

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 15-cv-62049-BLOOM/Valle

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

Plaintiff,

v.

TODD OWEN MARSHALL, et al.,

Defendants.

ORDER

THIS CAUSE is before the Court upon Plaintiff's Motion for Entry of Final Default Judgment, ECF No. [34] ("Motion"), filed on May 13, 2016. On September 28, 2015, Plaintiff U.S. Commodity Futures Trading Commission ("Plaintiff" or the "Commission") filed its Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties, pursuant to the Commodity Exchange Act ("CEA"), against Defendants Todd Owen Marshall ("Marshall"), Harvard Assets LLC ("Harvard Assets"), London Assets Inc. ("London Assets"), and Harvard International Trading, Inc. ("Harvard International") (collectively, "Defendants"). *See* ECF No. 1 ("Complaint"). On February 18, 2016, the Commission filed an Amended Complaint, alleging that Marshall was concealing his whereabouts and that Defendants operated, conducted, engaged in or carried on a business or business venture in the State of Florida, or had an office or agency in Florida. *See* ECF No. [18] (Amended Complaint ("Am. Compl.)) at ¶¶ 66-81.

In light of those allegations, the Commission effected service of process on Defendants through substitute service on the Secretary of State of Florida pursuant to Fla. Stat. §§ 48.161 and 48.181. ECF No. [29]. The Secretary of State accepted service of process of the Amended

Complaint and related Summonses for Marshall, Harvard Assets, and London Assets on February 23, 2016, and for Harvard International on March 8, 2016. ECF No. [28].

As required by Fla. Stat. § 48.161(1), on February 24, 2016, the Commission sent to Defendants, by certified mail, return receipt requested, copies of the Amended Complaint and Summonses, as well as a notice that the same were served on Defendants by serving the Secretary of State. ECF Nos. [24-25]. In addition, on March 24, 2016, the Commission sent Defendants, by certified mail, return receipt requested, copies of correspondence from the Secretary of State confirming the acceptance of service of the Amended Complaint and Summonses for each Defendant. ECF Nos. [26-27]. The Commission obtained return receipts confirming that the copies of the Amended Complaint and Summonses were received by all Defendants at a UPS mailbox address that Marshall previously identified to the Commission as his mailing address and that was subsequently confirmed as Marshall's mailing address by a clerk employed at the location. ECF No. [15-1] at ¶ 6; ECF No. [29] at ¶ 11. Pursuant to Fla. Stat. § 48.161(1), the Commission filed copies of those return receipts with the Court along with its declaration of compliance, thereby completing the statutory requirements for substitute service of process. ECF No. [29].

Because service of process was properly made on all Defendants, through the Secretary of State, by March 8, 2016, Defendants were required to answer the Amended Complaint, at the latest, no later than March 29, 2016. ECF No. [28]. Defendants have failed to appear in this action, answer the Amended Complaint, or otherwise defend this action within the time required by Rule 12(a)(1) of the Federal Rules of Civil Procedure. The Commission filed its Motion for Clerk's Entry of Default on April 19, 2016, ECF No. [30], and the Clerk entered default as to all Defendants on April 20, 2016, ECF No. [31].

I. FACTS AND CONCLUSIONS OF LAW

A. The Parties

1. Plaintiff CFTC is an independent federal regulatory agency charged by Congress with the administration and enforcement of the CEA, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* Am. Compl. ¶ 14.

2. Harvard International was a Delaware corporation, incorporated on or about February 21, 2008, with a place of business in Boca Raton, Florida. From on or around July 16, 2011 to April 30, 2012 or later (the “First Relevant Period”), Harvard International claimed to be a market maker and dealer to retail customers in precious metals, including gold, silver, platinum, and palladium bullion, as well as gold, silver, platinum, and palladium coins. Using telemarketers and a website it owned, www.harvardassets.com, Harvard International solicited retail customers to invest in leveraged, margined, or financed precious metals transactions. From on or about April 29, 2008 to on or about April 30, 2010, Harvard International was registered with the Commission as an introducing broker, notice broker dealer, and NFA member. Harvard International’s status as a Delaware corporation was revoked on or about March 1, 2014. Harvard International is not currently registered with the Commission in any capacity. *Id.* ¶ 15.

