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CFTC Releases Enforcement Division's Annual Results

Agency obtained a record $1.7 billion in monetary sanctions and filed 82 actions.

Washington, DC - The Commodity Futures Trading Commission (CFTC) today announced that it filed 82 enforcement actions in fiscal year 2013 (FY 13), bringing the total over the past three fiscal years to 283, nearly double the number of actions brought during the prior three fiscal years. In addition, the Division of Enforcement (Division) obtained orders this year imposing more than $1.7 billion in sanctions, including orders for more than $1.5 billion in civil monetary penalties and more than $200 million in restitution and disgorgement. This year's civil monetary penalties total more than seven times the Commission's operating budget for the fiscal year. The Division also reported that it opened more than 290 new investigations in FY 13, adding to the numerous investigations previously opened. The Division noted that while the number of actions filed is among the highest annual figures in program history, that total is down compared to FY 12.

"We measure success principally by the impact of our cases: positively influencing market behavior, penalizing and deterring illegal conduct, and requiring orders of restitution for victim losses," said David Meister, the Enforcement Division's Director. "As we have begun to enforce our new Dodd-Frank authority on top of the laws that have been on the books for decades, the cases we bring and the sanctions we have obtained reflect the Division's unwavering commitment to protect market participants and promote market integrity. On a personal note, as I will be departing the CFTC later this month, I want to thank the Enforcement staff for giving me their support over the past nearly three years – it has been an honor and a privilege to lead such a dedicated team of public servants."

Highlights of Selected FY 2013 CFTC Enforcement Actions:

LIBOR and other Interest Rate Benchmarks

• The Commission simultaneously filed and settled charges against UBS, finding that it engaged in manipulation, attempted manipulation and false reporting of LIBOR and other benchmark interest rates for at least six years. The Commission found that UBS engaged in more than 2,000 instances of unlawful conduct involving dozens of employees on several continents, including colluding with other banks; inducing interdealer brokers to spread false information and influence other banks; and making false LIBOR submissions to protect UBS's reputation during the global financial crisis. The Commission ordered UBS to pay a $700 million civil monetary penalty. In re UBS AG, et al., CFTC Docket No. 13-09 (CFTC filed Dec. 19, 2012), Press Release 6472-12.

• The Commission simultaneously filed and settled charges against The Royal Bank of Scotland plc and RBS Securities Japan Limited, finding that they engaged in manipulation, attempted manipulation, and false reporting relating to LIBOR for Yen and Swiss Franc for approximately four years, as recently as 2010 and dating back to at least mid-2006. The Commission ordered RBS to pay a $325 million civil monetary penalty. In re The Royal Bank of Scotland plc, et al., CFTC Docket No. 13-14 (CFTC filed Feb. 6, 2013), Press Release 6510-13.

• The Commission simultaneously filed and settled charges against ICAP Europe Limited (ICAP), an interdealer broker, finding that for more than four years, from at least October 2006 through at least January 2011, ICAP engaged in manipulation, attempted manipulation, false

reporting, and aiding and abetting derivatives traders' manipulation and attempted manipulation, relating to the LIBOR for Yen. The Commission ordered ICAP to pay a $65 million civil monetary penalty. In re ICAP Europe Ltd., CFTC Docket NO. 13-38 (CFTC Filed Sept. 25, 2013), Press Release 6708-13.

• Taking these FY 13 actions together with the action against Barclays Bank in FY 12 (Press Release 6289-12), the CFTC's benchmark-related cases have yielded total penalties of just under $1.3 billion.

Protection of Customer Funds (MF Global, Peregrine and Others)

• The Commission filed charges in federal court against MF Global Inc., MF Global Holdings Ltd., former Chief Executive Officer Jon S. Corzine, and former Assistant Treasurer of MF Global Edith O'Brien alleging, among other violations, MF Global's unlawful use of customer funds that harmed thousands of customers and violated fundamental customer protection laws on an unprecedented scale. MF Global agreed to settle all charges against it on terms set forth in a proposed order that is subject to court approval and includes 100% restitution of the approximately $1 billion lost by all commodity customers when the firm failed on October 31, 2011. CFTC v. MF Global Inc., et al., No. 13 CIV 4463 (S.D.N.Y. filed June 27, 2013), Press Release 6626-13.

