

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

AMERIFIRST MANAGEMENT LLC,  
JOHN P. D'ONOFRIO, GEORGE E.  
SARAFIANOS, and SCOTT D. PICCININNI,

Defendants.

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

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

Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC")

alleges as follows:

I. SUMMARY

1. From at least November 2011 through February 2013 ("relevant period"), Defendant AmeriFirst Management LLC ("AML"), by and through its officers, employees, and agents, including Defendants John P. D'Onofrio, George E. Sarafianos, and Scott D. Piccininni (collectively, "Defendants"), operated an unlawful precious metals scheme in which Defendants cheated and defrauded retail customers in connection with the offer, sale, and confirmation of the execution of illegal, off-exchange, financed transactions in gold, silver, and platinum.

Defendants D'Onofrio, Sarafianos, and Piccininni each owned, operated, and controlled AML.

2. AML held itself out as a precious metals wholesaler and clearing firm, using a network of more than thirty precious metals dealers. These dealers solicited retail customers to

invest in financed precious metals transactions, where the retail customer was led to believe that he only needed to make a deposit with the dealer, typically 20% of the total metal value; (2) the dealer would loan the remaining 80% to the customer and the dealer would sell, and the customer would purchase, the total quantity of metal; and (3) the dealer would allocate the total quantity of metal at a depository to be held for the customer. In reality, AML was the counterparty to and controlled all aspects of these transactions. The dealers were merely pass-through entities to which AML paid commissions for successful solicitations. AML used its share of the funds to purchase precious metal, but only in the name of AML. Neither AML nor the dealer ever actually transferred, allocated, or sold any of this metal to the customer or his account. The customer did not actually own, possess, or have title to any of this metal. Likewise, neither AML nor the dealer loaned any funds to the customer to purchase metals, and neither AML nor the dealer provided the customer with the balance of the metal. AML purported to cover its remaining exposure of the 80% balance of metal with a physical position of gold, purportedly warehoused in Africa, which also was held in the name of AML. On information and belief, this was a sham physical position that did not exist.

3. The size of Defendants' scheme was significant. On information and belief, Defendants took in at least \$9.7 million in customer funds during the relevant period. Defendants profited from the scheme in two ways: through an initial mark-up on the total metal value; and through various recurring fees that Defendants charged, such as storage and finance charges.

4. By virtue of this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in conduct in violation of Sections 4(a), 4b(a)(2)(A), (B), and (C), 4d, and 6(c) of the Commodity Exchange Act ("CEA" or "Act"),

7 U.S.C. §§ 6(a), 6b(a)(2)(A), (B), (C), 6d, 9 (2006 & Supp. V 2011), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012).

5. Defendants D’Onofrio, Sarafianos, and Piccininni each controlled AML and did not act in good faith or knowingly induced the acts constituting AML’s violations of the Act and Regulations. Each of these Defendants is therefore liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b), as a controlling person of AML for its violations of the Act and Regulations.

6. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices.

7. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants’ unlawful practices and to compel their compliance with the Act and the regulations promulgated thereunder. In addition, the CFTC seeks restitution, rescission, civil monetary penalties (“CMP”), and such other equitable relief as this Court may deem appropriate.

## II. JURISDICTION AND VENUE

8. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), 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.

9. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2)(D) and 6(c) of the Act, 7 U.S.C. §§ 2(c)(2)(D), 9.

10. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants transact business in this District and certain transactions, acts,

practices, and business alleged in this Complaint occurred, are occurring, and/or are about to occur within this District.

### III. PARTIES

11. Plaintiff **United States Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with administering and enforcing the Act and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

12. Defendant **AmeriFirst Management LLC** is a Florida limited liability company formed in October 2011. Its principal place of business is 200 SE 3rd Ave., Fort Lauderdale, Florida. AML has never been registered with the Commission in any capacity. AML ceased operation on February 25, 2013.

