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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	
Matthew L. Hall, individually and d/b/a Pacific Exchange Group,	**CFTC Docket No.** 13-32
Respondent.	

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that during the period between late April 2012 through February 2013 (the "relevant period"), Matthew L. Hall ("Hall"), individually and d/b/a Pacific Exchange Group ("PEG") ("the Respondent"), violated Section 4(a) of the Commodity Exchange Act, 7 U.S.C. § 6(a) (Supp. IV 2011). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether the Respondent engaged in the violation 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 Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

[1] Respondent consents 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 Respondent does 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 does Respondent 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, Respondent violated Section 4(a) of the Act by offering to enter into, entering into, confirming the execution of, and conducting an office and business in the United States for the purpose of soliciting, accepting orders for, and otherwise dealing in illegal, off-exchange retail commodity transactions. Specifically, the transactions were financed precious metals transactions with individual investors. Respondent received commissions and fees totaling $202,577 for these transactions.

B. RESPONDENT

Matthew L. Hall resides in West Palm Beach, Florida, and conducted business as **Pacific Exchange Group**, a telemarketing firm with a virtual office in Henderson, Nevada. Respondent solicited retail customers to execute retail commodity transactions with Hunter Wise Commodities LLC, by telephone and through a website, www.pacificexchange.com. Neither Hall nor PEG has ever been registered with the Commission in any capacity.

C. OTHER RELEVANT PARTIES

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

Lloyds Commodities, LLC ("Lloyds") was a Florida limited liability company with its principal place of business at 4880 Donald Ross Road, Suite 225, Palm Beach Gardens, Florida. From approximately May 2012 through December 2012, Lloyds functioned as an intermediary between Respondent and Hunter Wise.

D. FACTS

In late April 2012, Respondent entered into an agreement with Lloyds to act as one of Hunter Wise's dealers and solicit retail customers to execute retail commodity transactions with Hunter Wise. In January 2013, after Lloyd's terminated its business operations, Respondent entered into an agreement directly with Hunter Wise to solicit retail customers to execute retail transactions with the firm. During the relevant period, Respondent, individually and through his employees and agents, solicited retail customers, generally by telephone or through the PEG website, to enter into retail commodity transactions as part of a "leveraged program." Respondent represented to prospective 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) 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 Respondent about Hunter Wise's operations.

When retail customers placed orders with Respondent to enter into retail commodity transactions, the Respondent did not purchase physical commodities on the customers' behalf, provide loans to customers for the remaining portion of the purchase price, or store any physical commodities for customers. Instead, the Respondent simply passed all the details of the purchase, customer payments, and financing on to Hunter Wise, whose existence the Respondent did not disclose to retail customers. During the relevant period, customers paid a total of $567,975 to Hunter Wise and Respondent received commissions and fees totaling $202,577 for the retail financed precious metals transactions executed through Hunter Wise.

Neither Respondent nor Hunter Wise bought, sold, loaned, stored, or transferred any physical metals for these financed precious metals transactions. Likewise, neither Respondent nor Hunter Wise actually delivered any precious metals to customers. Instead, Hunter Wise managed its exposure on these transactions using derivatives in margin trading accounts with several entities. *See CFTC v. Hunter Wise Commodities*, LLC, No. 12-81311-CIV, Docket Entry 78, slip op. at 15-16 & nn. 23-24 (S.D. Fla. Feb. 25, 2013) (order granting preliminary injunction).

IV.

LEGAL DISCUSSION

Section 4(a) of the Act makes it unlawful for any person to offer to enter into, enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, or accepting any order for, or otherwise dealing in any transaction in, or in connection with, a commodity futures contract, unless such transaction is made on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market or derivatives transaction execution facility for the specific commodity. 7 U.S.C. § 6(a).

A. Relevant Statutory Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, 124 Stat. 1376 (2010) ("the Dodd-Frank Act") amended the Commodity Exchange Act to add, among other things, new authority over certain leveraged, margined, or financed retail commodity transactions, including authority to prohibit fraud in connection with such transactions.

Section 742(a) of the Dodd-Frank Act added Section 2(c)(2)(D) to the Act.[2] Section 2(c)(2)(D) broadly applies to any agreement, contract, or transaction in any commodity that is entered into with, or offered to (even if not entered into with), a non-eligible contract participant ("non-ECP")[3] or non-eligible commercial entity on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis. 7 U.S.C. § 2(c)(2)(D)(i). 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 [4]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."[5] Section 2(c)(2)(D)(ii)(III)(bb) excepts a contract of sale that creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer.

The Commission has stated that it is the view of the Commission that the determination of whether "actual delivery" has occurred within the meaning of Section 2(c)(2)(D)(ii)(III)(aa) requires a consideration of evidence beyond the four corners of the contract documents. This interpretation of the statutory language is based on Congress' use of the word "actual" to modify "delivery" and on the legislative history of Section 2(c)(2)(D)(ii)(III)(aa). Consistent with this interpretation, in determining whether actual delivery has occurred within 28 days, the Commission will employ a functional approach and examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction.[6] 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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[2] Section 2(c)(2)(D) of the Act became effective July 16, 2011.

