

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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**3:28 pm, Jul 29, 2013**

**In the Matter of:**

**Pan American Metals of Miami, LLC,  
Pan American Metals of Miami  
Beach, Inc., and William J. Hionas,**

**Respondents.**

CFTC Docket No. 13-27

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,  
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about July 2011 to at least April 2012 (the “Relevant Period”), Pan American Metals of Miami, LLC (“PAMOM”), Pan American Metals of Miami Beach, Inc. (“PAMOMB”) and William J. Hionas (“Hionas”) (collectively “Respondents”) violated Sections 4(a), 4b(a)(2)(A) and (C) and 6(c) of the Commodity Exchange Act, as amended, to be codified at 7 U.S.C. §§ 6(a), 6b(a)(2)(A), (C), 9 and 15 (Supp. IV 2011), and Commission Regulation (“Regulation”) 180.1(a), 17 C.F.R. § 180.1(a) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.<sup>1</sup>

<sup>1</sup> Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

During the Relevant Period, PAMOM and PAMOMB (collectively the “Pan American Companies”), by and through their employees and agents, solicited and accepted more than \$4,715,000 from retail public customers for the purpose of engaging in illegal, off-exchange transactions in precious metals, commodities in interstate commerce, throughout the United States and Canada. During the relevant period, Hionas owned, operated and was a controlling person of the Pan American Companies. During the Relevant Period, all but nine of the 189 customers with accounts at the Pan American Companies lost money, resulting in more than \$3,190,000 in customer losses and fees. The Pan American Companies offer physical commodities, including gold, silver, platinum and palladium, in off-exchange transactions to retail customers. The investment product offered is physical metal, not stocks in metal companies or exchange-traded commodity futures.

Through their agents and other persons acting for them, the Pan American Companies fraudulently solicited retail customers and prospective customers to enter into off-exchange metals transactions on a financed basis (“Retail Commodity Transactions”). Specifically, the Pan American Companies falsely claimed to: (1) sell and transfer ownership of physical metals to customers; (2) provide loans to customers to purchase the physical metals; and (3) arrange for storage and store customers’ physical metals in independent depositories. In fact, in their Retail Commodity Transactions, the Pan American Companies did not sell or transfer ownership of any physical metals; did not disburse any funds as loans; and did not store physical metals in any depositories for or on behalf of customers.

The Pan American Companies also defrauded customers and potential customers by misrepresenting and failing to disclose material facts relating to their experience and expertise dealing in Retail Commodity Transactions, actual trading results other customers have achieved, and the profit potential and risks associated with entering into Retail Commodity Transactions, among other things.

#### B. RESPONDENTS

**Pan American Metals of Miami, LLC** is a Florida registered LLC with offices in Miami Beach, Florida. Hionas established PAMOM in January 2010 and listed his ex-wife as the owner of the company on required Florida Secretary of State filings, but Hionas financed and managed the day-to-day operations of the company. PAMOM has never been registered with the Commission in any capacity.

**Pan American Metals of Miami Beach, Inc.** is a Florida registered corporation with the same office location and same employees as PAMOM. Hionas’s father incorporated PAMOMB in May 2010 and was listed as the initial officer and/or director of the company on required Florida Secretary of State filings, but Hionas financed and managed the day-to-day operations of the company. PAMOMB has never been registered with the Commission in any capacity.

**William J. Hionas** owns and operates the Pan American Companies. Hionas currently resides in Sunny Isles, Florida. Hionas has never been registered with the Commission in any capacity.

**C. OTHER RELEVANT PARTY**

**Hunter Wise Commodities, LLC** (“Hunter Wise”) is a Nevada company that holds 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 purported to offer, enter into, and confirm 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 PAMOM that it refers to as “dealers.”<sup>2</sup>

**D. FACTS**

**1. The Pan American Companies’ Illegal Retail Commodity Transactions**

During the Relevant Period, PAMOM offered retail customers two types of transactions: (1) the purchase or sale of physical metals such as coins and bars after full payment for actual delivery, and (2) Retail Commodity Transactions, which are off-exchange transactions in gold, silver, platinum, and palladium on a financed basis, in which a retail customer purportedly purchases physical commodities and pays just a portion of the purchase price. It is only the Respondents’ purported Retail Commodity Transactions that are at issue here.

