

Coin had arranged for the purchased metals to be stored at a depository. However, US Coin never purchased nor stored precious metals for these customers. Instead, Defendants misappropriated more than \$7.9 million in customer funds to pay for personal and business expenses; diverted funds invested by new customers to make Ponzi scheme-like payments to earlier customers who requested account withdrawals; and invested misappropriated customer funds in leveraged precious metals in separate accounts at a third-party precious metals dealer. Moreover, Defendants fabricated the purchase orders and account statements in an effort to prevent US Coin customers from learning that Defendants had misappropriated customer funds.

3. By virtue of this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in conduct in violation of Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1) (2012), and Commission Regulation (“Regulation”) 180.1(a), 17 C.F.R. § 180.1(a) (2019).

4. At all relevant times, the acts and omissions of Salvatore and Joseph Esposito were committed within the scope of their employment, agency, or office with US Coin. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), US Coin is liable as a principal for the actions and omissions of Salvatore and Joseph Esposito in violation of the Act and Regulations.

5. At all times during the Relevant Period, Salvatore and Joseph Esposito were controlling persons of US Coin. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Salvatore and Joseph Esposito are liable as a controlling person for the actions and omissions of US Coin in violation of the Act and Regulations.

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(a) (2012), the Commission brings this action to enjoin Defendants’ unlawful acts and practices, to compel

compliance with the Act and Regulations, and to further enjoin Defendants from engaging in any commodity-related activity.

7. In addition, the Commission seeks civil monetary penalties, restitution, and remedial ancillary relief, including but not limited to, trading and registration bans, disgorgement, rescission, pre-judgment and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

9. Venue properly lies with this Court pursuant to Section 6c of the Act because Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act and Regulations occurred, or are occurring, or are about to occur within this District, among other places.

III. PARTIES

A. Plaintiff

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act, and

the Regulations promulgated thereunder. The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street N.W., Washington, DC 20581.

B. Defendants

11. **US Coin Bullion LLC** is a Florida Corporation formed in 2012, with its principal place of business at 250 North Orange Avenue, Suite 500, Orlando, FL 32801. US Coin held itself out to the public as a precious metals broker that would sell physical precious metals to retail customers and store such metals on their behalf. US Coin solicited customers via phone, the internet, and U.S. mail. US Coin has never been registered with the Commission.

12. **Salvatore Esposito** is an individual residing in Orlando, FL. During the Relevant Period, he was the Manager and sole officer of US Coin. He was responsible for co-managing operations at US Coin with his brother, Joseph Esposito. In 2001, the National Association of Securities Dealers (“NASD”) barred Salvatore Esposito from association with any NASD member in any capacity, after finding that he “had an imposter . . . sit for and complete the Series 7 exam . . . and provided the NASD Staff with false, deceptive, inaccurate or incomplete testimony during an on the record interview.” He has never been registered with the Commission.

13. **Joseph Esposito** is an individual residing in Orlando, FL, and the brother of Salvatore Esposito. During the Relevant Period, he assisted Salvatore Esposito in operating US Coin. He has never been registered with the Commission.

IV. FACTS

14. US Coin was formed in February 2012. As of March 2012, Salvatore Esposito was its sole officer, director, and agent. Salvatore Esposito also opened bank accounts in the name of US Coin.

15. On or before March 2012, Joseph Esposito began assisting Salvatore Esposito in the operation of the US Coin business. In March 2012, Joseph Esposito filed multiple corporate documents with the Florida Secretary of State on behalf of US Coin. Joseph Esposito identified himself in these documents as an authorized representative of US Coin.

16. During the Relevant Period, US Coin, by and through Salvatore and Joseph Esposito, and other employees and agents, solicited members of the general public throughout the United States to engage in fully-paid precious metals transactions. In its solicitations to customers, US Coin offered the opportunity to purchase physical metals such as gold, silver, platinum, and palladium. US Coin charged customers commissions and/or fees for these transactions.

17. During the Relevant Period, US Coin, by and through Salvatore and Joseph Esposito, and other employees and agents, obtained more than \$7.9 million from approximately 120 customers for the purported purpose of investing in precious metals. Defendants misappropriated all of the customer funds they received and customers received no metals.

