

MAR. 30, 2011

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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

v.

**KASTLE & HAWKE, INC.,
JAMES A. WARD, and
NATHANIEL R. WALKER,**

Defendants.

Civil Action No:

11-60674-CIV-COHN/SELTZER

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF
AND PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

The U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, hereby alleges as follows:

I. SUMMARY

1. Beginning in at least August 2007, defendants Kastle & Hawke, Inc. (“K&H”) and its principals, James A. Ward (“Ward”) and Nathaniel R. Walker (“Walker”) (collectively, “Defendants”), have defrauded customers in connection with transactions for the purchase, sale, or delivery of physical precious metals on a leveraged basis. Specifically, Ward and K&H have misappropriated at least \$319,000 from customers for their own benefit and have made fraudulent misrepresentations to prospective and actual customers of K&H, which Ward and Walker controlled.

2. Among the fraudulent misrepresentations were the following: (1) K&H would sell physical precious metals, including gold, silver, platinum, and palladium, to customers on a

leveraged basis; (2) the leverage transactions would require customers to make an initial deposit equivalent to 23% of the total value of physical precious metals purchased, after which K&H would arrange loans for the remaining 77%; (3) K&H would store customers' physical precious metals in a secure depository; (4) interest would accrue on the loans K&H arranged; and (5) customers could cash out their equity by selling their purchased metals at any time. In fact, K&H does not hold, nor has it ever acquired, any physical precious metals on behalf of customers.

3. Instead, Ward and K&H have actively concealed this fraud by perpetrating additional frauds. They have manufactured and sent customers false account statements, charged customers interest on nonexistent loans, and refused to return customer funds when instructed to do so by customers. When customers have instructed Ward to sell the metals purportedly in their accounts and cash out their equity as reported by Ward and/or reflected in their statements, Ward and K&H have made additional fraudulent misrepresentations, including that they: (1) would sell metals in customers' accounts as requested; (2) were unable to sell metals due to (a) rogue traders, (b) price manipulation, (c) market closures for holidays, or (d) "force majeure"; and (3) were unable to sell metals and return customer equity until customers signed a legal document purporting to release Defendants from any liability. Ward and K&H have failed to return customer equity even after representing that they sold metals, and their excuses for their claimed inability to sell metals are nothing but pretext.

4. Furthermore, Ward's and K&H's offer and sale of palladium to customers on a leveraged basis is unlawful.

5. 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 the Commodity

Exchange Act (the “Act”) as amended by the Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010). Specifically, Ward and K&H have violated Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3, and Walker is liable for K&H’s violations as a controlling person of K&H pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

6. Unless restrained and enjoined by this Court, Defendants are likely to continue engaging in the acts and practices alleged in this complaint or in similar acts and practices.

7. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act and the Regulations promulgated thereunder. In addition, the CFTC seeks restitution, rescission, civil monetary penalties, and such other equitable relief as this Court may deem necessary or appropriate.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), which authorizes the CFTC to seek injunctive relief in the proper district court of the United States against any person whenever it shall appear to the CFTC that such 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.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Ward and Walker reside in this District, Defendants transacted business in

this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

III. THE PARTIES

10. 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 by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010 (“WSTAA”)), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2010).

11. Defendant **Kastle & Hawke, Inc.** is a Florida corporation incorporated in July 2007 with a business address in Ft. Lauderdale, Florida. Since its incorporation, K&H has been in the business of offering, entering into, and confirming the execution of transactions for the purchase, sale, or delivery of gold, silver, platinum, and palladium on a leveraged basis. K&H has never been registered with the Commission in any capacity.

12. Defendant **James A. Ward** represented himself as the President of K&H on its corporate bank account application and is responsible for all facets of K&H’s operations. Ward resides in Ft. Lauderdale, Florida. From 2005 to 2007, Ward was registered with the Commission as an associated person (“AP”) of various entities registered with the Commission, but he has never been registered as an AP of K&H.

13. Defendant **Nathaniel R. Walker** is the President and Director of K&H according to its Articles of Incorporation. Walker resides in Lauderhill, Florida. From 2004 to 2007,

Walker was registered with the Commission as an AP of various entities registered with the Commission, but he has never been registered as an AP of K&H.