3. Harvard Assets was a Delaware limited liability company, formed on or about April 18, 2012, with a place of business in Boca Raton, Florida, and with the same address as Harvard International but a different suite number. From on or around September 6, 2012 or earlier to March 5, 2013 or later (the “Second Relevant Period”), Harvard Assets claimed to be a market maker and dealer to retail customers in precious metals, including gold, silver, platinum, and palladium bullion, as well as gold, silver, platinum, and palladium coins. Using telemarketers and the website www.harvardassets.com, Harvard Assets solicited retail customers

to invest in leveraged, margined, or financed precious metals transactions. Harvard Assets' status as a Delaware limited liability company was revoked on or about September 6, 2014. Harvard Assets has never been registered with the Commission in any capacity. *Id.* ¶ 16.

4. London Assets, an affiliate of Harvard Assets, was a Delaware corporation, incorporated on or about August 27, 2012, with a place of business in Boca Raton, Florida, and with the same address as Harvard International. During the Second Relevant Period, Harvard Assets and London Assets had at least one common officer, employee, and/or agent. For leveraged, margined, or financed precious metals transactions on behalf of Harvard Assets' customers that were introduced to Hunter Wise Commodities, LLC ("Hunter Wise Commodities"), Harvard Assets solicited and funneled the customer funds and orders to Hunter Wise Commodities through London Assets. London Assets' status as a Delaware corporation was forfeited on or about January 26, 2014. London Assets has never been registered with the Commission in any capacity. *Id.* ¶ 17.

5. Marshall is an individual whose last known address is in Deerfield Beach, Florida. During the First Relevant Period, Marshall was President and a principal of Harvard International. During the Second Relevant Period, Marshall was a principal of Harvard Assets, and was Director of the Board, Vice President, and Treasurer of London Assets. For most of the period from January 1998 through May 2008, Marshall was registered with the Commission as an associated person or principal of one or more Commission registrant firms. Marshall is not currently registered with the Commission in any capacity. *Id.* ¶ 18.

6. On or about June 30, 1999, the National Futures Association ("NFA") Business Conduct Committee issued a complaint alleging that Marshall and others made deceptive and misleading sales solicitations. On or about July 5, 2000, an NFA Hearing Panel issued a

decision ordering Marshall to pay a \$5,000 fine, tape record his conversations with customers for six months, maintain a log of his solicitations, retain the tapes for two years, and promptly produce the same to the NFA or the CFTC upon request. *Id.* ¶ 19.

7. On or about June 28, 2007, the NFA Business Conduct Committee issued a complaint against Marshall and others, alleging misconduct by Marshall in connection with another firm he owned and controlled, Sterling International Commodities (“Sterling”). On or about July 9, 2008, an NFA Hearing Panel issued a decision finding that Marshall:

made misleading sales solicitations that exaggerated the profit potential of trading options; . . . minimized the risk of loss of trading options and spreads; misrepresented the performance of Sterling’s . . . customers; misrepresented that Sterling’s commissions were normal and customary when, in fact, they were excessive . . . and failed to disclose that the vast majority of Sterling’s . . . customers lost money in the years immediately prior to the solicitations.

Id. ¶ 20.

8. The panel further found that Marshall used “high-pressure sales tactics, failing to uphold high standards of commercial honor and just and equitable principles of trade, and fail[ed] to supervise Sterling’s sales force.” *Id.* ¶ 21.

9. The panel barred Marshall from NFA membership or associated membership and from acting as a principal of an NFA member for three years. Among other things, the panel ordered Marshall to pay a \$50,000 fine if, after the expiration of the three-year membership bar, he were granted NFA membership or associated membership or became a principal of an NFA Member. The panel also ordered Marshall to tape record, for a period of one year, all conversations between him and existing and potential customers and retain the tapes for a period of one year from the time they were created if he again became an NFA member or associate. Finally, the panel ordered that in the event Marshall became a principal of an NFA Member, Marshall would be required to cause all associated persons of that firm, and of any firm of which

he became a principal, to tape record, for one year, all conversations that occurred between the associated persons and existing or potential customers and to retain these tapes for a period of one year from their creation. *Id.* ¶ 22.

