

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____ Civ

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

PALM BEACH CAPITAL LLC and LAWRENCE
SCOTT SPAIN,

Defendants.

JURY TRIAL DEMANDED

**COMPLAINT FOR INJUNCTIVE AND EQUITABLE
RELIEF AND CIVIL MONETARY PENALTIES
UNDER THE COMMODITY EXCHANGE ACT**

Plaintiff, U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”), by its attorneys, alleges as follows:

I. SUMMARY

1. Between at least July 16, 2011 and continuing through at least August 2012 (the “Relevant Period”), Defendants Palm Beach Capital LLC (“PBC”) and Lawrence Scott Spain (“Spain”) (collectively “Defendants”) offered to enter into, entered into, executed, confirmed the execution of, and/or conducted an office or business in the United States, for the purpose of soliciting, or accepting orders for, or otherwise dealing in, transactions in, or in connection with, precious metals on a leveraged, margined, or financed basis. These transactions were illegal, off-exchange retail commodity transactions.

2. By this conduct, Defendants have engaged, are engaging, or are about to engage in conduct in violation of Section 4(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C.

§ 6(a) (Supp. V 2011), and are directly liable for this conduct. PBC's employees and agents, including Spain, committed the acts and omissions alleged herein within the course and scope of their employment, agency or office with PBC. Therefore, PBC is liable pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2, as principal for the violative actions and omissions of PBC's employees and agents, including Spain.

3. Spain controlled PBC throughout the Relevant Period, and did not act in good faith or knowingly induced PBC's violations of the Act. Therefore, Spain is also liable for PBC's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (Supp. V 2011), the CFTC brings this action to enjoin the Defendants' unlawful acts and practices, to compel their compliance with the Act, and to further enjoin them from engaging in any commodity-related activity, as set forth below.

5. In addition, the CFTC seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

6. Unless restrained and enjoined by this Court, Defendants likely will continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

7. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (Supp. V 2011), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the

Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

8. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D) (Supp. V 2011).

9. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (Supp. V 2011), because Defendants reside in this District, transacted business in this District, and certain transactions, acts and practices alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

III. THE PARTIES

10. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

11. Defendant PBC is a Florida Limited Liability Company listed with the Florida Department of State's Division of Corporations as "inactive" and as having a principal place of business in Palm Beach, Florida. PBC claimed to be a precious metals distributor selling gold and silver, among other metals, to the public. PBC solicited retail customers to execute leveraged, margined, or financed precious metals transactions. PBC was dissolved in or around August 2012. PBC has never been registered with the Commission in any capacity.

12. Defendant Spain is an individual whose last known address was in Boca Raton, Florida. Spain was owner, manager and controlling person of PBC. Although Spain has been registered with the Commission as an associated person of several Commission-registered firms

since 1996, he is not currently, and was not during the Relevant Period, registered with the Commission in any capacity.

IV. OTHER RELEVANT ENTITIES

13. Hunter Wise Commodities, LLC was formed as a California Limited Liability Company in July 2007, has been registered as a Nevada limited liability company since October 2010, and has maintained business addresses in Las Vegas, Nevada and Irvine, California. Hunter Wise Commodities, LLC had several wholly-owned subsidiaries and related entities including Hunter Wise Credit, LLC (a Nevada registered LLC), Hunter Wise Trading, LLC (a Nevada registered LLC), and Hunter Wise Services, LLC (a California registered LLC) (the Hunter Wise entities are collectively referred to herein as “Hunter Wise”). Hunter Wise held itself out as a physical commodity trading company, wholesaler, back-office support service provider, and finance company that offered off-exchange financed trading in physical metals.

14. Lloyds Commodities, LLC is a Florida Limited Liability Company that maintained a business address in Palm Beach Gardens, Florida. Lloyds Commodities, LLC had several corporate affiliates, including Lloyds Commodities Credit Company LLC (a Nevada LLC) and Lloyds Services, LLC (a Florida LLC) (the Lloyds Commodities entities are collectively referred to herein as “Lloyds Commodities”). Lloyds Commodities functioned as an intermediary between Hunter Wise and precious metals telemarketing firms (including PBC), *i.e.*, PBC deposited its customer funds with Lloyds Commodities and transmitted orders on behalf of customers to Lloyds Commodities, which in turn placed orders with Hunter Wise.

