

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

FIRST STATE DEPOSITORY COMPANY, LLC,  
ARGENT ASSET GROUP LLC, AND  
ROBERT LEROY HIGGINS,

Defendants.

Case No. 1:22-cv-1266-RGA

~~PROPOSED~~ ORDER FOR  
FINAL JUDGMENT BY  
DEFAULT, PERMANENT  
INJUNCTION, CIVIL  
MONETARY PENALTIES,  
AND OTHER STATUTORY  
AND EQUITABLE RELIEF

On September 27, 2022, Plaintiff Commodity Futures Trading Commission (the “Commission”) filed a Complaint charging First State Depository Company, LLC (“FSD”), Argent Asset Group LLC (“Argent”), and Robert Leroy Higgins (“Higgins,” collectively, “Defendants”) with violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2022). D.I. 2.

On September 29, 2022, the Court entered a statutory restraining order (“SRO”), which, among other things, authorized the freezing of assets held in the name of or under the control or management of the Defendants, appointed Kelly Crawford as Temporary Receiver over Defendants, and authorized Mr. Crawford to take over the physical premises of FSD and Argent, and take control of their operations. *See* D.I. 12 at ¶¶ 17-19, 28, 29.a.-b.

On October 4, 2022, the Commission served the Summons, Complaint, SRO, and all other papers on Defendants. *See* D.I. 20-22 (Executed Summonses); D.I. 23 (describing service

of summonses, complaint and other papers on counsel for all Defendants, who stated in writing that they would accept service on behalf of Defendants).

Defendants have failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, the Commission filed motions for entry of a clerk's default against Defendants and on December 30, 2022, the Clerk of this Court entered a default against Defendants.

The Commission has moved this Court to grant final judgment by default against Defendant Robert Higgins, order permanent injunctive relief, and impose a restitution obligation and civil monetary penalty.

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission's memorandum in support of its motion, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

**ORDERED** that the Plaintiff's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief against Higgins is **GRANTED**. Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief ("Order") pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Findings of Fact**

**1. The Parties**

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

2. Defendant **Robert Leroy Higgins** is the owner, and was the operator, principal, and control person for FSD and Argent. Higgins has never been registered with the Commission in any capacity.

3. Defendant **First State Depository Company, LLC** is a Delaware limited liability company, organized on or about January 25, 2006, with an address of 100 Todds Lane, Wilmington, Delaware. FSD's website describes itself as a "private depository" that offers "a full range of precious metals custody, shipping and accounting services to both commercial and individual participants in the rare coin and precious metals markets." FSD has never been registered with the Commission in any capacity.

4. Defendant **Argent Asset Group LLC** is a Delaware limited liability company, organized on or about September 24, 2013, with an address of 100 Todds Lane, Wilmington, Delaware. Argent engages in the business of buying, selling, and leasing coins, bullion, bars, and other precious metals. Argent has never been registered with the Commission in any capacity.

## 2. Defendants' Scheme

5. From at least January 2014 through the present (the "Relevant Period") Defendants engaged in a fraudulent and deceptive scheme (the "Scheme") that involved extensive misappropriation and other fraudulent and deceptive conduct in connection with the purchase and sale of precious metals. As described in more detail below, Defendants defrauded participants in two silver leasing programs ("Customers") as well as clients who were not involved in the silver leasing programs ("Clients"). Defendants misappropriated tens of millions of dollars of assets that were supposedly stored at FSD for safekeeping, diverted those assets to their own use, and issued statements and reports to Customers and Clients falsely indicating that the assets remained safely stored at FSD. On several occasions, Defendants falsely led

Customers and Clients to believe that Defendants had obtained assets for them, when in fact Defendants had not. Defendants also deceived and misled Customers who enrolled in the silver leasing programs known as the Maximus Program and Silver Lease Program (the “Programs”), and made misrepresentations to Customers and Clients about FSD’s insurance coverage. In instances when Customers or Clients tried to withdraw their assets, Defendants lied in order to conceal the misappropriation.