According to PAMOM’s website, PAMOM is a “group of seasoned traders, investors, and brokers who have come together to enable our customers to purchase bullion.” PAMOM claims that it purchases metal for Retail Commodity Transactions from Hunter Wise and uses volume purchasing to receive the “very best pricing available.” PAMOM also claims that it provides customers with “0-80% financing” that allows customers to “finance 6 times more metal than you ordinarily could in a typical bullion purchase.” The Pan American Companies entered into exclusive agreements with Hunter Wise to offer Retail Commodity Transactions to the public.

After depositing funds with the Pan American Companies, customers are informed that they can place either long (buy) or short (sell) trades to speculate on the price movement of metals. The Pan American Companies charge customers a 10-12% management fee or commission, a price spread (assertedly, a 3% mark-up on the current market purchase price or mark-down on the current market sale price of the metal), interest on the purported loan (at a rate

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<sup>2</sup> The CFTC filed an enforcement action against Hunter Wise and other related entities in United States District Court for the Southern District of Florida on December 5, 2012, styled *CFTC v. Hunter Wise Commodities, LLC, et al.*, No. 9:12-cv-81311-DMM. In that complaint, the CFTC charged the defendants with fraudulently soliciting and accepting at least \$46 million from hundreds of customers since July 2011 to invest in physical precious metals, such as gold, silver, platinum, palladium, and copper, and charging interest on loans, storage and insurance fees, when, in fact, the defendants did not own, purchase or store any metal for their customers. On February 25, 2013, the Court granted the Commission’s Motion for Preliminary Injunction against all defendants.

of approximately 8.75% per year) and other fees (such as a service fee and \$200 account opening fee) until the long or short trading position is offset. Consequently, since much of their principal investment was consumed by fees, it was exceedingly difficult for customers to break even on their investments, let alone earn a profit.

The Pan American Companies solicit potential customers, provide account opening documentation, manage the account opening process, collect customer funds, provide investing advice, and obtain authorization from customers to purchase precious metals on their behalf. Hionas reviewed customer account applications and had final authority to decide which customers were permitted to open an account with the Pan American Companies. After a customer agrees to invest with the Pan American Companies, the Pan American Companies purportedly relay the customer's buy or sell order to Hunter Wise and send customer funds to Hunter Wise.

During the Relevant Period, the Pan American Companies charged \$1,687,175 in commissions, interest and fees – equivalent to approximately 35 percent of the \$4,715,000 customer funds they accepted. When retail customers placed orders to enter into Retail Commodity Transactions, the Respondents did not purchase physical commodities on the customers' behalf, did not disburse any funds to purchase the remaining portion of the purchase price, and did not store any physical commodities for customers. Instead, the Respondents simply passed all the details of the purchase, customer payments, and financing on to Hunter Wise, whose existence the Respondents did not disclose to retail customers.

Similarly, Hunter Wise did not purchase or finance the purchase of physical commodities, or store physical commodities in connection with the Pan American Companies' customers' Retail Commodity Transactions. Instead, when Hunter Wise received a customer order from the Pan American Companies, Hunter Wise made a book entry in its electronic database reflecting the transaction details, including the amount of the purported loan to the customer. Hunter Wise aggregated the customer payments received from the Pan American Companies with funds received from other similar dealers and deposited those funds into bank accounts in Hunter Wise's name. Hunter Wise then typically transferred a portion of those funds to margin trading accounts held in the name of Hunter Wise. Hunter Wise did not purchase or store physical commodities through these margin trading accounts, and neither the Pan American Companies nor their retail customers had any direct interest in these accounts.

The Pan American Companies' retail customers never owned, possessed, or received title to the physical commodities that they believed they purchased, no funds were expended by the Pan American Companies or Hunter Wise to purchase physical commodities for the customers and no physical commodities were stored for the customers.