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

[4] Section 4(b) of the Act, 7 U.S.C. § 6(b), authorizes the Commission to adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission. Section 4b of the Act, 7 U.S.C. § 6b, prohibits fraudulent conduct.

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

[6] *See* Retail Commodity Transactions Under Commodity Exchange Act, 76 Fed. Reg. 77,670 (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.

Section 2(c)(2)(D) of the Act applies to all agreements, contracts, and transactions entered into with, or offered to, non-ECPs on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis, as those terms are commonly used in the industry.

B. The Commission's Jurisdiction

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

Respondent's retail financed precious metals transactions executed through Hunter Wise did not result in actual delivery to the customer. As found by the district court in *Hunter Wise*, Hunter Wise had no actual metal to deliver. *Hunter Wise*, No. 12-81311-CIV, Docket Entry 78, slip op. at 19-20 & n.30 (order granting preliminary injunction) and Docket Entry 155, slip op. at 15-17 (S.D. Fla. Jun. 21, 2013) (order denying motions to dismiss). Respondent's transactions are not excepted from the Commission's jurisdiction under Section 2(c)(2)(D)(ii)(III)(A) of the Act.

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

As stated above, retail commodity transactions within the scope of Section 2(c)(2)(D) of the Act are subject to enforcement under Section 4(a) of the Act, among other provisions, as if such transactions are commodity futures contracts.

Respondent offered to enter into, entered into, and confirmed the execution of retail financed precious metals transactions. Respondent also conducted an office and business in the United States for the purpose of soliciting, accepting orders for, and otherwise dealing in retail financed precious metals transactions. None of the retail financed precious metals transactions were conducted on or subject to the rules of a board of trade that has been designated or registered by the CFTC as a contract market or derivatives transaction execution facility for precious metals. Respondent therefore violated Section 4(a) of the Act.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the relevant period, Hall, individually and d/b/a PEG, violated Section 4(a) of the Act, 7 U.S.C § 6(a).

VI.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which he, without admitting or denying the findings and conclusions herein:

A. Acknowledges receipt of service of this Order;

B. Admits 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. Waives:

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 he 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 he 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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. makes findings by the Commission that Respondent violated Section 4(a) of the Act;

2. orders Respondent to cease and desist from violating Section 4(a) of the Act;

3. orders Respondent to pay restitution to customers in the amount of two hundred two thousand, five hundred seventy-seven dollars ($202,577), plus post-judgment interest;

4. orders that Respondent 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 him trading privileges, and

5. orders Respondent and his 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 Respondent's Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Section 4(a) of the Act, as amended, 7 U.S.C. § 6(a).

B. Respondent shall pay restitution in the amount of two hundred two thousand, five hundred seventy-seven dollars ($202,577) 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 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.

Respondent shall make his payments of the Restitution Obligation under this Order to Melanie Damian, Esq., the corporate monitor appointed by the court in *CFTC v. Hunter Wise Commodities, LLC*, No. 12-81311-CIV (S.D. Fla. Feb. 25, 2013) ("Hunter Wise corporate monitor"). Respondent shall make such payments in the name "Matthew Hall/Pacific Exchange Group (Hunter Wise Transactions) 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 Melanie Damian, Esq., Damian & Valori LLP, 1000 Brickell Ave., Ste. 1020, Miami, FL. 33131, under a cover letter that identifies the Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. To the extent any such funds accrue to the U.S. Treasury for satisfaction of Respondent's Restitution Obligation, such funds shall be transferred to the Hunter Wise corporate monitor.

C. Respondent is permanently prohibited from, directly or indirectly, engaging in or trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a), and all registered entities shall refuse him trading privileges.

D. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. <u>Public Statements</u>: Respondent agrees that neither he nor any of his successors and assignees, agents or employees under his 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.

2. Respondent agrees that he shall never, directly or indirectly:

   a. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh)), security futures products, swaps, (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (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, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for Respondent's own personal account(s) or for any account(s) in which Respondent has 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 Respondent's 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); and/or

f. act 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, 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).

E. Cooperation with the Hunter Wise Corporate Monitor: Respondent shall cooperate with the Hunter Wise corporate monitor as appropriate to provide such information as the Hunter Wise corporate monitor deems necessary and appropriate to identify Respondent's customers. Respondent shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

F. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

G. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Hunter Wise corporate monitor of partial payment of Respondent's Restitution Obligation, shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

H. Change of Address/Phone: Until such time as Respondent satisfies in full his Restitution Obligation as set forth in this Order, Respondent 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.

Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 4, 2013