6. The fraud and deception in Defendants’ Scheme was material to Customers and Clients. As FSD itself said in marketing materials:

We know that asset safety, transaction accuracy and expeditious fulfillment are of paramount importance to every depository customer, whether they are commercial enterprises conducting frequent, high volume business transactions or individuals simply seeking a highly secure facility to hold their personal coin and bullion investments.

7. But instead of storing assets safely, reporting transactions accurately, and fulfilling transactions expeditiously, Defendants misappropriated tens of millions of dollars, took steps to conceal that misappropriation, and made numerous misrepresentations and material omissions.

### **3. Misappropriation of Customer and Client Assets**

8. In the course of conducting an inventory of assets stored at 100 Todds Lane, Baker Tilly, the public accounting firm retained by the Receiver, has discovered that as much as \$112.7 million of Customer and Client assets are missing from FSD. *See* D.I. 82-1 at 14. In some instances, they found empty boxes at FSD with a Customer’s or Client’s name on it, or boxes that did not contain metal but instead held an “IOU” of sorts—a piece of paper stating the quantity of metal that should have been stored there. D.I. 78-1 at 22. In other instances, nothing could be found for a particular Customer or Client, not even empty boxes. Defendants

misappropriated these assets, diverted them to their own uses, and sold them for their own benefit.

9. Some of the missing assets were purchased directly through Argent to be stored at FSD, while other assets were obtained from other precious metals dealers, and then sent by Customers and Clients to FSD for storage. For the missing assets purportedly purchased from Argent, it is not clear whether Defendants obtained the assets and then subsequently misappropriated them, or if Defendants instead misappropriated the funds sent for the purpose of obtaining assets, failed to obtain the assets, and sent invoices and account statements that falsely indicated the assets had been obtained. There is some indication that Defendants used both methods. Whatever the method used, Defendants misappropriated tens of millions of dollars of assets from Customers and Clients. Defendants concealed their misappropriation by sending account statements to Customers and Clients that falsely indicated that their assets were stored at FSD, when in fact they were not. When Customers and Clients sought to withdraw their assets, Defendants attempted to delay the return of assets for as long as possible. Defendants offered false and misleading excuses for why the assets could not be returned immediately.

#### **4. The Maximus Program**

10. Starting in or around November 2013, Argent and Higgins promoted an investment program called the Maximus Program and solicited individuals to participate in it. The Maximus Program purported to offer Customers guaranteed monthly payments in exchange for their agreement to lease to Argent silver that the Customers purchased or owned. Maximus Customers were supposed to receive a monthly “lease” payment based on a sliding scale that in part depended on the amount of silver the Maximus Customers leased to Argent.

11. All of the leased silver in the Maximus Program was in the form of American Silver Eagles (“ASEs”).<sup>1</sup> The ASE, also referred to as a “Silver Eagle” or “SAE,” is the official silver bullion coin issued by the United States Mint. Each coin weighs one ounce and is a minimum of 99.9% pure silver. The weight and purity of ASEs is guaranteed by the United States government.

12. Maximus Customers signed an agreement with Argent that was known and referred to as the “Maximus Agreement” or “Maximus Silver Agreement.” The Maximus Agreements set forth the terms and conditions of the leasing relationship and included various representations and warranties. Maximus Customers also entered into a Depository Account Agreement with FSD regarding the purported storage of assets at FSD. In accordance with the Depository Account Agreement, FSD provided Maximus Customers with weekly or monthly “Holdings Reports” that purported to show each Customer’s account balance and holdings at FSD, and “Activity Reports” that were purportedly distributed every time a transaction occurred in their account (collectively, the “Reports”).

13. In February 2014, Argent entered into a Maximus Agreement with Metals Dealer 1, an entity owned and controlled by Individual 1. Pursuant to the Maximus Agreement between Argent and Metals Dealer 1, Argent agreed to pay Metals Dealer 1 twenty cents (\$0.20) per month for each ASE that Metals Dealer 1 pledged to the Maximus Program. Higgins told Metals Dealer 1 that Argent used the Leased Silver to fulfill short-term sales of ASEs to third parties as needed, and that if Leased Silver was sold, an equivalent amount of ASEs would promptly be returned to the account.

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<sup>1</sup> This Order uses the term “Leased Silver” to refer to the ASEs that were part of either the Maximus Program or the Silver Lease Program.