13. Defendant **John P. D'Onofrio** is a resident of Fort Lauderdale, Florida and was an owner and operator of AML. Along with Defendants Sarafianos and Piccininni, D'Onofrio controlled the day to day operations of AML. D'Onofrio was Manager and Compliance Consultant at AML, and his principal responsibility was executing physical metals transactions with physical metals suppliers. D'Onofrio is not currently registered with the Commission in any capacity. He was formerly registered with the Commission as an associated person ("AP") and was a principal of several firms. During that time, D'Onofrio was the subject of three National Futures Association ("NFA") investigations for deceptive and misleading sales solicitations and failure to supervise employees, and he paid \$95,000 in fines to settle those matters.

14. Furthermore, a federal district court found, via consent order, that D'Onofrio controlled two entities that committed solicitation fraud in connection with foreign currency options. *CFTC v. Madison Forex Int'l, LLC*, No. 05-61672-CIV (S.D. Fla. Jul. 12, 2007). The

court ordered D'Onofrio to pay \$1,400,000 in restitution and a \$435,000 CMP, and the court permanently banned D'Onofrio from trading in commodity futures, foreign currency futures, and options on those products. *Id.*

15. After that ban, D'Onofrio moved to the precious metals industry, working for APM Sales and Marketing, Inc., which was a branch office of American Precious Metals, LLC. Defendant George Sarafianos was the owner of APM Sales and Marketing. The Federal Trade Commission sued American Precious Metals for deceptive and abusive telemarketing practices in connection with precious metals investments. Compl., *FTC v. Am. Precious Metals, LLC*, No. 11-61072-CIV (S.D. Fla. May 10, 2011). The court granted a preliminary injunction against American Precious Metals and placed the entity in receivership, and the receiver sued D'Onofrio, Sarafianos, and APM Sales and Marketing, among others, alleging that they were part of American Precious Metals' fraudulent telemarketing scheme, received fraudulent transfers from American Precious Metals, converted customer funds, and were unjustly enriched by "scammed victim funds." Compl., *Chase v. APM Sales & Mktg., Inc.*, No. 12-60140-CIV (S.D. Fla. Jan. 26, 2012). Although the receiver alleged that APM Sales and Marketing illegally received at least \$1.1 million, the receiver settled the case with APM Sales and Marketing, D'Onofrio, and Sarafianos for \$50,000, due to their lack of assets and outstanding debt obligations. Mot. for Miscellaneous Relief, *APM Sales and Mktg, Inc.*, No. 12-60140-CIV (S.D. Fla. Dec. 6, 2012). The FTC obtained a judgment of over \$24 million against American Precious Metals and its controlling persons. Stipulated Final J. and Permanent Inj., *Am. Precious Metals*, No. 11-61072-CIV (S.D. Fla. Nov. 19, 2012).

16. Defendant **George E. Sarafianos** is a resident of Lighthouse Point, Florida and was an owner and operator of AML. Along with Defendants D'Onofrio and Piccininni,

Sarafianos controlled the day to day operations of AML. Sarafianos was the Comptroller of AML and is primarily responsible for AML's accounting and financials. Sarafianos has never been registered with the Commission in any capacity.

17. Defendant **Scott D. Piccininni** is a resident of Fort Lauderdale, Florida and was an owner and operator of AML. Along with Defendants D'Onofrio and Sarafianos, Piccininni controlled the day to day operations of AML. Piccininni was the head of sales at AML and was primarily responsible for recruiting and maintaining relationships with precious metals dealers. In addition, Piccininni was responsible for recruiting and maintaining relationships with African Trading Partners LLC and American Capital Partners (Ghana) Limited Inc., two entities with whom AML purportedly covered the balance of metals of the retail customers. Piccininni has never been registered with the Commission in any capacity. Piccininni's wife, Lisa Piccininni, is listed on corporate filings, bank accounts, and trading accounts as the principal of AML, but Lisa Piccininni has no actual involvement in AML or its operations.

#### IV. OTHER RELEVANT ENTITIES

18. **AmeriFirst Trading Corporation** ("ATC") is a Florida corporation formed in 2007. Its principal place of business is 3960 N. Andrews Ave., Oakland Park, Florida. ATC was the predecessor entity to AML. ATC has never been registered with the Commission in any capacity.

