

**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

**CONSENT ORDER OF
PERMANENT
INJUNCTION AND OTHER
STATUTORY 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.

I. CONSENTS AND AGREEMENTS

1. To effect settlement of all charges alleged in the Complaint against FSD and Argent (the “Settling Defendants”), without a trial on the merits or any further judicial proceedings, the Settling Defendants:
2. Consent to the entry of this Consent Order for Permanent Injunction and Other Equitable Relief Against the Settling Defendants (“Consent Order”);
3. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the

Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;

4. Acknowledge service of the Summons, Complaint, and all other filings and orders entered herein;

5. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a);

6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);

7. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;

8. Waive:

a. the entry of findings of fact and conclusions of law in this action under Fed. R. Civ. P. 52(a)(2);

b. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this action;

c. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;

- d. Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and
- e. Any and all rights of appeal from this action;

9. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order, the terms and conditions of the Statutory Restraining Order (“SRO”) and Preliminary Injunction entered in this matter, D.I. 12, D.I. 57, and for any other purpose relevant to this action, even if the Settling Defendants now or in the future reside outside the jurisdiction of this Court;

10. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waive any objection based thereon;

11. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. Settling Defendants shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

12. By consenting to entry of this Consent Order, Settling Defendants neither admit nor deny the allegations of the Complaint or any Findings of Fact or Conclusions of Law in this Consent Order, except the admissions as to jurisdiction and venue above;

13. Consent to the use of the Findings of Facts and Conclusions of Law in this Consent Order in this proceeding and in any other proceeding brought by the Commission or by Kelly M. Crawford (the “Receiver”) or to which the Commission or the Receiver is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

14. Do not consent, however, to the use of this Consent Order, or the Findings of Fact and Conclusions of Law herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding, proceeding in bankruptcy, or proceeding to enforce the terms of this Consent Order;

15. Do not consent to the use of this Consent Order, or the Findings of Fact or Conclusions of Law herein, by any other party in any other proceeding;

16. Agree that this Consent Order shall not limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Settling Defendants in any other proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following findings of fact, conclusions of law, permanent injunction, and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, as set forth herein.

A. Findings of Fact

1. The Parties to This Consent Order

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

19. 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.

20. 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. Other Parties

21. Non-Settling Defendant **Robert Leroy Higgins** is the owner, and was the operator and principal for FSD and Argent. Higgins has never been registered with the Commission in any capacity.

3. Settling Defendants' Scheme

22. From at least January 2014 through the present (the "Relevant Period") Settling Defendants, by and through their employee and agents, 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, Settling Defendants defrauded participants in two silver leasing programs ("Customers") as well as clients who were not involved in the silver leasing programs ("Clients"). Settling 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, Settling Defendants falsely led Customers and Clients to believe that Settling Defendants had obtained assets for them, when in fact Settling Defendants had not. Settling 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, Settling Defendants lied in order to conceal the misappropriation.

23. The fraud and deception in Settling 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.

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

4. Misappropriation of Customer and Client Assets

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

26. 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 Settling Defendants obtained the assets and then subsequently misappropriated them, or if Settling 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 Settling Defendants used both methods. Whatever the method used, Settling Defendants misappropriated tens of millions of dollars of assets from Customers and Clients. Settling 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, Settling Defendants attempted to delay the return of assets for as long as possible. Settling Defendants offered false and misleading excuses for why the assets could not be returned immediately.

5. The Maximus Program

27. Starting in or around November 2013, Argent 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.

28. All of the leased silver in the Maximus Program was in the form of American Silver Eagles (“ASEs”).¹ 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.

29. 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”).

30. 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. Argent 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.

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

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. If Silver Lease Customers asked how leasing of the Leased Silver worked, Metals Dealer 1 told them the same thing that Argent 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 Settling 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

37. Settling 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."

38. 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.

39. In fact, the exact opposite was true. To the extent Settling Defendants even obtained ASEs for Customers in the first place, Settling Defendants' practice was to transfer all of the Leased Silver to Argent and for Argent 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.