14. At or around the same time, Metals Dealer 1 began soliciting prospective Customers for a silver leasing program of its own that operated in parallel to Argent's Maximus Program. The result of this arrangement was a set of back-to-back leases, through which Metals Dealer 1's customers leased ASEs to Metals Dealer 1, and Metals Dealer 1 exclusively leased those ASEs to Argent.

15. Metals Dealer 1 agreed to provide Silver Lease Customers with a monthly payment of between one cent and ten cents per ASE invested in the Silver Lease Program, with the rate set in tiers based on the quantity of the ASEs leased to Metals Dealer 1 (the "Silver Lease Payment"). For example, a Silver Lease Customer who pledged between 1,000 and 1,999 ASEs received a monthly payment of \$0.01 per coin; a Silver Lease Customer who pledged between 9,000 and 9,999 ASEs received a monthly payment of \$0.09 per coin, and a Silver Lease Customer who pledged more than 10,000 ASEs received a monthly payment of \$0.10 per coin. Silver Lease Customers had the option to receive this monthly payment in cash, or instead to have additional ASEs put into their account.

16. From 2014 to present, Silver Lease Customers collectively sent millions of dollars of money, silver, or other assets to Metals Dealer 1 or FSD to join the Silver Lease Program. At the time of the Commission's complaint, there were approximately 200 Silver Lease Customers who collectively enrolled more than 537,000 ASEs in the Silver Lease Program, worth more than \$10 million at prevailing market prices.

17. Although certain iterations of the Lease Agreements were silent as to what Metals Dealer 1 intended do with the Leased Silver, and others permitted Metals Dealer 1 to transfer the Leased Silver to non-specified "customers desiring to purchase silver," in every case and without fail, Metals Dealer 1 pledged the Leased Silver to the Maximus Program.

18. In other words, Metals Dealer 1 essentially served as a vehicle for directing ASEs to Argent's Maximus Program. Consequently, a large majority of the ASEs in the Maximus Program came from Metals Dealer 1 and Silver Lease Customers. In light of Argent's agreement to pay Metals Dealer 1 \$0.20 for each ASE pledged to the Maximus Program, Metals Dealer 1's Silver Lease Payments to Customers were essentially a pass-through arrangement in which Argent paid \$0.20 to Metals Dealer 1 for each ASE that Silver Lease Customers held, and Metals Dealer 1 paid up to \$0.10 per ASE to Silver Lease Customers, keeping the rest as profit.

19. If Silver Lease Customers asked how leasing of the Leased Silver worked, Metals Dealer 1 told them the same thing that Higgins told Metals Dealer 1—that the Leased Silver was used to fulfill short-term sales of ASEs as needed, but that if this occurred, an equivalent amount of ASEs would promptly be returned to their account. Based on representations by Defendants, Metals Dealer 1 also told Silver Lease Customers that their ASEs were insured for 100% of their value and stored in physically segregated storage at FSD.

**a) Fraud Regarding ASEs Held at FSD**

20. Defendants led Customers to believe that their ASEs were held securely at FSD. FSD's website unequivocally states that "your coins and bullion always remain physically stored in our depository, in your account and your legal property at all times," and Argent's Maximus Agreements (both with Metals Dealer 1 and with other Maximus Customers) required Argent to "maintain, in its possession and/or control, the specific property borrowed or property of similar nature that is fungible with the property borrowed."

21. FSD represented that it was "fully transparent" in reporting transactions, that it engaged in "full disclosure" and "accurate and timely reporting" and that an account owner could rely on the Reports to know the "exact status of all holdings secured at FSD." Consistent with those representations, FSD sent monthly account statements to Customers indicating that the



Leased Silver remained in Customers' accounts at all times. All of these representations, taken together, were intended to give Customers the impression that all of their Leased Silver was physically and securely stored in their accounts at FSD at all times.