B. Other Relevant Entities

10. Harvard Assets and London Assets conducted their customers' financed precious metals transactions through Hunter Wise Commodities. *Id.* ¶ 23.

11. Harvard International conducted its customers' financed precious metals transactions through Worth Group Inc. *Id.* ¶ 24.

12. Hunter Wise Commodities was formed as a California limited liability company in July 2007, registered as a Nevada limited liability company in October 2010, and maintained business addresses in Las Vegas, Nevada, and Irvine, California. Hunter Wise Commodities had several wholly-owned subsidiaries and related entities including Hunter Wise Credit, LLC (a Nevada registered LLC), Hunter Wise Trading, LLC (a Nevada registered LLC), and Hunter Wise Services, LLC (a California registered LLC) (collectively, together with Hunter Wise Commodities, "Hunter Wise"). Hunter Wise held itself out as a physical commodity trading company, wholesaler, back office support service provider, and finance company offering off-exchange financed trading in physical metals. *Id.* ¶ 25.

13. On December 5, 2012, the Commission filed a civil action in the Southern District of Florida, captioned *CFTC v. Hunter Wise Commodities, LLC, et al.*, Case No. 12-81311-CIV, against Hunter Wise and others, alleging, among other things, that Hunter Wise engaged in illegal off-exchange precious metals transactions from July 16, 2011 continuing until the date of the complaint. On February 25, 2013, the Court entered a preliminary injunction that, among other things, prohibited Hunter Wise from offering investments in physical metals to the retail

public, froze its assets, and appointed a corporate monitor (ECF No. [78], Case No. 12-81311-CIV, *aff'd by CFTC v. Hunter Wise Commodities, LLC, et al.*, No. 13-10993 (11th Cir. Apr. 15, 2014)). On February 19, 2014, the Court granted the Commission's motion for partial summary judgment, finding that the remaining defendants, including Hunter Wise, violated Section 4(a) of the CEA, 7 U.S.C. § 6(a), by engaging in or offering illegal off-exchange retail commodity transactions (ECF No. [281], Case No. 12-81311-CIV). On May 16, 2014, following a trial on remaining counts, the Court found that Hunter Wise "neither purchased precious metals on the retail customers' behalf . . . nor delivered metals to the retail customers," and entered a permanent injunction and imposed restitution and civil monetary penalties against Hunter Wise. ECF No. [303], Case No. 12-81311-CIV, at pp. 14-15, 54-58; Am. Compl. ¶ 26; Giglio Decl. ¶ 10, Ex. D.

14. Worth Group Inc. ("Worth") is a Florida corporation formed in June 2002 that has previously gone by the names of Wilshire Capital Management Corp. and Worth Bullion Group Inc. Worth describes itself as "a Florida-based precious metals wholesaler [that] might also be described as a dealer or broker of precious metals." Worth's office is located at 3900 Military Trail, Ste. 500, Jupiter, Florida 33458. Worth has never been registered with the Commission in any capacity. Am. Compl. ¶ 27.

15. On August 13, 2013, Plaintiff CFTC brought an action in this District against Worth and its principals, captioned *CFTC v. Worth Group, Inc., et al.*, Case No. 13-cv-80796-KLR, alleging, among other things, that Worth defrauded retail precious metals customers and engaged in illegal, off-exchange leveraged commodity transactions with retail customers. On January 23, 2014, the Court entered a Consent Order of Preliminary Injunction and Other Ancillary Relief (ECF No. [61], Case No. 13-cv-80796-KLR) that, among other relief, appointed

a corporate monitor for Worth, and enjoined Worth from violating certain provisions of the CEA. On July 29, 2015, the Court denied the CFTC and Worth's cross-motions for summary judgment. ECF No. [181], Case No. 13-cv-80796-KLR; Am. Compl. ¶ 28; Giglio Decl. ¶ 11, Ex. E. Accordingly, it **ORDERED AND ADJUDGED** that Plaintiff's Motion, ECF No. [34], is **GRANTED** as follows:

C. Findings of Fact

16. During the Relevant Periods, Defendants offered to enter into, entered into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, or accepting orders for, or otherwise dealing in any transactions in, or in connection with, the purchase or sale of precious metals to or from retail customers on a leveraged, margined, or financed basis. Only the leveraged, margined, or financed precious metals transactions (hereinafter "retail commodity transactions") that Defendants conducted through Hunter Wise and Worth are at issue in this action. Am. Compl. ¶ 1.