• The Commission obtained federal court orders against Peregrine Financial Group, Inc. (PFG), and its owner, Russell Wasendorf, Sr., finding that they misappropriated in excess of $200 million of customer funds, violated customer fund segregation requirements and made false statements to the CFTC. The Court enjoined further violations and ordered trading and registration bans, while reserving for future consideration the issues of a civil monetary penalty for both PFG and Wasendorf and restitution from Wasendorf. CFTC v. Peregrine Financial Group, Inc., et al., No. 1:12-cv-05383, Default Judgment (N.D. IL. entered Feb. 13, 2013), Press Release 6300-12 (regarding the Commission's filing of an enforcement action on July 10, 2012).

• The Commission simultaneously filed and settled charges against PFG's longtime auditor, Jeannie Veraja-Snelling, a sole practitioner certified public accountant (CPA), finding that her audits were not performed in accordance with GAAS and did not include appropriate review and tests of internal accounting controls and procedures for safeguarding customer assets, as required by CFTC Regulations. The Commission permanently barred Veraja-Snelling from appearing or practicing as an accountant before the Commission. In re Veraja-Snelling, CFTC Docket No. 13-29 (CFTC filed Aug. 26, 2013), Press Release 6675-13.

• The Commission filed charges in federal court against U.S. Bank National Association for unlawfully using and holding PFG customer segregated funds. According to the complaint, U.S. Bank, among other things, (i) unlawfully accepted Peregrine's customers' funds as security on loans it made to Wasendorf, his wife and his construction company; and (ii) knowingly facilitated Wasendorf's transfers of millions of dollars of customers' funds to pay for Wasendorf's private jet, his restaurant, and his divorce settlement. CFTC v. U.S. Bank, NA, No. 13–Civ–2041–EJM (N.D. Iowa filed June 5, 2013), Press Release 6601-13.

• The Commission filed charges in federal court against the accounting firm Tunney & Associates, P.C. related to its audits for a registered FCM. According to the complaint, neither Tunney & Associates nor its owner CPA, Michael Tunney, had experience auditing FCMs or any entity that holds customer segregated accounts, nor did they have an understanding of the applicable Commodity Exchange Act or CFTC regulatory provisions prior to accepting the audit engagements. CFTC v.

Tunney & Associates, P.C., et al., No. 1:13-cv-02919 (N.D. Ill. filed Apr. 18, 2013), Press Release 6571-13.

• The Commission simultaneously filed and settled 14 actions against FCMs alleging violations of customer segregation, secured, and net capital rules and/or related supervision failures, and obtained over $5.5 million in civil monetary penalties, including: In re ABN AMRO Clearing Chicago LLC, CFTC Docket No. 13-25 (CFTC filed June 18, 2013) (Press Release 6614-13; ABN AMRO failed to segregate or secure sufficient customer funds, meet minimum net capital requirements, maintain accurate books and records, and supervise its employees; $1 million civil monetary penalty); and In re Cantor Fitzgerald & Co, Inc., CFTC Docket No. 13-06 (CFTC filed Nov. 21, 2012) (Press Release 6419-12; Cantor failed to maintain sufficient funds in its customer segregation account for a period of three days and failed to provide the CFTC timely notice of its under-segregation, as required; $700,000 civil monetary penalty).

• The Commission also settled federal charges previously filed against MBF Clearing Corp. alleging that from September 2008 through March 2010, MBF routinely held between $30 million and $90 million of its customer funds in an account at another financial institution, but that account was not legally qualified to hold customer segregated funds. MBF paid a $650,000 civil monetary penalty. CFTC v. MBF Clearing Corp., No. 1:12-cv-01830-SAS, Consent Order (S.D.N.Y. entered Nov. 28, 2012), Press Release 6437-12.