22. In fact, the exact opposite was true. To the extent Defendants even obtained ASEs for Customers in the first place, Defendants' practice was to transfer all of the Leased Silver to Argent and Higgins, and for Higgins to sell that Leased Silver to third parties and remove it from 100 Todds Lane. After this occurred, neither the Leased Silver, metal similar to the Leased Silver, nor assets roughly equivalent in value to the Leased Silver were returned to the Customers' account at FSD. This is confirmed by the fact that after the Complaint in this case was filed, only 2,500 ASEs were found in Silver Lease Customers' accounts, despite FSD's records and Reports indicating there should have been more than 537,000. D.I. 78-1 at 94.

23. In other words, Defendants did not temporarily remove Leased Silver from Customer accounts to satisfy specific orders by third parties, and then replace the Leased Silver with other ASEs shortly thereafter, as Defendants led Customers to believe they were doing. Nor did Defendants replace Customers' ASEs with other assets of an equivalent value. Instead, Defendants misappropriated the Leased Silver, simply taking it and diverting it to their own use. None of this was disclosed to Customers, either on the Reports or elsewhere. FSD repeatedly sent Customers false and misleading Holdings Reports showing that the Customers' ASEs were securely stored in their account at FSD, when in fact no such metal was there. FSD also sent false and misleading Activity Reports showing that ASEs were added to Customers' accounts, when in fact no metal had been moved to the accounts, and no metal was there. FSD's failure to inform Customers that their metal was not actually stored at FSD was also a deceptive omission, in light of their representations to the contrary on the Holdings Reports. Defendants knew that

the Reports were false and misleading or were reckless as to their truth or falsity. Defendants knew that the Leased Silver was not stored at FSD, and knew that they were nonetheless sending Holdings Reports that gave Customers the contrary impression.

**b) Fraud Regarding the Acquisition of ASEs**

24. Defendants' Scheme also involved several occasions in which Defendants never obtained ASEs for Customers in the first place. Defendants instead misappropriated the money and assets they received for the purpose of purchasing ASEs, diverting those assets to Higgins' personal use or the general use of FSD and Argent.

25. In those instances, Defendants deceived Metals Dealer 1, Customers, and IRA Custodians about their acquisition of ASEs. Defendants directly deceived Silver Lease Customers by sending false and misleading Reports. Defendants also deceived Metals Dealer 1 and IRA Custodians with the knowledge that those parties would rely on Defendants' deception and make representations to Silver Lease Customers that were misleading. Defendants' deception involved issuing invoices and purchase orders falsely indicating that Argent had obtained ASEs, falsely stating in communications that ASEs had been obtained or were being delivered to Defendants' offices at 100 Todds Lane, and issuing Reports that indicated that ASEs had been deposited to Customers' accounts. Defendants knew that Argent had not in fact obtained those ASEs, but instead simply created fake invoices and made fictitious "paper entries" in FSD's inventory management system.

26. For example, between October 1, 2018 and April 30, 2019, the number of ASEs pledged to Metals Dealer 1's Silver Lease Program increased by more than 100,000. The vast majority of the new ASEs came from four separate Customers. Those four Customers collectively transferred more than \$1.53 million of money or other assets to Metals Dealer 1 with the understanding that those assets would be used to acquire ASEs for the Silver Lease Program.

Metals Dealer 1, in turn, wired funds and transferred assets to Argent with the understanding that Argent would use those assets to acquire ASEs.

27. Rather than obtaining ASEs for Customers 1-4, Defendants misappropriated their assets, made fictitious entries in IBMS, and sent false and misleading emails and Reports to Metals Dealer 1, Customers 1-4, and IRA Custodian 1, purporting to show that the ASEs had been transferred into the accounts of Customers 1-4 at FSD, and were stored there. In fact, Defendants did not obtain the required ASEs for Customers 1-4 and deposit them into their accounts.

28. During the Relevant Period, Argent received millions of dollars in Customer funds and assets for the purpose of obtaining ASEs for the Programs. The four transactions identified above were not the only time that Defendants failed to obtain ASEs for Customers. Indeed, as noted above, of the 537,000 ASEs enrolled in the Silver Lease Program, almost none of those ASEs were stored at FSD. Whether Defendants actually obtained ASEs for Customers and then subsequently misappropriated them, or whether Argent simply misappropriated Customers' funds and fraudulently failed to obtain ASEs, Defendants did not store Leased Silver at FSD on behalf of Customers, as they led Customers to believe they were doing.