1. Harvard International

17. During the First Relevant Period, Harvard International had a place of business in Boca Raton, Florida. *Id.* ¶ 34.

18. Harvard International and its officers, employees, or agents, including Marshall, solicited customers by telephone or through Harvard International's website, www.harvardassets.com, to engage in financed precious metals transactions. *Id.* ¶ 35.

19. In these financed precious metals transactions, Harvard International's customers invested only a percentage of the total metal value and would purportedly receive a loan from Harvard International for the remainder of the metal's value. According to Harvard International's standard Account Agreement ("Harvard International Agreement"), Harvard

International's customers incurred a finance charge on their loans (up to 7 percent above the prime rate), as well as service/storage charges on these transactions. Harvard International's customers also paid a commission, typically 15 percent, on the total metal value per transaction.

Id. ¶ 36.

20. The Harvard International Agreement provides, in part:

The formation of this Agreement constitutes the making of a contract in Palm Beach County, Florida, notwithstanding the manner, timing or location of the delivery or receipt of the acceptance of this Agreement by either party hereto. The making of this contract will cause the following events, among others, to occur in Palm Beach County, Florida: the negotiation of this contract will have taken place and have been completed in Palm Beach County, Florida; the contract will be executed in Palm Beach County, Florida; Harvard is located in Palm Beach County, Florida; all deposits and payments made by Customer will be delivered to and paid in Palm Beach County, Florida; all loans made by Harvard will be made from and paid in Palm Beach County, Florida; and all statements of account will be generated in an transmitted from Palm Beach County, Florida.

Id. ¶ 37.

21. During the First Relevant Period, some of Harvard International's customers were not ECPs or ECEs. *Id.* ¶ 38.

22. During the First Relevant Period, Harvard International and its officers, employees, or agents solicited at least 42 retail customers to engage in at least 241 financed precious metals transactions, reflecting a total value of over \$3.6 million worth of metals. Harvard International solicited and accepted over \$1.5 million from those customers with respect to these transactions. After Harvard International solicited retail customers and accepted customer orders and funds for these transactions, Harvard International extracted commissions and fees from these funds, and then forwarded the orders and funds to Worth. Worth failed to make actual delivery of metals to Harvard International customers in connection with at least 241 financed precious metals transactions. *Id.* ¶ 39.

23. During the First Relevant Period, Worth maintained a “master” account and customer sub-accounts at depositories with whom Worth contracted to hold metal. Worth purported to deliver metal to retail customers by “allocating” metal from a master account to customer sub-accounts. However, these purported “allocations” did not result in the transfer of possession or control of metal to Harvard International’s customers or agents of the customers. Accordingly, there was no actual delivery of metals to Harvard International’s customers in connection with at least 241 financed precious metals transactions. *Id.* ¶ 40.

24. Harvard International’s commissions from these at least 241 financed precious metals transactions introduced to Worth that did not result in actual delivery of precious metals to Harvard International’s customers totaled at least approximately \$534,226.32. Giglio Decl. ¶ 5.a.

25. Furthermore, at least 29 of these financed precious metals transactions did not result in “allocations” within 28 days after the transaction, and thus did not result in timely actual delivery of metals to Harvard International’s customers for this additional reason. Am. Compl. ¶ 42.

26. During the First Relevant Period, none of the financed precious metals transactions entered into with, or offered to, Harvard International’s customers by Harvard International or its officers, employees, or agents were conducted on or subject to the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility. *Id.* ¶ 43.

27. During the First Relevant Period, Marshall was the President of Harvard International and the sole signatory for Harvard International’s bank accounts. *Id.* ¶ 44.

28. During the First Relevant Time Period, Marshall signed all checks in connection with Harvard International's retail commodity transactions business with Worth. *Id.* ¶ 45.

29. Marshall executed Harvard International's retail account agreement with Worth. *Id.* ¶ 46.

30. During the First Relevant Period, Marshall solicited customers for Harvard International, and solicited or accepted orders from Harvard International customers in connection with leveraged, margined, or financed precious metals transactions. *Id.* ¶ 47.