15. On December 5, 2012, the Commission filed a civil action in the Southern District of Florida (*U.S. Commodity Futures Trading Commission v. Hunter Wise Commodities, LLC, et al.*, Case No. 12-81311-CIV) against, among others, Hunter Wise and Lloyds Commodities,

alleging among other things, that Hunter Wise and Lloyds Commodities engaged in illegal off-exchange precious metals transactions. On February 25, 2013, following an evidentiary hearing, the Court entered a preliminary injunction that, among other things, prohibited Hunter Wise and Lloyds Commodities from offering investments in physical metals to the retail public, froze the defendants' assets, and appointed a corporate monitor (Docket No. 78, Case No. 12-81311-CIV, *aff'd by CFTC v. Hunter Wise Commodities, LLC, et al.*, No. 13-10993 (11th Cir. Apr. 15, 2014)). On February 5, 2014, the Court entered a Consent Order for permanent injunction, civil monetary penalties, and other relief, which resolved the Commission's claims as to Lloyds Commodities (Docket No. 254, Case No. 12-81311-CIV). On February 19, 2014, the Court granted the Commission's motion for partial summary judgment, finding that the remaining defendants, including Hunter Wise, violated Section 4(a) of the Act, 7 U.S.C. § 6(a), by engaging in or offering illegal off-exchange retail commodity transactions (Docket No. 281, Case No. 12-81311-CIV).

V. STATUTORY BACKGROUND

16. Section 2(c)(2)(D) of the Act, as amended by the Dodd-Frank Act, 7 U.S.C. § 2(c)(2)(D) (Supp. V 2011), gives the Commission jurisdiction over “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to, a person who is not an eligible contract participant (“ECP”) or eligible commercial entity (“ECE”) “on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis” (referred to herein as “retail commodity transactions”) with respect to conduct occurring on or after July 16, 2011, subject to certain exceptions not applicable here. In relevant part, Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D), makes Section 4(a) of the Act, 7 U.S.C. § 6(a) (Supp. V 2011), applicable to retail

commodity transactions “as if” such transactions were “contract[s] of sale of a commodity for future delivery.”

17. Section 1a(18)(xi) of the Act, 7 U.S.C. § 1a(18)(xi), defines an ECP, in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which exceeds \$10 million, or \$5 million if the individual enters into the transaction to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual. Section 1a(17) of the Act, 7 U.S.C. § 1a(17), defines an ECE as an ECP that meets certain additional requirements, both financially and in its business.

18. Section 4(a) of the Act, 7 U.S.C. § 6(a) (Supp. V 2011), in relevant part, makes it unlawful for any person to offer to enter into, enter into, execute, confirm the execution of, or conduct any office or business anywhere in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless the transaction is conducted on or subject to the rules of a board of trade that has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

VI. FACTS

19. During the Relevant Period, Defendants offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, or accepting orders for, or otherwise dealing in, transactions in, or in connection with, the purchase or sale of precious metals to or from retail customers on a leveraged, margined, or financed basis. It is only the leveraged, margined, or financed precious

metals transactions executed through Lloyds Commodities and Hunter Wise that are at issue here.

20. During the Relevant Period, PBC's principal place of business was located in Palm Beach County, Florida.

21. PBC, by and through its employees and agents, including Spain, solicited potential customers by telephone and on PBC's website, www.pbc-metals.com, to engage in leveraged, margined, or financed precious metals transactions.

22. In the leveraged, margined, or financed precious metals transactions, PBC's customers invested only a percentage of the total metal value, as little as 20% according to PBC's website. According to PBC's customer agreements, the customer would receive a loan for the remainder of the metal's value by PBC, who claimed to be the offeror.

23. PBC's customers were charged a finance charge on the loan, as well as a service charge.

24. PBC's customers also paid a commission on the total metal value, with a maximum commission of 10%, and a mark-up on the spot price of the metal. Thus, due to the high fees, finance charges, and commissions, PBC's customers almost never broke even on their investments, let alone earned a profit, because much of their principal investment was consumed by these charges.

25. After a customer was persuaded to invest, PBC collected funds from the customer needed for the transaction, and deposited the funds with Lloyds Commodities. Lloyds Commodities in turn deposited funds with Hunter Wise.

26. Lloyds Commodities was an intermediary between PBC and Hunter Wise (Hunter Wise executed, recorded, and tracked the leveraged, margined, or financed metals transactions).

27. In order to effectuate a leveraged, margined, or financed precious metals transaction on behalf of PBC customers, PBC, by and through its employees and agents, including Spain, contacted Lloyds Commodities to enter buy or sell orders, and Lloyds Commodities in turn placed those orders with Hunter Wise.

28. PBC, by and through its employees and agents, including Spain, confirmed the execution of transactions in, or in connection with, leveraged, margined or financed precious metals, including by emailing trade confirmations to customers.

29. Spain received daily statements from Hunter Wise and/or Lloyds Commodities detailing transactions placed by PBC with Lloyds Commodities in connection with retail commodity transactions on behalf of PBC's customers.

30. Spain routinely controlled and directed the transfer of funds from PBC's trading account with Lloyds Commodities (which contained PBC's customers' funds) to PBC's bank accounts.

31. During the Relevant Period, approximately 39 of PBC's customers paid at least \$1.35 million to PBC in connection with leveraged, margined, or financed precious metals transactions.