19. **African Trading Partners LLC** is a Florida limited liability company formed in 2010. Its principal place of business is 5900 Powerline Rd., Fort Lauderdale, Florida. African Trading Partners has never been registered with the Commission in any capacity. African Trading Partners is currently a defendant in a state civil suit where the plaintiffs allege fraudulent

gold transactions. *Conville v. Conway*, CACE12033381 (Fla. Broward County Ct. filed Dec. 3, 2012).

20. **American Capital Partners (Ghana) Limited Inc.** (“ACP Ghana”) is a Florida foreign corporation formed in 2012. Its principal place of business is 277 Royal Poinciana Way #129, Palm Beach, Florida. ACP Ghana has never been registered with the Commission in any capacity. The principal of ACP Ghana, Frank Speight, was successfully sued twice for fraud in connection with a stock loan scheme, where the defendants gave a personal loan secured by stock, and then the defendants misappropriated the stock. *See Hopkins Capital Grp. II, LLC v. Speight*, No. 5:06-cv-329 (M.D. Fla. Apr. 22, 2009) (finding that Speight failed to return stock in stock loan scheme); *Cole v. American Capital Partners Ltd.*, No 06-80525-CIV, 2008 WL 2986444, at \*6 (S.D. Fla. Aug. 4, 2008) (finding that Speight committed fraud in connection with stock loan scheme).

## V. STATUTORY BACKGROUND

21. Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D), applies to “any agreement, contract, or transaction in any commodity” that is entered into with, or offered to, a non-eligible contract participant (“ECP”) “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,” with respect to conduct occurring on or after July 16, 2011, subject to certain exceptions not applicable here. Such retail commodity transactions are subject to Sections 4(a), 4(b), and 4b of the Act, 7 U.S.C. §§ 6(a), 6(b), 6b, “as if” they are a contract of sale of a commodity for future delivery. 7 U.S.C. § 2(c)(2)(D)(iii).

22. The Act 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. 7 U.S.C. § 1a(18)(xi).

23. Section 4(a) of the Act, 7 U.S.C. § 6(a), in relevant part, makes it unlawful for any person to offer to 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.

24. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), in relevant part, makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for, on behalf of, or with any other person, other than on or subject to the rules of a designated contract market: (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement, or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for, on behalf of, or with the other person.

25. Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1), makes it unlawful for any person to be a futures commission merchant (“FCM”) unless such person is registered with the Commission. The Act defines FCM to include an entity that is engaged in soliciting or accepting



orders for any retail commodity transaction, or acts as a counterparty in any retail commodity transaction. 7 U.S.C. § 1a(28)(A)(i)(I)(aa)(DD) and (bb).

26. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), in relevant part, makes it unlawful for any person to use or employ, or attempt to use or employ, in connection with a contract of sale of any commodity in interstate commerce, any manipulative or deceptive device or contrivance, in contravention of Commission rules or regulations. Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a), in relevant part, makes it unlawful for any person, in connection with a contract of sale of any commodity in interstate commerce, to intentionally or recklessly: use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; make or attempt to make any untrue or misleading statement of material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or engage or attempt to engage in any conduct that operates or would operate as a fraud or deceit upon any person.

## VI. FACTS

### A. AML's Business Structure

27. During the relevant period, AML, by and through its officers, employees, and agents, including D'Onofrio, Sarafianos, and Piccininni, operated an unlawful precious metals scheme. AML held itself out as a precious metals clearing and financing firm for precious metals dealers. On its website, AML claimed to provide dealers with "tangible assets in a growing physical market" and "guarantee[s] that every ounce of metal in [the dealer's] customers [sic] account exists and is ready for delivery at any point and time." On its website, AML's product offering was gold, silver, and platinum in bar and coin form. On its website, AML also claimed to provide customer financing options for precious metals dealers. Though

AML entered into some precious metals transactions that were fully paid by customers, the vast majority of AML's business was financed transactions.

28. D'Onofrio, Sarafianos, and Piccininni founded, owned, and operated AML. The three were the ultimate decision maker at AML, and they made management decisions as a group.