31. During the First Relevant Period, Marshall was the "registration contact," "technical contact," "administrative contact," and "billing contact" on file with Domains by Proxy for Harvard International's website, www.harvardassets.com. *Id.* ¶ 48.

2. Harvard Assets and London Assets

32. During the Second Relevant Period, Harvard Assets and London Assets had places of business in Boca Raton, Florida. *Id.* ¶ 49.

33. Harvard Assets and its officers, employees, or agents, including Marshall, solicited customers by telephone, by email, by mail, and/or through a website, www.harvardassets.com, to engage in financed precious metals transactions. *Id.* ¶ 50.

34. In these financed precious metals transactions, Harvard Assets' customers invested only a percentage of the total metal value, and received loans from Harvard Assets for the remainder of the metal's value. According to Harvard Assets' standard Customer Account Documentation and Agreement ("Harvard Assets Agreement"), Harvard Assets' customers incurred a finance charge on their loans (up to 7 percent above the prime rate), as well as service/storage charges on these transactions, and a \$100 account opening fee. Harvard Assets'

customers also paid a commission, typically 12 percent, on the total metal value per transaction.

Id. ¶ 51.

35. The Harvard Assets Agreement provides, in part:

The formation of this Agreement constitutes the making of a contract in Palm Beach County, Florida, notwithstanding the manner, timing or location of the delivery or receipt of the acceptance of this Agreement by either party hereto. The making of this contract will cause the following events, among others, to occur in Palm Beach County, Florida: the negotiation of this contract will have taken place and have been completed in Palm Beach County, Florida; the contract will be executed in Palm Beach County, Florida; Harvard is located in Palm Beach County, Florida; all deposits and payments made by Customer will be delivered to and paid in Palm Beach County, Florida; all loans made by Harvard will be made from and paid in Palm Beach County, Florida; and all statements of account will be generated in an transmitted from Palm Beach County, Florida.

Id. ¶ 52.

36. After persuading a customer to invest, Harvard Assets, Marshall, and/or their officers, employees, and/or agents would collect funds from the customer for the transaction and deposit the funds into a bank account in the name of Harvard Assets. *Id.* ¶ 53.

37. In order to effectuate financed precious metals transactions on behalf of Harvard Assets' customers, Harvard Assets and its officers, employees, or agents used London Assets to place buy or sell orders with Hunter Wise. *Id.* ¶ 54.

38. Marshall signed checks transferring customer funds from Harvard Assets' bank accounts to London Assets' bank accounts. At London Assets, Marshall signed checks for deposit of customer funds with Hunter Wise. *Id.* ¶ 55.

39. During the Second Relevant Period, at least 14 Harvard Assets retail customers paid at least \$231,963 to Harvard Assets and London Assets in connection with at least 48 financed precious metals transactions, reflecting a total value of over \$693,000 worth of metals.

Id. ¶ 56.

40. London Assets received commissions totaling at least \$78,665.69 in connection with financed precious metals transactions from these retail customers. *Id.* ¶ 58.

41. During the Second Relevant Period, all or most of Harvard Assets' customers were not ECPs or ECEs. *Id.* ¶ 59.

42. During the Second Relevant Period, neither Harvard Assets nor London Assets nor Marshall nor Hunter Wise ever delivered metals to Harvard Assets' retail customers in connection with financed precious metals transactions. *Id.* ¶ 60.

43. During the Second Relevant Period, none of the financed precious metals transactions entered into with, or offered to, Harvard Assets' or London Assets' customers by Harvard Assets, London Assets, or their officers, employees, or agents were conducted on or subject to the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility. *Id.* ¶ 61.

44. Marshall executed the certificate of formation of Harvard Assets. *Id.* ¶ 62.

45. Marshall was the sole signatory for Harvard Assets' and London Assets' bank accounts. *Id.* ¶ 63.

46. Marshall signed all Harvard Assets and London Assets checks in connection with Harvard Assets' and London Assets' retail commodity transactions business with Hunter Wise. *Id.* ¶ 64.

47. Marshall was the "registration contact," "technical contact," "administrative contact," and "billing contact" on file with Domains by Proxy for the website used by Harvard Assets, www.harvardassets.com. *Id.* ¶ 65.

