

III.

The Commission finds the following:

A. SUMMARY

During the relevant period, Respondents violated Section 4(a) of the Act by offering to enter into, entering into, confirming the execution of, and conducting an office and business in the United States for the purpose of soliciting, accepting orders for, and otherwise dealing in illegal, off-exchange retail commodity transactions. Specifically, the transactions were financed precious metals transactions with individual investors. Bridges is directly liable for such violations, and he is also liable as the controlling person of Empire and IPM. For these transactions, Empire received commissions and fees totaling \$243,456.61, and IPM received commissions and fees totaling \$14,854.41.

B. RESPONDENTS

Empire Sterling Metals Corp. is a Florida corporation formed in August 2010. Its principal place of business was Coral Springs, Florida. Empire was a telemarketing firm that solicited retail customers to invest in financed precious metals transactions. Empire has never been registered with the Commission in any capacity.

I.P.M. Investments, Inc. is a Florida corporation formed in August 2012. Its principal place of business was Coral Springs, Florida. IPM was a telemarketing firm that solicited retail customers to invest in financed precious metals transactions. IPM has never been registered with the Commission in any capacity.

Derek Jason Bridges is a resident of Coral Springs, Florida. Bridges is the owner, operator, and controlling person of Empire and IPM. Bridges has never been registered with the Commission in any capacity.

C. OTHER RELEVANT ENTITIES

Hunter Wise Commodities, LLC was formed as a California limited liability company in July 2007 but was converted to a Nevada limited liability company in October 2010. It held itself out on its website as “a physical commodity trading company, wholesaler, market maker, back-office support provider, and finance company.” During the relevant period, Hunter Wise executed and confirmed the execution of retail commodity transactions involving gold, silver, platinum, palladium, and copper throughout the United States using a network of telemarketing solicitors such as Empire and IPM that it referred to as “dealers.”

Lloyds Commodities, LLC (“Lloyds”) was a Florida limited liability company with its principal place of business in Palm Beach Gardens, Florida. Lloyds was an intermediary firm

findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

that recruited precious metals dealers to solicit customers who would execute retail commodity transactions through Hunter Wise. Lloyds has never been registered with the Commission.

D. FACTS

During the relevant period, Empire and IPM were telemarketing firms that solicited retail customers to engage in financed precious metals transactions. Although Empire and IPM offered precious metals on a fully paid basis, the vast majority of its business was in financed precious metals transactions. This Order relates to the financed precious metals transactions executed through Hunter Wise.

Empire and IPM conducted nearly all of their solicitations by telephone or email. Bridges, the controlling person of Empire and IPM, directly solicited customers and supervised other telemarketers involved in solicitation. When soliciting customers for financed precious metals transactions executed through Hunter Wise, Bridges and the other Empire and IPM telemarketers represented that to purchase a certain quantity of metal, the customer needed to deposit only a percentage of the total metal value (e.g., 20%). Empire and IPM represented that the customer would receive a loan for the remaining percentage (e.g., 80%), and that the customer would have to pay a finance charge on the loan. In addition, in order to purchase the metal, Empire and IPM represented that the customer needed to pay a 15% or 10% commission, respectively, on the total metal value and a mark-up on the spot price of the metal.

If the customer agreed to the transaction, Empire and IPM confirmed the transaction and directed the customer to send Empire or IPM a lump sum, which represented the partial deposit on the value of the total metal purchased, the commission amount, and the mark-up amount. Upon receipt of those funds, Empire and IPM sent the funds in their entirety to Lloyds, which then sent the funds to Hunter Wise, or directly to Hunter Wise. Hunter Wise then sent Lloyds any commission and fees due. Lloyds took a portion of this payment and sent the remainder to Empire and IPM. During the relevant period, Empire received \$243,456.61 and IPM received \$14,854.41 in commissions and fees for the retail financed precious metals transactions executed through Hunter Wise.

Neither Empire, IPM, nor Hunter Wise bought, sold, loaned, stored, or transferred any physical metals for these financed precious metals transactions. Likewise, neither Empire, IPM, nor Hunter Wise actually delivered any precious metals to any customers. Instead, Hunter Wise managed exposure on these transactions using derivatives in margin trading accounts with several entities. *CFTC v. Hunter Wise Commodities, LLC*, Case No. 9:12-cv-81311-DMM, slip op. at 12-14 (S.D. Fla. Feb. 19, 2014) (order granting summary judgment).

