

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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<p><b>In the Matter of:</b></p> <p style="padding-left: 40px;"><b>Barclay Metals, Inc., Universal Clearing, LLC, Sean Stropp and Sylvia Williams,</b></p> <p style="text-align: right; padding-right: 20px;"><b>Respondents.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CFTC Docket No. <u>13-13</u></p>
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**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 Barclay Metals, Inc. (“Barclay”), Universal Clearing, LLC (“Universal”), Sean Stropp (“Stropp”) and Sylvia Williams (“Williams”) (collectively “the Respondents”) have committed violations of Section 4(a) of the Commodity Exchange Act, as amended (“the Act”), 7 U.S.C. § 6(a), between July 2011 and at least June 2012, by offering and entering into off-exchange agreements, contracts or transactions in leveraged, margined, or financed commodities involving precious metals with persons who are not eligible contract participants (“ECP”) or eligible commercial entities as defined by the Act (“retail commodity transactions”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether the 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, the 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 acknowledges service of this Order.<sup>1</sup>

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<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

### III.

The Commission finds the following:

#### A. SUMMARY

Since July 16, 2011, all retail commodity transactions must be 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 compliance with Section 4(a) of the Act, pursuant to Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii). From July 16, 2011, until at least June 2012, the Respondents offered and entered into off-exchange retail commodity transactions and therefore violated Section 4(a) of the Act.

#### B. RESPONDENTS

**Barclay** is a New York corporation that offered to enter into, entered into, and conducted an office or business for the purpose of offering and entering into retail commodity transactions. It was purportedly located at 40 Wall Street, 28th Floor, New York, New York. However, Barclay actually operated out of West Palm Beach, Florida. Barclay has never been registered with the Commission.

**Universal** is a New York corporation that purportedly provided financing to Barclay customers in connection with Barclay's retail commodity transactions. It was purportedly located at 40 Wall Street, 28th Floor, New York, New York. However, Universal actually operated out of West Palm Beach, Florida. Universal has never been registered with the Commission.

**Stropp** is an owner and principal of Barclay and Universal. Stropp was previously registered as an associated person of various entities, but is no longer registered with the Commission.

**Williams** is an owner and principal of Barclay and Universal. Williams has never been registered with the Commission.

#### 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." Hunter Wise offers, enters into, and confirms 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 Barclay that it refers to as "dealers."

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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.

## **D. FACTS**

In March 2011, the Respondents entered into an agreement with Hunter Wise to act as one of Hunter Wise's dealers. Subsequently, the Respondents purchased lead lists of potential retail customers and solicited customers, including by telephone and a website, to enter into retail commodity transactions as part of Respondents' "leveraged program." Respondents represented to potential customers that: (1) the customer could purchase physical commodities, including gold, silver, copper, 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, 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 physical commodities, disburse any funds to purchase the remaining portion of the purchase price, or store physical commodities in connection with Respondents' customers' retail commodity transactions. Instead, when Hunter Wise received a customer order from Respondents, 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 Respondents 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 Respondents nor their retail customers had any direct interest in these accounts.

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

## **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>2</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-ECP<sup>3</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>4</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>5</sup> Further, we state today, that it is the view of the Commission that 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.

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

<sup>3</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>4</sup> The Commission has not adopted any regulations permitting a longer actual delivery period for any commodity pursuant to new CEA section 2(c)(2)(D)(ii)(III)(aa). Accordingly, the 28-day actual delivery period set forth in this provision remains applicable to all commodities.

<sup>5</sup> See, *Retail Commodity Transactions Under Commodity Exchange Act*, 77670 Fed. Reg. Vol. 76 No. 240 (Dec. 14, 2011).

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.

The Commission intends to give the fullest possible expression to the words used by Congress in enacting Section 2(c)(2)(D) of the Act and apply the statute 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. Nowhere did Congress express an intent to limit Section 2(c)(2)(D)'s application to any previously defined contract or transaction. Specifically, nowhere did Congress express an intent to limit the applicability of Section 2(c)(2)(D) to contracts or transactions previously described as "leverage transactions" in Commission Regulation 31.4(w), 17 C.F.R. § 31.4(w) (2012).