D. Conclusions of Law

1. Jurisdiction and Venue

48. Section 6c(a) of the CEA, 7 U.S.C. §13a-1(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the CEA or any rule, regulation, or order thereunder.

49. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Section 2(c)(2)(D) of the CEA, 7 U.S.C. § 2(c)(2)(D) (2012).

50. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. § 13a-1(e) (2012), because Defendants reside in this District, Defendants transacted business in this District, and certain transactions, acts, and practices alleged in the Amended Complaint occurred, are occurring, and/or are about to occur within this District.

2. Harvard International and Marshall Engaged in Illegal Off-Exchange Precious Metals Transactions

51. During the First Relevant Period, the retail commodity transactions described herein were offered by Harvard International and its officers, employees, or agents, including Marshall, and were 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, (b) with persons who were not ECPs or ECEs as defined by the CEA, and (c) were not made or conducted on, or subject to, the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility.

52. The precious metals involved in the retail commodity transactions described herein, including gold, silver, platinum, and palladium, are commodities as defined by Section 1a(9) of the CEA, 7 U.S.C. § 1a(9) (2012).

53. During the First Relevant Period, Harvard International and Marshall violated Section 4(a) of the CEA, 7 U.S.C. § 6(a) (2012), by offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in any transactions in, or in connection with, retail commodity transactions which were not conducted on or subject to the rules of a board of trade designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

54. Each offer to enter into, entrance into, execution, confirmation, solicitation, or acceptance of an order in any transaction in, or in connection with an off-exchange retail commodity transaction, or instance of conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in any transactions in, or in connection with, retail commodity transactions made during the First Relevant Period is alleged as a separate and distinct violation of Section 4(a) of the CEA.

55. In addition to his own violations of Section 4(a) of the CEA, Marshall directly or indirectly controlled Harvard International and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Harvard International's violations of Section 4(a) of the CEA alleged in the Amended Complaint. Therefore, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13(b) (2012), Marshall is liable for each of Harvard International's violations of Section 4(a) of the CEA.

56. The acts, failures, and omissions of Harvard International's officers, employees, and/or agents, including Marshall, as described in the Amended Complaint, were done within the scope of the individuals' employment or office with Harvard International, and are deemed to be the acts, failures, and omissions of Harvard International by operation of Section 2(a)(1)(B) of

the CEA, 7 U.S.C § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014). Harvard International is therefore liable as principal for each of the acts, omissions, or failures by its employees and/or agents, including Marshall, that constitute violations of Section 4(a) of the CEA.

**3. Harvard Assets, London Assets, and Marshall
Engaged in Illegal Off-Exchange Precious Metals Transactions**

57. During the Second Relevant Period, the retail commodity transactions described herein were offered by Harvard Assets, London Assets, Marshall, and/or their officers, employees, and/or agents and were 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, (b) with persons who were not ECEs or ECPs as defined by the CEA, and (c) were not made or conducted on, or subject to, the rules of any board of trade, exchange, contract market, or derivatives transaction execution facility.

58. The precious metals involved in the retail commodity transactions described herein, including gold, silver, platinum, and palladium, are commodities as defined by Section 1a(9) of the CEA, 7 U.S.C. § 1a(9) (2012).

59. During the Second Relevant Period, Harvard Assets, London Assets, and Marshall violated Section 4(a) of the CEA, 7 U.S.C. § 6(a) (2012), by offering to enter into, entering into, executing, confirming the execution of, or conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in any transactions in, or in connection with, retail commodity transactions which were not conducted on or subject to the rules of a board of trade designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.

60. Each offer to enter into, entrance into, execution, confirmation, solicitation, acceptance of an order in any transaction in, or in connection with, an off-exchange retail commodity transaction, or instance of conducting an office or business in the United States for the purpose of soliciting or accepting orders for, or otherwise dealing in any transactions in, or in connection with, retail commodity transactions made during the Second Relevant Period is alleged as a separate and distinct violation of Section 4(a) of the CEA.

61. In addition to his own violations of Section 4(a) of the CEA, Marshall directly or indirectly controlled Harvard Assets and London Assets and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Harvard Assets' and London Assets' violations of Section 4(a) of the CEA alleged in the Amended Complaint. Therefore, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13(b) (2012), Marshall is liable for each of Harvard Assets' and London Assets' violations of Section 4(a) of the CEA.