Other Manipulation and Trading Violations; Pre- and Post-Dodd Frank Authority

• The Commission filed charges in federal court against Eric Moncada, BES Capital LLC, and Serdika LLC alleging that they attempted to manipulate wheat futures prices, and engaged in fictitious sales and non-competitive transactions. According to the complaint, Moncada entered and immediately canceled numerous large-lot orders for wheat futures that he did not intend to fill, intending to create a misleading impression of increasing liquidity in the marketplace. Moncada allegedly would then seek to take advantage of any price movements that may have resulted from this manipulative scheme by placing smaller orders, which he hoped to fill at beneficial prices, on the opposite side of market from his large-lot cancelled orders. CFTC v. Moncada, et al., No. 12-cv-8791 (S.D.N.Y. filed Dec. 4, 2012), Press Release 6441-12.

• In the first case under Dodd-Frank Act's spoofing prohibition (bidding or offering with intent to cancel before execution), the Commission simultaneously filed and settled charges against Panther Energy Trading LLC and Michael J. Coscia. Per the Order, Defendants utilized a computer algorithm designed to illegally place and quickly cancel large bids and offers in futures contracts on CME Group's Globex trading platform. These orders gave the impression of significant trading interest, which Defendants exploited. The Commission ordered Panther and Coscia to pay a $1.4 million civil monetary penalty, and disgorge $1.4 million in trading profits. In re Panther Energy Trading LLC, et al., No. 13-26 (CFTC filed July 22, 2013), Press Release 6649-13.

• The Commission simultaneously filed and settled two related enforcement actions finding that: Gelber Group, LLC (Gelber), an FCM, reported orders during the pre-opening trading sessions it had no intention of executing; and Gelber and former Gelber trading manager, Martin A. Lorenzen, engaged in wash sales. In re Gelber Group, LLC, CFTC Docket No. 13-15 (CFTC filed Feb. 8, 2013) (ordering a $750,000 civil monetary penalty); In re Lorenzen, CFTC Docket No. 13-16 (CFTC filed Feb. 8, 2013) (ordering a $250,000 civil monetary penalty), Press Release 6512-13.

Designated Contract Market Violations

• The Commission filed charges in federal court against the New York Mercantile Exchange, Inc. (CME NYMEX), which is owned and operated by the CME Group, and two former CME NYMEX employees, William Byrnes and Christopher Curtin, alleging that they unlawfully repeatedly disclosed material nonpublic customer information over two and a half years to an outside commodity broker who was not authorized to receive the information. CFTC v. Byrnes, et al., No. 13 CIV 1174 (S.D.N.Y. filed Feb. 21, 2013), Press Release 6519-13, and Press Release 6584-13 (regarding amended complaint to charge Ron Eibschutz, who received the confidential information, with aiding and abetting the violations).

Futures Commission Merchant and Introducing Broker Supervision Violations

• The Commission simultaneously filed and settled charges against FXDirectDealer, LLC (FXDD), a registered RFED and FCM, finding that from at least December 10, 2009, until June 2011, it violated its supervision obligations by employing a trading system that gave FXDD pricing advantages over and harmed thousands of its retail customers. The Commission ordered FXDD to make full restitution of $1,828,261 to FXDD's current and former customers that were harmed by its violation and imposed a $914,131 civil monetary penalty. In re FXDirectDealer, LLC, CFTC Docket No. 13-34 (CFTC filed Sept. 18, 2013), Press Release 6697-13.

• The Commission simultaneously filed and settled charges against FCStone LLC, an FCM, finding that it failed to implement adequate customer credit and concentration risk policies and controls in 2008 and part of 2009, allowing one account to acquire a massive options position that the account owners could not afford to maintain. FCStone, which was ultimately obligated to take over the account in question, lost approximately $127 million. The Commission ordered FCStone to pay a civil monetary penalty of $1.5 million. In re FCStone, LLC, CFTC Docket No. 13-24 (CFTC filed May 29, 2013), Press Release 6594-13.

• The Commission simultaneously filed and settled charges against Goldman, Sachs & Co. finding that it failed to supervise diligently its employees for several months in late 2007 when a then-Goldman trader was able to conceal an $8.3 billion trading position from the firm. The Commission ordered Goldman to pay a $1.5 million civil monetary penalty. In re Goldman Sachs & Co., CFTC Docket No. 13-08 (CFTC Dec. 7, 2012), Press Release 6450-12, and Press Release 6677-13 (regarding settlement by former Goldman employee Matthew Marshall Taylor for defrauding Goldman by intentionally concealing from Goldman the true position size, as well as the risk and potential profits or losses associated with a futures position in a firm account traded by him; CFTC v. Taylor, No. 1:12-cv-8170-RJS, Consent Order (S.D.N.Y. filed Aug. 29, 2013) (imposing $500,000 civil monetary penalty)).

