

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

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

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

vs.

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

**SPECIAL MONITOR AND CORPORATE MANAGER'S
INITIAL REPORT**

Melanie E. Damian, Esq., the court-appointed Special Monitor and Corporate Manager (the "Monitor") in the above-captioned enforcement action, submits her initial report regarding the present status of, and her conclusions and recommendations for, the Defendants in this matter.

EXECUTIVE SUMMARY

The Monitor has made preliminary findings pertaining to methods of operations of the Entity Defendants,¹ and marshaled all known assets of the Entity Defendants, and particular

¹ The Defendants in this matter include: Hunter Wise Commodities, LLC ("HW Commodities"), Hunter Wise Services, LLC ("HW Services"), Hunter Wise Credit, LLC ("HW Credit"), Hunter Wise Trading, LLC ("HW Trading"), Lloyds Commodities, LLC ("Lloyds Commodities"), Lloyds Commodities Credit Company, LLC ("Lloyds Credit"), Lloyds Services, LLC ("Lloyd Services"), C.D. Hopkins Financial, LLC ("CD Hopkins"), Hard Asset Lending Group, LLC ("Hard Asset"), Blackstone Metals Group, LLC ("Blackstone"), Newbridge Alliance, Inc. ("Newbridge"), and United States Capital Trust, LLC ("US Capital"). HW Commodities, HW Services, HW Credit and HW Trading, shall be collectively referenced to herein as the "HW Entities." Lloyds Commodities, Lloyds Credit, and Lloyd Services, shall be collectively referred

assets of certain Individual Defendants,² including bank accounts, trading accounts, physical inventory of precious metals, equipment and furniture, as well as recoveries from certain third parties, as set forth *infra*, in the combined total amount of \$8,123,573.65.³ It is the Monitor's opinion that the continued operations of business activities that are not subject to this Court's injunction are not a practical or prudent use of recovered assets. Therefore, the Monitor recommends, given the circumstances detailed herein, the conversion of this case to a full Receivership in order to liquidate all remaining assets of the Entity Defendants, recover assets from the Individual Defendants as well as third-party transferees, and effectuate a comprehensive claims process that would allow for distributions to creditors and investors that have been adversely affected by the Defendants' conduct of the various Defendants.

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

² The individual defendants named in the complaint, including Edward (Ed) Martin, Fred Jager, James Burbage, Baris Keser, Frank Gaudino, John King, David Moore, and Chad Hopkins, collectively shall be referred to herein as the "Individual Defendants."

³ The total amount is an estimate and is expected to be revised based on: (a) additional information regarding certain recovered assets; (b) market fluctuations that will likely impact the value of the physical precious metals that have been recovered; (c) appraisals that will be conducted for all equipment and furniture owned by the Entity Defendants; and (d) additional assets that have yet to be discovered. This amount includes estimated values for two silver bars, but does not include the value of the Martin Metals (defined below), as discussed *infra*. Additionally, although the Monitor has recovered furniture and equipment, no value was included as part of the totals calculated, and as such, the amount will be increased upon further appraisal of said items. Further, the balance of frozen and liquidated funds owed by HWIC Cayman (defined below) to the Monitorship (defined below) in the amount of \$51,020.00 is not included.

I. INTRODUCTION

On December 5, 2012, the United States Commodity Futures Trading Commission (the “CFTC”) filed a 48-page complaint (the “Complaint”) for injunctive and other equitable relief and penalties [ECF # 1] under the Commodities and Exchange Act and the amendment thereto known as the Dodd-Frank Act (collectively, the “Act”). The CFTC alleged that the Defendant Entities offered and executed transactions for the purchase and sale of precious metals in violation of the Act.⁴ The CFTC also filed a Motion for Preliminary Injunction (the “Injunction Motion”) [ECF # 4], seeking to enjoin the Entity Defendants from continuing their operations and further violations of the Act, and the appointment of a receiver.

a. Appointment of Special Monitor and Corporate Manager

On February 22, 2013, following a hearing on the CFTC’s Injunction Motion, the Court appointed the Monitor and provided her with powers of monitor and corporate manager over the Entity Defendants, as set forth in the order (the “Appointment Order”) [ECF # 77].

The Monitor’s mandate was “to examin[e] the Entity Defendant’s finances and options, and make [a] recommendation about the alternatives to maximize the operations and asset value of the Entity Defendants” for the benefit of creditors, investors (mostly end customers), and non-complicit member owners of the Entity Defendants. *See* Appointment Order at p. 2. Given the desire to preserve the Entity Defendants’ assets, the Court also assigned to the Monitor the function of Corporate Manager for the Entity Defendants. The Monitor was charged with

⁴ This Court found that “...the CFTC has presented a prima facie case that all Defendants are engaged in illegal conduct for violations of, inter alia, 7 U.S.C. 6(a), by entering into, executing, or conducting an office or business in connection with financial retail commodity transaction that are not subject to a registered commodities market or exchange. None of the Defendants is registered with the CFTC in any capacity. Additionally, the CFTC has certainly presented a prima facie case that Defendants mislead and take advantage of retail customers, comprised largely of novice investors.” *See* Injunction Order at p. 23.

providing a report detailing the viability of the Entity Defendants as a going concern, in light of the preliminary injunction, which prohibited the central business of the Entity Defendants – the financed sale of unallocated precious metals.

b. The Monitor’s Expanded Powers and Authority

The Court’s February 25, 2013, preliminary injunction order (the “Injunction Order”) [ECF # 78] entered on the Monday following the entry of the Appointment Order, expanded and further explained the injunction set forth in the Appointment Order, and added to the Monitor’s duties and responsibilities. The Injunction Order requires the Individual Defendants to submit a complete accounting of their personal finances as well as of any funds and assets they controlled in connection with the Entity Defendants, and all documents pertaining to the foregoing. The Injunction Order also requires the Individual Defendants to turnover all assets to the Monitor. *See* Injunction Order at p. 34, ¶ 22.

The Injunction Order requires the Monitor to provide the Court with the instant report, which not only summarizes the performance of her duties and responsibilities described in both the Appointment Order and Injunction Order, but also thoroughly details the Monitor’s efforts to marshal and secure assets, and administer the corporate monitorship estate (the “Monitorship”).

c. Preliminary Findings

i. Highly Leveraged Investment

Immediately following her appointment, late Friday afternoon February 22, 2013, the Monitor made all efforts to obtain full control over the assets of all Entity Defendants, but specifically assets of HW Commodities that were invested in the metals commodities markets and constituted the majority of the assets of the Monitorship. The Monitor discovered that more than **85%** of HW Commodities’ equity at supplier accounts was invested in metals traded using

a single account at Standard Bank, PLC (“Standard Bank”), located in London, England. Standard Bank served as the main supplier from which HW Commodities acquired long positions of precious metals such as gold, silver, platinum and palladium. Over the weekend following her appointment, and upon the opening of the London Commodity Market on Monday, the Monitor, working with the CFTC and with the assistance of the General Counsel for Standard Bank, was able to liquidate the open tradable positions of the HW Entities. As a result, the Monitor recovered more than \$4,144,827.27 in cash (U.S. Dollars). In fact, following a long night of searching for buyers for the positions held by the HW Entities, the Monitor, in consultation with the CFTC, liquidated all of the gold, silver, platinum and palladium positions that HW Entities held at Standard Bank. Statements⁵ recovered by the Monitor and her professionals indicated that HW Commodities owned between \$34 and \$37 million in tradable precious metals positions at Standard Bank. Because those tradable positions were highly leveraged, with the financed portion of the transaction generally accounting for at least 75% of the total transaction amount, the liquidation value obtained by Monitor was \$4,144,827.27. *See* the Standard Bank statements, attached hereto as **Exhibit “A.”**

At the same time, early Monday morning, February 25, 2013, to avoid any further market risk to investors, the Monitor also liquidated the HW Entities’ positions held at other supplier institutions, including R.J. O’Brien and Associates, LLC (“R.J. O’Brien”), in the amount of approximately \$449,557.20, and Fidelitytrade Incorporated (“Fidelitytrade”) in the amount of \$66,536.19.