40. In other words, Settling 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 Settling Defendants led Customers to believe they were doing. Nor did Settling Defendants replace Customers' ASEs with other assets of an equivalent value. Instead, Settling 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. Settling Defendants knew that the Reports were false and misleading or were reckless as to their truth or falsity. Settling 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

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

42. In those instances, Settling Defendants deceived Metals Dealer 1, Customers, and IRA Custodians about their acquisition of ASEs. Settling Defendants directly deceived Silver Lease Customers by sending false and misleading Reports. Settling Defendants also deceived Metals Dealer 1 and IRA Custodians with the knowledge that those parties would rely on Settling Defendants' deception and make representations to Silver Lease Customers that were misleading. Settling 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 Settling Defendants' offices at 100 Todds Lane, and issuing Reports that indicated that ASEs had been deposited to Customers' accounts. Settling 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.

43. 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.

44. Rather than obtaining ASEs for Customers 1-4, Settling 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, Settling Defendants did not obtain the required ASEs for Customers 1-4 and deposit them into their accounts.

45. 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 Settling 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 Settling Defendants actually obtained ASEs for Customers and then subsequently misappropriated them, or whether Argent simply misappropriated Customers' funds and fraudulently failed to obtain ASEs, Settling Defendants did not store Leased Silver at FSD on behalf of Customers, as they led Customers to believe they were doing.

6. Fraud Regarding Insurance

46. Settling 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.”

47. 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.

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

49. *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. Settling Defendants knew their representations regarding a \$400 million policy limit were false, or were reckless as to their truth or falsity.

50. *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.

51. 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.

52. In short, Settling Defendants falsely represented that all assets purportedly stored at FSD were fully insured for 100% of their value. Settling 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.

53. *Third*, FSD provided Evidences of Insurance to Customers with the intent to give a misleading assurance that their Leased Silver was insured, when Settling 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.

54. 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.

55. 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 Settling Defendants' own use. But none of FSD's insurance policies covered metal that was misappropriated. Settling Defendants' provision of Evidences of Insurance upon request thus provided false assurances that assets were insured by FSD's insurance policies.

7. FSD and Argent Operated as a Common Enterprise

56. FSD and Argent did not conduct business at arm's length or observe corporate formalities, but rather were commonly controlled by a single individual who owned both entities, had ultimate decision-making authority over both entities, and controlled and was the signatory on both entities' bank accounts.

57. FSD and Argent shared the same address and office at 100 Todds Lane. FSD and Argent also shared employees, consultants, or agents, including Higgins. One of Higgins' sons served as nominal operational head of FSD, and another son served 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.

58. 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. Settling 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

59. 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).

60. Venue lies properly with this Court pursuant to Section 6c(e) of the Act because Settling Defendants 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

61. 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].

62. 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

63. As described above, during the Relevant Period Settling Defendants, by and through their employees and agents, 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 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.

64. During the Relevant Period, Settling Defendants, by and through their employees and agents, 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.

65. Settling Defendants engaged in the acts and practices described above willfully, knowingly or with reckless disregard for the truth.

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

67. The foregoing acts, omissions, and failures of Argent's employees and agents occurred within the scope of their employment, agency, or office with Argent. Therefore, 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.

68. The foregoing acts, omissions, and failures of FSD's employees and agents occurred within the scope of their employment, agency, or office with FSD. Therefore, 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.

69. Because FSD and Argent operated as a common enterprise, each is liable for the violative acts of each member of the enterprise.

70. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Settling Defendants 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.

III. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

71. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Settling Defendants are 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).

72. Settling 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 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), or precious metals that are commodities, as that term is defined herein, for their own personal account or for any account in which they have a direct or indirect interest;
- c. having any commodity interests, or precious metals that are commodities, as that term is defined herein, 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 interests, or precious metals that are commodities, as that term is defined herein;

- e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests or precious metals that are commodities, as that term is defined herein;
- 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).

IV. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

73. Settling Defendants shall pay, jointly and severally, restitution in the amount of one hundred and twelve million seven hundred thousand dollars (\$112,700,000) (“Restitution Obligation”). Settling Defendants’ Restitution Obligation also will be joint and several with any restitution obligation imposed by this Court on Higgins. 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 Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

74. 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”). Subject to Paragraph 79 herein, and the Receiver’s duties under the SRO, 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.

75. Settling Defendants 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. Settling 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.

76. 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.

77. Settling Defendants 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. Settling 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 Restitution Obligation.

78. 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.

