

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No.: 12-CV-81311-Middlebrooks/Brannon

UNITED STATES COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

HUNTER WISE COMMODITIES, LLC,
HUNTER WISE SERVICES, LLC, HUNTER
WISE CREDIT, LLC, HUNTER WISE
TRADING, LLC, LLOYDS COMMODITIES,
LLC, LLOYDS COMMODITIES CREDIT
COMPANY, LLC, LLOYDS SERVICES,
LLC, C.D. HOPKINS FINANCIAL, LLC,
HARD ASSET LENDING GROUP, LLC,
BLACKSTONE METALS GROUP, LLC,
NEWBRIDGE ALLIANCE, INC., UNITED
STATES CAPITAL TRUST, LLC, HAROLD
EDWARD MARTIN, JR., FRED JAGER,
JAMES BURBAGE, FRANK GAUDINO,
BARIS KESER, CHADEWICK HOPKINS,
JOHN KING, and DAVID A. MOORE,

Defendants.

**DEFENDANTS UNITED STATES CAPITAL TRUST LLC AND DAVID A. MOORE
RESPONSE TO PLAINTIFF'S MOTION FOR AN ORDER OF PRELIMINARY
INJUNCTION**

INTRODUCTION

In the defendants' answer to the complaint filed by the Commodity Futures Trading Commission defendants have denied most of the allegations made by the plaintiff against Defendants. This motion by plaintiff basically restates most of the allegations made in the complaint and has added additional background allegations. Defendants disagree with most of

the allegations but do so only based on the information they had received from defendants Hunter Wise and Lloyds Commodities. Defendants truly believed that the statements they made to their customers and the statements made in their agreements and promotional material were accurate, and that defendants Hunter Wise and Lloyds Commodities were acting in a manner that complied with the exclusion provided by the Section 742 of the Dodd Frank Act of 2010.

FACTS

Specifically, defendants were told repeatedly by representatives of Lloyds Commodities that physical metals were being purchased for each and every client, that those physical metals were being held at depositories on behalf of said clients and that actual delivery in conformance with the terms of the Dodd Frank Act were being made again in compliance with the requirements to exclude these transactions from CFTC jurisdiction. It is properly stated by CFTC that the entire back-office operation for defendants was provided by Hunter Wise and Lloyds Commodities. Defendants had no reason to believe that either Hunter Wise or Lloyds Commodities were not doing what they said they were doing. If customers ended up liquidating their positions, the money due the customers was dutifully sent back to those customers. On the rare occasion that a physical delivery might take place, a delivery was made. As far as defendants knew, these purchases and sales were completely legitimate. Hunter Wise and/or Lloyds Commodities provided the funds that would be loaned to customers who purchased financed metals. Defendants believe that the metals were actually stored and that there were real storage charges being paid as well as other carrying charges. In fact, defendant Moore contacted Delaware Depository, the place that Hunter Wise claimed the metals were being stored and was told that Hunter Wise had an account at Delaware Depository. Defendants were shocked and stunned to learn, during an informational deposition taken by CFTC , that the assertions made by Lloyds when Defendants were solicited Lloyds might not be the same as they were told. Hunter

Wise and Lloyds Commodities continue to claim that they are in full compliance with those provisions of the Dodd Frank Act in that Hunter Wise and/or Lloyds Commodities were providing actual delivery to customers within 28 days and therefore the activities of defendants were outside the jurisdiction of the Commodity Futures Trading Commission. In fact, it was only after reading the motion that defendants are responding to, that they realized that there was testimony and other alleged evidence that Hunter Wise and Lloyds Commodities were not complying. After defendants learned of these allegations, they voluntarily stopped soliciting any new customers and have retained a skeleton staff at the office to handle any current customers and potential liquidations so that customers' accounts will be serviced.

DISCUSSION

The defendants' position in this matter is crystal clear. Had defendants any inkling that their business conduct violated any provision of the Commodity Exchange Act or the rules and regulations promulgated by the Commission, defendants would never have engaged in the business of selling financed precious metals. Certainly, if there was a "scheme", defendants were not willing participants in offering a product that required registration. Defendants did business with Hunter Wise and Lloyds Commodities based on what appeared to be the reasonable representations of Hunter Wise and Lloyds. Considering the fact that other precious metals dealers were doing business within the bounds of the Dodd Frank exclusion, it would be reasonable to expect that when Hunter Wise and/or Lloyds offered defendants an opportunity to sell financed precious metals for actual delivery, there would be no reason for defendants to expect that Hunter Wise or Lloyds intentionally entered into business with them that did not comply with the Dodd Frank exclusion. The handling of the precious metals was assigned to Hunter Wise and/or Lloyds pursuant to the agreements between Hunter Wise and Lloyds on the one hand and defendants on the other. Customers, by contract accepted the assignment of certain

duties, including providing for the actual delivery of the precious metal. Defendants had every reasonable right to believe they were conducting business properly. In most standard contractual situations, one party, in this case the defendants, is generally not permitted to learn the confidential aspects of how Hunter Wise was conducting business. Rather, Hunter Wise and/or Lloyds indicated that metals were held for customers at Delaware Depository, among others, and defendants reached out to Delaware Depository to try to at least verify the fact that there was a relationship. One cannot reasonably expect Delaware Depository to disclose the exact nature of that relationship, as that was confidential information between Hunter Wise and Delaware Depository. Add to this the fact that the provisions of the Dodd Frank Act that affected precious metals transactions was somewhat vague because there was never a definition of what the term “actual delivery” meant. One can see how a lay person such as defendant might have been convinced that these business activities were proper.

CONCLUSION

Since defendants have voluntarily ceased conducting business and do not intend to continue to conduct business with Hunter Wise and/or Lloyds Commodities, or any other firm that does not offer actual delivery of precious metals bought with financing, there is no need to enter an order of preliminary injunction against defendants. Defendants do however look to the court for guidance on how to deal with their customers that have remaining outstanding positions.

/s/Bradford Cohen, Esq.

/s/Gary M. Sinclair, Esq.
PRO HAC VICE

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HUNTER WISE COMMODITIES, LLC,
DAVID A. MOORE, ET AL.

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, January 22, 2013 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

/s/Bradford Cohen, Esq.

/s/Gary M. Sinclair, Esq.
PRO HAC VICE

SERVICE LIST
UNITED STATES COMMODITY FUTURES
TRADING COMMISSION v. HUNTER WISE COMMODITIES, LLC, ET AL.
CASE NO: 12-CV-81311-Middlebrooks/Brannon

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This notice was served via U.S. Mail upon Defendants C.D. Hopkins Financial, LLC, Hard Asset Lending Group, LLC, and Chadewick Hopkins at the last known address for Chadewick Hopkins at:

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