⁵ The Monitor obtained statements from Standard Bank and internal reports produced by the HW Entities’ accounting system.

ii. HW Commodities' Use of Future Contracts in its Operations

Several in-depth informal interviews of HW Entities' chief trader, Mr. Herb Choi, as well as preliminary analysis of data by the Monitor and her trading consultant provided an explanation as to the HW Entities' use of future contracts. Future contracts were routinely used as a means of hedging against inventory. These contracts were traded using accounts in the name of HW Commodities at R.J. O'Brien (for purchases of more than \$5,000.00) and NTR Futures⁶ (for corresponding purchases of less than \$5,000.00).

iii. Limited Quantity of Physical Precious Metals

The Monitor's review and analysis of accounts held at various suppliers, including Fidelity, Baird & Associates ("Baird"), Delaware Depository Services ("DDS"), and International Depository Services of Canada ("IDS"), as well as an inspection of the office of the HW Entities in Irvine, California (the "Irvine Office"), revealed a limited quantity of precious metals that were actually held by the HW Entities as "collateral" for retail end-customers.⁷ In particular, the Monitor discovered that the HW Entities, and certain of their subsidiaries, held physical precious metals at DDS, an affiliate entity of Fidelity. These accounts contained

⁶ NTR Futures replaced OANDA as primary futures supplier due to the termination of the business relationship by OANDA following the filing of the CFTC's Complaint.

⁷ The Monitor recovered *de minimis* quantities of gold and silver bars and coins, and fashion watches (collectively, the "Martin Metals") from the HW Entities' leased condominium unit in Santa Ana, California. The condominium was used by Ed Martin, an officer and managing member of HW Commodities and one of the Individual Defendants in this case. The Martin Metals are now in a safe deposit box in Miami, Florida that is controlled by the Monitor.

significant quantities of precious metals with a total market value of \$1,158,984.88.⁸ Further, the Monitor discovered one (1) silver bar at Baird, and one (1) silver bar at IDS.⁹ Moreover, the Monitor discovered precious metals in a safe located at the Irvine Office (the “Irvine Metals”). The Monitor had these metals appraised by a reputable professional appraiser of precious metals who determined them to be worth \$256,057.04.¹⁰

In total, and based on the Monitor’s preliminary estimates, only approximately \$1,470,041.92¹¹ in equity or **23.2%** of the total equity held and invested by the HW Entities (or \$6,330,808.90¹²) was maintained in physical form, and used as collateral to balance certain of the customer equity positions. The remaining equity was invested by the HW Entities primarily through accounts at suppliers including Standard Bank, Fidelity, and NTR Futures (as well as

⁸ This amount is an estimate based on the prevailing spot prices of the precious metals in the accounts as of March 19, 2013, and does not account for the numismatic value of certain items in inventory.

⁹ Baird and IDS have confirmed with the Monitor that those accounts have been frozen and that they will await further instructions from the Monitor regarding the transfer of the metals to the Monitor or their liquidation. Additional information concerning the silver bars at IDS and Baird is provided *infra*.

¹⁰ The Irvine Metals were subsequently transferred to a high-security, insured facility in Miami, Florida, operated by a reputable company, to which only the Monitor has access. The value of the Irvine Metals is based on market spot prices on the date of the appraisal - March 4, 2013.

¹¹ This amount is an estimate that is based on the spot prices of precious metals as of (a) the date of the appraisal of the Irvine Metals - March 4, 2013, (b) the market spot prices on March 19, 2013 of those metals stored at DDS, and (c) the estimated value based on book value of one silver bar at IDS and another silver bar at Baird, discussed *infra*. Further, the estimate excludes the Martin Metals as those have not been appraised, as discussed *infra*.

¹² This amount excludes cash on hand at various bank accounts that were wired to the appropriate Monitor fiduciary trust account, as well as any sums of indebtedness by affiliate entities or owner managers of the HW Entities that have been paid back to the Monitor, as explained *infra*.

OANDA prior to its termination), as explained *supra*. The total equity (whether in trading accounts or in physical form) was used to achieve 75% leveraged positions in supplier trading accounts. Invested equity was never assigned to specific end-customers, or even Dealer Entities who would be entitled to the metals, however, the HW Trading's Platform systems (as defined *infra*) would maintain an accounting of each client's "equity" (*i.e.*, the current market value of the client's investment after deducting amounts that the client borrowed against that initial investment and the fees and commissions) and "excess equity" (*i.e.* the cash amount that was not invested by the end-customer and available for immediate withdrawal, and that was above the margin call amount required to be maintained by the end-customer as part of his/her leveraged transaction).

iv. Significant Losses Sustained by Nearly All Customers

The Monitor obtained significant amounts of data from the HW Entities' offices, amongst which were tabulations of all sums invested, fees (interest and service fees, miscellaneous fees and commissions) charged to Dealer Entities and passed along to customers, sums withdrawn, and net amounts gained or lost on the investment. The numbers speak for themselves. Since inception of the business through March 6, 2013, the HW Entities received total end-customer investments of \$147,061,243.65. After accounting for withdrawals made, end-customers invested a total net amount of \$90,903,193.67 with the HW Entities by and through its network of dealers. During the same period of time, the HW Entities charged the Dealer Entities as well as other dealers, who charged end-customers approximately \$34,642,887.16 in commission spreads, approximately \$7,825,262.55 in interest, approximately \$7,930,446.63 in services fees, and approximately \$334,380.31 in miscellaneous fees, for a total sum of fees and commissions charged of approximately \$50,732,976.65. End-customers also suffered significant trade-related

losses (during this time period) of approximately \$32,601,348.85. Nearly all end-customers (or 93%) sustained trade-related losses on their investment, with more than **39%** of their overall sustained losses being attributed to trade-related losses. Further, the trade-related losses that end-customers sustained were compounded many times over by the high commissions and fees that the HW Entities and the Dealer Entities charged. In fact, the HW Entities' and its dealer network's revenues were responsible for more than **61%** of overall losses sustained by end-customers. *See* consolidated chart of all end-customers' investments, withdrawals, fees charged, trade losses incurred and equity remaining, sorted by dealer, from inception through March 6, 2013, together with a summary of key statistics, attached hereto as **Exhibit "B."** Focusing on the time period since passage of the Dodd Frank Act, from July 2011 through March 6, 2013, approximately \$97,277,356.31 was invested by end-customers, but during this period end-customers were charged approximately \$25,768,853.93 in total fees. More than **61%** of the end-customers' overall loss was attributed to exorbitant fees. *See* consolidated chart of end-customer investments for the period of July 16, 2011 to March 6, 2013, sorted by dealer, and a summary of key statistics, attached hereto as Exhibit "B."

Since inception of the HW Entities' operations, more than **91%** of all end-customer net funds invested were lost to fees and trade-related losses, while for the time period beginning with the passage of the Dodd Frank Act, and ending on March 6, 2013, **88%** of all end-customer net funds invested were lost to fees and trade-related losses.

II. DOCUMENTS RECOVERED AND PRELIMINARY ANALYSIS

a. Hunter Wise Operations

According to HW Commodities' 2011 Consolidated Financial Statements, which the Monitor recovered from the Irvine Office, each of the company's subsidiary entities is responsible for a specific aspect of the company's operations:

- *HW Trading* – provided a market for dealers (and end-customers) to purchase and sell commodities with HW Commodities, specifically, for transactions involving a “long” position in a precious metal.
- *HW Credit* – provides financing for transactions executed by dealers (and end-customers) and handles all transactions that involve shorting a position in a precious metal.
- *HW Services* – provides dealers (and end-customers) all contracts, forms and other “back office” administrative services.
- *IRA Services, LLC (a Nevada limited liability company)* – provides brokerage services as broker of record for dealers' end-customers who wish to invest in commodities utilizing an Individual Retirement Account (“IRA”).
- *Hunter Wise International Commodities, LLP (United Kingdom) (“HWIC UK”)* – the international office of HW Commodities is located in the United Kingdom and serviced HW Commodities' international clients. This limited liability partnership is structured in a similar manner as HW Commodities, divided into subsidiary entities dedicated to credit, service and trading.

HW Commodities was controlled and managed (through the date of the Appointment Order) by Defendants Ed Martin¹³ and Fred Jager. Both Defendants hold significant equity interest directly and indirectly (through entities and trusts) in the company and its subsidiaries. Additionally, these principal members set up a related entity, Hunter Wise International Commodities, Ltd., a limited liability company that is registered in and operates from the Cayman Islands (“HWIC Cayman”). This entity was set up in recent years and was financed with funds from several of the HW Entities, as explained *infra*.

The HW Entities maintained two offices from which they operated. The Irvine Office is where the majority of operations were located, and a second office in Las Vegas, Nevada (the “Las Vegas Office”) was used for trading and client contacts. Combined, the HW Entities employed 22 employees (including Ed Martin and Fred Jager) who were tasked with sales (dealer development), operations (trading credit and service operations) and administration (compliance and administrative support).

b. The Trading Process

The Monitor and her professionals conducted interviews of Fred Jager, traders and other employees of the HW Entities. Furthermore, the Monitor and her professionals reviewed extensive volumes of documents in order to understand the methods of operations of the HW Entities. The Monitor consulted with a financial professional with more than 30 years experience in the relevant field in order to understand the process by which the HW Entities, and specifically HW Trading and HW Credit, operated. As a result, the Monitor was able to learn the

¹³ Ed Martin appears to have had more day-to-day management responsibilities than Mr. Jager. Despite the Appointment Order having been entered more than three weeks ago, Ed Martin has yet to provide the Monitor with any financial disclosures or make himself available for an interview, repeatedly citing to “health issues.”

sales and trading process on a step-by-step basis. This process included the steps necessary to execute trades for clients and dealers using HW Trading's computer system. It also demonstrated the means by which HW Commodities, through its traders, would seek to protect HW Commodities' own accounts with suppliers by selling future contracts. The process was not complex in nature.