29. AML aggressively recruited dealers to solicit customer transactions for AML. D'Onofrio, Sarafianos, and Piccininni specifically formed AML in October 2011 to take over and expand the operations of an existing, smaller precious metals wholesale firm, ATC. Whereas ATC had only one or two dealer relationships, AML expanded its network to include over thirty dealers.

30. AML dictated the terms of the precious metals transactions to its dealers. AML dictated the price of the transaction, the minimum size of the customer deposit, the maximum commission the dealer could charge, the price mark up, the finance charge, the storage charge, the margin call level, and the liquidation level.

**B. The Mechanics of a Retail Financed Transaction**

31. AML operated its precious metals scheme through a network of dealers. The AML dealer solicited customers for financed precious metals transactions, generally via telephone. Through the dealer's solicitation, sales and marketing materials, website, and customer agreement, the dealer represented that the customer was purchasing, and that the dealer was selling, physical precious metals. The dealer marketed to the customer a financing program, where the customer only needed to pay a percentage equity deposit of the total metal value, generally 20%. The dealer represented that the dealer would loan the customer the remaining 80% of the funds for a finance charge. The dealer represented that the customer would then buy,

and the dealer would sell, the total quantity of physical metal. The dealer represented that the dealer would transfer the total quantity of physical metal to the customer, to be held for the customer at a depository.

32. If the customer agreed to the transaction, the dealer generally required the customer to send to the dealer 38% of the total metal value, of which 20% constituted the equity deposit, 15% the dealer's commission, and 3% for mark up.

33. In reality, the AML dealer never possessed any precious metal, never held title to any precious metal, and never had any enforceable commitment to receive or direct delivery of precious metal. The AML dealer had no precious metal to sell to the customer and never actually sold any precious metal to the customer.

34. The AML dealer was merely a commissioned sales broker for AML. The dealer's role was to solicit customers to invest in retail financed transactions, and to relay customer orders and funds to AML, who was the true counterparty. Once the dealer passed the customer order and money to AML, and then passed the trade confirmation to the customer, the dealer no longer had any role in the transaction.

35. AML used a portion of the customer funds it received from the dealer to purchase physical precious metal from Fidelity Inc., a precious metals dealer in Delaware, in an account in AML's name. The account agreement between AML and Fidelity specifically stated: "[A]ny bullion held at Fidelity will be those of [AML] and not [AML's] customers." None of the metal at Fidelity was ever actually transferred or allocated to any dealer or to any customer.

36. In addition to the physical metals that AML purchased for its own account at Fidelity, AML entered into a relationship with two entities to acquire interests in gold

positions, purportedly to cover all of AML's obligations to customers, including silver and platinum transactions. For the entire relevant period, AML had a relationship with African Trading Partners. From approximately January through February 2013, AML also had a relationship with ACP Ghana. The substance of these two relationships was identical. AML contracted with each entity for AML to purchase, and the entity to sell, a large dollar amount of gold, approximately \$20 million from each entity. AML never took possession of or even saw this gold. AML also never paid any portion of the \$20 million principal to either entity. Instead, each entity held the gold, purportedly located in Africa, for AML. In exchange, AML paid each entity approximately 1.5% of the total metal value on an annual basis. On information and belief, no underlying physical gold position existed for either relationship, in Africa or otherwise. On information and belief, these were sham physical positions.

37. The purported gold positions in Africa were in AML's name only. AML never instructed either entity to transfer or allocate any of the purported gold to any dealer or customer.

38. AML charged the customer a 7% finance charge on the loan balance but never disbursed any loan funds to, for, or on behalf of the customer.

39. AML charged the customer a storage fee based on the total metal value of the transaction, even though AML never transferred, allocated, stored, or sold any physical metal to, for, or on behalf of the customer.

40. Over time, the customer's equity increased or decreased as the price of metals fluctuated. In addition, AML added the monthly finance and storage charges to the customer's loan balance, which directly decreased the customer's equity. If the customer's equity fell below a certain level, generally 15%, AML notified the dealer, who then sent the customer an equity

call, requiring the customer to put additional funds into his account. If the customer's equity fell below a certain level, generally 10%, AML liquidated the customer's position.