79. Settling Defendants shall receive dollar-for-dollar credit against the Restitution Obligation for any funds that are disbursed by the Receiver 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.

80. 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.

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

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

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

B. Civil Monetary Penalty

84. Settling Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of thirty-three million dollars (\$33,000,000) ("CMP Obligation"). Settling Defendants' CMP Obligation also will be joint and several with any civil monetary penalty obligation imposed by this Court on Higgins. If the CMP Obligation is not paid in full within ten (10) days of the date of the entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

85. Settling Defendants shall pay their 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

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

87. Partial Satisfaction: Acceptance by the Commission of any partial payment of the CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

V. CONTINUATION OF RELIEF FROM STATUTORY RESTRAINING ORDER

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

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

89. Settling Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, who receive actual notice of this Consent 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 Settling Defendants, or other property held outside the United States, in accordance with the Court's SRO.

90. At the request of the Receiver, Settling Defendants and any other person who has possession, custody, or control of any of Settling 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.

91. The funds, assets, or other property affected by this Consent Order shall include both existing funds, assets or other property, and funds, assets, or other property acquired after the effective date of this Consent Order.

VI. MISCELLANEOUS PROVISIONS

92. **Cooperation:** Settling Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency or any self-regulatory organization, in this action, and in any current or future Commission investigation or action related thereto. Settling Defendants shall also

cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

93. Until such time as Settling Defendants satisfies in full their CMP and Restitution obligations under this Consent Order, upon the commencement by or against Settling Defendants of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Settling Defendants debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

94. **Notice:** All notices required to be given by any provision in this Consent 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 21st Street, NW
Washington, D.C. 20581
Telephone: (202) 418-5000

Notice to Settling Defendants:

First State Depository Company, LLC
Argent Asset Group LLC
c/o Receiver Kelly M. Crawford
500 North Akard, Suite 2700
Dallas, TX 75201

Telephone: (214) 706-4200

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

95. **Change of Address/Phone:** Until such time as Settling Defendants satisfy in full the Restitution Obligation and CMP Obligation, Settling Defendants shall provide written notice to the Commission by reasonable means of any change to their telephone numbers and mailing addresses within ten calendar days of the change.

96. **Entire Agreement and Amendments:** This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

98. **Waiver:** The failure of any party to this Consent Order to require performance of any provision of this Consent Order shall not affect the right of the party to later enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

99. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent 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 Consent Order.

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

101. **Authority for Settling Defendants:** Kelly M. Crawford hereby warrants that he is the court appointed Receiver for Settling Defendants, and that this Consent Order has been duly authorized by him as the Receiver for FSD and Argent, and that he has been duly empowered to sign and submit this Consent Order on behalf of Settling Defendants; that pursuant to the SRO he has assumed full control of FSD and Argent; and as such signs and submits this Consent Order on behalf of Settling Defendants.

102. **Counterparts and Electronic Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by e-mail or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

103. **Contempt:** Settling Defendants understand that the terms of the Consent Order, except with respect to restitution, are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

104. **Agreements and Undertakings:** Settling Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

105. There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction and Other Equitable Relief* forthwith and without further notice.

CONSENTED TO AND APPROVED BY:

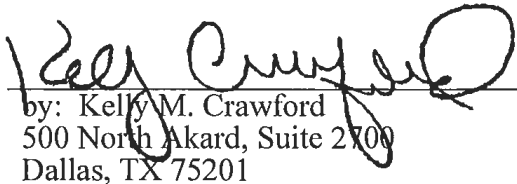
PLAINTIFF COMMODITY FUTURES
TRADING COMMISSION



Dated: June 7, 2023

Brian A. Hunt
Rick Glaser
COMMODITY FUTURES
TRADING COMMISSION
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
bhunt@cftc.gov
rglaser@cftc.gov

DEFENDANTS
FIRST STATE DEPOSITORY
COMPANY, LLC AND
ARGENT ASSET GROUP LLC



Dated: May 9, 2023

by: Kelly M. Crawford
500 North Akard, Suite 2700
Dallas, TX 75201
*Receiver on Behalf of First State
Depository Company, LLC and
Argent Asset Group LLC*

IT SO ORDERED, at Wilmington, Delaware on this _____ day of _____, 2023, at
_____ .m.

/s/ Richard G. Andrews

UNITED STATES DISTRICT JUDGE