End-customers would place their purchase or sale orders with sales agents or directly with the dealers. The agents would give the order to their sales manager or dealer owner. The sales manager or dealer owner would then contact HW Trading's trading room by telephone, and usually reach one of the traders on the floor.

As soon as the trader received an order, a ticket with a tracking number would be created and sent to the trading desk at HW Trading. The ticket included the quantity, product description and base price (the "Base Price"). The Base Price was determined using a Reuters-company-supplied general market spot price feed in Microsoft Excel format. The feed was processed through HW Trading's custom-made Excel spreadsheet. This spreadsheet calculated the variance of the spot prices of the metals in order to provide a fairly accurate spot price at any given time. Using the Base Price, the custom-made Excel Spreadsheet calculated the spread to charge customers. Typically, the spread of bid/ask for gold was a markup or markdown of 1.25% of the Base Price, respectively.¹⁴ For silver, the charge was 1.5% above and/or below the Base Price. Rates for platinum and palladium, metals traded with less frequency and volume, were higher, as detailed *infra*.

¹⁴ For example, a \$1,000 spot price for 1 ounce of gold, with the rate of 1.25% mark-up and 1.25% markdown, set the bid and buy prices at \$1,012.50 and \$987.50, respectively.

Once the prices were calculated, the order was verbally confirmed and submitted into the HW Trading's trading platform (the "Platform"). Contemporaneously with the submission of the transaction into their system, HW Trading's traders would cover their trades by contacting their own suppliers, namely, Standard Bank (for transactions of more than \$5,000.00) or NTR Bullion Group (following the termination of services by OANDA) (for transaction of less than \$5,000.00), and executing a transaction of either similar quantity as that submitted by the end-customer, or larger in size, depending on market conditions.

If traders believed, based on volume of transactions received on their end from various end-customers, that demand for a particular type of metal was high, they would execute larger quantity purchases and cover the additional inventory with future contracts. The traders' job was to immediately cover all trades. HW Trading's policy was to ensure that no inventory was maintained. The traders used future contracts to protect their long positions in the account. Future contracts transactions were executed using R.J. O'Brien and NTR Futures¹⁵ as their primary suppliers. HW Entities' traders explained that they did not use future contracts for any other purpose. The traders were responsible to use the Platform to keep their trading positions at a net zero, and to keep their cash positions positive or at zero by the close of each business day.

Once the order was executed and confirmed by the suppliers, HW Trading's trader would post the transaction to various record keeping systems that tracked such things as the particular Dealer Entity's positions and HW Trading's positions with suppliers. The trade information was also input into HW Trading's Platform which was accessible by the end-customers through the Dealer Entity's website portal. HW Trading merely tracked the various transactions and

¹⁵ NTR Futures is an affiliate of NTR Bullion Group. Both entities are owned by NTR Metals, LLC. NTR Futures was used by HW Commodities for the purchase and sale of futures contracts, while NTR Bullion Group was used as supplier of physical metals.

positions submitted by the dealers (and end-customers). The Monitor and her professionals discovered that the vast majority of dealer orders to HW Trading were logged internally but executed by HW Commodities in its own name through one of its suppliers (primarily, Standard Bank or NTR Bullion, following the termination by OANDA). HW Trading tracked the accounts and allocated the profits and losses attributed to each transaction to the relevant dealer (and thereafter to the end-customers). HW Entities and the dealers made their income on the spreads, interest and service fees that were associated with each transaction, and which were passed along to end-customers.

Transactions executed by HW Trading using HW Commodities' account with Standard Bank were usually charged a fixed price (varying by volume of purchase and/or metal type) of several pennies above the spot price for each transaction. End-customers however, were charged a percentage commission based on the metal spot price. Interestingly, according to HW Trading's chief trader, more than 85% of the purchase transactions executed by HW Trading were made with Standard Bank.

Most transactions with the suppliers were done on margin. In fact, according to the HW Entities' traders, more than 80-90% of all trades with the suppliers were leveraged in the amount of approximately 75%. In other words, only approximately 25% of each transaction amount was equity invested by HW Commodities. End-customers' funds were never invested directly in the positions acquired through the suppliers. No physical metal was ever purchased and allocated to a specific end-customer, except for a few limited exceptions as set forth *infra*.

c. The Customer Perspective

The HW Entities by and through their network of dealers (*i.e.*, the Dealer Entities), serviced the end-customers. From the end-customer's perspective, however, the purchase,

storage and sale of the metals appeared to be done completely by and through the dealers, and HW Entities' involvement was usually unknown to the end-customer. The end-customer filled out an application with his chosen dealer, which included a Purchase and Sale Agreement and Customer Loan Security and Storage Agreement with the dealer with whom he or she were transacting, deposited his or her money into his or her account by submitting a wire transfer to the dealer, and began trading. An end-customer was able to check on the status of his or her orders, and account balances through the dealer's portal. Unbeknownst to the end-customer, the dealer's website portal seamlessly connected (under the dealer's branding) to the HW Entities' Platform. End-customer data and transaction information was available to the end-customer, but were maintained and managed by HW Trading's Platform. Trades (purchase or sale of precious metals which ultimately were only positions) that were made by the end-customer were taken by telephone, verified by the dealer's staff and executed with HW Trading as described *supra*.

Almost all end-customers financed their "purchase" of precious metals through their dealers. The financing (provided by HW Credit and unknown to the end-customer) was generally provided to the end-customer at a rate of 9.5% per annum and calculated on a monthly basis, based on the amount borrowed by the end customer. Most of the end-customers financed approximately 75% of the total value of each purchase or sale transaction. The remaining 25% of the total value of the transaction came from the end-customer's equity investment amount deposited into his or her account. Funding for the end-customer's equity was usually done as a cash deposit. In limited instances, funding of end-customer's equity portion of the transaction was done by transferring a precious metal to serve as "collateral" for the financing of trading in large quantities. The dealers charged their own rate on the financing provided by the HW Entities. This rate was negotiated, but generally the dealers paid to HW Credit a rate of 8% per

year. Therefore, the dealers generally made revenues of approximately 1.5% per year calculated on a monthly basis for each leveraged end-customer transaction – nearly all end-customer transactions. In total, the Dealer Entities (and therefore the HW Entities) charged the end-customer charges:

Fee Type	Rate	Description
Commissions	<ul style="list-style-type: none"> • Gold: 1.25% (D) or 0.75% (V) • Silver: 1.5% (D) or 0.75% (V) • Platinum: 1.75% (D) • Palladium: 2.25% (D) 	<p>The commission was calculated using the rate applicable to each type of precious metal (<i>i.e.</i> gold, silver, palladium, and platinum) and multiplied by the market spot price. The spot price was calculated as detailed <i>supra</i>. This charge would be applied either by increasing the price at which a metal would be bought by the end-customer or decreasing the price at which a metal would be bought from an end-customer. Generally, these commissions were higher than those rates paid by HW Entities on their independent transactions with suppliers – a few pennies rather than a percentage charge.</p> <p>The dealers were offered two commission rates based on the frequency and volume of purchase for a type of metal. HW Trading designated “D” as the “retail” commission rate, and “V” as the “wholesale” rate. Platinum and Palladium did not have a wholesale rate due to the volume and frequency of their trades among all the dealers.</p>
Service Fees	7.2% annualized rate	This rate was charged on the entire market value of the precious metals held in the end-customer’s account, which is calculated and charged on a monthly basis.
Finance Charges	9.5% per annum	This was a per annum rate. It was calculated and charged on a monthly basis, based on the amount borrowed by the end-customer.
Misc. Fees	Varied	Storage fees and various other fees. ¹⁶

¹⁶ The Monitor is in the process of calculating these rates and will update the Court in her next report.

d. Member Distributions, Revenues and the HW Entities' International Expansion

A preliminary review of HW Commodities' books and records show that the HW Entities' 16 equity-holding members profited handsomely from their investment. As of December 31, 2012, HW Commodities had made distributions to members of approximately \$6,524,000 (the "Distributions"). *See* 2012 Balance Sheet for HW Commodities attached hereto as **Exhibit "C."** A detailed breakdown of distributions made to members of HW Commodities between December 2010 and March 2012 is attached hereto as **Exhibit "D."**¹⁷ In addition to the distributions the HW Entities supported the salaries and additional benefits reaped by Ed Martin and Fred Jager. Fred Jager received a salary of \$150,000 per year. Ed Martin received a salary of \$240,000 per year. A preliminary review of the HW Entities' financials also indicates that Mr. Martin's lifestyle was supported by the companies, which included among other things a corporate apartment.

The Monitor's review of member circulars and other documents yielded insight into HW Commodities' attempts to skirt unfavorable and restricting regulatory regimes. Beginning in 2010, the company re-domesticated in Nevada. Based on its 2011 Consolidated Financial Statement, the purpose behind this move was "to allow the company to operate in a more favorable regulatory environment." *See* 2011 Consolidated Financial Statement at p. 7, attached hereto as **Exhibit "E."** Thereafter, when passage of the Dodd-Frank Act became a reality, HW Commodities sought to go global, by expanding its operations overseas. To this end, the

¹⁷ Additional documents retrieved by the Monitor provide greater insight and detail about the distribution amounts received by the membership body from December 2010 through March 2012. During this time period, a total amount of approximately \$5,250,000 was distributed on 9 separate occasions (or an average distribution of \$583,333 every 1.8 months), to all equity owners of the company.

principals of the HW Entities established HWIC Cayman. This entity was setup as a mirror image of HW Commodities, with trading, credit and service sub-entities, and set up with the specific and explicit purpose to operate outside the purview of U.S. regulatory bodies such as the CFTC. In July 2012, Ed Martin stated in a letter to the membership body that

“HWIC Cayman will serve those same markets [as those in the USA] everywhere in the world EXCEPT the USA...” and that “...eventually...this worldwide opportunity will far surpass that of the USA in volume and profitability. To get that business operational, and until all the remaining 5% interest in the company is raised, HW [Commodities] has loaned that company the money necessary to begin operations” (the “Cayman Loan”).

As of the date of the Monitor’s appointment, HW Commodities held certain positions in an account at Baird under the name of HWIC Cayman. Upon her appointment, the Monitor liquidated those positions, resulting in approximately \$569,000 in proceeds. Nonetheless, HWIC Cayman only transferred \$517,980 of that amount to the Monitor, resulting in an existing balance of \$51,000.00 that is owed to HW Commodities.

HWIC Cayman was indebted to HW Commodities in an approximate amount of \$572,172.31. A detailed ledger evidencing the Cayman Loan is attached hereto as **Exhibit “F.”** HWIC Cayman also received approximately \$1,571,792.85 from HW Credit with little or no consideration provided. In addition, HWIC UK, a wholly-owned subsidiary of HW Commodities, to which HWIC Cayman is a successor-in-interest, is also indebted to HW Credit (by assuming control of HWIC UK) in the approximate amount of \$1,330,910.58. *See* Exhibit “F.”

e. Other Entity Defendants: Lloyds Entities and Dealer Entities

The profitability of the HW Entities, and distributions to their members could not have been possible without the assistance of the other Entity Defendants, and specifically, the Dealer

Entities,¹⁸ which acquired end-customers, and the Lloyds Entities, which served as an intermediary between the HW Entities and the Dealer Entities, handling the exchange of funds, among other things. The functions and method of operations of the foregoing entities were detailed extensively in the Injunction Order.¹⁹ Nevertheless, the Monitor was able to obtain and analyze additional documents that detail the extent of these entities' success – the substantial revenue generated by each. A detailed revenue breakdown by month and entity is attached hereto as **Exhibit “G.”** This chart provides a glimpse at the revenues generated by each of the entities (other than the HW Entities) from July 2011 through February 2013.²⁰

i. Lloyds Entities

During the time period of July 2011 through February 2013, the Lloyds Entities generated total revenues of approximately \$1,477,179.51. This amount was paid to the Lloyds Entities through fees they shared with the HW Entities (that were attributed to trading commissions), a share in interest charged on credit extended to end-customers, spread revenue, and additional service charges to end-customers.²¹ A majority of the Lloyds Entities' revenue

¹⁸ The Dealer Entities engaged in more than *de minimis* sales of fully paid delivery of precious metals. Each of the Dealer Entities dealt exclusively or nearly exclusively in the financed unallocated sale of precious metals.

¹⁹ The Monitor is in the process of sorting through additional documents and other data, and will provide additional information concerning the Lloyds Entities' and the Dealer Entities' respective operations in subsequent reports to the Court.

²⁰ No information was recovered for Hard Asset, which was an entity owned by the CD Hopkins' owner, Chadwick Hopkins (“Hopkins”). It is believed that the revenue figures associated with CD Hopkins included revenue for Hard Asset. In April 2012, Hopkins sold the assets of CD Hopkins to Blackstone and ceased CD Hopkins' operations, and presumably Hard Asset's operations as well.

²¹ Of course, all these charges were passed on to the end-customers.

(more than 65%)²² was attributed to the Lloyds Credit operations. As a whole, the Lloyds Entities earned on average approximately \$82,038.36 per month during the period from July 2011 through December 2012, and a total of approximately \$659,739.50 in the 12 months preceding the cessation of its operations in January 2013.

ii. Blackstone

Blackstone, a Dealer Entity, received net revenue payments of approximately \$617,818.93, from the HW Entities during the period from July 2011 through February 2013. During this time period, the company received average monthly revenue of approximately \$30,890.95. In the 12-month period prior to the appointment of the Monitor, the company earned \$400,150.40.

iii. Newbridge

Newbridge, a Dealer Entity, received net revenue payments of approximately \$750,595.44, from the HW Entities from October 2011²³ through February 2013. During this time period, the company received average monthly revenue of approximately \$44,152.67. In the last 12-month period prior to the appointment of the Monitor, the company received \$546,925.76.

iv. US Capital

US Capital, a Dealer Entity, received approximately \$380,663.70, from the HW Entities from September 2011²⁴ through February 2013. During this time period, the company received

²² Lloyds Credit generated approximately \$971,192.26 during the relevant time period (July 2011 through February 2013).

²³ The company was established in October 2011.

²⁴ The company was established in September 2011.

average monthly revenue of approximately \$23,787.18.²⁵ In the 12 months preceding the cessation of its operations in February 2013, the company received \$184,974.37.

v. C.D. Hopkins

Although the company was sold to Blackstone in April 2012, during the period from July 2011 through May 2012 (the last substantial month of revenues)²⁶ the company was quite profitable, generating a net revenue total payment from the HW Entities of approximately \$1,158,278.78. During this time period, CD Hopkins averaged monthly revenues of \$105,239.46.²⁷

III. MONITOR AND MANGER'S ACTIONS TO DATE

a. Employment of Professionals

Immediately upon her appointment and review of relevant documents and discussions with CFTC staff and counsel for certain of the defendants, J.B. Grossman, the Monitor conducted the necessary planning and determined her need to employ certain professionals to assist her in carrying out her duties and responsibilities under the Appointment Order and the Injunction Order. Pursuant to the Appointment Order, the Monitor and Manager was provided with authority to "...engage and employ persons in her discretion to assist her in carrying her duties and responsibilities ... and to continue the normal operations of [HW Entities, Lloyds

²⁵ The calculated average does not take into account *de minimis* revenue received at end of reported period.

²⁶ While its accounts were sold to Blackstone in April 2012, CD Hopkins was presumably entitled to receive income for May 2012. In June 2012, it received a *de minimis* payment of \$644.68.

²⁷ The calculated average does not take into account *de minimis* revenue received at end of the reported period.

Entities, and Dealer Entities], including but not limited to, accountants, attorneys, financial or business advisers, real estate agents, forensic experts, or brokers.” See Appointment Order, Section III, ¶ 8(G). This authorization was refined in the Injunction Order, pursuant to which the Monitor was required to submit requests for compensation every 90 days. See Injunction Order, Section IV, ¶ 25.

Although neither the Appointment Order nor the Injunction Order provides for an explicit requirement for the Monitor to file applications to employ professionals, in an abundance of caution, on February 26, 2013, the Monitor sought such approval from the Court. On February 28, 2013, the Monitor obtained approval from the Court to engage Kenneth Dante Murena, Esq. of Damian & Valori LLP (“Lead Counsel”) as her lead counsel, and of Soneet R. Kapila of Kapila & Company (the “Forensic Accountant”) to serve as her forensic accountant [ECF # 83]. Further, as mentioned *supra*, the Monitor engaged the services of an appraiser to assist her with valuation of precious metals held in a safe at the Irvine Office. Finally, the Forensic Accountant is assisting the Monitor to define and narrow the scope of the proposed engagement of Haskell & White LLP for the purpose of finalizing and filing the HW Entities’ Federal Income Tax Returns for 2012.