18. As part of their scheme, Defendants used the U.S. mail or other instrumentalities of interstate commerce, including telephone and internet, to: (1) receive funds from customers; (2) disseminate marketing documents to actual and potential customers; and (3) disseminate contracts containing false statements to actual and potential customers.

19. Customers ostensibly purchased physical metals with US Coin in multiple ways. They could open and fund an account at the company's web site, <https://uscoinbullion.com>. US Coin also received funds from customers via checks in the U.S. mail, interstate wires, and credit card payments.

20. Some customers took immediate delivery of the metals they purchased. The delivered metals transactions are not at issue in the present action.

21. At least one hundred twenty additional customers agreed not to take physical delivery of the metals they purchased. These customers signed a contract with US Coin, which stated that US Coin would deliver the customer's metals to a depository. US Coin provided each customer with a purchase order that confirmed the alleged purchase of precious metals, and identified the depository at which the metals would be held. Subsequently, US Coin sent each customer regular account statements that included the current purported value of the precious metals US Coin had allegedly purchased for them.

22. US Coin did not purchase any physical metals for these customers. Instead, Respondents misappropriated all of the customers' money, totaling more than \$7.9 million.

23. A significant amount of the misappropriated funds were used by Defendants, for their own benefit, to invest in silver and other precious metals on a leveraged basis at a third-party precious metals dealer ("Dealer"). In 2014, an associate of Salvatore and Joseph Esposito ("Person A"), acting on the Espositos' behalf, opened an account at Dealer in the name of a Florida company that Person A owned ("Company A"). Salvatore and Joseph Esposito caused millions of dollars in customer funds to be transferred from US Coin to Company A's account at Dealer. US Coin customer funds were used to finance leveraged metals investments in the Company A account at Dealer, and to pay Dealer interest charges and other fees. Ultimately, Defendants lost all of the misappropriated customer money that they had transferred to Dealer.

24. Defendants also misappropriated customer money for other purposes, including the payment of the personal expenses of Salvatore Esposito, the salaries of Salvatore and Joseph Esposito, and the business expenses of US Coin. Moreover Defendants diverted funds received

from new customers to make Ponzi scheme-like payments to earlier customers who requested refunds and/or wished to sell their metals back to US Coin.

25. Defendants did not obtain permission from US Coin customers to transfer customer funds to the Company A account at Dealer. Defendants also did not tell US Coin customers that the misappropriated funds had been lost through poor investments at Dealer. Instead, throughout the Relevant Period, Defendants continued to send US Coin customers falsified account statements that purported to show the present value of the fully-paid metals that Defendants represented they had purchased. Accordingly, throughout the Relevant Period, these US Coin customers believed that US Coin had arranged to purchase and store metals for them.

26. Additionally, Defendants falsely stated in many of the US Coin purchase orders that Company A would be the depository for precious metals that customers bought from US Coin. Company A was not a depository, and no precious metals were ever shipped to Company A. During the Relevant Period, Company A's registered address was a personal residence in Florida that belonged to relatives of Person A. The first name of Company A consisted of three initials; these initials were chosen intentionally to match the name of a well-known depository located outside of Florida. Accordingly, most customers believed, incorrectly, that the well-known depository held their metals.

27. This fraudulent scheme ended in July 2019, at which time Defendants had misappropriated all of their customers' money, totaling at least \$7,918,120.

28. At all times during the Relevant Period, Salvatore Esposito was the sole officer and director of US Coin. Together, Salvatore and Joseph Esposito managed the day to day operations, hired and trained sales persons, supervised the solicitation of retail customers, and engaged in such solicitations themselves. Salvatore Esposito controlled the bank accounts of US

Coin, was the ultimate decision maker, and controlled all aspects of US Coin's business.

Salvatore Esposito, with the assistance of Joseph Esposito, possessed both general control over US Coin's business and specific control over the conduct underlying US Coin's violations.