IV.

LEGAL DISCUSSION

A. Relevant Statutory Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, 124 Stat. 1376 (2010) (“the Dodd-Frank Act”) amended the Commodity Exchange Act to add, among other things, new authority over certain leveraged, margined, or

financed retail commodity transactions, including authority to prohibit fraud in connection with such transactions.

Section 742(a) of the Dodd-Frank Act added Section 2(c)(2)(D) to the Act.² Section 2(c)(2)(D) broadly applies to any agreement, contract, or transaction in any commodity that is entered into with, or offered to (even if not entered into with), a non-eligible contract participant (“non-ECP”)³ or non-eligible commercial entity 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. 7 U.S.C. § 2(c)(2)(D)(i) (2012). Section 2(c)(2)(D) further provides that such an agreement, contract, or transaction shall be subject to Sections 4(a), 4(b), and 4b of the Act “as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.” 7 U.S.C. § 2(c)(2)(D)(iii) (2012).

Section 2(c)(2)(D)(ii) of the Act, 7 U.S.C. § 2(c)(2)(D)(ii) (2012), excepts certain transactions from Section 2(c)(2)(D). Section 2(c)(2)(D)(ii)(III)(aa) excepts a contract of sale that “results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved.”⁴ Section 2(c)(2)(D)(ii)(III)(bb) excepts a contract of sale that creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer.

The Commission has stated that it is the view of the Commission that the determination of whether “actual delivery” has occurred within the meaning of Section 2(c)(2)(D)(ii)(III)(aa) requires a consideration of evidence beyond the four corners of the contract documents. This interpretation of the statutory language is based on Congress’ use of the word “actual” to modify “delivery” and on the legislative history of Section 2(c)(2)(D)(ii)(III)(aa). Consistent with this interpretation, in determining whether actual delivery has occurred within 28 days, the Commission will employ a functional approach and examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction.⁵ Unless the Commission provides

² Section 2(c)(2)(D) of the Act became effective July 16, 2011.

³ As is relevant to this matter, Section 1a(18)(xi) of the Act, 7 U.S.C. § 1a(18)(xi) (2012), defines an eligible contract participant as an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000, or which is in excess of \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

⁴ The Commission has not adopted any regulations permitting a longer actual delivery period for any commodity pursuant to Section 2(c)(2)(D)(ii)(III)(aa) of the Act. Accordingly, the 28 day actual delivery period set forth in this provision remains applicable to all commodities.

⁵ See Retail Commodity Transactions Under Commodity Exchange Act, 76 Fed. Reg. 77,670 (Dec. 14, 2011).

otherwise, the 28 days for actual delivery is 28 days from the date the agreement, contract, or transaction is confirmed to the buyer or seller, typically, a retail customer.

Other than these exceptions, Congress did not express any intent to limit the reach of Section 2(c)(2)(D). Rather, in enacting the statute Congress expressed its intent that Section 2(c)(2)(D) should be applicable to a broad range of agreements, contracts, and transactions.

Section 2(c)(2)(D) of the Act applies to all agreements, contracts, and transactions entered into with, or offered to, non-ECPs 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, as those terms are commonly used in the industry.

B. The Commission's Jurisdiction

Respondents offered precious metals transactions to, and entered into such transactions with, persons who were not eligible contract participants or eligible commercial entities. Generally, Respondents' customers were unsophisticated, individual investors who did not meet the \$10 million discretionary investment threshold to be considered ECPs. Moreover, Respondents offered and entered into such transactions on a margined or leveraged basis, or financed by Empire, IPM, or Hunter Wise, which acted in concert with Respondents. Respondents' retail financed precious metals transactions fall squarely within the Commission's jurisdiction under Section 2(c)(2)(D) of the Act.