#### **5. Fraud Regarding Insurance**

29. Defendants led Customers and Clients to believe that their assets were insured for 100% of their value. During the Relevant Period, FSD's publicly-visible website advertised that "[a]ll Accounts [are] Insured for 100% of value," stated that "assets are stored in insured accounts," and said that "First State is fully insured, with an approximate insured contents limit of \$400 million, depending on the 'mix' of assets held." In marketing materials and communications with potential Customers and Clients, FSD made similar assertions, stating that

“[a]ll assets stored in First State’s vaults are insured for 100% of its [sic] value through our ALL RISK policy with Lloyds of London.”

30. FSD made similar representations in the standard Depository Account Agreement it entered into with Customers and Clients, which provided that “First State agrees to maintain in effect all-risk insurance on Assets stored in Account for Client.” FSD’s Depository Account Agreements also stated that upon request, FSD would “provide a Certificate of Insurance evidencing insurance coverage for Assets held by First State.” On numerous occasions Customers or Clients requested these certificates, which were referred to as “Evidences of Insurance.” The Evidences of Insurance listed FSD as the “Insured,” and typically identified the Customer or Client as a “Memorandum Holder and Loss Payee.” When requested, FSD provided these Evidences of Insurance, intending to reassure them that the Customer’s and Client’s assets were fully insured.

31. Defendants’ representations regarding insurance were false and misleading. Defendants deceived Customers and Clients regarding insurance in at least three ways.

32. *First*, despite the fact that throughout the Relevant Period FSD’s website has touted and continues to tout an “approximate insured contents limit of \$400 million,” in actuality FSD’s insurance policy limit has not been close to that from at least November 2014 through the present. To the contrary, FSD’s insurance policy limit was \$85 million from approximately November 2014 to November 2016, \$100 million from approximately November 2016 through May 2021, and \$75 million from May 2021 through the filing of the Commission’s complaint. FSD’s misrepresentations regarding the purported \$400 million insurance policy impacted all FSD Customers and Clients. Defendants knew their representations regarding a \$400 million policy limit were false, or were reckless as to their truth or falsity.

33. *Second*, FSD's representations that "[a]ll Accounts [are] Insured for 100% of value," that "First State is fully insured," and that "[a]ll assets stored in First State's vaults are insured for 100% of its [sic] value" were false. Not only did FSD not have a \$400 million policy limit, FSD's actual, much lower policy limits were insufficient to cover the full value of assets that FSD purportedly held for Customers and Clients. Like the misrepresentation regarding the \$400 million insurance policy, this deception impacted all FSD Customers and Clients.

34. For example, according to FSD records, as of March 2021, the total value of inventory purportedly stored at FSD was more than \$176 million, and the total insured value of inventory was more than \$158 million, at least \$50 million more than the then-applicable policy limit of \$100 million. Likewise, in October 2022, when FSD's policy limit was \$75 million, FSD's own records indicated that the total value of inventory purportedly stored at FSD was more than \$138 million, and the total insured value of inventory was more than \$125 million.

35. In short, Defendants falsely represented that all assets purportedly stored at FSD were fully insured for 100% of their value. Defendants made this misrepresentation repeatedly: on FSD's website, in marketing materials, in communications with prospective Customers and Clients, in FSD's standard agreement with Customers and Clients, and elsewhere. As with FSD's misrepresentations regarding the \$400 million policy limit, this misrepresentation impacted all Customers and Clients.

36. *Third*, FSD provided Evidences of Insurance to Customers with the intent to give a misleading assurance that their Leased Silver was insured, when Defendants knew it was not insured, or when the risk that it was not insured was so high that they must have been aware of it.

37. For the Relevant Period, FSD's primary insurance policy limit only covered assets stored at 100 Todds Lane. But as explained above, FSD and Argent did not store the Leased

Silver in FSD's vault at 100 Todds Lane (to the extent it was bought in the first place), but instead systematically and immediately transferred those ASEs to Argent's offices at 100 Todds Lane, where the Leased Silver was briefly stored before being sold to third parties. But none of FSD's insurance policies covered metal that was sold by Argent, delivered to third parties, and removed from the possession, custody, or control of FSD and Argent.