Moreover, Salvatore and Joseph Esposito knew that the basic nature or essence of US Coin's business was in retail precious metals transactions. They further knew that US Coin neither purchased nor held actual physical precious metals for approximately 120 customers

V. CRIMINAL PROCEEDINGS

29. On September 20, 2019, the United States Attorney for the Middle District of Florida filed an Information and separate Plea Agreements against Salvatore and Joseph Esposito. *See United States v. Salvatore Esposito and Joseph Esposito*, No. 6:10-cr-00208-CEM-DCI (M.D. Fla. Sept. 20, 2019), ECF Nos. 1, 3, 5. The Information charged Salvatore and Joseph Esposito with engaging in a conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1341 (2012).

30. The allegations set forth in the Information are substantially the same as the allegations set forth in this Complaint.

31. In a hearing on October 2, 2019, Magistrate Judge Daniel C. Irick issued a Report recommending that the guilty pleas and plea agreements signed by Salvatore and Joseph Esposito be accepted. *Esposito*, No. 6:19-cr-208-CEM-DCI (M.D. Fla. Oct. 2, 2019), ECF Nos. 18, 24.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT I

DECEPTIVE DEVICES OR CONTRIVANCES

**Violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a),
17 C.F.R. § 180.1(a) (2019)**

32. Paragraphs 1 through 31 of this Complaint are re-alleged and incorporated herein by reference.

33. 7 U.S.C. § 9(1) provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, to use or employ or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate

34. 17 C.F.R. § 180.1(a) provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, 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

35. During the Relevant Period, Defendants intentionally or recklessly used or employed manipulative or deceptive devices or contrivances, in connection with contracts of sale of any commodity in interstate commerce, including, but not limited to,

- (a) Misappropriating customer funds provided for the purchase of precious metals;
- (b) Misrepresenting that US Coin would purchase and store precious metals at a depository on the customers' behalf; and

- (c) Sending customers falsified purchase orders and account statements, in which US Coin misrepresented that precious metals had been purchased and stored for these customers.

By this conduct, Defendants violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a).

36. Each misappropriation and misrepresentation or omission of material fact, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation by Defendants of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a).

37. Each manipulative or deceptive device or contrivance, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a).

38. Salvatore and Joseph Esposito directly or indirectly controlled US Coin and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting US Coin's violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a). Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Salvatore and Joseph Esposito are liable for each of US Coin's violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a) as a controlling persons of US Coin.

39. The acts and omissions of Salvatore and Joseph Esposito, as described in this Complaint, were done within the scope of their employment and/or agency with US Coin. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012) and Regulation 1.2, 17 C.F.R. § 1.2 (2019), US Coin is liable as a principal for each act, omission, or failure of Salvatore and Joseph Esposito constituting violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a).

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers, enter:

- A. An order finding that Defendants violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2019).
- B. An order of permanent injunction permanently restraining, enjoining, and prohibiting Defendants, and any other person or entity associated with them, from engaging in conduct in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a).
- C. An order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, from directly or indirectly:
- (i) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
 - (ii) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for their own personal account or for any account in which they have a direct or indirect interest;
 - (iii) Having any commodity interests traded on their behalf;
 - (iv) 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 interests;
 - (v) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - (vi) 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) (2019); and

- (vii) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9).

D. An order requiring that Defendants, as well as any successors, disgorge to any officer appointed or directed by the Court all benefits received from the acts or practices that constitute violations of the Act and Regulations as described herein, including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, plus pre-judgment interest thereon from the date of such violations, and post-judgment interest;

E. An order requiring Defendants and any of their successors to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive pursuant to such procedure as the Court may order, to every customer whose funds Defendants received or caused another person or entity to receive as a result of the acts and practices described herein which constitute violations of the Act and Regulations, pre-judgment interest from the date of such violations;

F. An order directing Defendants, as well as any successors, to rescind, pursuant to such procedure as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constitute violations of the Act and Regulations, as described herein;

G. An order directing Defendants to pay a civil monetary penalty for each violation of the Act and Regulations of not more than the amount set forth by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 129 Stat. 584 (2015), title VII, Section 701, and promulgated in Commission Regulation 143.8, 17 C.F.R. § 143.8 (2019), plus post-judgment interest;

H. An order requiring Defendants, as well as any successors, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

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

Dated: January 8, 2020

Respectfully submitted,

/s/ Eugenia Vroustouris

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