IV. STATUTORY BACKGROUND

14. Section 19(a) of the Act, 7 U.S.C. § 23(a), strictly prohibits the offering, entering into, or execution of transactions for the delivery of any commodity pursuant to standardized contracts commonly known to the trade and/or marketed or managed in substantially the same manner as margin accounts, margin contracts, leverage accounts, or leverage contracts, except as authorized under subsection (b) of that Section.

15. Section 19(b) of the Act, 7 U.S.C. § 23(b), authorizes the offering, entering into, or execution of transactions only for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum pursuant to the standardized contracts described in subsection (a), and then only if done so in compliance with the rules and regulations prescribed by the Commission. Subsection (b) does not authorize transactions for any other commodity in this manner, including transactions for palladium.

16. Pursuant to subsection (b) of Section 19, in 1975, the Commission promulgated Regulation 31.3 (now codified at 17 C.F.R. § 31.3), which makes it unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statement of a material fact or omit a material fact necessary in order to make statements made not misleading; or (c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person “in, or in connection with (1) an offer to make or the making of, any transaction for the purchase, sale or delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or any other commodity pursuant to a standardized contract commonly known

to the trade as a margin account, margin contract, leverage account, or leverage contract, or pursuant to any contract, account, arrangement, scheme, or device that serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or (2) the maintenance or carrying of any such contract.”

V. DEFENDANTS' FRAUDULENT SCHEME

A. The Nature Of K&H's "Leveraged Purchase Program"

17. In approximately July 2007, Walker and Ward established K&H as a business that offered, entered into, and confirmed transactions for the purchase, sale, or delivery of gold bullion, silver bullion, platinum bullion, and palladium bullion on a leveraged basis. The business of K&H was carried out by Walker and Ward as principals. Walker served as the President and Director of K&H for purposes of corporate filings with the State of Florida, while Ward served as President of K&H for purposes of administering the company's finances. Both Walker and Ward also personally solicited customers and received payments from K&H's bank account.

18. Shortly after establishing K&H, Defendants and at least one K&H salesman began soliciting customers and prospective customers throughout the United States, including through K&H's website and by telephone, to purchase physical precious metals from K&H on a leveraged basis through what they described as K&H's "Leveraged Purchase Program.”

19. On the K&H website, K&H claimed to “specialize in the Leveraged Purchase of Precious Metals” and explained the “*power* of Leverage” to potential customers as the ability to “have approx[imately] 400% more physical Precious Metal working for you than on a cash basis. In other words, should Silver change by \$1.00/oz, your effect would be \$4.00/oz.” [*Emphases and grammar in original.*]

20. K&H further advertised the purported advantages of purchasing physical precious metals on a leveraged basis instead of on an outright basis using the following table on the K&H website:

PHYSICAL 'v' LEVERAGE

Transportation – Yes	Unnecessary
Insurance – Yes	Included
Storage – Yes	Included
Trading – Not Immediate	Instantaneous
Delivery – Mandatory	Available
Dollars – 1:1 [Example \$100,000]	4:1 [Example: \$400,000]
Assay on sale – Yes	Unnecessary
Commission – 5% - 8% Every buy/sell	10%-15% ONCE Only for up to 5 Years
Price Moves – \$1.00/oz = \$1.00	\$1.00/oz = \$4.00
Use Profits to Purchase – No	Yes + take Profit Checks

21. According to the K&H website, the Leveraged Purchase Program allowed customers to finance up to 77% of purchased metals for up to 5 years without having to make monthly payments or undergo credit checks. The website further stated that “You may sell your metal with one phone-call or take delivery at anytime.” [*Grammar in original.*]

22. Customers who purchased metals through K&H’s Leveraged Purchase Program customarily executed a Client Account Application and Agreement (“Customer Agreement”). The Customer Agreement states, “Client understands that each transaction by the client is a purchase or sale of physical Precious Metals for immediate delivery and is not a Futures Contract, Option on a Futures Contract or securities transaction. The choice of payment in full or the use of Collateralized Financing is that of the client.” [*Grammar in original.*]

B. Defendants Made Misrepresentations When Soliciting Customers And Executing Transactions To Purchase Physical Precious Metals From K&H On A Leveraged Basis

23. From July 2007 to November 2010, K&H received approximately \$407,000 from at least 12 customers for the purchase of gold, silver, platinum, and palladium on a leveraged basis. When soliciting these funds, Ward and Walker, individually, and K&H, through its employees and agents, misrepresented to customers that K&H would sell physical precious metals to customers, arrange financing for the leveraged portion of the total value of metals purchased, and store the metals in a secure depository. Defendants knew that the foregoing representations were false or recklessly disregarded the truth when they were made.

