

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-81311-CV-MIDDLEBROOKS/BRANNON

UNITED STATES COMMODITY FUTURES :
TRADING COMMISSION, :

Plaintiff, :

vs. :

HUNTER WISE COMMODITIES, LLC, *et al.*, :

Defendants. :

DEFAULT JUDGMENT FOR PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY AND OTHER EQUITABLE RELIEF AGAINST C.D. HOPKINS
FINANCIAL, LLC, HARD ASSET LENDING GROUP, LLC, CHADEWICK HOPKINS,
BLACKSTONE METALS GROUP, LLC, AND BARIS KESER

I. INTRODUCTION

On December 5, 2012, Plaintiff U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a thirteen-count Complaint (DE 1) against eight companies and twelve individuals seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2012). On February 25, 2013, the Court entered an Order of Preliminary Injunction and Other Equitable Relief against all defendants (DE 78) (“Order of Preliminary Injunction”). On June 11, 2013, the Clerk of Court entered a default against C.D. Hopkins Financial, LLC (“CDH”), Hard Asset Lending Group, LLC (“HAL”), and Chadewick Hopkins (“C. Hopkins”). (DE 145-47). On November 15, 2013, the Clerk of Court entered a default against Blackstone Metals Group, LLC (“Blackstone”) and Baris Keser (“Keser”) (collectively “Default Defendants”). (DE 224-5).

On February 19, 2014, the Court entered summary judgment in favor of the Commission on Count 1 of the complaint against all named defendants. (DE 281). A trial in this matter was held from February 26, 2014 through March 3, 2014. None of the Default Defendants participated in the trial, presented any evidence or argument, or otherwise participated in any meaningful way in these proceedings.

II. PROCEDURAL HISTORY

Defendant C.D. Hopkins Financial, I.L.C was properly served with a copy of the Complaint and summons on December 17, 2012. (DE 31). Defendant Hard Asset Lending, LLC was properly served with the Complaint and summons on December 12, 2012. (DE 8). Defendant Chadewick Hopkins was properly served with a copy of the Complaint and summons on January 10, 2013. (DE 54). Defendant Blackstone Metals Group, LLC was properly served with a copy of the complaint and a summons on December 10, 2012. (DE 8).

On January 22, 2012, Defendants Blackstone and Keser filed a motion to dismiss the CFTC's Complaint for failure to state a claim. (DE 42). The Motion was denied on June 21, 2013. (DE 155).

Federal Rule of Civil Procedure 12(a)(4) requires that a responsive pleading be filed 14 days after notice of the Court's denial of a Rule 12 motion. Fed. R. Civ. P. 12(a)(4). All Defendants that were parties to the Motions to Dismiss were therefore required to file a responsive pleading on or before July 5, 2013. Fed. R. Civ. P. 12(a)(4); Fed. R. Civ. P. 6(a). Default Defendants have each failed to file an answer, or otherwise respond to the Complaint.

III. FINDINGS AND CONCLUSIONS

The Court has carefully considered the Complaint, the factual allegations, which are well-pled and hereby taken as true, along with the record evidence introduced at trial and throughout

these proceedings. Being fully advised in the premises, the Court finds that there is good cause for the entry of this Default Order and that there is no just reason for delay. Therefore, the Court directs the **ENTRY** of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

The court hereby **FINDS**:

A. Findings of Fact

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

2. CDH was a telemarketing firm that solicited retail customers to execute retail commodity transactions with Hunter Wise directly and through the intermediary firm Lloyds Commodities LLC (“Lloyds”). CDH was organized as a California limited liability company which had offices in in West Palm Beach, Florida and Los Angeles, California. CDH operated between July 2011 and May 2012, when it transferred all of its customer accounts to Defendant Blackstone.

3. Defendant C. Hopkins resides in Maryland and was the sole member of CDH. C. Hopkins owned, directed and controlled the operations of CDH. He controlled the CDH bank accounts, made hiring and firing decisions for the company, and had control over the content of the CDH website. On a daily basis, he personally performed market research, reviewed customer account activity, discussed customer performance with CDH staff, and monitored his staff’s phone communications with customers.

4. Defendant HAL is a corporate affiliate of CD Hopkins and operated as a part of the same common enterprise. C. Hopkins is the sole member and manager of HAL. HAL is a Florida limited liability company with its principal office located at 80 Southwest 8th Street, 20th Floor, Miami, Florida, 33130. HAL purportedly made loans to customers of CDH for the purchase of physical metals on a financed basis. C. Hopkins received payments for commissions, fees and mark ups on the price of metals sold to CDH customers from Lloyds Commodities in a bank account in the name of HAL.

5. Defendant Blackstone is a telemarketing firm that solicits retail customers to execute retail commodity transactions with Hunter Wise through Lloyds Commodities. Blackstone is a Florida limited liability company with its principal address at 801 Northpoint Parkway, Suite 75, West Palm Beach, Florida 33407.

6. Defendant Keser resides in West Palm Beach, Florida and is the managing member of Blackstone. Keser owned, directed and controlled the operations of Blackstone during the relevant period. Keser controlled the bank accounts of Blackstone. Keser is responsible for paying Blackstone's employees and contractors, and he made hiring and firing decisions for Blackstone. Keser either personally approved or authored the content of Blackstone's website, and he approved all Blackstone's promotional materials. Keser also runs the Compliance Department for Blackstone.

7. Default Defendants operated within a fraudulent scheme in which they claimed to sell physical metals to retail customers, made loans to customers to purchase physical metals, and then stored those physical metals in secured depositories. In fact, Default Defendants never possessed any metals, did not operate on a regulated exchange and only provided their retail customers with a means of speculating on the price of metals.

8. Default Defendants solicited prospective customers and customers to purchase financed precious metals transactions by phone or through websites. Default Defendants took orders and received customer funds which they then relayed to Hunter Wise through Lloyds Commodities. Default Defendants received commissions from Hunter Wise and Lloyds Commodities based on the dollar value of the transactions entered for customers. Hunter Wise also compensated the Default Defendants with a portion of the price spread, interest, and service fees charged to retail customers for Retail Commodity Transactions.

9. The CD Hopkins website (www.cdhopkinsmetals.com) contained the following false statements about the purchase and storage of physical metals:

a. "CD Hopkins offers high investment financing and secure storage at an independent depository."

b. "Investment Security: When your purchase is financed or all cash for storage, your goods can be stored at an independent bank or depository on your behalf or you can take personal delivery at any time. You will receive the title to your precious metals delivered to the depository, giving you ownership."

c. "Delivery to an independent bank or depository is part of your financed or stored metal purchase."

d. "You'll have actual ownership of your metal by receiving its legal title."

e. "Metals held by the bank or depository will remain in your name until sold or until personal delivery is taken."

10. The Blackstone website (www.blackstonemetals.com) contained the following false statements about the purchase and storage of physical metals:

a. "Each client who chooses to participate in the financed metals program is provided a financed metal purchase receipt commodity transfer notice in their name as evidence of a legitimate transaction."

b. "Am I buying a [sic] real gold or a certificate? When you purchase your gold with Blackstone Metals, you will receive a commodity transfer

notice and a receipt. We will deliver the gold to your depository within 72 hours after the purchase is made.”

c. “If clients decide to purchase physical metal, they will receive a warehouse receipt from a Comex regulated establishment; verifying actually [sic] bullion has been purchased and is being kept in a precious metals storage facility.”

d. “Investors retain full ownership, and title is held in the client’s name to eliminate all counterparty risk.”

e. “The bullion assets are 100% insured by Lloyds of London for replacement value.”

f. “Secured Third-Party Storage [is] [p]rovided by world-class professional vault operators with locations in London, New York, Salt Lake City, Zurich, Hong Kong and Dubai.”

“Transfer of Commodity” notices sent to Default Defendants’ customers similarly represented that customers owned the metals purchased and sold in its retail commodity transactions.

11. The statements on Default Defendants’ websites, in customer account documentation, and in the Transfer of Commodity notices, were false. Default Defendants never possessed or had title to any physical metals in connection with its financed retail commodity transactions. Default Defendants did not transfer ownership of any physical metals to its customers in connection with these retail commodity transactions. Default Defendants did not loan sums of money to customers for the purchase of physical commodities. There were no identifiable physical metals stored in independent banks, vaults, or depositories for Default Defendants or their customers.

12. CDH acted as a retail dealer soliciting customers whose orders for retail commodity transactions were executed by Hunter Wise between at least July 16, 2011 and the date of the preliminary injunction order in this case on February 25, 2013. During that time, CDH received commissions and fees from illegal retail commodity transactions in an amount of at least \$1,158,278.78. During the same period, CDH customers lost \$3,053,885.93.

13. Blackstone acted as a retail dealer soliciting customers whose orders for retail commodity transactions were executed by Hunter Wise between at least July 16, 2011 and the date of the preliminary injunction order in this case on February 25, 2013. During that time, Blackstone received commissions and fees from illegal retail commodity transactions in an amount of at least \$617,818.93. During the same period, Blackstone customers lost \$1,679,865.46.

B. Conclusions of Law

1. Jurisdiction and Venue

14. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

15. The Commission has jurisdiction over the solicitations and transactions at issue in this action pursuant to Section 2(c)(2)(D) of the Act, 7 U.S.C. § 2(c)(2)(D).

16. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Default Defendants either reside in this jurisdiction and/or the acts and practices in violation of the Act occurred within this District.

17. After a default has been entered, the party seeking the default shall then apply to the court for an entry of default judgment. *See* Fed. R. Civ. P. 55(b). Entry of default judgment is within a district court's sound discretion. *See CFTC v. Gutterman*, No. 12-21047-CIV, 2012 WL 2413082, at *4 (S.D. Fla. June 26, 2012) (citing *Hamm v. DeKalb Cnty.*, 774 F.2d 1567,

1576 (11th Cir. 1985)). After default has been entered, the defendant is deemed to have admitted all well-pled factual allegations in the complaint, except those relating to unspecified damages. *Id.* (citation omitted); *see Buchanan*, 820 F.2d at 361; *see also* Fed. R. Civ. P. 8(b)(6) (effect of failure to deny an allegation). Entry of this judgment is warranted.

2. Violation of Section 4(a) of the Commodity Exchange Act – Off-Exchange Retail Commodity Transactions (Count 1 of the Complaint)

18. Between July 16, 2011 and February 25, 2013, the retail commodity transactions described in the Complaint (DE 1) were offered and entered into (a) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, and (b) with persons who are not eligible contract participants or eligible commercial entities as defined by the Commodity Exchange Act. These transactions were not made or conducted on, or subject to, the rules of any board of trade, exchange or contract market.

19. Default Defendants violated Section 4(a) of the Commodity Exchange Act by offering to enter into, entering into, and conducting an office or business in the United States for the purpose of soliciting, or accepting orders for, or otherwise dealing in, retail commodity transactions.

20. The foregoing acts, omissions, and failures of both C. Hopkins and Keser occurred within the scope of their employment, office, or agency with CDH, and Blackstone, respectively; therefore, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 2 (2013), CDH and Blackstone are liable for CD Hopkins and Keser's acts, omissions, and failures in violation of Section 4(a) of the Act.

21. C. Hopkins and Keser knowingly induced the acts constituting the violations of CDH and Blackstone described in this Order. Pursuant to Section 13(b) of the Act, 7 U.S.C.

§ 13c(b), C. Hopkins and Keser therefore are liable as controlling persons for the violations of the Act by CDH and Blackstone, respectively.

22. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Default Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

3. Violation of Section 4b of the Commodity Exchange Act – Fraud in Connection With Retail Commodity Transactions (Counts 4 and 6 of the Complaint)

23. Between July 16, 2011 and February 25, 2013, Default Defendants violated Section 4b of the Commodity Exchange Act by cheating, defrauding, and attempting to cheat and defraud persons in or in connection with retail commodity transactions.

24. Defendants violated Section 4b(a)(2)(A) and (C) of the Act, 7 USC § 6b(a)(2)(A), (C), by misrepresenting and omitting material facts in connection with their retail commodity transactions. To establish misrepresentation and omission liability under Section 4b(a)(2)(A) and (C) of the Act, the Commission must prove that: (1) a misrepresentation, misleading statement, or omission was made; (2) with scienter; and (3) that the misrepresentation, statement or omission was material. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002), *cert. denied*, 125 S.Ct. 808 (2004) (citations omitted).

25. Specifically, Default Defendants recklessly made material misrepresentations on its website, in account documentation, and in statements and notices sent to customers regarding nature of the product being purchased, and the significant risks associated with the transactions. Default Defendants also recklessly failed to inform customers and prospective customers of the substantial losses being suffered by Default Defendants' customers.

26. The foregoing acts, omissions, and failures of both C. Hopkins and Keser occurred within the scope of their employment, office, or agency with CDH and Blackstone,

respectively; therefore, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2013), CDH and Blackstone are liable for CD Hopkins and Keser's acts, omissions, and failures in violation of Section 4b of the Act.

27. C. Hopkins and Keser knowingly induced the acts constituting the violations of CDH and Blackstone described in this Order. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), therefore, C. Hopkins and Keser are liable as controlling persons for the violations of the Act by CDH and Blackstone, respectively.

28. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Default Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

4. Violation of Section 6(c) of the Commodity Exchange Act and Commission Regulation 180.1 – Fraud in Connection With Commodity Transactions in Interstate Commerce (Counts 5 and 7 of the Complaint)

29. Section 6(c)(1) of the Act, 7 U.S.C. §§ 9, 15, is an anti-fraud provision that 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), which is the Commission regulation that implements Section 6(c)(1), 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

30. Between August 15, 2011 and February 25, 2013, Default Defendants, through their agents and employees, recklessly used or employed, or attempted to use or employ, in connection with contracts of sale of commodities in interstate commerce, a scheme or artifice to defraud in violation of Section 6(c) of the Commodity Exchange Act and Commission Regulation 180.1(a). Default Defendants recklessly made untrue or misleading statements of material facts and omitted to state material facts necessary in order to make the statements made not untrue or misleading.

31. Specifically, Default Defendants recklessly made material misrepresentations on websites, in account documentation, and in statements and notices sent to customers regarding nature of the product being purchased and the significant risks associated with the transactions as detailed above in ¶¶8-11. Default Defendants also recklessly failed to inform current and prospective customers of the substantial losses being suffered by their customers.

32. The foregoing acts, omissions, and failures of both C. Hopkins and Keser occurred within the scope of their employment, office, or agency with CDH and Blackstone respectively; therefore, pursuant to Section 2(a)(1)(B) of the Commodity Exchange Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 2 (2013), CDH and Blackstone are liable for CD Hopkins and Keser's acts, omissions, and failures in violation of Section 6(c) of the Act.

33. C. Hopkins and Keser knowingly induced the acts constituting the violations of CDH and Blackstone described in this Order. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), therefore, C. Hopkins and Keser are liable as controlling persons for the violations of the Act by CDH and Blackstone, respectively.

34. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Default Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

IV. PERMANENT INJUNCTION

35. Under 6c of the Act, 7 U.S.C. § 13a-1, the Commission must show only two things to obtain permanent injunctive relief: first, that a violation of the Act has occurred and second, that there is a reasonable likelihood of future violations. *CFTC v. Wilshire Inv. Mgmt. Corp.*, 531 F.3d 1339, 1344 (11th Cir. 2008). In an action for permanent injunctive relief, the Commission is not required to make a specific showing of irreparable injury or inadequacy of other remedies. See *CFTC v. Fleury*, Case No. 03-61199-CIV-MARRA, 2010 WL 3835134, at *18 (S.D. Fla. Sept. 29, 2010) (the Commission makes the requisite showing for issuance of injunctive relief when it presents a prima facie case that the defendant has engaged, or is engaging, in illegal conduct, and that there is a likelihood of future violations), citing *CFTC v. Am. Bd. of Trade, Inc.*, 803 F.2d 1242, 1250-51 (2d Cir. 1986); *CFTC v. Hunt*, 591 F.2d at 1220. (once a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations). “Whether such a likelihood of future violations exists depends on the ‘totality of the circumstances.’” *Id.* (quoting *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 807 (2d Cir. 1975)). Foremost among these circumstances, “is the past illegal conduct of Defendants, from which courts may infer likelihood of future violations.” *Id.* (citations omitted). In fact, past misconduct is “highly suggestive of future violations.” *Hunt*, 591 F.2d at 1220; *Midland*, 1999 U.S. Dist. Lexis 20977 *28 (once unlawful conduct is established, the law will presume a likelihood of future violations absent proof to the contrary). Under these standards the Court finds that permanent injunctive relief is warranted against the Default Defendants.

It is hereby **ORDERED AND ADJUDGED** as follows:

36. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, the Default Defendants are **PERMANENTLY RESTRAINED, ENJOINED, AND PROHIBITED** from directly or indirectly violating Sections 4(a), 4b(a)(2)(A)-(C) and 6(c) of the Act, as amended, 7 U.S.C. §§ 6(a), 6b(a)(2)(A)-(C) and 9, and Regulation 180.1(a), 17 C.F.R. § 180.1(a).

37. Default Defendants are also **PERMANENTLY RESTRAINED, ENJOINED, AND PROHIBITED** from directly or indirectly:

- a. 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);
- b. Entering 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, 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 Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”), for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity

- futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps;
 - f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and/or
 - g. Acting as a principal (as that term is defined in 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, as amended, 7 U.S.C. § 1a) exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

38. Pursuant to Section 6c(d)(3) of the Act, 7 U.S.C. § 13a-1(d)(3), “the court may impose, on a proper showing . . . (A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses)” Here, the customer losses in the amount of funds received by the Default Defendants were proximately caused by Default Defendants violations.

39. CDH, C. Hopkins and HAL shall PAY restitution in the amount of one million, one hundred fifty-eight thousand, two hundred seventy-eight dollars and seventy-eight cents

(\$1,158,278.78) (“Restitution Obligation”). CDH and C. Hopkins are jointly and severally liable for this restitution.

40. Blackstone and Keser shall **PAY** restitution in the amount of six hundred seventeen thousand, eight hundred eighteen dollars and ninety-three cents (\$617,818.93) (“Restitution Obligation”). Blackstone and Keser are jointly and severally liable for this restitution.

41. The Default Defendants will pay their respective Restitution Obligation, plus post-judgment interest, within **ten (10) days** of the date of the entry of this Default Order. If the Restitution Obligation is not paid in full within ten (10) days of the date of entry of this Default Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Default Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Default Order pursuant to 28 U.S.C. § 1961 (2006).

42. The Court-appointed Special Monitor and Corporate Manager, Melanie Damian (“Monitor”), shall pursue and collect restitution payments from the Default Defendants and make distributions as set forth below.

43. Default Defendants shall make Restitution Obligation payments under this Default Order to the Monitor in the name “Hunter Wise Settlement/Restitution Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, to the Monitor at the office of Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131 under cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendant 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.

44. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' customers or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers 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 following the instructions for civil monetary penalty payments set forth in Part V.B. below.

45. Default Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify the customers to whom the Monitor, in her sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Default Defendants 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.

46. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

47. The amounts payable to each customer shall not limit the ability of any customer to prove that a greater amount is owed from Default Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

48. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Default Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Default Order and may seek to enforce obedience of this Default Order to obtain satisfaction of any portion of the restitution that has not been paid by Default Defendants to ensure continued compliance with any provision of this Default Order and to hold Default Defendants in contempt for any violations of any provision of this Default Order.

49. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Default Defendants' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

50. Section 6c of the Act allows the Commission to assess civil monetary penalties against of the higher of \$140,000 per violation or triple the monetary gain to the defendants. The Commission has set forth several factors to consider in assessing a civil monetary penalty. These factors include: the relationship of the violation at issue to the regulatory purposes of the Act and whether the violations involved core provisions of the Act; whether or not scienter was involved; the consequences flowing from the violative conduct; financial benefit to a defendant; and harm to customers or the market. See *Fleury*, 2010 WL 5146283, at *19 (citing *In re Grossfeld*, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,921 at 44,467–8 (CFTC Dec. 10, 1996), *aff'd*, 137 F.3d 1300 (11th Cir. 1998)). The civil penalty should be proportional to the gravity of the offenses committed and sufficient to serve the goal of

deterrence. See *id*; *Reddy v. CFTC*, 191 F. 3d 109-123 (2nd Cir. 1999). This case warrants imposition of a substantial civil penalty against the Default Defendants because they engaged in off-exchange trading, thus depriving their customers of the protections of a regulated commodity market, and engaged in extensive fraud while doing so.

51. CDH, C. Hopkins and HAL shall **PAY** a civil monetary penalty in the amount of three million, four hundred seventy-four thousand dollars (\$3,474,000.00) (“CMP Obligation”), which represents the statutorily allowable penalty of triple the monetary gain to the Defendant. CDH, C. Hopkins and HAL are jointly and severally liable for this civil monetary penalty.

52. Blackstone and Keser shall **PAY** a civil monetary penalty in the amount of one million, eight hundred fifty-three thousand dollars (\$1,853,000.00) (“CMP Obligation”), which represents the statutorily allowable penalty of triple the monetary gain to the violator. Blackstone and Keser are jointly and severally liable for this civil monetary penalty.

53. The Default Defendants shall pay their respective CMP Obligations, plus post-judgment interest, within **ten (10) days** of the date of the entry of this Default Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Default Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Default Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Default Order pursuant to 28 U.S.C. § 1961 (2006).

54. Default Defendants shall pay their respective CMP Obligations 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 by electronic funds transfer is chosen, Default Defendants shall contact Nikki Gibson or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Default Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the Default Defendant and the name and docket number of this proceeding. Default Defendants 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.

C. Provisions Related to Monetary Sanctions

55. Partial Satisfaction: Any acceptance by the Commission or the Monitor of partial payment of Default Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of Default Defendants' obligation to make further payments pursuant to this Default Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

56. Notice: All notices required to be given by any provision in this Default Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Rosemary Hollinger
Deputy Director
U.S. Commodity Futures Trading Commission
525 W. Monroe, Suite 1100
Chicago, Illinois 60661

All such notices to the Commission shall reference the name and docket number of this action.

57. **Change of Address/Phone:** Until such time as Default Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Default Order, Defendants shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within **ten (10) calendar days** of the change.

58. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Default Order and for all other purposes related to this action, including any motion by Default Defendants to modify or for relief from the terms of this Default Order.

59. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Default Order shall be binding upon Default Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Default Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Default Defendants.

There being no just reason for delay, the Clerk of the Court is hereby directed to **ENTER** this Default Judgment for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against C.D. Hopkins Financial, LLC, Hard Asset Lending Group, LLC, Chadewick Hopkins, Blackstone Metals Group, LLC and Baris Keser.

DONE AND ORDERED in Chambers in West Palm Beach, Florida, this 5 day of May, 2014.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
Melanie E. Damian, Special Monitor and Corporate Manager
John A. King, II, *pro se* Defendant
Chadewick Hopkins, *pro se* Defendant