• The Commission simultaneously filed and settled charges against Foremost Trading LLC, an IB, finding that the firm failed to diligently supervise the handling of accounts held by clients that were referred to Foremost from three unregistered entities that sold futures trading systems (the Systems Providers). Foremost's officers, employees, and agents ignored warning signs that the Systems Providers were procuring their clients through fraudulent means and engaging in fraudulent business practices. The Commission ordered Foremost to pay a $400,000 civil monetary penalty. In re Foremost Trading LLC, CFTC Docket No. 13-35 (CFTC filed Sep. 20, 2013), Press Release 6700-13.

False Statements under Dodd-Frank

• The Commission used new Dodd-Frank authority prohibiting the making of false and misleading statements. The Commission filed and settled charges against a defendant who gave false testimony in a Division investigation, imposing a $50,000 penalty on the defendant. In re Butterfield, CFTC Docket No. 13-33 (CFTC filed Sept. 16, 2013), Press Release 6693-13.

• The Commission filed charges in federal court against Arista LLC and its principals, Abdul Sultan Walji (a/k/a Abdul Sultan Valji) and Reniero Francisco (who had previously been charged with fraud), alleging that the defendants misrepresented certain information in a letter sent to the CFTC's Division of Enforcement during the course of an investigation. CFTC v. Arista LLC, et al., 12-CV-9043 (SDNY amended complaint filed May 28, 2013), Press Release 6600-13.

• The Commission also used this new authority in its Peregrine enforcement action to charge the defendants for filing false statements on required forms with the Commission. See above, *Protection of Customer Funds (MF Global, Peregrine and Others).*

Precious Metals Fraud Charges under Dodd-Frank

• Under the Dodd-Frank Act and implementing regulations, the Commission filed charges in federal court against Hunter Wise Commodities, LLC, and related entities, charging them with fraudulently marketing illegal, off-exchange retail commodity contracts involving physical metals, including gold, silver, platinum, palladium, and copper. The complaint alleges that Hunter Wise Commodities, the orchestrator of the fraud, has taken in at least $46 million in customer funds since July 2011. CFTC v. Hunter Wise Commodities, LLC, et al., No. 12-cv-81311 (S.D. Fla. filed Dec. 5, 2012), Press Release 6447-12.

• The Commission also filed and settled actions against 9 firms and 8 individuals who solicited retail customers to invest in financed precious metals transactions, which were executed through Hunter Wise, alleging that the firms were engaging in illegal, off-exchange precious metals transactions and requiring the firms and their principals to pay more than $4.1 million in restitution. See In re Secured Precious Metals Int'l, Inc., et al., CFTC Docket No. 13-12 (CFTC filed Jan. 28, 2013) (Press Release 6503-13; imposing a cease and desist order and five-year trading ban); In re Barclay Metals, Inc., et al., CFTC Docket No. 13-13 (CFTC Jan. 28, 2013) (same); In re Joseph Glenn Commodities, LLC, et al., CFTC Docket No. 13-18 (CFTC filed Mar. 27, 2013) (Press Release 6542-13; ordering defendants to pay approximately $635,000 in restitution and to return approximately $330,000 remaining in customers' accounts, and requiring one of the principals to pay a civil monetary penalty of $100,000); In re Pan American Metals of Miami, LLC, et al., CFTC Docket No. 13-27 (CFTC filed July 29, 2013) (Press Release 6653-13; ordering defendants to jointly pay restitution of approximately $3.2 million and a $1.5 million civil monetary penalty); In re London Metals Market, LLC, et al., CFTC Docket No. 13-32 (CFTC filed Sept. 4, 2013) (Press Release 6680-13; ordering defendants to pay $121,665.75 in restitution); In re Hall, CFTC Docket No. 13-32 (CFTC filed Sept. 4, 2013) (Press Release 6681-13; ordering Hall to pay $202,577 in restitution).

