Statement of Rosemary Hollinger

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Commodity Futures Trading Commission

Before the United States Senate Special Committee on Aging

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Good afternoon Chairman Nelson, Ranking Member Collins and members of the Committee. Thank you for the opportunity to address you today. My name is Rosemary Hollinger. I am a Deputy Director in the Division of Enforcement at the Commodity Futures Trading Commission ("CFTC" or "Commission") and I am pleased to talk about the Commission's work in regard to precious metals fraud - to be precise, off-exchange transactions in precious metals with retail customers. The Commission has been engaged in combating fraud in the precious metals area throughout my 28-year career at the Commission. And, at each point along the way, the Commission has used whatever tools it had available to combat this type of fraud. The Commission's ability to fight fraud in this area was aided in 2010, when Congress, in the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), clarified the CFTC's authority to address precious metals fraud.

Most significantly, Section 2(c)(2)(D) of the Commodity Exchange Act ("CEA" or "Act"), made sure that retail commodity transactions done on a leveraged or financed basis were executed on a regulated exchange and were fully subject to the CFTC's jurisdiction. Specifically, the CFTC has jurisdiction over any agreement, contract, or transaction in any commodity that: (1) is entered into with a retail customer; (2) is entered into, or offered, on a leveraged, margined, or financed basis; (3) does not result in actual delivery within 28 days; or (4) creates an enforceable obligation to deliver between a seller and buyer in connection with the line of business of the seller and buyer. Under CEA Section 2(c)(2)(D), leveraged or financed commodity transactions with retail customers would be treated "as if" they were futures. In fraud cases, this has streamlined the Commission's efforts to bring cases against metals dealers offering financed metals while avoiding protracted battles over jurisdiction that the Commission had previously faced. In addition, Dodd-Frank also amended CEA Section 6(c)(1) making it "unlawful for any person, directly or indirectly to use or employ…in connection with…a contract of sale of any commodity in interstate commerce…any manipulative or deceptive device or deceptive device or contrivance… ." With this new provision, the Commission is able to address fraud involving precious metals that are not leveraged or financed.

Subsequent to the enactment of Dodd-Frank, the Commission has filed 21 cases utilizing these new provisions.[1] Nineteen of these cases have been filed in the area of financed precious metals pursuant to Section 2(c)(2)(D) of the CEA, and two cases were filed under Section 6(c)(1) of the CEA.

In the 19 cases filed under Section 2(c)(2)(D), the Commission charged the firms with illegally offering off-exchange leveraged or financed precious metals to retail customers, and at times with fraud. Typically, these firms operate at multiple levels. So-called metals wholesalers operate at the top of these schemes claiming to

[1] The Commission most often learns of these matters through direct customer complaints to the CFTC and through referrals from federal and state agencies.

act as intermediaries between metal suppliers and retail dealers in buying and selling physical metal. The retail dealer, in turn, claims to buy and sell metals on behalf of the retail customer. In reality, the "retail dealer" is just a telemarketing firm to whom the wholesaler has outsourced its sales operations.[2]

While the Commission does not categorize its cases or keep statistics concerning the age of the victims, it has observed that senior citizens are often the victims of precious metals telemarketers and perpetrators of other types of solicitation fraud. For example, in the Commission's July 2013 action against Pan American Metals of Miami, the Commission found that the precious metals telemarketer solicited at least 46 individuals over 65 years of age, including four who are over 90 years old, one of whom was solicited while he was in hospice care.

Telemarketers fraudulently selling precious metals call their victims repeatedly to build trust and rapport and to wear down their resistance with well-rehearsed sales scripts designed to reassure their victims and close the deal. They say things such as "[w]e are bound by the law to give the best advice at all times."[3]

Once they have established trust, they often capitalize on current events or trends and say things like: "…our economy is in a recession…How long will it last? And how deep will it get?" or "The U.S. dollar is poised for new all-time lows! With

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[2] The two cases filed under Section 6(c)(1) alleged fraudulent sales where there was no underlying metal.

[3] The examples of solicitation practices are from evidence presented by the Division of Enforcement at a preliminary injunction hearing in the Commission's pending litigation against Hunter Wise Commodities, LLC, et al., No. 12-CV-81311 (S.D. Fla. filed Dec. 5, 2012) ("*Hunter Wise*"). The Division successfully obtained the preliminary injunction, the issuance of which was affirmed on appeal by the United States Court of Appeals for the Eleventh Circuit, No. 13-10993 (11th Cir. Apr. 15, 2014) (the court of appeals also found the Commission had enforcement authority over leveraged or financed precious metals retail commodity transactions pursuant to Section 2(c)(2)(D)).

almost 3 trillion new U.S. dollars being printed, it is dramatically devaluing the existing dollars in circulation."

The telemarketer then offers precious metals as an alternative. They present it as an opportunity to "…invest in the actual commodity, not just a piece of paper." They claim that this is an investment that will "protect your buying power, protect your assets and provide...the safety of gold." Gold, they point out will "always have a value." However, what is presented as "safe," "secure," and "reliable" is fraught with risk. One of those risks is that there may not be any metal, even though the telemarketer promises to "…deliver gold to your depository within 72 hours after the purchase is made." Another risk is inherent in the structure of the transactions themselves.

In the schemes the Division of Enforcement typically sees, the investment the telemarketers offer is leveraged. While they tout the benefits of compounding profits through the use of financing and leverage by pointing out that the customer can "control" more metal by using leverage, they fail to disclose that leverage also compounds risk. In fact, many of these transactions are structured in such a way so that the retail customers rarely profit and, when they do, they are encouraged to make another trade until eventually they lose their money. The transactions result in substantial fees for the metals dealers. In the typical financed transaction, significant fees are immediately paid out of the customer's initial investment.

For example, at the preliminary injunction hearing in the *Hunter Wise* litigation noted earlier, the Division presented evidence that the customers immediately incurred fees of about 38% of their initial investment. Thereafter interest and storage fees are charged every day eroding the cash value of the customer's account and increasing the likelihood of a margin call and a forced liquidation. In a typical case, when fees are taken into consideration, the price of the metal has to increase at least 25% in one year for the customer to break even. So, even if the market moves favorably, the customer can still lose money. While I cannot comment upon pending litigation, two months ago, at the hearing against Hunter Wise, the Division presented evidence that 98% of the customers closed their accounts at a loss.

The Commission continues to bring enforcement cases to stop fraud in this area. Typically, the Commission seeks to immediately freeze assets so that they will be preserved for the customers. Where assets are apparent, the Commission will ask the court to appoint a receiver to marshal the assets and make restitution to customers. In addition, the Commission will seek the imposition of civil monetary penalties and disgorgement of ill-gotten fees so that the individuals and entities do not profit from their unlawful activity.

While many CFTC metals litigations remain ongoing, since February 2013, wrongdoers in these cases have been ordered to pay more than $32 million in civil monetary penalties and more than $26 million in restitution and disgorgement. Recovery of funds in this area has been very difficult. In order to increase the deterrence effect of our cases, the Commission also works cooperatively with the Department of Justice and other federal and state criminal authorities. With the involvement of the criminal authorities, wrongdoers face the real prospect that fraudulent misconduct leads to jail time. The Commission also cooperates with federal and state regulators like the Federal Trade Commission and several state securities regulators and consumer protection boards.

Though the CFTC continues to pursue cases, as with law enforcement generally, the CFTC only has the resources to pursue a small percentage of those of which the CFTC becomes aware. Consequently, enforcement efforts must be accompanied with education of consumers about the warning signs of fraud.

For example, the CFTC publishes consumer advisories warning the public about specific unlawful activity and educates the public through its consumer outreach efforts. In January 2012, the CFTC issued a Precious Metals Consumer Fraud Advisory to alert customers to precious metals fraud.[4] The CFTC's Advisory specifically warns that companies often fail to purchase any physical metals for their customers, instead simply keeping the customers' funds. It further cautions customers that leveraged commodity transactions are unlawful unless executed on a regulated exchange. The Advisory alerts the customers of several red flags to beware of, including solicitations that: claim high profits with little risk; do not identify the bank or financial institution loaning the customer money, or fail to identify where the physical metal is located or claims that it is overseas. In addition to the Advisory, the Commission's Office of Consumer Outreach has published and promotes a Precious Metals Fraud Brochure and participates in numerous expos, makes public appearances and speeches and highlights fraud cases to the media to

[4] Commodity Futures Trading Commission, Precious Metals Consumer Advisory, available at http://www.cftc.gov/ConsumerProtection/FraudAwarenessPrevention/CFTCFraudAdvisories/fraudadv_preciousmetals.

get the word out to the retail public.[5] The Commission relies on the public as an important source of information in carrying out its regulatory and enforcement responsibilities. Customers can report violations or other suspicious activities to our Division of Enforcement by calling 866-366-2382 or through the Commission's website, at www.cftc.gov/customerprotection/FileaTiporComplaint.

Again, thank you for the opportunity to appear before the Subcommittee. I will be pleased to respond to any questions you may have.

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[5] Commodity Futures Trading Commission, Precious Metals Fraud Brochure, available at http://www.cftc.gov/consumerprotection/resource.

COMMODITY FUTURES TRADING COMMISSION
PRECIOUS METALS ENFORCEMENT ACTIONS

Precious Metals Enforcement Actions Involving Financed Transactions

1. CFTC v. Hunter Wise Commodities, LLC, et al., No. 12-cv-81311 (S.D. Fla. filed Dec. 5, 2012) (financed; fraud; offering and entering illegal, off-exchange transactions; failure to register); see Press Release 6447-12.

2. In re Secured Precious Metals Int'l, Inc., et al., CFTC Docket No. 13-12 (CFTC filed Jan. 28, 2013) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6503-13.

3. In re Barclay Metals, Inc., et al., CFTC Docket No. 13-13 (CFTC Jan. 28, 2013) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6503-13.

4. In re Joseph Glenn Commodities, LLC, et al., CFTC Docket No. 13-18 (CFTC filed Mar. 27, 2013) (financed; fraud; offering and entering illegal, off-exchange transactions); see Press Release 6542-13.

5. CFTC v. Global Precious Metals, LLC, et al., No. 13-cv-21708, Default Judgment (S.D. Fla. entered Aug. 12, 2013) (financed; fraud; offering and entering illegal, off-exchange transactions); see Press Releases 6587-13 (May 13, 2013 filing), and 6670-13 (settlement).

6. CFTC v. AmeriFirst Management LLC, et al., No. 13-cv-61637 (S.D. Fla. filed July 29. 2013) (financed; fraud; offering and entering illegal, off-exchange transactions); see Press Release 6653-13.

7. In re Pan American Metals of Miami, LLC, et al., CFTC Docket No. 13-27 (CFTC filed July 29, 2013) (financed; fraud; offering and entering illegal, off-exchange transactions); see Press Release 6653-13.

8. CFTC v. Worth Group, Inc., et al., No. 13-cv-80796 (S.D. Fla. filed Aug. 13, 2013) (financed and not financed; fraud; offering and entering illegal, off-exchange transactions); see Press Release 6666-13.

9. In re London Metals Market, LLC, et al., CFTC Docket No. 13-32 (CFTC filed Sept. 4, 2013) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6680-13.

10. In re Hall, CFTC Docket No. 13-32 (CFTC filed Sept. 4, 2013) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6681-13.

11. In re Newbridge Metals, LLC, CFTC Docket No. 13-37 (CFTC filed Sept. 24, 2013) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6705-13.

12. CFTC v. The Yorkshire Group Inc., et al., No. CV 13-5323 (E.D.N.Y. filed Sep. 25, 2013) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6713-13.

13. CFTC v. Lions Wealth Holdings, Inc., et al., No. 2:13-cv-01787 (D. Nev. filed Sep. 30, 2013) (financed; fraud; offering and entering illegal, off-exchange transactions); see Press Release 6729-13.

14. CFTC v. Vertical Integration Group LLC, et al., No. 9:14-cv-80038 (S.D. Fla. filed Jan. 13, 2014) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6824-14.

15. In re Worth Asset Mgt. LLC, et al., CFTC Docket No. 14-07 (CFTC filed Feb. 18, 2014) (financed; fraud; offering and entering illegal, off-exchange transactions); see Press Release 6859-14.

16. CFTC v. Gold Distributors Inc., et al, CFTC Docket No. 0:14-cv-60695 (S.D. Fla. filed Mar. 19, 2014) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6884-14.

17. In re PGS Capital Wealth Mgt., et al., CFTC Docket No. 14-14 (CFTC filed Apr. 7, 2014) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6909-14.

18. In re Rockwell Asset Mgt., Inc., et al., CFTC Docket No. 14-13 (CFTC filed Apr. 7, 2014) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6909-14.

19. In re Empire Sterling Metals Corp., et al., CFTC Docket No. 14-15 (CFTC filed Apr. 17, 2014) (financed; offering and entering illegal, off-exchange transactions); see Press Release 6912-14.

Other Precious Metals Enforcement Actions

1. CFTC v. Atlantic Bullion & Coin, Inc. et al., No. 8:12-cv-01503-JMC (D.S.C. filed June 6, 2012, settled Feb. 27, 2013) (not financed, fraud); see Press Releases 6275-12 (filing), 6524-13 (settlement).

2. CFTC v. Smithers, No. 9:12-cv-81165-KAM, Default Judgment (S.D. Fla. entered July 31, 2013) (not financed; fraud; violation of prior Commission order); see Press Releases 6397-12 (filing on Oct. 22, 2012), and 6659-13 (default judgment).