**C. The Customer Transaction Documents**

41. When the customer sent sufficient funds to the dealer, the dealer provided the customer with a trade confirmation. The trade confirmation contained the name of the dealer or the dealer's logo. The trade confirmation showed that the customer had purchased the "Total Ounces" of metal at a given price.

42. The dealer also gave the customer access to a portal on the dealer's website, from which the customer had access to a variety of documents, including trade lists, position lists, account statements, and notices of allocation. All of these documents had the name or logo of the dealer on them.

43. In reality, AML created all the customer documents related to the transaction: the trade confirmation, the trade list, the position list, the account statement, and the notice of allocation. AML used the name or the logo of the dealer on all of these documents. AML provided the trade confirmation to the dealer, and AML knew that the dealer then provided the trade confirmation to the customer. AML also controlled the website portal that provided the customer direct access to the remaining transaction documents by creating an access portal on the dealer's website, where the transaction documents resided.

44. The trade list contained every customer transaction. Under "Quantity," the number provided was the total quantity of metal for a given transaction. The trade list also contained the field "Loan Balance," which represented the 80% loan from the dealer.

45. The position list was similar to the trade list, but it showed the profitability of each transaction, given the current metal price. Like the trade list, the position list had a “Quantity” field, and the figure was the total quantity of metal for a given transaction.

46. The account statement likewise contained a “Quantity” field, which showed the total quantity of metal for the cumulative transactions. The statement also contained the individual transactions for the month and listed the total quantity of metal for a given transaction. The statement also listed the “Current Credit Balance Due,” which showed the 80% loan balance plus any accrued charges, including the monthly finance charge amount and the monthly storage charge amount.

47. The notice of allocation existed for each individual transaction. Under the heading of “Quantity,” the notice of allocation listed the total metal quantity for the transaction. In addition, for a metal purchase, the heading “Action Taken” contained the description “ALLOCATED.” In its terms, the notice of allocation stated, among other things:

- a. If the above transaction is a purchase of precious or industrial metal, you hold for your risk and benefit an interest on an amount of precious or industrial metal equal to your order(s) as documented above . . . . [Dealer] either possesses or has corresponding commitments from counterparties from whom [dealer] purchased comparable product equal to or exceeding your purchase.
- b. Customer acknowledges that upon receipt of precious or industrial metal for the benefit of the customer [dealer] may maintain that inventory collectively with the precious and industrial metal held on behalf other [sic] customer’s [sic] physical inventories which are held at one or more of several depositories. [Dealer] may at its discretion transfer custody of your commodities to another custodian provided such other custodian is authorized by the aforementioned agreements.
- c. The customer acknowledges that [dealer] holds its inventory, and therein the customer’s precious or industrial metal by trading with one or more counterparty wholesale dealers who in turn may hold their inventory via like counterparties. The customer further acknowledges that [dealer’s] inventory of precious and industrial metals at various times may be comprised of physical stocks of precious or industrial metals and/or

enforceable commitments of the counterparty from or through whom [dealer] has acquired precious or industrial metals for the customer.

**D. AML's Misrepresentations and Deception**

48. Through false reports and statements, specifically the trade confirmation, the trade list, the position list, the account statement, and the notice of allocation, AML misrepresented to the customer that the customer bought, and the dealer sold, precious metal, and that the dealer held the precious metal underlying the customer purchase.

49. For example, in the trade confirmation for a customer purchase, the "Order" field contained the word "Buy," the "Total Ounces" field contained the total quantity of precious metal for the transaction, and the "TMV" field contained the total metal value of the transaction. Likewise, the account statement listed the transactions for the month where the customer had purchased precious metal and the total quantity for each of those transactions. Similarly, the notice of allocation stated that the total quantity of precious metal had been allocated to the customer.

50. The terms of the notice of allocation stated that the dealer had an inventory of physical precious metal at a depository, and/or the dealer had enforceable commitments of metal. Additionally, the notice of allocation stated that the customer had been allocated the total quantity of precious metal. The account statement listed the customer's storage fee for that month.