Respondents' retail financed precious metals transactions executed through Hunter Wise did not result in actual delivery to the customer. As found by the district court in *Hunter Wise*, Hunter Wise had no actual metal to deliver. *Hunter Wise*, Case No. 9:12-cv-81311-DMM, slip op. at 12-14 (S.D. Fla. Feb. 19, 2014) (order granting summary judgment). Respondents' transactions are not excepted from the Commission's jurisdiction under Section 2(c)(2)(D)(ii)(III)(A) of the Act.

C. Respondents Violated Section 4(a) of the Act: Illegal, Off-Exchange Transactions

As stated above, retail commodity transactions within the scope of Section 2(c)(2)(D) of the Act are subject to enforcement under Section 4(a) of the Act, among other provisions, as if such transactions are commodity futures contracts. Section 4(a) of the Act makes it unlawful for any person to offer to enter into, enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity futures contract, unless such transaction is made on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market or derivatives transaction execution facility for the specific commodity.

Respondents offered to enter into, entered into, and confirmed the execution of retail financed precious metals transactions. Respondents also conducted an office and business in the United States for the purpose of soliciting, accepting orders for, and otherwise dealing in retail financed precious metals transactions. None of the retail financed precious metals transactions were conducted on or subject to the rules of a board of trade that has been designated or

registered by the CFTC as a contract market or derivatives transaction execution facility for precious metals. Respondents therefore violated Section 4(a) of the Act.

D. Empire and IPM Are Liable for the Violations of Their Agents

Empire and IPM are liable for the violations of their agents, including Bridges. Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), as well as Regulation 1.2, 17 C.F.R. § 1.2 (2013), a principal is strictly liable for the violations of its agents made within the scope of the agents' employment. *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986). Bridges, along with other Empire and IPM telemarketers, were agents of Empire and IPM, and in the scope of their employment they violated Section 4(a) of the Act. Empire and IPM are therefore liable for these violations.

E. Bridges Is Liable as the Controlling Person Under Section 13(b) of the Act for Empire's and IPM's Violations

Bridges is directly liable for violations of Section 4(a) of the Act. In addition, Bridges directly controlled Empire and IPM and directly and knowingly induced Empire's and IPM's conduct constituting violations of the Act; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Bridges is liable for Empire's and IPM's violations of Section 4(a) of the Act. Section 13(b) of the Act states that a controlling person of an entity is liable for the violations of that entity, provided that the controlling person knowingly induced, directly or indirectly, the violations, or provided that the controlling person did not act in good faith. "A fundamental purpose of Section 13b [sic] is to allow the Commission to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself." *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (internal quotation marks and citation omitted), *cert. denied*, 543 U.S. 1034 (2004).

To establish controlling person liability under Section 13(b), the Division must show both (1) control; and (2) lack of good faith or knowing inducement of the acts constituting the violation. *In re First Nat'l Trading Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142 at 41,787 (CFTC Jul. 20, 1994), *aff'd without opinion sub nom. Pick v. CFTC*, 99 F.3d 1139 (6th Cir. 1996). To establish the first element, control, a defendant must possess general control over the operation of the entity principally liable. *See, e.g., R.J. Fitzgerald*, 310 F.3d at 1334 (recognizing an individual who "exercised the ultimate choice-making power within the firm regarding its business decisions" as a controlling person). Evidence that a defendant is an officer, founder, principal, or the authorized signatory on the company's bank accounts indicates the power to control a company. *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103 at 34,767 (CFTC Jan. 12, 1988). The Division must also show that a defendant possessed specific control, which is "the power or ability to control the specific transaction or activity upon which the primary violation was predicated." *Monieson v CFTC*, 996 F.2d 852, 860 (7th Cir. 1993) (internal quotation marks and citation omitted). The defendant does not need to participate in or benefit from the wrongdoing; the issue is whether the defendant has the power to address the illegal conduct. *Id.* (finding that, in a trade allocation case, the fact that the defendant could fire or discipline responsible employees, end the

placement of orders without numbers as soon as the defendant knew of it, or order a full investigation was sufficient to show specific control).

With respect to control, Bridges was the owner and operator of Empire and IPM. He managed the day to day operations, supervising the solicitation of retail customers and engaging in solicitations himself. Bridges was the ultimate decision maker and controlled all aspects of Empire's and IPM's business. Bridges had both general control over Empire and IPM and specific control over the conduct underlying Empire's and IPM's violations, *i.e.*, Empire and IPM offering to enter into, entering into, and confirming the execution of retail financed precious metals transactions, and Empire and IPM conducting an office and business in the United States for soliciting, accepting, and otherwise dealing in retail financed precious metals transactions.