#### **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, it is clear that the 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.

It is also clear that the Respondents transactions do not fall under either of the exceptions provided in Section 2(c)(2)(D)(ii)(III) of the Act. A careful examination of the manner in which the Respondents' retail commodity transactions were marketed, managed, and performed reveals that the 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.

The Respondents' transactions do not fall within the exception contained in Section 2(c)(2)(D)(ii)(III) (bb) of the Act either. The 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. Barclay and Universal, Acting Through Their Agents and Employees, and Stropp and Williams, 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 Respondents 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 Respondents conducted an office or business in the United States for the purpose of soliciting and accepting orders from customers for these transactions. Accordingly, Barclay and Universal, acting through their agents and employees, and Stropp and Williams, violated Section 4(a) of the Act.

**D. Stropp and Williams were Controlling Persons of Barclay and Universal and Knowingly Induced, Directly or Indirectly, Barclay's and Universal's 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 its 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." *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1334 (11<sup>th</sup> Cir. 2002), *cert. denied*, 543 U.S. 1034 (2004); *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*, 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).

Stropp and Williams were the sole owners, sole principals and officers of Barclay and Universal. They were responsible for and approved Barclay's and Universal's operations including the Barclay's and Universal's offering to enter into the transactions, entering into the transactions and confirming the execution of transactions. In addition, Stropp and Williams were directly responsible for Barclay's and Universal's office and the conduct of the business that operated "for the purpose of soliciting and accepting orders from customers for these transactions." Accordingly, Stropp and Williams were controlling persons of Barclay and Universal within the meaning of Section 13(b) of the Act.

There is no dispute that Stropp and Williams were aware of and knew Barclay's and Universal's business including that Barclay was offering to enter into the transactions, entering into the transactions and confirming the execution of transactions. Accordingly, they knowingly induced, directly or indirectly, Barclay's and Universal's violations. *See, In the Matter of FNITC, 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).

## V.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Section 4(a) of the Act.

## VI.

### OFFER OF SETTLEMENT

The Respondents have submitted an Offer of Settlement 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 the Respondents violated Section 4(a) of the Act;
  2. orders the Respondents to cease and desist from violating Section 4(a) of the Act;
  3. orders that Respondents be prohibited , for a period of five years commencing from the date of entry of this order, 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
  4. orders the Respondents, and their successors and assigns, to comply with the conditions and undertakings, consented to in their offers and set forth in Section VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.<sup>6</sup>

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<sup>6</sup> The Commission notes that the sanctions, including waiving the imposition of a civil monetary penalty, in this order reflect the substantial and ongoing cooperation of the Respondents.

## VII.

### ORDER

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

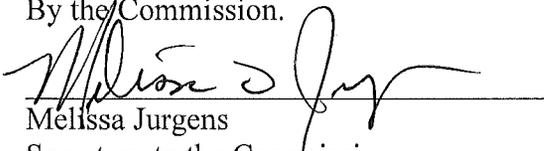
- A. Respondents shall cease and desist from violating Section 4(a) of the Act, as amended, 7 U.S.C. § 6(a).
- B. Respondents are prohibited, for a period of five years commencing from the date of entry of this order, from, directly or indirectly, engaging in trading on or subject to the rules of any 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.
- C. Respondents shall comply with the following undertakings:
  1. Public Statements: Respondents and their successors or assigns agree that neither they nor any of their 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 the Respondents': (i) testimonial obligations; or (ii) right to take contrary positions in other proceedings to which the Commission is not a party. The 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 for a period of five years commencing from the date of this Order they shall not, 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) (2011)) ("commodity options"), security futures products, 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"), and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, 7 U.S.C. § 1a(47), and as further defined by Regulation 1.3, 17 C.F.R. § 1.3 (2012) ("swaps") for Respondents' own personal account(s) or for any account(s) in which Respondents have a direct or indirect interest;
    - b. have any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps 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, forex contracts; and/or swaps;

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, forex contracts, and/or swaps.

3. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously, including providing testimony, 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.

By the Commission.

  
Melissa Jurgens  
Secretary to the Commission

Dated: January 28, 2013