51. Through false reports and statements, specifically the trade list and the account statement, AML misrepresented to the customer that the dealer made a loan to the customer to enable the customer to purchase the 80% balance of metal. The trade list specified the customer's "Loan Balance"; similarly, the account statement listed the customer's credit balance and the finance charge for that month.

52. These trade confirmations, trade lists, position lists, account statements, and notices of allocation were false and deceptive. The dealer never had possession of, title to, or any enforceable commitment of precious metal. The dealer could not and did not actually transfer, allocate, or sell any precious metal to the customer. Likewise, AML did not actually transfer, allocate, or sell any precious metal to the customer. AML charged the customer a storage fee, even though no metal was ever transferred, allocated, or sold to the customer.

53. The customer never received, and the dealer never made, any loan. The dealer never disbursed any loan funds to the customer. Likewise, AML never disbursed any loan funds to the customer. AML charged the customer a finance fee, even though no loan was ever made to the customer.

## **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND THE COMMISSION'S REGULATIONS**

### **COUNT ONE**

#### **Violations of Section 4(a) of the Act: Illegal, Off-Exchange Transactions**

54. Paragraphs 1 through 53 are re-alleged and incorporated herein.

55. During the relevant period, Defendants conducted an office and business in the United States for the purpose of accepting and otherwise dealing in retail commodity transactions, pursuant to which Defendants offered to enter into, entered into, and confirmed the execution of retail commodity transactions on a leveraged or margined basis, or financed by AML. None of Defendants' retail commodity transactions were 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. The persons with whom Defendants offered to enter into, entered into, or confirmed the execution of precious metals transactions were not eligible contract participants or eligible



commercial participants, as defined by the Act, and were not engaged in a line of business related to precious metals. Defendants thereby violated Section 4(a) of the Act, 7 U.S.C. § 6(a).

56. The acts, failures, and omissions of D'Onofrio, Sarafianos, Piccininni, and other officials, agents, or persons acting for AML occurred within the scope of their employment, agency, or office with AML, and are deemed to be the acts, failures, and omissions of AML by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2. AML is therefore liable for D'Onofrio's, Sarafianos', and Piccininni's acts, failures, and omissions that are violations of Section 4(a) of the Act.

57. D'Onofrio, Sarafianos, and Piccininni each controlled AML, and each failed to act in good faith or knowingly induced the acts constituting AML's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), D'Onofrio, Sarafianos, and Piccininni each is therefore liable as a controlling person for AML's violations of Section 4(a) of the Act.

58. Each offer to enter into, entrance into, and confirmation of the execution of a retail commodity transaction is alleged as a separate and distinct violation of Section 4(a) of the Act.

## COUNT TWO

### **Violations of Section 4b of the Act: Fraudulent Misrepresentations and False Reports and Statements**

59. Paragraphs 1 through 53 are re-alleged and incorporated herein.

60. During the relevant period, Defendants violated Section 4b(a)(2)(A) and (C) of the Act by making false representations of material fact and failing to disclose material facts to the retail customer. Likewise, Defendants violated Section 4b(a)(2)(B) of the Act by making false reports and statements to the retail customer.

61. Defendants misrepresented that the retail customer purchased, and the dealer sold, the total quantity of precious metal in the transaction.

62. Defendants misrepresented that the retail customer received, and the dealer made, a loan so that the customer could purchase the total quantity of precious metal in the transaction.

63. Defendants misrepresented that the dealer held for the customer the total quantity of precious metal in the transaction.

64. Defendants made such misrepresentations in false reports and statements to the retail customers.

65. Defendants committed such acts intentionally or with reckless disregard for the truth.

66. The acts, failures, and omissions of D'Onofrio, Sarafianos, Piccininni, and other officials, agents, or persons acting for AML occurred within the scope of their employment, agency, or office with AML, and are deemed to be the acts, failures, and omissions of AML by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2. AML is therefore liable for D'Onofrio's, Sarafianos', and Piccininni's acts, failures, and omissions that are violations of Section 4b(a)(2)(A), (B), and (C) of the Act.