38. In addition, assets that were misappropriated from Clients who were not part of the Programs were also removed from FSD's premises and diverted to Defendants' own use. But none of FSD's insurance policies covered metal that was misappropriated. Defendants' provision of Evidences of Insurance upon request thus provided false assurances that assets were insured by FSD's insurance policies.

#### **6. Higgins Was a Controlling Person of FSD and Argent**

39. Higgins was a controlling person of both FSD and Argent. Higgins was the operator, principal, and control person for FSD and Argent. Higgins held himself out as, and in fact was, the owner and manager of both FSD and Argent. Higgins controlled and was the signatory on the bank accounts of FSD and Argent. Higgins had ultimate decision-making authority over FSD and Argent, and he was authorized to and did enter into contractual agreements on behalf of both entities. Higgins had primary and often exclusive responsibility for managing the purchase and sale of silver and gold coins, bars, and bullion on behalf of Argent. Higgins was the individual with primary responsibility for managing the Maximus Program for Argent. Higgins also conducted business on FSD's behalf throughout the Relevant Period. Higgins communicated with Customers, Clients, and other counterparties on FSD's behalf, including, for example, by communicating with Customers and Clients regarding the return or distribution of assets stored at FSD, and communicating with FSD's insurance brokers and underwriters regarding FSD's insurance policies.

**7. FSD and Argent Operated as a Common Enterprise, and Higgins Was a Controlling Person of the Common Enterprise**

40. FSD and Argent did not conduct business at arm's length or observe corporate formalities, but rather were commonly controlled by Higgins. Although Higgins on occasion told counterparties that the companies were separate and that he had no control over FSD, that was not true. In other communications Higgins held himself out to third parties as owner, manager, President, or CEO of FSD. As noted above, Higgins conducted business on FSD's and Argent's behalf throughout the Relevant Period, he was the primary or an authorized signer on FSD's and Argent's bank accounts, and the primary credentials for online access to FSD's and Argent's bank accounts were in his name.

41. FSD and Argent shared the same address and office at 100 Todds Lane. FSD and Argent also shared employees, consultants, or agents, including Higgins. Higgins installed one of his sons as nominal operational head of FSD and another son as nominal operational head of Argent. Higgins' sister performed services on behalf of both FSD and Argent, and a third son and Higgins' wife worked for FSD and/or Argent at various points during the Relevant Period.

42. FSD and Argent commingled corporate funds—on various occasions throughout the Relevant Period, Argent paid bills for FSD or wired money to FSD in order to ensure its bank account balance remained positive. FSD and Argent also transferred Customer funds between them. Defendants' misappropriation was at least partially premised on Higgins taking Customer and Client assets from FSD and selling them through Argent.

**B. Conclusions of Law**

**1. Jurisdiction and Venue**

43. 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 Commission to seek injunctive and other relief in United

States district court 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 any provision of the Act, or any rule, regulation, or order thereunder, and provides that district courts “shall have jurisdiction to entertain such actions.” This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1345 (United States as plaintiff).

44. Venue lies properly with this Court pursuant to Section 6c(e) of the Act because Higgins can be found in this District, transacted business in this District, and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur in this District.

## **2. Count I—Fraud by Manipulative or Deceptive Device or Contrivance**

45. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), makes it unlawful for any person, directly or indirectly, to:

[U]se or employ, or attempt to use or employ, in connection with any . . . contract of sale of any commodity in interstate commerce . . . any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after [July 21, 2010, the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act].

46. Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2022) provides, in part:

It shall be unlawful for any person, directly or indirectly, in connection with any . . . contract of sale of any commodity in interstate commerce . . . to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or] (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person . . . .