• The Commission also brought actions against other firms that purported to directly deal in precious metal. See CFTC v. Global Precious Metals, LLC, et al., No. 13-cv-21708, Default Judgment (S.D. Fla. entered Aug. 12, 2013) (Press Release 6670-13; defendants ordered to pay a $1.26 million civil monetary penalty, $736,979 in restitution, and to disgorge $186,860 in ill-gotten gains); CFTC v. AmeriFirst Management LLC, et al., No. 13-cv-61637 (S.D. Fla. filed

July 29. 2013) (Press Release 6655-13; Division charges defendants with operating a precious metals scheme marketing illegal, off-exchange financed commodity transactions, claiming that they operated through a network of more than 30 dealers, and fraudulently misrepresenting the nature of those transactions); and CFTC v. Worth Group, Inc., et al., No. 13-cv-80796 (S.D. Fla. filed Aug. 13, 2013) (Press Release 6666-13; Worth is alleged to have taken in over $73 million from hundreds of retail customers located throughout the United States).

• The Commission settled previously filed charges against Ronnie Gene Wilson and his company, Atlantic Bullion & Coin, Inc. (Atlantic Bullion), alleging that they defrauded investors in connection with a multi-million dollar silver bullion Ponzi scheme. The June 6, 2012 complaint charged defendants under new Dodd-Frank Act anti-fraud prohibition in connection with a contract of sale of a commodity in interstate commerce. Wilson was ordered to pay a $23 million civil monetary penalty and $11,530,000 of restitution (and in a parallel criminal case, sentenced to 235 months' imprisonment). CFTC v. Atlantic Bullion & Coin, Inc., et al., No. 8:12-cv-01503-JMC, Consent Order (D.S.C. filed Feb. 27, 2013), Press Release 6524-13.

Ponzi Fraud -- Trial Victory

• On April 24, 2013, following a bench trial, the U.S. District Court for the Southern District of Florida ordered William Center to pay restitution of $455,430 individually and $8,652,140.41 jointly and severally with Trade, LLC, as well as a $4 million civil monetary penalty; and Gregory Center to pay $265,661 restitution and a $2 million civil monetary penalty. The Commission filed charges against the defendants on June 22, 2010 (Press Release 5848-10) alleging that they operated a Ponzi scheme. CFTC v. Milton, et al., No. 9:10-cv-80738-DTKH, Memorandum Opinion (S.D. Fla. May 17, 2013), Press Release 6593-13.

"Prediction Market" Off-Exchange Options Trading

• The Commission filed charges in federal court against Intrade The Prediction Market Limited and Trade Exchange Network Limited (TEN), companies based in Dublin, Ireland, with offering prohibited off-exchange commodity option contracts to U.S. customers by operating an online "prediction market" trading website, through which customers buy or sell binary options that allow them to predict ("yes" or "no") whether a specific future event will occur. The Commission also alleged that defendants made false statements to the Commission about their website and that TEN violated a 2005 CFTC cease and desist order (Press Release 5124-05). CFTC v. Trade Exchange Network Limited, No. 1:12-cv-01902 (D.D.C. Nov. 26, 2012), Press Release 6423-12.

• The Commission filed charges in federal court against Banc de Binary, Ltd., a foreign company, alleging that it operated an unregistered FCM and, from May 2011 through March 2013, operated an online trading website that allowed U.S. customers to trade options products prohibited by the CFTC's ban on off-exchange options trading. CFTC v. Banc De Binary LTD, No. 2:13-cv-00992 (D. Nev. filed June 5, 2013), Press Release 6602-13.

Cooperation with Law Enforcement Partners

• The Division of Enforcement worked actively with federal and state criminal and civil law enforcement authorities, including by sharing information in just under 300 investigations and prosecutions, which is reflective of the high priority that the CFTC places on supporting criminal prosecution of willful violations of the commodities laws. Approximately

93% of the CFTC's major fraud cases filed during FY 13 involved a parallel criminal proceeding, with violators sentenced up to 50 years' imprisonment.

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