## **2. The Pan American Companies Made Misrepresentations and Material Omissions to Retail Customers**

The Pan American Companies purchased lead lists of potential retail customers and solicited customers, including by telephone cold calls, press releases, and a website, to enter into Retail Commodity Transactions. The Pan American Companies' represented to potential customers that: (1) the customer could purchase physical commodities, including gold, silver,

platinum, or palladium, by paying as little as 20% of the purchase price; (2) that customers would receive a loan for the remaining portion of the purchase price on which the customer would be charged interest; and (3) upon confirmation of the customer's purchase, the physical commodity the customer purchased would be stored at an independent depository on the customer's behalf in an account in the customer's name. These representations were based upon representations Hunter Wise made to Respondents about Hunter Wise's operations. However, in the Retail Commodity Transactions, Respondents do not deal in physical metal or transfer ownership of any physical metals to customers. Further, they do not disburse any funds as loans or store physical metals in any depositories for or on behalf of customers. Instead, Respondents charge customers commissions for purchasing metal, interest on loans to buy metal, and storage and insurance fees for metal when the metal does not exist and retail customers are really only speculating on the price direction of metals.

The Pan American Companies also defrauded customers and potential customers by misrepresenting and failing to disclose material facts relating to the nature of the Retail Commodity Transactions, Respondents' experience and expertise, actual trading results other customers had achieved, and the profit potential and risks associated with entering into Retail Commodity Transactions, among other things. The Pan American Companies' employees and agents made misrepresentations and omissions of material fact intended to persuade customers to enter into Retail Commodity Transactions including the following:

- a. PAMOM traders have, combined, over 100 years of experience.
- b. PAMOM has "technical traders" who are experts in the natural trends of bullion prices and use methods including: daily moving averages; buy and sell signals; algorithmic trading; support and resistance; and daily, weekly, monthly, and yearly trends.
- c. Customer orders would be aggregated with other customers to form "block orders" that would give each individual better pricing than if they were not part of the block order.
- d. The "worst case scenario" is the customer makes money by investing with PAMOM.
- e. PAMOM customers "have nothing to lose and everything to gain" by investing with PAMOM.
- f. PAMOM's investments are not high leverage and the Dodd-Frank Act did away with investment firms that were high leveraging their clients.
- g. PAMOM makes a market in precious metal bullion.
- h. PAMOM opens individual retirement accounts for customers and Retail Commodity Transactions are a good investment for retirement funds.

- i. PAMOM has a trading floor.
- j. PAMOM has market and/or industry analysts at COMEX New York and London.
- k. Most big PAMOM clients take profits out in nice shiny bars of gold because they are a non-reportable asset like a Rolex watch.

All of these statements are false. Specifically: (1) 180 of the Pan American Companies' 189 customers lost money; (2) the Pan American Companies do not have any traders, let alone a trading floor with experienced or "technical" traders; (3) the Pan American Companies do not have any market, industry or research analysts; (4) the Pan American Companies placed numerous stop/loss orders on behalf of customers without their knowledge or prior approval; (5) customers receive no pricing benefit from block orders; (6) the Pan American Companies do not make a market in precious metal bullion; (7) Retail Commodity Transaction customers do not have a true physical holding in physical metal; and (8) Retail Commodity Transactions are highly leveraged and very risky.

PAMOM provided a risk disclosure document to customers stating that "[f]inancing precious metal trading is not an appropriate investment for retirement funds." However, PAMOM solicited at least 46 individuals over 65 years of age, including four who are over 90 years old and one that PAMOM solicited while in hospice care. Elderly persons were falsely told during solicitation calls that Retail Commodity Transactions were a good retirement investment and convinced to invest their retirement funds with PAMOM. All but one of the 46 customers over 65 years old lost money.

Hionas personally performed market research, responded to customer complaints, reviewed customer account activity, discussed customer performance with PAMOM staff, and monitored his staff's phone communications with customers. At the time the above misrepresentations were made, Hionas knew that the information was being provided, and knew that the information the Pan American Companies' agents and employees were providing customers was false, or acted in reckless disregard for whether this information was true and allowed the misrepresentations to continue.

#### 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 in interstate commerce.

Section 742(a) of the Dodd Frank Act added Section 2(c)(2)(D) to the Act.<sup>3</sup> 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”)<sup>4</sup> 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). 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).

Section 2(c)(2)(D)(ii) of the Act 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.”<sup>5</sup> 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’s 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.<sup>6</sup> Unless the Commission provides 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.

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<sup>3</sup> Section 2(c)(2)(D) of the Act became effective July 16, 2011.

<sup>4</sup> As is relevant to this matter, Section 1a(18)(xi) of the Act defines an eligible contract participant as an individual who has amounts invested on a discretionary basis, the aggregate of 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.

<sup>5</sup> The Commission has not adopted any regulations permitting a longer actual delivery period for any commodity pursuant to new 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.

<sup>6</sup> See, *Retail Commodity Transactions Under Commodity Exchange Act*, 77670 Fed. Reg. Vol. 76 No. 240 (Dec. 14, 2011).

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 has Jurisdiction over the Respondents' Transactions**

In the Respondents' transactions, customers pay 20% of the purchase price and Respondents' purport to provide financing for the remainder of the purchase. Thus, the transactions are clearly "entered into with, or offered to (even if not entered into), 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."

The Respondents' retail customers have not invested amounts on a discretionary basis, the aggregate of which are in excess of \$5,000,000 and or entered 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. Accordingly, the Respondents' retail customers are non-ECPs and the Respondents are offering and entering into off-exchange agreements, contracts or transactions in leveraged, margined, or financed commodities involving precious metals with persons who are not ECPs.

Accordingly, Respondents' transactions fall squarely within Section 2(c)(2)(D) of the Act as agreements, contracts or transactions in leveraged, margined, or financed commodities involving precious metals with persons who are not ECPs as defined by the Act.

Respondents transactions do not fall under either of the exceptions provided in Section 2(c)(2)(D)(ii)(III) of the Act. Respondents did not "actually deliver" any commodities in connection with their customers' Retail Commodity Transactions: Neither the Respondents nor Hunter Wise purchased, sold, owned, or stored physical metals, nor did they possess or transfer title to any physical metals, in connection with their retail commodity transactions. Accordingly, the Respondents' Retail Commodity Transactions did not result in actual delivery of any commodities, and the exception contained in Section 2(c)(2)(D)(ii)(III)(aa) of the Act does not apply.

Respondents' transactions do not fall within the exception contained in Section 2(c)(2)(D)(ii)(III) (bb) of the Act either. Respondents' transactions are not in connection with any line of business of the Respondents' retail customers. Section 2(c)(2)(D)(ii)(III)(bb) is thus inapplicable.

**C. The Pan American Companies, Acting Through Their Agents and Employees, and Hionas, Violated Section 4(a) of the Act**

Pursuant to Section 2(c)(2)(D)(iii) of the Act, the Respondents' Retail Commodity Transactions are subject to Section 4(a) of the Act. Section 4(a) of the Act, in relevant part, makes it illegal 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,

commodity futures, 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.

The Pan American Companies offered to enter into the transactions, entered into transactions and confirmed the execution of transactions that were not 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. In addition, the Pan American Companies conducted an office or business in the United States for the purpose of soliciting and accepting orders from customers for these transactions. Accordingly, the Pan American Companies, acting through their agents and employees, and Hionas, violated Section 4(a) of the Act.

**D. The Pan American Companies, Acting Through Their Agents and Employees, and Hionas, Violated Section 4b(a)(2)(A) and (C) of the Act**

Fraudulent solicitation of prospective investors violates Sections 4b(a)(2)(A) and (C) of the Act. To establish solicitation fraud, the Commission must prove that: (1) a misrepresentation has occurred; (2) with scienter; and (3) that the misrepresentation was material. *CFTC v. R.J. Fitzgerald & Co. Inc.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002) *cert. denied*, 543 U.S. 1034 (2004).

Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed.” *R.J. Fitzgerald & Co.*, 310 F.3d at 1328 (internal quotation marks and citation omitted). A statement or omission is material if “a reasonable investor would consider it important in deciding whether to make an investment.” *Id.* at 1328-29. “Scienter requires proof that an individual committed the alleged wrongful acts intentionally or with reckless disregard for his duties under the Act.” *CFTC v. Rolando*, 589 F. Supp. 2d 159, 169-170 (D. Conn. 2008) (citing *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985) and *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988)); *Do v. Lind-Waldock & Co.* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) P 26,516, 1995 CFTC LEXIS 247, at \*4 (CFTC Sept. 27, 1995) (determining that a reckless act is one that “departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing”) (quoting *Drexel Burnham Lambert v. CFTC*, 850 F.2d at 848); *see also CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995) (“Mere negligence, mistake, or inadvertence fails to meet Section 4b’s scienter requirement”).

The Pan American Companies, through their agents and employees, cheated or defrauded, or attempted to cheat or defraud, retail customers in or in connection with Retail Commodity Transactions. Pan American Companies did so by misrepresenting and omitting facts that were material to the investment decisions of customers and potential customers. Pan American Companies made these material misrepresentations and omissions, knowingly or with a reckless disregard to their truth or falsity. Accordingly, the Pan American Companies, acting through their agents and employees, and Hionas, violated Section 4b(a)(2)(A) and (C) of the Act.

**E. The Pan American Companies, Acting Through Their Agents and Employees, and Hionas, Violated Section 6(c)(1) of the Act and Rule 180.1**

Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15 (Supp. IV 2011), provides, among other things, that it is unlawful for any person “to employ . . . in connection with any contract of sale of any commodity in interstate commerce or for futures delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of [Commission rules and regulations].” Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012), in relevant part, makes it unlawful for any person:

in connection with any . . . contract of sale of any commodity in interstate commerce . . . to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person . . . .

The Pan American Companies, through their agents and employees, knowingly or recklessly made untrue or misleading statements of material facts, or omitted to state material facts necessary in order to make the statements made not untrue or misleading, in connection with contracts of sale of commodities in interstate commerce. Accordingly, the Pan American Companies, acting through their agents and employees, and Hionas, violated Section 6(c)(1) of the Act and Regulation 180.1.

**F. Hionas was a Controlling Person of the Pan American Companies and Knowingly Induced, Directly or Indirectly, the Pan American Companies’ Violations**

Section 13(b), 7 U.S.C. § 13c(b), provides: “Any person who, directly or indirectly, controls any person who has violated any provision of this Act, or any of the rules, regulations or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.”

A “fundamental purpose” of the statute is “to reach behind the corporate entity to it the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as on the corporation itself.” *R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1334; *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11<sup>th</sup> Cir. 1995). The statute is construed liberally and even indirect means of discipline or influence, short of actual direction, is sufficient to find liability as a controlling person. *Monieson v. CFTC*, 996 F. 2d 852, 859 (7<sup>th</sup> Cir. 1993) (“Control person liability will attach if a person possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised.”); *R.J. Fitzgerald & Co., Inc.*, 310 F.3d at 1334.

Whether a respondent possessed the requisite control over the operations in question is a determination of fact, based upon the totality of the circumstances, including an appraisal of the influence upon management and policies of a corporation by the alleged controlling person. *CFTC v. Baragosh*, 278 F.3d 319 at 330 (4<sup>th</sup> Cir. 2002) (reversing grant of summary judgment); *CFTC v. AVCO Financial Corp.*, 28 F.Supp.2d 104, 117 (SDNY 1998), *aff'd in relevant part* *CFTC v. Vartuli*, 228 F.3d 94 (2d Cir. 2000).

Hionas was the owner, principal, officer and bank account signatory of the Pan American Companies. He was responsible for and approved the Pan American Companies' operations including the Pan American Companies' offering to enter into the transactions, entering into the transactions and confirming the execution of transactions. In addition, Hionas was directly responsible for the Pan American Companies' office and the conduct of the business that operated "for the purpose of soliciting and accepting orders from customers for these transactions." Accordingly, Hionas was a controlling person of the Pan American Companies within the meaning of Section 13(b) of the Act.