47. As described above, during the Relevant Period, Higgins violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3) by, among other things, in connection with contracts of



sale of a commodity (e.g., precious metals) in interstate commerce, using or employing, or attempting to use or employ, a device, scheme, or artifice to defraud and engaging, or attempt to engage, in an act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, including by:

- a. Misappropriating precious metals and other assets owned by Customers and Clients;
- b. Misappropriating funds that were sent by Customers and Clients for the purpose of obtaining precious metals and other assets, and instead diverting those funds to Higgins' personal uses or the general use of FSD and Argent;
- c. Leading Metals Dealer 1, other Customers, and IRA Custodians to believe that ASEs had been obtained for the Programs, and that ASEs for the Programs were stored at FSD, when in fact they were not; and
- d. Leading Metals Dealer 1, other Customers, IRA Custodians, and Clients to believe that their assets were fully insured for 100% of their value, when in fact they were not.

48. During the Relevant Period, Higgins violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3), by, among other things, in connection with contracts of sale of a commodity (e.g., precious metals) in interstate commerce, making or attempting to make untrue or misleading statements of material fact or omitting to state or attempting to omit material facts necessary in order to make statements made not untrue or misleading, including by:

- a. Making false and misleading statements that Customer and Client assets were stored at FSD when in fact they were not;

- b. Making false and misleading statements that assets had been acquired for Customers and Clients when in fact they had not;
- c. Making false and misleading statements regarding insurance coverage that applied to Customer and Client assets; and
- d. Making false and misleading statements in connection with certain Customers' and Clients' attempts to retrieve their assets from FSD.

49. Higgins engaged in the acts and practices described above willfully, knowingly or with reckless disregard for the truth.

50. Each misappropriation, misrepresentation or omission of material fact, false statement, or other act in furtherance of the Scheme is a separate and distinct violation of Section 6(c)(1) and Regulation 180.1(a)(1)-(3).

51. The foregoing acts, omissions, and failures of Argent's employees and agents, including Higgins and others, occurred within the scope of their employment, agency, or office with Argent. As alleged in the Complaint and established in the [Proposed] Consent Order of Permanent Injunction and Other Statutory Equitable Relief ("[Proposed] Consent Order") being filed simultaneously with this Order, Argent is liable 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 (2022), as principal for the violative actions and omissions of Argent's employees and agents.

52. The foregoing acts, omissions, and failures of FSD's employees and agents, including Higgins and others, occurred within the scope of their employment, agency, or office with FSD. As alleged in the Complaint and established in the [Proposed] Consent Order being filed simultaneously with this Order, FSD is liable pursuant to Section 2(a)(1)(B) of the Act and

Regulation 1.2, as principal for the violative actions and omissions of FSD's employees and agents.

53. Higgins directly or indirectly controlled Argent and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting Argent's violations of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3). Higgins is therefore liable for Argent's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

54. Higgins directly or indirectly controlled FSD and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting FSD's violations of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3). Higgins is therefore liable for FSD's violations pursuant to Section 13(b) of the Act.

55. Higgins directly or indirectly controlled the common enterprise and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the common enterprise's violations of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3). Higgins is therefore liable as a control person for the violative acts of each member of the common enterprise.

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

## **II. PERMANENT INJUNCTION**

### **IT IS HEREBY ORDERED THAT:**

57. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Higgins is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. directly or indirectly, using or employing, or attempting to use or employ, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, including by intentionally or recklessly: (1) using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; (2) making, or attempting to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, or otherwise violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. §180.1(a)(1)-(3) (2022).

58. Higgins is also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a (40));
- b. entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2022)), for his own personal account or for any account in which he has a direct or indirect interest;
- c. having any commodity interests traded on his 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 interests;
- e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- 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) (2022); and/or
- g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2022)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9).

### **III. RESTITUTION AND CIVIL MONETARY PENALTY**

#### **A. Restitution**

59. Higgins shall pay restitution in the amount of one hundred and twelve million seven hundred thousand dollars (\$112,700,000) (“Restitution Obligation”). Higgins’ Restitution Obligation will be joint and several with any restitution obligation imposed by this Court as to FSD and Argent. If the Restitution Obligation is not paid immediately in full, post-judgment interest shall accrue on the unpaid portion of the Restitution 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.

60. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants' customers, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall receive restitution 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.

61. Higgins shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name "FSD/Argent/Higgins Settlement/Restitution Fund" and shall send such payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, 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 Defendant and the name and docket number of this proceeding. Higgins 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.

62. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendants' customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a de minimis nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall

forward to the Commission following the instructions for civil monetary penalty payments set forth below.

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

64. 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.

65. Higgins shall receive dollar-for-dollar credit against the Restitution Obligation for any funds that are disbursed to customers as the result of the liquidation of any assets of Defendants by the Receiver. The Receiver shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, copies of the form of payment to those customers.

66. Upon the termination of the receivership estate, the Receiver shall provide the Commission with a report detailing the disbursement of funds to Defendants' customers. The Receiver 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.

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

68. 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 restitution that has not been paid by Higgins to ensure continued compliance with any provision of this Order and to hold Higgins in contempt for any violations of any provision of this Order.

69. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Restitution Obligation, such funds shall be disbursed in accordance with the procedures set forth above.

**B. Civil Monetary Penalty**

70. Higgins shall pay a civil monetary penalty in the amount of thirty-three million dollars (\$33,000,000) (“CMP Obligation”). Higgins’ CMP Obligation will be joint and several with any civil monetary penalty obligation imposed by this Court as to FSD and Argent. If the CMP Obligation is not paid in full within ten (10) days of the date of the 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.



71. Higgins shall pay his CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
6500 S. MacArthur Blvd.  
HQ Room 266  
Oklahoma City, OK 73169  
[9-AMC-AR-CFTC@faa.gov](mailto:9-AMC-AR-CFTC@faa.gov)

72. If payment is to be made by electronic funds transfer, Higgins shall contact Tonia King or her successor at the above email address to receive payment instructions and shall fully comply with those instructions. Higgins shall accompany payment of the CMP Obligation with a cover letter that identifies Higgins and the name and docket number of this proceeding. Higgins 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. Higgins shall also transmit a copy of the cover letter and the form of payment to Rick Glaser, Deputy Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

**C. Provisions Related to Monetary Sanctions**

73. Partial Satisfaction: Acceptance by the Commission of any partial payment of the CMP 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.

#### **IV. CONTINUATION OF RELIEF FROM STATUTORY RESTRAINING ORDER**

##### **A. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation, and Disposal of Assets**

74. Except as otherwise modified by this Order and subsequent court orders, the SRO, D.I. 12, shall remain in full force and effect.

75. Higgins and his agents, servants, employees, assigns, attorneys, and persons in active concert or participation with him, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly withdrawing, transferring, removing, dissipating or otherwise disposing of any assets, wherever located, including but not limited to assets held in the names of Defendants, or other property held outside the United States, in accordance with the Court's SRO. This paragraph does not apply to any social security benefits Higgins receives.

76. At the request of the Receiver, Higgins and any other person who has possession, custody, or control of any of Defendants' funds, assets, or other property shall transfer possession of all funds, assets, or other property subject to this Order to the Receiver in accordance with the SRO.

77. Except as excluded in Paragraph 75, the funds, assets, or other property affected by this Order shall include both existing funds, assets or other property, and funds, assets, or other property acquired after the effective date of this Order.

#### **V. MISCELLANEOUS PROVISIONS**

78. **Notice:** All notices required to be given by any provision in this Order, except as set forth in the previous paragraph, shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Rick Glaser  
Deputy Director, Division of Enforcement  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581  
Telephone: (202) 418-5000

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

79. **Change of Address/Phone:** Until such time as he satisfies the Restitution Obligation and CMP Obligation, Higgins shall provide written notice to the Commission by reasonable means of any change to his telephone numbers and mailing addresses within ten calendar days of the change.

80. **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.

81. **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 Defendants to modify or for relief from the terms of this Order.

82. **Injunctive and Equitable Relief:** The injunctive and equitable relief provisions of this Order shall be binding upon the following persons who receive actual notice of this Order, by personal service or otherwise: (1) Higgins; (2) any officer, agent, servant, employee, or attorney of Higgins; and (3) any other persons who are in active concert or participation with any persons described in subsections (1) and (2) above.

83. There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief* forthwith and without further notice.

IT SO ORDERED, at Wilmington, Delaware on this 30<sup>th</sup> day of June, 2023, at  
\_\_\_\_\_.m.

A handwritten signature in blue ink, reading "Richard G. Anderson", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE