



Premier Metal Services, LLC.

Summary

Re: Summary of Premier Metal Services, LLC's Comments in Response to the Request for Comment on the Reauthorization of the Commodity Futures Trading Commission, Market oversight, Agency Oversight and Resources, Statutory Authority and Copper ETFs (Exchange Traded Funds) March 7, 2013.

Content

Comment Letter Reauthorization of the Commodity Futures Trading Commission.

- (i) Brief introduction to the scrap recycling industry;
- (ii) Discussion of the critical role that bona fide hedging serves in the scrap recycling and metals industries;
- (iii) Discussion of several critical issues that remain for "Customers" who engage in hedging and must maintain Segregated Accounts whether or not the CFTC Proposed Enhancements¹ are enacted;
- (iv) Discussion of the important oversight role of the CFTC and statement in support of CFTC Reauthorization; and
- (v) Discussion of the risks that are faced by metals industry participants by permitting the creation and trading of Copper ETFs.

Exhibit List

Exhibit A. Comment Letter filed by Premier Metal Services, LLC on Proposed Rulemaking Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations. (RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012 and 78 Fed. Reg. 4093, January 18, 2013.) Dated January 3, 2013.

Exhibit B. Comment Letter filed by the Institute of Scrap Recycling Industries on Proposed Rulemaking Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations. (RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012 and 78 Fed. Reg. 4093, January 18, 2013.) Dated December 4, 2012.

Exhibit C. "The End User Bill of Rights" Statement of Commissioner Bart Chilton, April 3, 2013. Paragraph No. 4.

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Exhibit D. "SEC ignored risks posed by copper ETF: Southwire." Andrea Hotter, American Metal Market, March 26, 2013.

Exhibit E. "In-warehouse copper premiums skyrocket." Suzy Waite, American Metal Market, April 18, 2013.

Exhibit F. "Copper mine outage sparks shift to scrap." Barbara O'Donovan, American Metal Market, April 18, 2013.

ⁱ Proposed Rulemaking Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations. (RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012 and 78 Fed. Reg. 4093, January 18, 2013.)



Premier Metal Services, LLC.

April 29, 2013

Via Electronic Submission

Senator Debbie Stabenow, Chairwoman
Senator Thad Cochran, Ranking Member
Committee Members
United States Senate
Committee on Agriculture, Nutrition and Forestry
Washington, D.C. 20510-6000

Re: Request for Comment on the Reauthorization of the Commodity Futures Trading Commission, Market oversight, Agency Oversight and Resources, Statutory Authority and Copper ETFs (Exchange Traded Funds) March 7, 2013.

I. Introduction

Premier Metal Services, LLC (“Premier”) is a privately held broker and processor of metals. The vast majority of the metal products that Premier brokers, processes and trades are nonferrous scrap metals such as copper, aluminum, and zinc. Premier is engaged in both the import and export of metals. Premier greatly appreciates this opportunity to comment on the above stated topics and respectfully submits this comment letter (the “Comment Letter”) in response to the Request for Input-Senate Ag-CFTC Reauthorization dated March 7, 2013 (the “CFTC Reauthorization”) issued by the United States Senate, Committee on Agriculture, Nutrition and Forestry. In addition to the comments related to CFTC Reauthorization, this Comment Letter will discuss Copper ETFs (Exchange Traded Funds) recently approved by the Securities and Exchange Commission. More specifically, Premier’s comments will be limited to (i) a brief introduction to the scrap recycling industry; (ii) a discussion of the critical role that bona fide hedging serves in the scrap recycling and metals industries; (iii) a discussion of several critical issues that remain for “Customers” who engage in hedging and must maintain Segregated Accounts whether or not the CFTC Proposed Enhancements¹ are enacted; (iv) a discussion of the important oversight role of the CFTC and statement in support of CFTC Reauthorization;

and (v) a discussion of the risks that are faced by metals industry participants by permitting the creation and trading of Copper ETFs.

Premier has taken an active role in leading an initiative of metals industry companies that are similarly situated in an effort to provide the CFTC with an introduction to the recycling industry and an understanding of the metals industry's significant role in commodity futures trading. The initiative is reflected by the filing of Premier's Comment Letter, Comment No. 59024, dated January 3, 2013, attached as **Exhibit A**, and the Comment Letter filed by the Institute of Scrap Recycling Industries (ISRI), on behalf of its members on December 4, 2012, Comment Number 58962, attached as **Exhibit B**. Premier utilizes bona fide hedging on the futures exchanges as a risk mitigation tool in the ordinary course of its business. As further described below, hedging plays a critical role in the metals recycling industry not only as it relates to the trading of various grades of scrap metal, but also as it relates to those manufacturers that consume, produce, and fabricate metals.

II. Introduction to the Scrap Recycling Industry

The recycling industry is comprised of businesses engaged in the recycling of various commodities such as metals, plastics, glass, paper, rubber, textiles and electronics. Members of ISRI, a Washington, D.C. based trade association representing the scrap recycling industry, are involved in the processing, collecting, trading and consuming of these commodities; for all intents and purposes the scrap recycling industry is the first link in the manufacturing chain. The scrap recycling industry produced approximately \$100 Billion worth of commodities last year, which is equal to roughly 0.6 percent of GDP,² and is similar in size to the nation's forestry and fishing industries combined, nearly all of the nation's professional sports teams and the toy industry. In 2011, scrap recycling brokers and processors provided in excess of 459,000 jobs directly and indirectly.³ Hedging metals' prices on commodity futures exchanges as a risk mitigation tool is a critical component of the financial and risk management activities conducted by scrap metal recyclers ("Metals Recyclers").