The foregoing professionals have been critical to the success of the Monitor, helping her with marshalling and securing the various Entity Defendants’ assets, identifying and analyzing additional potential assets, and communicating with CFTC staff as well as counsel for the Individual Defendants and former counsel for the HW Entities. Moreover, the Monitor’s professionals have been instrumental in assisting with formulating her recommendations to the Court, as set forth *infra*.

b. Marshalling and Securing Assets

i. Offices

Following her appointment, the Monitor and her professionals swiftly took action, reviewing all available relevant documents associated with the various entities. The Monitor's professionals assembled into teams to investigate the ongoing operations of the Entity Defendants and to ensure compliance with the Court's Appointment Order and Injunction Order.

The Monitor and her Lead Counsel flew to California on the Sunday following entry of the Appointment Order in order to commence the investigation and secure the assets of the HW Entities' Irvine Office, with the assistance of a member of the Forensic Accountant's firm who is based in Orange County, California. The Monitor sent another attorney to the Las Vegas Office of the HW Entities to secure the assets and operations at that location. Additionally, separate teams were dispatched to various locations in South Florida to secure the assets and operations of the Lloyds Entities and the Dealer Entities. Upon arriving at and securing each of the Entity Defendants' locations, the Monitor and her professionals conducted the necessary due diligence and determined which employees were necessary to assist the Monitor to carry out her duties, and those employees whose services were not necessary were let go to avoid further expense to the Entity Defendants.

The Monitor and her professionals conducted all necessary logistics associated with securing the Entity Defendants' operations, including controlling ongoing operational expenses by terminating ongoing contracts with various utility and office providers, re-directing all mail received at offices around the country to the Monitor's office, and re-directing telephones and e-mails to dedicated numbers and e-mail addresses controlled by the Monitor. Moreover, all

websites were re-directed to a general website that the Monitor created for this Monitorship, as explained *infra*.

Significant efforts were made to secure the offices and their contents against loss of property. Locks and alarm codes were changed, the office contents, including furniture, computers and other equipment, were moved to secure storage facilities, and the Monitor assessed whether additional security measures were needed. The Monitor and her professionals are of the opinion that the measures employed to date are sufficient. They continue, however, to monitor and assess the security situation at each of the locations.

- The HW Entities

As explained above, on the first business day following her appointment, the Monitor and her professionals were in Irvine, California, and Las Vegas, Nevada, securing HW Entities' offices and all assets, computer records and data and documents located therein. Pursuant to the Court's rulings in the Appointment Order and the Injunction Order, the Monitor immediately ceased the HW Entities' business of selling financed unallocated precious metals. While in Irvine and Las Vegas, the Monitor and her professionals took inventory of all assets located at those offices, including documents, furniture and equipment. In particular, at the Irvine Office, the Monitor and her professionals conducted extensive interviews of Human Resources, Accounting, Information Technology, Operations and Investment personnel to obtain pertinent information and documents necessary for immediate analysis and recovery of financial assets held by the HW Entities in various accounts, as detailed *infra*. The documents accumulated included QuickBooks records, financial statements, tax returns, bank statements/reconciliations, various operational reports, payroll/personnel records, insurance policy information, dealer agreements, and other relevant documents. In addition to these documents, the Monitor and her

professionals obtained access to the HW Entities' servers, Virtual Private Network, and the Client/Dealer/Operations website portals (through which dealers and end-customers placed their orders, as explained *supra*). Access to these servers, networks and the portals was necessary and critical in order for the Monitor to notify all dealers and end-customers of the discontinuation of financed sales of unallocated precious metals by the HW Entities, as well as to recover necessary information regarding operations and transaction of those entities going forward. The Irvine Office remains in limited use by the Monitor's professionals given the extensive and voluminous information, documents and computer systems that are located there.

The Monitor determined that the Las Vegas Office was of little value for any continued operations. Other than containing many manuals and forms used by the HW Entities, valuable equipment such as computers, printers, networking equipment, large screen televisions, in addition to office furniture were identified and inventoried. This equipment was determined to be in fairly good condition. Following the initial visit by the Monitor's professionals, and after further analysis and examination of the security situation at the Las Vegas Office, the Monitor decided to be cautious and take additional security measures. In particular, the Monitor dispatched another professional to that location to secure relevant computer hard drives and the document file server, which were believed to contain additional pertinent financial information, and coordinated the removal and storage of the furniture and remaining equipment to a secure storage facility. The computer hard drives and document file server were shipped to the Irvine Office for further analysis by the Monitor and her Forensic Accountant. Finally, the Las Vegas lease agreement is in the process of being terminated.

A complete inventory of all assets that the Monitor and her team found at the Irvine and Las Vegas offices is attached hereto as **Exhibit "H."**

- The Lloyds Entities

On February 25, 2013, the first business day after the Court entered the Appointment Order, the Monitor's professionals and staff arrived at the Lloyds Entities' office located in Palm Beach Gardens, Florida, and were met by two of the Individual Defendants in this matter, Frank Gaudino ("Gaudino") and James Burbage ("Burbage"), principals and owners of the Lloyds Entities. Both Gaudino and Burbage were helpful, providing relevant information necessary for the turnover of that office to the Monitor. During the initial interviews of Gaudino and Burbage, they indicated that the Lloyds Entities had terminated their operations several weeks prior to entry of the Appointment Order.

Once at the Lloyds Entities' office, the Monitor's professionals and staff obtained all necessary information concerning the Lloyds Entities' employees (all of whom had their employment terminated prior to the Appointment Order and were not owed any compensation), corporate tax identification, as well as landlord and lease information. Banking statements for the previous two years were recovered, and administrative log-in information and password access codes for the Lloyds Entities' computers and website were obtained from Gaudino and Burbage. Relevant financial information was recovered from the Lloyds Entities' computers. In addition, the Monitor's professionals conducted a thorough inventory of all documents, furniture and equipment located in the office, and secured the office by immediately changing all locks. The Monitor has not yet completed her analysis of the Lloyds Entities' business operations.

- The Dealer Entities²⁸

a) *Blackstone* – On February 25, 2013, the Monitor’s professionals and staff met Defendant, Baris Keser (“Keser”), a principal of Blackstone, at Blackstone’s West Palm Beach office. Blackstone utilized a small office space that was shared with other unrelated companies in a “share” type leased office space arrangement. Keser informed the Monitor’s professionals that the three employees of Blackstone were owed limited amounts in compensation.²⁹ Subsequently, the Monitor’s professionals obtained the employees’ contact information and contacted them regarding the termination of their employment.

Keser provided the Monitor’s professionals with only limited information. He provided a mail key but it did not work. Efforts to obtain online access to Blackstone’s bank account were unsuccessful; Keser refused to provide passwords or help the Monitor gain access. Moreover, the Monitor’s professionals could not obtain access to certain drawers in employees’ desks. Nevertheless, Keser provided end-customer files, and the Monitor’s professionals recovered additional documents. The Monitor is engaged in ongoing efforts to retrieve banking information regarding Blackstone. Given the nature of this shared office space environment and the fact that the equipment and furniture that Blackstone used was of *de-minimis* value, the company’s assets are limited to its bank account, discussed *infra*. The assets were secured and the Monitor’s professionals notified the landlord of the Monitorship and terminated the lease.

²⁸ It was not necessary for the Monitor and her professionals to shut down Hard Asset’s and CD Hopkins’ operations because both entities had ceased their operations sometime in April 2012.

²⁹ Compensation amounts owed to former employees is unknown. Keser has agreed to provide the Monitor with this information, however, to date he has not done so.

b) *Newbridge* – On the same day as visiting Blackstone’s office, the Monitor’s professionals arrived at the offices of Newbridge in Palm Beach, Florida. John King (“King”), a principal of Newbridge and one of the Individual Defendants, and Bancroft Wright (“Wright”), an employee of Newbridge, met the Monitor’s professionals at Newbridge’s office.. King and Wright provided the Monitor’s professionals with additional information regarding the two remaining employees (Wright and another individual). According to King, the employees were not owed compensation.

The Monitor’s professionals obtained documents pertaining to the company’s operations and, specifically, banking statements for all bank accounts (both closed and active) for the previous two years. The Monitor’s professionals prepared an inventory of all furniture and equipment located at the office. To ensure that the limited assets (primarily office equipment and furniture) stored at the facility were secured, the Monitor’s professionals changed the office’s electronic locking system. In the following week, the Monitor’s professionals moved the office equipment and furniture into a secure storage facility and terminated the lease.

c) *US Capital* – Finally, on that same day, the Monitor’s professionals arrived at US Capital’s office space located in Pompano, Florida. US Capital occupied the third floor of an office building. The Monitor’s professionals met US Capital’s three employees, who were cooperative and provided information concerning the company’s banking information as well as online access to bank accounts. Furthermore, these employees provided the Monitor’s professionals with access codes to the company’s e-mail account and website. Banking

documents were recovered and sent to the Monitor's Forensic Accountant for review and analysis.³⁰

The employees of US Capital informed the Monitor's professionals that only limited trading had been conducted out of the office, including receiving from existing end-customers orders to transact in precious metals. Following additional interviews of the employees, the Monitor's professionals learned that the employees had not solicited new end-customers in recent months. The Monitor's professionals terminated the employment of the remaining employees. The employees were permitted to remove their personal belongings, and they provided documents pertaining to the company to the Monitor's professionals.

The Monitor's professionals inventoried the office and conducted additional due diligence to ensure that the limited assets (computer and office equipment) owned by the company were secure. Although locks to the building could not be changed,³¹ the Monitor's professionals secured a portion of the third floor office that US Capital utilized by changing the locks to an interior door and securing all valuable assets and documents in that locked office. Shortly thereafter, the Monitor's professionals moved the documents, equipment, and furniture to a secure storage facility and terminated the lease.

- Individual Defendant Personal Property Recovered

The Monitor and her professionals inspected HW Commodities' leased condominium unit in Orange County, California. There, they recovered collectible coins made of precious

³⁰ A section of US Capital's third floor office space was filled with a substantial quantity of files, which the Monitor's professionals determined to belong to another company that abandoned the office space in the 2000's.

³¹ All tenants access the building through a shared door located on the first floor of the building. Therefore, the Monitor and her professionals were not able to completely secure the third floor offices of the company.

metals, watches and other jewelry, all of which were securely transported to a safe deposit box maintained by the Monitor in Miami, Florida.

ii. Securing and Recovering Funds in Various Accounts

- Precious Metals Recovered

The Monitor and her professionals examined and analyzed the books and records maintained by each of the Entity Defendants. HW Commodities maintained a comprehensive spreadsheet database known as the relevant portion of the “Seg. Report” that details the company’s accounts with its various suppliers, including those accounts holding deposits of physical precious metals. A copy of the Seg. Report is attached hereto is as **Exhibit “I.”** This report was used as a tool to balance risk against end-customer precious metal positions. While the Seg. Report had a number of inaccuracies as to the status and amounts held in certain accounts, it did serve the Monitor as a useful tool to track assets held by the HW Entities. These accounts were either located at the Irvine Office of HW Commodities, or at various financial institutions in the name of HW Commodities, and, in certain instances, contain notations detailing the end-customer beneficiary of each quantity of metals.

The Monitor successfully recovered from HW Commodities’ safe approximately \$256,057.04 in precious metals. Upon discovery of the metals in the safe, the Monitor and her professionals retained the services of Tangible Investments, an appraiser of precious metals, who inventoried (under the supervision of the Monitor’s professionals) and appraised the precious metals found. Soon after the appraisal was completed, the Monitor and her professionals made the necessary arrangements to transport the precious metals from HW Commodities’ Irvine

Office to a storage unit at a high-security facility³² in Miami, Florida, which can only be accessed by the Monitor and her Lead Counsel.

Another large quantity of precious metals was held with DDS. The Monitor and her professionals located records for the DDS accounts, and expeditiously notified and received confirmation from DDS that the accounts holding these metals were frozen until further instructions by the Monitor. In the interim, the Monitor and her professionals conducted a preliminary evaluation of the quantities and types of metals in the accounts and determined their aggregate value to be \$1,158,984.88³³. A consolidated report detailing all precious metals that were physically held at the Irvine Office and those that are presently held by DDS is attached hereto as **Exhibit “J.”**

In addition, IDS holds a single silver bar associated with an account owned by HW Commodities. This bar is 961 gross troy ounces (marked “1000 oz. Royal Canadian Silver Bar”) and has a current market value of approximately \$27,800. According to the Seg. Report, it is worth \$27,525, but its value adjusts on a daily basis based on market fluctuations. IDS has frozen the account in which this silver bar is held pursuant to the Appointment Order and the Injunction Order, and is awaiting further instructions from the Monitor regarding its transfer to the Monitor or liquidation.

Finally, Baird is holding one (1) silver bar weighing 972.0 troy ounces in an account in the name of HW Commodities. At the current market price, that bar is worth approximately

³² The facility is operated and maintained by a leader in the field of transportation and storage of high value assets.

³³ This value is based on the spot price as of March 19, 2013. This value appears to conflict with the low valuation of the account by HW Commodities as detailed in the Seg. Report, which lists the DDS accounts to be holding approximately \$682,378.04 in precious metals.

\$28,000. Baird has confirmed that the account is frozen and that it will continue to store and insure the bar until the Monitor pays the outstanding storage fees and arranges for the transfer or liquidation of the bar.

- Liquid Assets: Bank and Other Trading Accounts

HW Entities – A large portion of the time spent by the Monitor and her professionals in the initial hours following her arrival in Irvine was dedicated to liquidating financial trading accounts held by the HW Entities. As a fiduciary, to avoid market risk in the highly leveraged accounts, the Monitor liquidated the open tradable positions, the results of which yielded the following:

SUPPLIER NAME	AMOUNT (\$)
Standard Bank, PLC	\$ 4,144,827.27
NTR Bullion Group	\$ 197,502.00
R.J. O'Brien Associates, LLC	\$ 449,557.20
Fidelitrade Incorporated	\$ 66,536.19
Total	\$ 4,858,422.66

All funds were wired to the Monitor's fiduciary account during the first few days of the Monitorship.

The Monitor also was informed that HW Commodities held certain assets associated with HWIC Cayman in an account at Baird. The Monitor liquidated that amount resulting in approximately \$569,000 in proceeds, with HWIC Cayman only transferring \$517,980 of that amount to the Monitor. A chart of all accounts liquidated by the Monitor is attached hereto as **Exhibit "K."**

Additionally, an account with Baird the final balance of which is unknown has been frozen. The Monitor is awaiting confirmation of the balance in that account (which is estimated to be \$2,344.32), and for the funds to be wired to her trust account.

The Monitor also took immediate custody of the HW Entities' operating accounts held at First Foundation Bank. A total of \$646,677.43 was recovered and transferred to the Monitor's fiduciary account.

Soon after the entry of the Court's Injunction Order, the Monitor and her professionals learned that, prior thereto, significant sums of monies had been transferred from HW Commodities' accounts to various affiliated entities that were owned by principals of HW Commodities who are also Individual Defendants. Specifically, the Monitor and her professionals ascertained that Hunter Wise Holdings, LLC ("HW Holding") and Hunter Wise Financial Group, LLC ("HW Financial"), both of which are owned by Defendant Fred Jager ("Jager"), received multiple transfers totaling more than \$2,659,804.50. The Monitor and counsel for the CFTC negotiated a stipulation with Jager, HW Financial and HW Holdings, in which Jager and those entities agreed to a total disgorgement amount and to make payments toward that amount. *See* ECF # 93.³⁴ Indeed, on March 7, 2013, the Court entered an agreed order (the "Agreed Order"), which, among other things, provided for an initial payment from Jager, HW Holdings, and HW Financial, in the amounts of \$15,000.00, \$35,000.00, \$150,000.00, respectively [ECF # 94]. Accordingly, on March 8, 2013, the Monitor received three wire transfers into her fiduciary accounts in the total amount of \$200,000.00 in satisfaction of the initial payment requirement under the Agreed Order. The Monitor, pursuant to the agreement

³⁴ In the Stipulation for An Agreed Order Unfreezing Certain Bank Accounts, Jager, HW Holdings and HW Financial did not admit to any wrongdoing or liability in connection with the transfers, and reserved the right to seek the return of amounts paid.

memorialized in the Agreed Order, monitors the accounts of Jager, HW Holdings, and HW Financial, which are required to obtain authorization from the Monitor for all distributions therefrom until further order of this Court.

In total, the Monitor has successfully recovered approximately \$7,678,368.96 from various suppliers and financial institutions in which the HW Entities held accounts, as well as recoveries of sums from certain of the Individual Defendants and their affiliated entities (of the HW Entities), as explained *supra*. A chart of all liquidated sums received by the Monitor into her fiduciary accounts is attached hereto as **Exhibit “L.”** The Monitor has paid operating expenses of the HW Entities’ from the appropriate fiduciary account, the most significant of which were salaries and lease payments. The schedule of expenses paid is included within Exhibit “L.”

a) *Lloyds Entities* – The Monitor and her professionals determined that all accounts associated with the Lloyds Entities were closed as of the end of 2012. The Monitor provided notice of the Injunction Order and requested all known financial institutions to freeze accounts. Since her request, the Monitor has received confirmation from all known banking institutions that accounts held in the name of the Lloyds Entities were in fact closed as of the end of 2012. Nonetheless, the Monitor continues to review all bank statements to ascertain whether transfers were made to unknown accounts. A schedule detailing all sums recovered from each entity’s bank account is included within Exhibit “K.” Former counsel to the Lloyds Entities turned over a remaining retainer balance of \$3,632.20.

b) *Dealer Entities* – The Monitor and her professionals reviewed the books and records of each of the Dealer Entities, accessed those accounts of which they had

knowledge, and determined (with regards to those entities that were active³⁵) that those entities held approximately \$29,420.52 in funds at various bank accounts in their names. The Monitor and her professionals notified all financial institutions of the Injunction Order, and successfully arranged for the immediate freeze of the accounts and subsequent wire transfers of the balances in each of the accounts to her fiduciary account.³⁶ A schedule detailing all sums recovered from each entity's bank account is included within Exhibit "K."

In addition to the above sums, the Monitor and her professionals were successful in locating approximately \$364,610.80 of funds held by Amerifirst Management ("Amerifirst") for the benefit of US Capital and its end-customers. US Capital purchased and sold precious metals through Amerifirst Management, which recently ceased active operations and closed all open positions of US Capital. This resulted in net proceeds due to US Capital in the approximate amount of \$364,610.80. Counsel for Amerifirst has sent two cashier's checks from his client totaling this amount to the Monitor, who has received the first one in the amount of \$10,823.54, and is scheduled to receive second one in the amount of \$353,787.26 on March 25, 2013. The Monitor will deposit both of these checks in her fiduciary account.

c. Individual Defendants: Financial Statements and Recoveries

Most of the Individual Defendants have provided limited financial information to the Monitor. To date, five of the eight Individual Defendants (Burbage, Gaudino, Keser, King and

³⁵ As explained *supra*, CD Hopkins and Hard Asset, and presumably their bank accounts, were closed sometime after April 2012. The Monitor and her professionals sent notices of the Appointment Order and the Injunction Order to the last known financial institutions with which those entities banked. However, to date, the Monitor has not received any information regarding those accounts.

³⁶ In some instances, the Monitor's professionals were given access to an entity's bank and were themselves able to initiate a transfer to the Monitor.

Jager) have filed their financial disclosures and provided the Monitor with their financial documents, which are largely incomplete, and do not satisfy the production requirement in the Injunction Order. The Monitor and her professionals have begun a thorough review of the documents they did receive in order to ascertain the extent of funds each of the Individual Defendants obtained from each of the Entity Defendants. Regardless, significant work remains to be completed in this regard.

Since the Court entered the Injunction Order, the Monitor has frozen and/or received wire transfers of funds associated with the various Individual Defendants. The list of Individual Defendants and sums frozen and/or remitted to date are listed below:

NAME	AMOUNT (\$)
John King	\$ 18,768.14
Fred Jager	\$ 15,000.00
Frank Gaudino	\$ 11,696.42
David Moore	\$ 475.19
Ed Martin	\$ 541.05
James Burbage	\$ 62.83
Chadwick Hopkins	\$ 0.00
Baris Keser	\$ 0.00
<i>TOTAL</i>	<i>\$ 46,543.63</i>

In total, the Monitor has frozen and/or received and deposited into her fiduciary account \$46,543.63 associated with the Individual Defendants.

In the Monitor's opinion, the Individual Defendants are in violation of the Court's Appointment Order and Injunction Order. The Monitor and/or the CFTC will file appropriate motions with the Court as it relates to the Individual Defendants' failure to comply with the Court's orders.

IV. ONGOING ISSUES

a. Dealers and End-Customers Contacted

In the initial days of the Monitorship, the Monitor and her professionals made every effort to ensure that dealers and end-customers were aware of the Court's orders. Specific efforts were made to re-direct all Entity Defendants' websites to a website that explains the CFTC action and posts pertinent Court filings and the letters previously sent to dealers and end-customers. Moreover, all telephone and e-mail communications are being re-directed on an ongoing basis to the CFTC and the Monitor's professionals to explain the status and purpose of the Monitorship and to answer questions. Dealer and end-customer inquiries are responded to based on urgency and as deemed appropriate under the circumstances by the Monitor and her professionals.

Although a comprehensive database has already been accumulated based on the extensive records held by the HW Entities, the Monitor will endeavor to assemble by the next reporting date a comprehensive notice mailing matrix. Said matrix will allow the Monitor to provide notice to all interested parties, including administrative creditors, dealers, and end-customers of any and all pertinent information, court filing or action taken in this case, as discussed *infra*.

b. Ongoing Legal Proceedings

i. Terminated Legal Counsels

The Monitor's Lead Counsel sent a termination letter to all counsels representing the various Entity Defendants. The Monitor believed, in her business judgment, that continued payment of fees to various counsels, while a stay³⁷ is in effect, would provide little if any benefit to the Monitorship estate, and would waste precious resources. A list of all counsel to whom the Monitor sent a termination letter is attached hereto as **Exhibit "M."**

• J.B. Grossman and Grossman, P.A.

J.B. Grossman of Grossman, P.A. was notified of his firm's termination pursuant to the legal counsel termination letter. Despite the Monitor's appointment and the Court's findings of fact, J.B. Grossman and Grossman, P.A. filed a motion on behalf of HW Entities that requests this Court to unfreeze the HW Entities' funds to pay their legal fees and reinstate themselves as counsel for the HW Entities in order to pursue an appeal of the Appointment Order and the Injunction Order on behalf of the HW Entities [ECF # 92]. The Monitor does not believe it is in the best interest of the HW Entities to pursue the appeal.

ii. Assessment of Various Legal Proceedings

The Lloyds Entities³⁸ and US Capital are known to be defendants in certain pending actions against them that were commenced by third party individuals – presumably end-customers damaged by the Entity Defendants' conduct. Attached hereto as **Exhibit "N"** is the

³⁷ As discussed *infra*, the Appointment Order contains certain conflicting language with regards to the stay of all legal proceedings involving the entities of which the Monitor will seek clarification from the Court.

³⁸ Lloyds Asset Management, LLC, which is not one of the Lloyds Entities, was also a named defendant in each of the pending actions. The Monitor is presently investigating Lloyd Asset Management, LLC's connection to the the Lloyds Entities and to the Individual Defendants.

Monitor's report concerning all known ancillary proceedings involving the Lloyds Entities and/or certain of the Dealer Entities.

The Monitor requires an additional thirty (30) days within which to evaluate and assess each of these legal actions and make a determination as to each case. As such, the Monitor requests the Court's authority to stay all legal proceedings involving the Lloyds Entities (or their subsidiaries) and the Dealer Entities (or their subsidiaries), in which they are defendants, pending further evaluation by the Monitor and direction from this Court based on the status of the Monitorship and/or additional authority provided to the Court, as discussed *infra*.

In addition, HW Commodities had commenced an action for declaratory relief against the CFTC in the U.S. District Court for the Northern District of Illinois, Case No. 1:12-CV-07656 (the "N.D. Ill. Action"), seeking to have that Court determine the correct interpretation of a particular provision of Section 2(c)(2)(D) of the Commodity Exchange Act (the "Act"), and that certain actions of the CFTC exceeded its statutory jurisdiction under the Act. The Monitor has reviewed the Complaint, the Motions and the opposing and supporting Memoranda filed in that case.³⁹ Given this Court's Injunction Order and that the parties and claims involved in the N.D. Ill. Action are substantially similar to those involved here, the Monitor believes it would be prudent for the N.D. Ill. Action to be stayed pending the resolution of this action or, in the alternative, transferred to this Court so it may determine the claim underlying the N.D. Ill. Action in a manner consistent with its determinations in this action. The Monitor recommends and requests approval for the foregoing course of action.

³⁹ The CFTC had filed a Motion to dismiss for lack of jurisdiction and failure to state a claim and a Motion to transfer the case to this Court. HW Commodities filed Memoranda in opposition to those two Motions and the CFTC filed Reply Memoranda in support of those Motions. A status hearing on the Motions is set for April 19, 2013.

V. POTENTIAL ASSETS/CLAIMS AGAINST THIRD PARTIES

During the initial days and weeks of the Monitorship, the Monitor's and her professionals' efforts were spent identifying and recovering those funds and assets that were readily identifiable and recoverable. During this time period, the Monitor's professionals, including her Forensic Accountant, paid particular attention to all potential sources from which the Monitorship estate could recover funds belonging to the Entity Defendants.

a. Other Accounts To Be Discovered

The Monitor diligently pursued all known bank accounts and supplier accounts held by the Entity Defendants. At this juncture, most if not all funds in known accounts have been frozen and/or recovered by the Monitor. The Monitor and her professionals continue their review of all bank statements produced to date, and dating as far back as four years, in order to determine whether any funds from known accounts were transferred to unknown accounts that may exist. Subpoenas will be sent to the principals of each of the Entity Defendants, requesting them to appear for a deposition and produce any and all documentation that they have not yet produced pertaining to their finances and involvement with the Entity Defendants. The Monitor's work in this regard is ongoing.

b. Entity Defendants' Distribution to Members

Based on the Monitor's initial investigation it is apparent that large sums of money were distributed by the Entity Defendants to their member owners, including the Individual Defendants. As detailed *supra*, more than \$6,524,000 was distributed by HW Commodities to their member owners. In many instances, the sums reflected on the HW Commodities' balance sheet (and from which the foregoing amount was derived) only reveals a portion of the distributions made to the individual owners of HW Commodities such as Ed Martin and Fred

Jager. Many of the member owners were in fact affiliate entities that were either wholly owned or partially owned and controlled by Ed Martin, Fred Jager, or other individual member owners of HW Commodities. Therefore, sums distributed to individual members such as Ed Martin and Fred Jager may in fact be significantly higher than those reported and analyzed by the Monitor. *See Exhibit “D”* listing **known** distributions made to members of HW Entities and, specifically, HW Commodities. Additionally, both Fred Jager and Ed Martin collected significant sums in salaries and other benefits that the Monitor will analyze and determine whether those sums should be disgorged.

Also, the Lloyds Entities and the Dealer Entities made their own disbursements to their respective Individual Defendants, in the form of salaries or regular disbursements.

The Monitor will continue to analyze the books and records of the Entity Defendants as well as the financial documents provided by the Individual Defendants, and work closely with the CFTC in an effort to determine potential amounts for disgorgements from the Individual Defendants as well as other owners who benefited from the Entity Defendants’ success at the expense of the end-customers and other creditors.

c. Insurance Claims

The Monitor has gathered all known insurance policies and is investigating potential claims for recovery. On March 15, 2013, the Monitor sent insurance claim letters to HW Commodities’ D&O insurance carrier and principals in accordance with the notice provisions set forth in the policy in order to preserve the Monitor’s right to pursue claims against the insurer and the principals and to trigger coverage under the policy prior to the expiration of the policy.

d. Fraudulent Transfer Analysis

The Forensic Accountant will review the banking records and company ledgers that have been recovered, and the Monitor's counsel will subpoena any additional records required to determine the occurrence and extent of any fraudulent transfers of funds from the Entity Defendants to Individuals Defendants, affiliated companies, and/or third parties. The Monitor will investigate potential claims and pursue those she believes to be meritorious and prudent for the Monitorship estate.

e. Bankruptcy Claim

On March 15, 2013, the Monitor received two notices by mail of approval of a Plan of Reorganization in the Chapter 11 bankruptcy case styled, *In re Dewey LeBoeuf, LLP*, Case No. 12-12321 (MG), pending in United States Bankruptcy Court Southern District of New York. A review by the Monitor and her professionals of that bankruptcy case's online claims register show that HW Commodities filed Claim No. 407 in the amount of \$25,000.00, which was subsequently withdrawn and re-filed, with the assistance of J.B. Grossman, as Lloyds Commodities' Claim No. 1145 in the amount of \$25,000.00, which the debtor's claims agent has marked as late filed. The Monitor has determined that the confirmed plan of reorganization provides for a 20% distribution to unsecured creditors, which includes Lloyds Commodities. In the event the bankruptcy court permits the Monitor to pursue Lloyds Commodities' late filed claim, and that claim is allowed in its entirety, the Monitorship estate would only receive a distribution of \$5,000.00 from the bankruptcy estate. If any party objects to the late filed claim, the cost of overcoming that objection and having the claim allowed will likely exceed any amount that the Monitor could recover from the bankruptcy estate. Accordingly, the Monitor

proposes to take no further action with regard to this bankruptcy claim other than to monitor the status of the treatment of Lloyds Commodities' claim.

The Monitor will endeavor to discover through inquiries with the Individual Defendants and former counsel to the Entity Defendants whether additional bankruptcy claims have been filed or are available for filing in other bankruptcy cases.

VI. CASH ON HAND AND ADMINISTRATIVE EXPENSES PAID

The Monitor presently holds a total of \$6,037,309.30 in cash on hand, in segregated fiduciary accounts held at Gibraltar Private Bank and Trust for each of the Entity Defendants, which amount is broken down as follows:

ENTITY NAME	AMOUNT (\$) IN FIDUCIARY ACCOUNTS
HW Commodities^	\$ 6,006,947.75
Blackstone	\$ 26,267.86
Newbridge	\$ 2,698.22
US Capital	\$ 1,395.47
<i>^ This amount includes the payment of \$15,000 made by Jager. Furthermore, this sum includes \$3,632.20 received from Sallah & Cox, LLC.</i>	

Additionally, spreadsheets listing of all disbursements of expenses made since the inception of the Monitorship, either from the Entity Defendants' bank accounts, at the direction of the Monitor, or from the Monitor's fiduciary accounts, are attached hereto as **Exhibit "L."**

VII. FULLY PAID SALE AND PHYSICAL DELIVERY OF PRECIOUS METALS, AND INSTITUTIONAL SALES

Based on the Court's Orders and the Monitor's understanding of the Court's concern regarding the viability of certain portions of the Entity Defendants' business, the Monitor

carefully analyzed the HW Entities' fully paid sale and delivery of precious metals business as well as the "Institutional Sales" segment of the companies' business. The Monitor interviewed Steve Fitch ("Fitch"), a HW Commodities' employee who worked on the institutional sales side of the business – the high-volume low-margin sales to wealthy family or institutional investors ("Institutional Sales"). Moreover, the Monitor interviewed other sales and operational employees regarding the fully-paid sales segment of the HW Entities' business operations.

The fully paid sale and delivery of precious metals represented 0.85% of the HW Entities' business in 2011, and less than 3.0% in 2012 and 2013. *See* Sales records obtained from HW Commodities, attached hereto as **Exhibit "O."** Based on the records provided to the Monitor, the HW Entities' Institutional Sales only represented approximately \$6,542.50 of total revenue and accounted for a mere fraction of one percent of HW Commodities' total revenues for 2012. Entry to this market has been slow and limited. While the HW Entities began to market Institutional Sales in 2011, the first sales only occurred in late 2012.

Mr. Fitch also provided the Monitor a thorough and detailed business plan proposal to conduct the Institutional Sales segment under a new structure. *See* the business plan attached hereto as **Exhibit "P."** Although the Monitor appreciates Mr. Fitch's efforts, and considers the business model to be viable under certain circumstances, she does not believe it should be pursued. Based on the capital that would be required, the number of dependent variables (including obtaining contracts from the US Mint) and the high volume of sales required to generate a profit, the Monitor has determined that it would not be a prudent use of the HW Entities' customer assets to engage in an unproven business model.⁴⁰ Without the financial

⁴⁰ Because the accumulation of assets at this point does not even cover the Customer Equity positions (after all fees and interest) as of February 25, 2013 (over \$7.5 million), absent a

support of the now Court-enjoined financed unallocated sale of precious metals, the proposed business model is difficult, at best, to support.

As a result, the Monitor recommends that those portions of the business that are not already enjoined be permanently discontinued and the Appointment Order and the Injunction Order be converted to a Receivership Order. In particular, the Monitor recommends that all assets be secured, pursued where still necessary, and liquidated. Further, the Monitor proposes that a claims process be formulated and implemented that would provide a fair process for distributing the Monitorship estate's assets to the injured end-customers.

VIII. CONCLUSION AND RECOMMENDATIONS

The Monitor and her professionals appreciate the opportunity to assist the Court in this matter. Significant efforts have already yielded tremendous results. Nonetheless, the Monitor and her professionals must continue their efforts, as discussed herein. Moreover, based on the analysis set forth above, the Monitor recommends that the Monitorship be converted to a full receivership to permit liquidation, when appropriate, a claims process and distributions to investors and creditors. This course of action will allow for the most cost-effective protection to, and maximize the ultimate recovery of funds by, the end-customers. At present, the Appointment Order and the Injunction Order do not provide for the liquidation and disposal of assets or the distributions of proceeds to the end-customers. Furthermore, the Monitor recommends that the Court enter an Order permitting her to pursue and/or stay litigation as proposed above.

turnover of significant additional assets, the Monitor cannot recommend the use of customer funds in this manner.

The Monitor believes that a receivership is more appropriate under the totality of the circumstances of this case. Indeed, it will not only provide for additional value to the end-customers, dealers, and other interested parties, but it will also bring about finality to this important aspect of the case.

Respectfully submitted this 22nd day of March, 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy Monitor's and Manager's Initial Report was served via CM/ECF this 22nd day of March, 2013, upon all counsels of record and by U.S. MAIL on 25th of March, 2013, to all parties listed in the attached Service List.

/s/ Kenneth Dante Murena

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