62. The acts, failures, and omissions of Harvard Assets' and London Assets' officers, employees, and/or agents, including Marshall, as described in the Amended Complaint, were done within the scope of the individuals' employment or office with Harvard Assets and/or London Assets, and are deemed to be the acts, failures, and omissions of Harvard Assets and/or London Assets by operation of Section 2(a)(1)(B) of the CEA, 7 U.S.C § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014). Harvard Assets and London Assets are therefore liable as principals for each of the acts, omissions, or failures by their employees and/or agents, including Marshall, that constitute violations of Section 4(a) of the CEA.

4. Harvard International Failed to Register as a Futures Commission Merchant

63. During the First Relevant Period, Harvard International violated Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1) (2012), by soliciting or accepting orders for the retail

commodity transactions described above, and in connection with such orders accepting money, securities, or property (or extended credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that resulted or may have resulted therefrom, when it was not registered with the Commission as an FCM.

64. The acts, failures, and omissions of Harvard International's officers, employees, and/or agents, including Marshall, as described in the Amended Complaint, were done within the scope of the individuals' employment or office with Harvard International, and are deemed to be the acts, failures, and omissions of Harvard International by operation of Section 2(a)(1)(B) of the CEA, 7 U.S.C § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014). Harvard International is therefore liable as principal for each of the acts, omissions, or failures by its employees and/or agents, including Marshall, that constitute violations of Section 4d(a)(1) of the CEA.

65. Each solicitation or acceptance of an order for the retail commodity transactions described above, and each acceptance of money, securities, or property (or extension of credit) to margin, guarantee, or secure such trades, during the First Relevant Period, is alleged as a separate and distinct violation of Section 4d(a)(1) of the CEA.

66. Marshall directly or indirectly controlled Harvard International and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Harvard International's violations of Section 4d(a)(1) of the CEA alleged in the Amended Complaint. Therefore, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13(b) (2012), Marshall is liable for each of Harvard International's violations of Section 4d(a)(1) of the CEA.

5. Harvard Assets and London Assets Failed to Register as a Futures Commission Merchant

67. During the Second Relevant Period, Harvard Assets and London Assets violated Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1) (2012), by soliciting or accepting orders for the retail commodity transactions described above, and in connection with such orders, accepting money, securities, or property (or extended credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that resulted or may have resulted therefrom, when they were not registered with the Commission as an FCM.

68. The acts, failures, and omissions of Harvard Assets' and London Assets' officers, employees, and/or agents, including Marshall, as described in the Amended Complaint, were done within the scope of the individuals' employment or office with Harvard Assets and/or London Assets, and are deemed to be the acts, failures, and omissions of Harvard Assets and/or London Assets by operation of Section 2(a)(1)(B) of the CEA, 7 U.S.C § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014). Harvard Assets and London Assets are therefore liable as principals for each of the acts, omissions, or failures by their employees and/or agents, including Marshall, that constitute violations of Section 4d(a)(1) of the CEA.

69. Each solicitation or acceptance of an order for the retail commodity transactions described above, and each acceptance of money, securities, or property (or extension of credit) to margin, guarantee, or secure such trades, during the Second Relevant Period, is alleged as a separate and distinct violation of Section 4d(a)(1) of the CEA.

70. Marshall directly or indirectly controlled Harvard Assets and London Assets and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Harvard Assets' and London Assets' violations of Section 4d(a)(1) of the CEA alleged in the Amended Complaint. Therefore, pursuant to Section 13(b) of the CEA, 7 U.S.C. § 13(b) (2012),

Marshall is liable for each of Harvard Assets' and London Assets' violations of Section 4d(a)(1) of the CEA.

71. Unless restrained and enjoined by this Court, Defendants likely will continue to engage in the acts and practices alleged in the Amended Complaint or similar acts and practices and in similar acts and practices in violations of the CEA.