There is no dispute that Hionas was aware of and knew the Pan American Companies' business including that the Pan American Companies' were offering to enter into the transactions, entering into the transactions and confirming the execution of transactions. Accordingly, he knowingly induced, directly or indirectly, the Pan American Companies' violations. *See, In the Matter of FNTC, et al.*, [1992 – 1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142 at 41,787 (CFTC July 20, 1994), *aff'd without opinion sub nom. Pick v. CFTC*, 99 F.3d 1139 (6th Cir. 1996).

#### **G. The Pan American Companies' Principal Liability**

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, provide in relevant part, that the act, omission, or failure of any official, agent, or other person acting for an individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

Strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment. *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (principals are strictly liable for the acts of their agents); *Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988). The acts, omissions and failures of the officials, agents or persons acting for the Pan American Companies were committed within the scope of their employment, agency or office with the Pan American Companies and are deemed to be the acts, omissions and failures of the Pan American Companies.

### **V.**

#### **FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Pan American Metals of Miami, LLC, Pan American Metals of Miami Beach, Inc. and William J. Hionas violated Sections 4(a), 4b(a)(2)(A) and (C), and 6(c) of the Act, as amended, to be

codified at 7 U.S.C. §§ 6(a), 6b(a)(2)(A), (C), 9 and 15 (Supp. IV 2011), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012).

## 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 this 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 (2006) and 28 U.S.C. § 2412 (2006), 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 (2012), 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;

- 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 Sections 4(a), 4b(a)(2)(A) and (C) and 6(c) of the Act, as amended, to be codified at 7 U.S.C. §§ 6(a), 6b(a)(2)(A), (C), 9 and 15 (Supp. IV 2011), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012);
  2. orders Respondents to cease and desist from violating Sections 4(a), 4b(a)(2)(A) and (C) and 6(c) of the Act, as amended, to be codified at 7 U.S.C. §§ 6(a), 6b(a)(2)(A), (C), 9 and 15 (Supp. IV 2011), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012);
  3. orders Respondents, jointly and severally, to pay restitution in the amount of three million, one hundred ninety one thousand, nine hundred twenty four dollars (\$3,191,924), plus post-judgment interest;
  4. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000), plus post-judgment interest;
  5. appoints the National Futures Association ("NFA") as Monitor in this matter;
  6. orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act) as amended, 7 U.S.C. § 1a and all registered entities shall refuse them trading privileges; and
  7. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

## VII.

### ORDER

#### **Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondents and their successors and assigns shall cease and desist from violating Sections 4(a), 4b(a)(2)(A) and (C) and 6(c) of the Act, as amended, to be codified at 7 U.S.C. §§ 6(a), 6b(a)(2)(A), (C), 9 and 15 (Supp. IV 2011), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012).
- B. Respondents, jointly and severally, shall pay restitution in the amount of three million one hundred ninety one thousand nine hundred twenty four dollars (\$3,191,924) within ten (10) days of the date of entry of this Order ("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 (2006).

To effect payment by Respondents and the distribution of restitution to Respondents' customers, the Commission appoints the NFA as "Monitor." The Monitor shall collect payments of the Restitution Obligation from Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make their payments of the Restitution Obligation under this Order in the name of the "Pan American Metals of Miami Companies' Settlement Fund" 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 the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, 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.

The Monitor shall oversee Respondents' Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion **to the Respondents' customers** or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). Post-judgment interest shall accrue on the CMP 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 (2006). Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables --- AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondent(s) shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent(s) shall accompany payment of the CMP Obligation with 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.

- D. Respondents are permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a), and all registered entities shall refuse them trading privileges.
- E. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, 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) (2012)) ("commodity options"), security futures products, swaps, (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. V 2011), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx)) ("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 Respondent's/s' own

personal account(s) or for any account(s) in which Respondent(s) has/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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or
  - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).
3. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents' customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. 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.
4. Partial Satisfaction: Respondents understands and agrees that any acceptance by the Commission or the Monitor of partial payment of Respondents' Restitution Obligation or CMP 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.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, Hionas 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.



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

Dated: July 29, 2013