32. These customers lost at least \$1.25 million of these funds to trading losses, commissions, fees, and other charges by PBC, Lloyds Commodities, and Hunter Wise.

33. PBC received commissions and fees totaling at least \$526,000 in connection with retail leveraged, margined, or financed precious metals transactions.

34. During the Relevant Period, most, if not all, of PBC's customers were not ECPs or ECEs.

35. During the Relevant Period, neither the Defendants, nor Lloyds Commodities, nor Hunter Wise ever actually delivered any precious metals in connection with the leveraged, margined, or financed precious metals transactions made on behalf of PBC's customers.

36. During the Relevant Period, none of the leveraged, margined, or financed precious metals transactions entered into with, or offered to, PBC's customers by Defendants were conducted on or subject to the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility.

37. Spain was the owner of PBC.

38. In 2007 and 2008, PBC's principal place of business and mailing addresses were Spain's personal residence.

39. At all relevant times, Spain was the sole manager of PBC.

40. Spain held himself out as the President of PBC.

41. During the Relevant Period, Spain was a signatory on PBC's bank accounts.

42. Spain signed checks in connection with PBC's retail commodity transactions business, including payments to PBC's salespeople.

43. Spain was the "registration contact," "technical contact," "administrative contact," and "billing contact" on file with Domains By Proxy for PBC's website.

44. Spain has invoked his Fifth Amendment privilege against self-incrimination in response to all questions about PBC during sworn investigative testimony.

VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE:

(Violations of Section 4(a) of the Act, Illegal Off-exchange Trading)

45. Paragraphs 1 through 44 of this Complaint are realleged and incorporated herein by reference.

46. During the Relevant Period, the retail commodity transactions described in this Complaint were offered by Defendants, Lloyds Commodities, and Hunter Wise and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, (b) with persons who are not ECPs or ECEs as defined by the Act, and (c) were not made or conducted on, or subject to, the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility.

47. The precious metals, including gold, silver, platinum, and palladium, described herein are commodities as defined by Section 1a(9) of the Act, 7 U.S.C. § 1a(9).

48. During the Relevant Period, Defendants violated Section 4(a) of the Act by offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in, transactions in, or in connection with, retail commodity transactions which were not conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

49. Each offer to enter into, entrance into, execution, confirmation, solicitation or acceptance of an order in any transaction in, or in connection with, an off-exchange retail commodity transaction, made during the Relevant Period, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (Supp. V 2011).

50. Spain directly or indirectly controlled PBC and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting PBC's violations of Section 4(a) of the Act, 7 U.S.C. § 6(c) (Supp. V 2011), alleged in this Complaint. Therefore, pursuant to

Section 13(b) of the Act, 7 U.S.C. § 13(b) (2012), Spain is liable for each of PBC's violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (Supp. V 2011).

51. The acts and omissions of PBC's employees and agents, including Spain, described in this Complaint were done within the scope of their employment or office with PBC. Therefore PBC is liable as a principal for each of the acts, omissions or failures by PBC's employees and agents, including Spain, constituting violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (Supp. V 2011), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C § 2(a)(1)(B) (2012).

VIII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, 7 U.S.C. § 13a-1 (Supp. V 2011), and pursuant to its own equitable powers, enter:

- A. An order finding that Defendants PBC and Spain violated Section 4(a) of the Act, as amended, 7 U.S.C. § 6(a) (Supp. V 2011);
- B. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct in violation of Section 4(a) of the Act, 7 U.S. C. § 6(a) (Supp. V 2011);
- C. An order of permanent injunction prohibiting Defendants and any of their successors from, directly or indirectly:
 - 1) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, as amended, 7 U.S.C. § 1a(40));
 - 2) Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in

Regulation 32.1(b)(1)), 17 C.F.R. § 32.1(b)(1) (2012)) (“commodity options”), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, as amended, 7 U.S.C. § 1a(47), and as further defined by Commission Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012)) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal accounts or for any accounts in or over which they have a direct or indirect interest;

- 3) Having any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded or executed on their behalf;
- 4) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- 5) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling of any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
- 6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and

7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

- D. Enter an order requiring Defendants, as well as any of their successors, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act as described herein, including pre and post-judgment interest;
- E. Enter an order requiring Defendants, as well as any of their successors, to make full restitution, pursuant to such procedure as the Court may order, to every person or entity whose funds were received or utilized by them in violation of the provisions of the Act and/or Commission Regulations, as described herein, plus pre-judgment interest thereon from the date of such violations, plus post-judgment interest;
- F. Enter an order directing Defendants and any of their successors to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as amended, and the Regulations as described herein;

- G. Enter an order requiring Defendants to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the greater of: (1) triple their monetary gain for each violation of the Act, as amended, and the Regulations or (2) \$140,000 for each violation;
- H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and
- I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: May 13, 2014

Respectfully submitted,

s/ R. Stephen Painter, Jr.

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