24. K&H misrepresented on the K&H website and Defendants misrepresented in telephone solicitations that the transactions required customers to make an initial deposit equivalent to 23% of the total value of metals purchased plus a commission, after which K&H would acquire the metals and arrange financing for the remaining 77% of the value at an annual percentage rate ("APR") of 5%. K&H further misrepresented on the K&H website that physical precious metals purchased by customers would be stored at Delaware Depository Service Company ("DDSC") by referencing "Delaware Depository" in multiple locations, linking to the DDSC webpage, describing the depository as "an Exchange-approved company" that "provides secure, insured, segregated custody services to banks and other lending institutions that finance precious metal dealer inventories," and stating that "precious metal assets held at this depository are maintained in customer-specific custody accounts, on a fully insured basis."

25. After customers placed orders to purchase physical precious metals on a leveraged basis from K&H, Ward and K&H mailed, emailed, or otherwise delivered transaction confirmations displaying the amount and value of metals purportedly purchased, along with the interest rate and commission charged on the purchase. Several of these confirmations stated,

“Client understands that Kastle & Hawke, Inc. deals strictly with Physical Precious Metals only.”

[*Grammar in original.*] Ward and K&H also mailed, emailed, or otherwise delivered to customers monthly statements displaying the total amount and value of metals that had purportedly been purchased to date, the interest fee charged, the total leveraged portion, and the remaining customer equity. These confirmations and statements led customers to believe that K&H had sold physical precious metals to them and arranged financing on the leveraged portion, for which they were being charged monthly interest.

26. However, Defendants never acquired any physical precious metals on behalf of customers, and Defendants failed to arrange financing for the leveraged portion of metals purchases. Furthermore, K&H has never had a metals storage account, or any other type of account, at DDSC. Ward and K&H simply manufactured and sent customers false account statements and charged customers interest on nonexistent loans.

27. In fact, Ward admitted to a K&H salesman in approximately late 2009 or early 2010 that he neither purchased metals nor obtained financing for customers, and Ward told at least one customer in approximately April 2010 that he did not always purchase metals for customers.

C. Defendants Made Misrepresentations Regarding Customers’ Ability To Cash Out Their Equity By Selling Metals

28. Ward and Walker, individually, and K&H, through its employees and agents, misrepresented to customers that customers could cash out their equity by selling the physical precious metals they thought they had purchased on a leveraged basis at any time. Defendants knew that the foregoing representations were false or recklessly disregarded the truth when they were made.

29. Specifically, K&H misrepresented on the K&H website that “You may sell your metal with one phone-call or take delivery at anytime” and that customers could use their profits to purchase additional metals or receive profit checks. [*Grammar in original.*]

30. However, since at least April 2010, Ward and K&H have refused to execute customer orders to sell physical precious metals they thought they had purchased from K&H on a leveraged basis and return customer equity, and Ward and K&H have provided patently false excuses for their refusal to do so.

31. For example, on or about April 20, 2010, a K&H customer who resides in Ohio instructed Ward to sell the 150 ounces of palladium purportedly in his account, which he had purchased from K&H on a leveraged basis. Ward initially confirmed the sale over the telephone and told the customer that his resulting equity was \$34,778. Subsequently, Ward told the customer K&H could not return any equity until the customer signed a document purporting to release K&H and its officers and employees from liability (“Release”). Even though the customer signed and notarized the Release as requested, Ward and K&H failed to return his equity. Over the following days, Ward gave the customer additional excuses for why he could not return the equity, including an unspecified London company’s failure to pay K&H that prevented K&H from being “liquid” enough, the illiquidity of the physical palladium market, and “rogue agents” in London that made it impossible to trade palladium. On or about April 23, 2010, Ward and K&H sent the customer an email stating that K&H could not process orders to purchase or sell palladium due to “Force Majeure” and that all palladium purchases between April 19 and 23, 2010 were “suspended until further notice.” Ward and K&H subsequently sent the customer a monthly account statement for April listing the April 20 palladium sale as “Unfilled” and an email on or about July 12, 2010 claiming “there was never any sale” of

palladium on April 20. Despite the customer's continued attempts by telephone, email, and mail to request the return of his equity remaining after the purported April 20 palladium sale, Ward and K&H have refused to return his equity, and the monthly statements the customer has received since April reflect that they have continued to charge the customer monthly interest on the 150 ounces of palladium. Contrary to their representations, palladium traded actively in the spot and futures markets throughout this time period.

