of the two (2) silver bars being stored at IDS and Baird (together, approximately \$32,720<sup>8</sup>), and the numismatic value of the metals being stored at Via Mat (\$207,267.00<sup>9</sup>), the total value of the assets of the Receivership Estate is approximately \$7,254,729.96<sup>10</sup>.

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<sup>6</sup> This is the balance reported as of December 1, 2014.

<sup>7</sup> This is the approximate value as of November 13, 2014.

<sup>8</sup> This is the approximate value as of November 13, 2014.

<sup>9</sup> The Receiver has estimated the value of these metals without obtaining another formal appraisal, using the spot prices of metals as of November 13, 2014, and the retail values of these items as listed for sale online through various internet retailers of precious metals.

<sup>10</sup> 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 to 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 respond to all appeals to disallowed claims filed with this Court and prepare to make an initial distribution to claimants holding allowed claims. 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 3rd day of December, 2014.

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

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Receiver's Seventh 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 3rd day of December, 2014.

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

### **SERVICE LIST**

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