67. D'Onofrio, Sarafianos, and Piccininni each controlled AML, and each failed to act in good faith or knowingly induced the acts constituting AML's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), D'Onofrio, Sarafianos, and Piccininni each is therefore liable as a controlling person for AML's violations of Section 4b(a)(2)(A), (B), and (C) of the Act.

68. Each misrepresentation and failure to disclose material facts, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of

Section 4b(a)(2)(A) and (C) of the Act. Each false report and statement, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(B) of the Act.

### **COUNT THREE**

#### **Violations of Section 6(c)(1) of the Act and Regulation 180.1(a): Deceptive Devices or Contrivances**

69. Paragraphs 1 through 53 are re-alleged and incorporated herein.

70. During the relevant period, Defendants violated Section 6(c)(1) of the Act and Regulation 180.1(a) by employing deceptive devices or contrivances in connection with contracts of sale of commodities in interstate commerce, including: making misrepresentations that the customer bought, and the dealer sold, the total quantity of precious metal; making misrepresentations that the customer received, and the dealer made, a loan to the customer; and making misrepresentations that the dealer held the precious metal for the customer.

71. Defendants committed such acts intentionally or with reckless disregard for the truth.

72. The acts, failures, and omissions of D'Onofrio, Sarafianos, Piccininni, and other officials, agents, or persons acting for AML occurred within the scope of their employment, agency, or office with AML, and are deemed to be the acts, failures, and omissions of AML by operation of Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2. AML is therefore liable for D'Onofrio's, Sarafianos', and Piccininni's acts, failures, and omissions that are violations of Section 6(c)(1) of the Act and Commission Regulation 180.1(a).

73. D'Onofrio, Sarafianos, and Piccininni each controlled AML, and each failed to act in good faith or knowingly induced the acts constituting AML's violations described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), D'Onofrio, Sarafianos, and

Piccininni each is therefore liable as a controlling person for AML's violations of Section 6(c)(1) of the Act and Commission Regulation 180.1(a).

74. Each deceptive device or contrivance, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 6(c)(1) of the Act and Commission Regulation 180.1(a).

#### **COUNT FOUR**

##### **Violation of Section 4d of the Act: Failure to Register**

75. Paragraphs 1 through 53 are re-alleged and incorporated herein.

76. During the relevant period, Defendant AML violated Section 4d(a)(1) of the Act by acting as an FCM when accepting orders for, and acting as a counterparty in, retail commodity transactions, when AML was not registered with the Commission as an FCM.

77. D'Onofrio, Sarafianos, and Piccininni each controlled AML, and each failed to act in good faith or knowingly induced the acts constituting AML's violation described in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), D'Onofrio, Sarafianos, and Piccininni each is therefore liable as a controlling person for AML's violation of Section 4d(a)(1) of the Act.

#### **VIII. RELIEF REQUESTED**

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

A. Find Defendants liable for violating: Section 4(a) of the Act, 7 U.S.C. § 6(a); Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2); Section 6(c)(1) of the Act, 7 U.S.C. § 9(1); Regulation 180.1(a), 17 C.F.R. § 180.1(a); and Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1);

B. Enter orders of preliminary and permanent injunction prohibiting Defendants, and any other person or entity associated with them from, directly or indirectly, engaging in conduct in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a); Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C); Section 6(c)(1) of the Act, 7 U.S.C. § 9(1); Regulation 180.1(a), 17 C.F.R. § 180.1(a); and Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1);

C. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a);

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

3. having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps traded 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, forex contracts, and/or swaps;

5. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;

6. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or

exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and

7. acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a) registered, exempted from registration, or required to be registered with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);

D. Enter an order requiring Defendants 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-judgment and post-judgment interest;

E. Enter an order directing Defendants and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendants and any customers whose funds were received by Defendants as a result of the acts and practices that constitute violations of the Act as described herein, including, but not limited to, the customary notes used by Defendants;

F. Enter an order requiring Defendants to make restitution by making whole each and every customer whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

G. Enter an order directing Defendants to pay a civil monetary penalty in the amount of not more than the greater of (1) triple the monetary gain to each Defendant for each violation of the Act, or (2) \$140,000 for each violation of the Act;

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: July 29, 2013

Respectfully submitted,

/s/ David Chu

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