32. Similarly, on or about April 28, 2010, a K&H customer who resides in Florida instructed Ward to sell the 2,500 ounces of silver purportedly in his account, which he had purchased from K&H on a leveraged basis, and send him the resulting equity of approximately \$20,378. Ward told this customer that he could not place his order over the telephone, even though the customer had placed all previous orders over the telephone, and demanded that the customer sign and notarize a Release. Ward also told the customer on multiple occasions that he could not return his equity due to "problems in London" and "silver manipulation" that made it impossible to trade silver. Despite the customer's continued attempts by telephone, email, and mail to request the sale of the silver he thought he had purchased and the return of his equity, Ward and K&H have refused to return his account equity, and the monthly statements the customer has received since May reflect that Ward and K&H have continued to charge the customer monthly interest on the 2,500 ounces of silver. Contrary to their representations, silver traded actively in the spot and futures markets throughout this time period.

D. Defendants Misappropriated Customer Funds

33. Between at least August 2007 and November 2010, Ward and K&H misappropriated at least \$319,000 of customer funds and used the misappropriated funds for various personal expenses and purchases, including, but not limited to, Ward's car, rent payments, and restaurant meals and Walker's car-related expenses.

34. In fact, while Ward claimed he was unable to return customers' equity in April and May, 2010, he withdrew approximately \$21,350 in cash from the K&H bank account and spent nearly \$9,000 at a grocery store chain, draining the bank account to a balance of less than \$500.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

Defendants Violated Section 19 Of The Act And Regulation 31.3: Fraud In Connection With Certain Leverage Transactions

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. Ward and K&H violated Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3, by using the mails and other means of interstate commerce, directly or indirectly, to (a) employ a device, scheme, or artifice to defraud; (b) make untrue statements of material fact or omit material facts necessary to make statements made not misleading; and (c) engage in acts or practices that operate or would operate as a fraud or deceit on any person, in or in connection with (1) offers to make, or the making of, transactions for the purchase, sale, or delivery of gold, silver, platinum, and palladium pursuant to standardized contracts commonly known to the trade and/or marketed or managed in substantially the same manner as margin accounts, margin contracts, leverage accounts, or leverage contracts, or (2) the maintenance or carrying of such contracts.

37. Specifically, Ward and K&H have misappropriated customer funds; made material misrepresentations to customers that K&H would sell physical precious metals to them on a leveraged basis, arrange financing on the leveraged portion of purchases, and store the metals in a secure depository; and made material misrepresentations that customers owed interest on the purported financing and could cash out their equity by selling their metals at any time.

Additionally, Ward and K&H have refused to sell metals purportedly in customers' accounts and return customers' funds as instructed by customers, and they have made material misrepresentations regarding their refusal to do so.

38. Ward and K&H engaged in the acts and practices described above willfully, knowingly, or with reckless disregard for the truth.

39. Ward and Walker were acting as agents of K&H when engaged in the acts alleged herein. Therefore, K&H, as their principal, is liable for the acts constituting Ward's and Walker's violations of Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

40. Ward and Walker controlled K&H and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting K&H's violations alleged in this count. Ward and Walker are therefore liable for K&H's violations of Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3, as controlling persons pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

41. Each act of employing a device, scheme, or artifice to defraud; making misrepresentations of material facts or omitting material facts; or engaging in acts or practices that have defrauded or deceived customers in connection with transactions for the purchase, sale, or delivery of gold, silver, platinum, or palladium pursuant to standardized contracts commonly known to the trade and/or marketed or managed in substantially the same manner as margin accounts, margin contracts, leverage accounts, or leverage contracts, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3.

COUNT TWO

Defendants Violated Section 19 Of The Act: Offering, Entering Into, Or Confirming The Execution Of Certain Leverage Transactions Involving Palladium

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. Ward and K&H violated Section 19 of the Act, 7 U.S.C. § 23, by offering, entering into, and confirming the execution of transactions for the purchase, sale, or delivery of palladium pursuant to standardized contracts commonly known to the trade and/or marketed or managed in substantially the same manner as margin accounts, margin contracts, leverage accounts, or leverage contracts contrary to the terms of Section 19(b)(1), 7 U.S.C. § 23(b)(1), which only authorizes persons to offer, enter into, or confirm the execution of such transactions for the purchase, sale, or delivery of “silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum,” but not palladium.