II. PERMANENT INJUNCTION

72. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the CEA, as amended, 7 U.S.C. § 13a-1, Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Offering to enter into, entering into, executing, confirming the execution of, or conducting an office in the United States, for the purpose of soliciting, or accepting orders for, or otherwise dealing in retail commodity transactions, in violation of Section 4(a) of the CEA, 7 U.S.C. § 6(a); and/or
- b. Soliciting or accepting orders for retail commodity transactions, and in connection with such orders, accepting money, securities, or property (or extended credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that resulted or may have resulted therefrom, without being registered with the Commission as a futures commission merchant, in violation of Section 4d(a)(1) of the CEA, 7 U.S.C. § 6d(a)(1).

73. 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 CEA, 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 CEA, 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 CEA, 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, swaps and/or forex contracts 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, swaps and/or forex contracts;
- 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, swaps and/or forex contracts;

- 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) (2011); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the CEA, as amended, 7 U.S.C. § 1a) 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) (2011).

III. DISGORGEMENT AND CIVIL MONETARY PENALTY

A. Disgorgement

74. Harvard International and Marshall shall pay, jointly and severally, disgorgement in the amount of five hundred thirty-four thousand two hundred twenty-six dollars and thirty-two cents (\$534,226.32), and Harvard Assets, London Assets, and Marshall shall pay, jointly and severally, additional disgorgement in the amount of seventy-eight thousand six hundred sixty-five dollars and sixty-nine cents (\$78,665.69), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. In total, Defendants shall pay disgorgement in the amount of six hundred twelve thousand, eight hundred ninety-two dollars and one cent (\$612,892.01), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the “Disgorgement Obligation”). Post-judgment interest shall accrue on the Disgorgement

Obligation beginning on the date of entry 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.

75. To effect payment of the Disgorgement Obligation and the distribution of any disgorgement payments to Defendants' customers, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect disgorgement payments from Defendants and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

76. Defendants shall make Disgorgement Obligation payments under this Order to the Monitor in the name "Todd Owen Marshall – DISGORGEMENT Fund" and shall send such Disgorgement Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendants and the name and docket number of this proceeding. 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.

77. The Monitor shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Disgorgement 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 disgorgement 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 B below.

78. Defendants shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Disgorgement Obligation payments. 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 Disgorgement Obligation.

79. 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.

80. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from 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.

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

provision of this Order and to hold Defendants in contempt for any violations of any provision of this Order.

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

B. Civil Monetary Penalty

83. Harvard International and Marshall shall, jointly and severally, pay a civil monetary penalty in the amount of one million six hundred two thousand six hundred seventy-eight dollars and ninety-six cents (\$1,602,678.96), and Harvard Assets, London Assets, and Marshall shall, jointly and severally, pay an additional civil monetary penalty in the amount of two hundred thirty-five thousand nine hundred ninety-seven dollars and seven cents (\$235,997.07), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. In total, Defendants shall pay a civil monetary penalty in the amount of one million eight hundred thirty-eight thousand six hundred seventy-six dollars and three cents (\$1,838,676.03), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry 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 (2006). Defendants shall pay their CMP Obligation 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262
nikki.gibson@faa.gov

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

84. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendants' Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of their 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.

D. Miscellaneous Provisions

85. Order of Payments: Defendants' obligation to pay disgorgement and civil monetary penalties are all due and owing as of the date of this Order. Should Defendants, however, not be able to satisfy all these obligations at the same time, any payments from Defendants shall first be used to satisfy their Disgorgement Obligation. After Defendants'

Disgorgement Obligation is satisfied fully, then any of Defendants' payments shall be applied to satisfaction of the CMP Obligation.

86. Prohibition on Transfer of Funds: Defendant shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court.

87. Equitable Relief: The equitable relief provisions of this Order shall be binding upon Defendants and any person who is acting in the capacity of agent, employee, servant, or attorney of Defendants, and any person acting in active concert or participation with Defendants, who receives actual notice of this Order by personal service or otherwise.

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

Notice to Commission:

Manal M. Sultan
Deputy Director
Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Monitor:

Executive Vice President, Compliance
National Futures Association
300 South Riverside Plaza, Suite 1800
Chicago, Illinois 60606

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

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

90. Invalidation: If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

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

The Clerk is **DIRECTED TO CLOSE** this case. The Court will separately enter an Order of Final Default Judgment.

DONE AND ORDERED in Miami, Florida, this 16th day of May, 2016.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

cc: counsel of record