In addition to control, the Division must show the controlling person knowingly induced, directly or indirectly, the acts constituting the violation or did not act in good faith. To show knowing inducement, the Division must show that a defendant had actual or constructive knowledge of the core activities that constituted the violation and allowed the activities to continue. *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 34,767. To show lack of good faith, the Division must show that a defendant did not have an adequate system of internal supervision, or that a defendant did not enforce such system with reasonable diligence. *Monieson*, 996 F.2d at 860.

Bridges had actual knowledge that Empire's and IPM's business was in off-exchange, retail financed precious metals transactions, because it was the basic nature or essence of the business. He also allowed the business to continue. Thus, Bridges knowingly induced the conduct in violation of Section 4(a) of the Act.

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the relevant period, Respondents violated Section 4(a) of the Act, 7 U.S.C. § 6(a).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of the Order;
- C. Waive:

1. the filing and service of a complaint and notice of hearing;
 2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
 7. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondents violated Section 4(a) of the Act, 7 U.S.C. § 6(a);
 2. orders Respondents to cease and desist from violating Section 4(a) of the Act, 7 U.S.C. § 6(a);
 3. orders Empire and Bridges, jointly and severally, to pay restitution in the amount of two hundred forty-three thousand four hundred fifty-six dollars and sixty-one cents (\$243,456.61) and orders IPM and Bridges, jointly and severally, to pay restitution in the amount of fourteen thousand eight hundred fifty-four dollars and forty-one cents (\$14,854.41), plus post-judgment interest;
 4. orders that Respondents be permanently prohibited from engaging, directly or indirectly, in 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), and all registered entities shall refuse them trading privileges;

5. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and set forth below in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Respondents' Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Section 4(a) of the Act, 7 U.S.C. § 6(a);
- B. Empire and Bridges, jointly and severally, shall pay restitution in the amount of two hundred forty-three thousand four hundred fifty-six dollars and sixty-one cents (\$243,456.61) and IPM and Bridges, jointly and severally, shall pay restitution in the amount of fourteen thousand eight hundred fifty-four dollars and forty-one cents (\$14,854.41), within ten (10) days of the date of entry of this Order (collectively, the "Restitution Obligation"). Post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondents shall make their payments of the Restitution Obligation under this Order to Melanie Damian, Esq., the corporate monitor appointed by the court in *CFTC v. Hunter Wise Commodities, LLC*, No. 12-81311-CIV (S.D. Fla. Feb. 25, 2013) ("Hunter Wise corporate monitor"). Respondents shall make such payments in the name of the "Empire Sterling Metals Corp. (Hunter Wise Transactions) Settlement Fund" or the "I.P.M. Investments, Inc. (Hunter Wise Transactions) Settlement Fund," as appropriate, and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, or bank money order to Melanie Damian, Esq., Damian & Valori LLP, 1000 Brickell Ave. Ste. 1020, Miami, FL, 33131, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Hunter Wise corporate monitor.

- C. Respondents are permanently prohibited from engaging, directly or indirectly, in 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), and all registered entities shall refuse them trading privileges;

D. Respondents and their successors and assigns shall comply with the following undertakings as consented to and set forth in the Offer:

1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, or agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
2. Respondents agree that they shall never, directly or indirectly:
 - a. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh)), security futures products, 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(xxx)), and/or 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") for their own personal account(s) or for any account(s) in which they have a direct or indirect interest;
 - b. have any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts traded on Respondents' behalf;
 - c. control or direct 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;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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/or
 - f. act 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).

- E. Cooperation with the Hunter Wise Corporate Monitor: Respondents shall cooperate with the Hunter Wise corporate monitor as appropriate to provide such information as the Hunter Wise corporate monitor deems necessary and appropriate to identify Respondents' customers. Respondents shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
- F. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
- G. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission or the Hunter Wise corporate monitor of partial payment of Respondents' Restitution Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- H. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation as set forth in this Consent Order, Bridges shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 17, 2014