44. Ward was acting as an agent of K&H when he engaged in the acts alleged herein. Therefore, K&H, as his principal, is liable for the acts constituting Ward’s violations of Section 19 of the Act, 7 U.S.C. § 23, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

45. Ward and Walker controlled K&H and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting K&H’s violations alleged in this count. Ward and Walker are therefore liable for K&H’s violations of Section 19 of the Act, 7 U.S.C. § 23, as controlling persons pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

46. Each act of offering, entering into, or confirming the execution of transactions for the purchase, sale, or delivery of palladium pursuant to standardized contracts commonly known to the trade and/or marketed or managed in substantially the same manner as margin accounts, margin contracts, leverage accounts, or leverage contracts, including, but not limited to, those

specifically alleged herein, is alleged as a separate and distinct violation of Section 19 of the Act, 7 U.S.C. § 23.

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, and pursuant to its own equitable powers:

A. Find Defendants liable for violating Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3;

B. Enter a statutory restraining order with notice and an order of preliminary injunction pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering, or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records, or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including, but not limited to, all funds, personal property, money, or securities held in safes or safety deposit boxes and all funds on deposit in any financial institution, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Ward, Walker, and/or K&H;

C. Enter an order directing that Defendants make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds Defendants received from and paid to customers and other persons in connection with transactions for the purchase, sale, or delivery of gold, silver, platinum, or palladium pursuant to standardized contracts commonly known to the trade and/or marketed or managed in substantially the same manner as margin accounts, margin contracts, leverage accounts, or leverage contracts, including the names, mailing addresses, email addresses, and telephone numbers of any such persons from whom they received such funds from July 1, 2007 to and including the date of such accounting, and all disbursements for any purpose whatsoever of funds received from customers, including salaries, commissions, fees, loans, and other disbursements of money and property of any kind, from July 1, 2007 to and including the date of such accounting;

D. Enter an order requiring Defendants immediately to identify and provide an accounting for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan account held by, under the actual or constructive control of, or in the name of Ward, Walker, and/or K&H, whether jointly or otherwise, and requiring them

to repatriate all funds held in such accounts by paying them to the Registry of the Court, or as otherwise ordered by the Court, for further disposition in this case;

E. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. engaging in conduct in violation of Section 19 of the Act, 7 U.S.C. § 23, or Regulation 31.3, 17 C.F.R. § 31.3;
2. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 1a(29)), including, but not limited to, trading for themselves, K&H, and K&H customers;
3. entering into any transactions involving leverage (as described in Section 19 of the Act, 7 U.S.C. § 23, and Regulation 31.3, 17 C.F.R. § 31.3) (“Section 19 contracts”), commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for any personal or proprietary account or for any account in which they have a direct or indirect interest;
4. having any Section 19 contracts, commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

5. 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 Section 19 contracts, commodity futures, options on commodity futures, commodity options, and/or forex contracts;

6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any Section 19 contracts, commodity futures, options on commodity futures, commodity options, and/or forex contracts;

7. 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

8. 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 registered, 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);

F. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court, or directly to customers, all benefits received, including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

G. Enter an order directing Defendants and any successors thereof to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between Defendants and any of the customers whose funds were

received by Defendants as a result of the acts and practices which constituted violations of the Act as described herein and restore to each participant the full amount of his or her original investment;

H. Enter an order directing each Defendant to pay a civil monetary penalty in the amount of not more than the greater of: (1) triple the monetary gain to Defendants for each violation of the Act; or (2) \$130,000 for each violation of the Act occurring prior to October 22, 2008 and/or \$140,000 for each violation of the Act occurring on or after October 23, 2008;

I. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

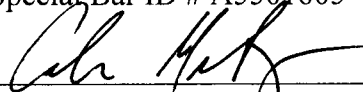
J. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Date: 3/30/11

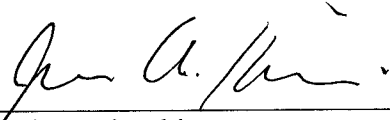
Respectfully submitted,



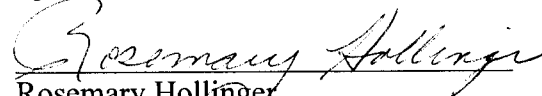
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