In addition to the impact on the domestic economy, the value of scrap exported by the scrap recycling industry in 2011 increased 32% to approach \$40 Billion in export sales to 161 Countries.⁴ Likewise, by value, scrap exports are one of the top 5 exports from the United States.⁵ Many of the commodities traded by Metals Recyclers are also traded on commodity futures exchanges throughout the world. Hedging is widely used as a risk mitigation tool against metals' price volatility and serves to provide liquidity for the metals recycling industry. Within the metals producing, consuming and scrap industries, there is often a significant time lapse that occurs from the time metal is produced, bought, sold, shipped and consumed by an end-user. This is especially cogent because so many metals are shipped all over the world. Specifically, these commodities, such as copper, aluminum, steel, zinc, and tin, among others, are critical raw materials for both emerging markets as well as mature economies.

III. Hedging: Risk Mitigation in the Scrap Metal Recycling Industry

The hedging of metals prices by Metals Recyclers is “bona fide hedging” as defined under the Act⁶ and is in contrast to the often erroneous use and application of the term “hedging” to other financial investment instruments and activities. Bona fide hedging is encouraged in many industries especially with respect to agriculture, and energy. However, the metals industry, and more specifically, the scrap metal recycling industry has not heretofore provided its input on the many issues exposed by the collapse of MF Global.

As mentioned above, Metals Recyclers use hedging on the commodity futures exchanges to mitigate the risk of exposure to metals’ pricing volatility. In addition to hedging on domestic exchanges, Metals Recyclers hedge a considerable volume of aluminum and other nonferrous metals through U. S. based FCMs on the London Metal Exchange. As a practical matter, Metals Recyclers hedge to ensure, on some level, that the risk of the transaction is removed. Metals Recyclers maintain Segregated Accounts comprised of commodity exchange mandated margin requirements, and cash proceeds typically resulting from changes in trading positions and/or market fluctuations. The margin requirements that are mandated by the commodity exchange serve as collateral for a Metals Recycler’s trading activities. Inherently, the Metals Recycler, who is hedging, seeks to reduce the risk of exposure to the market and is not assuming risk with respect to its collateral account. This is in contrast to those who engage in speculative trading on commodity exchanges. Speculators do assume risk of exposure from their trading activities.

IV. Critical Open Issues and Suggestions for Resolution Proposed to the CFTC Market Oversight, Agency Oversight and Resources, Statutory Authority

In order for the markets to function efficiently, Commodity Customers must have confidence and trust in the market’s financial safeguards. Specifically, in the absence of an FDIC or SIPC insurance type of regime, market participants must have a level of trust and confidence that there will not be a repeat of the circumstances involved in the collapse of MF Global and Peregrine. We applaud the CFTC for taking such strong measures in connection with the Enhanced Customer Protections (the “Proposal”) RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012. However, there remain critical open issues of concern involving: (i) FCMs continued unfettered access to pool Customer Funds then hypothecate and re-hypothecate those funds for their own benefit, including, but not limited to FCMs’ ability to transfer those funds to overseas subsidiaries to avoid compliance with U.S. regulations; (ii) the scope of investments that FCMs are still permitted to make under the Act; and (iii) the “permitted language” in Commodity Customer Agreements (the “Agreements”) that grant FCMs such unreasonably wide latitude to use and invest Customer Funds. For a more in-depth discussion of these open issues, including the adhesion contract language in Commodity Customer Agreements, *please see Exhibits A and B.*

Although the Proposal seeks to create a higher level of trust and confidence that Customer Funds will not be put at risk by the FCMs, the Proposal contains no provisions that provide Commodity Customers with an option to “opt out” of granting FCMs access to their collateral. The FCMs appear to have no incentive to encourage them to negotiate alternative segregation arrangements for Commodity Customers. Nor are there any consequences set forth that would penalize FCMs for coercing Commodity Customers to agree to those conditions. Likewise, there are no regulations that provide Commodity Customers with rights to decline those conditions or negotiate more mutually agreeable terms.

We asked the CFTC to mandate that FCMs provide Commodity Customers the option to “opt out” of granting FCMs access to invest Customer Funds including hypothecation and re-hypothecation of those Customer Funds, yet permit those Commodity Customers to continue to actively trade. Alternatively, or in conjunction with an “opt out” provision we also asked the CFTC to consider further enhancements to customer protections that would provide FCMs with an incentive or some reasonable mechanism to negotiate and modify these terms of concern. Alternatively, for those Commodity Customers that elect not to grant such wide latitude to FCMs, mandate that margin money be held in the name of Commodity Customers in accounts, and/or securities, or investment instruments that are identifiable and insurable and prohibit FCMs from transferring funds to foreign subsidiaries to avoid compliance with U.S. regulations.

Since filing the Comment Letters, attached as **Exhibits A and B**, we have had the opportunity to meet with CFTC Officials on two occasions to discuss these and other issues. Not only did these Officials show a strong interest in learning about our industry and our business model, they showed a keen interest in the issues and potential resolutions we proposed. Specifically, the “opt-out” or “alternative segregation arrangements” that we originally proposed in our Comment Letters⁷ seems to have risen from obscurity to now being part of the discussion. *Please see **Exhibit C**. “The End User Bill of Rights” Statement of Commissioner Bart Chilton, April 3, 2013. Paragraph No. 4.*

V. Importance of the Role of the CFTC

The collapse of both MF Global and Peregrine exposed systemic problems within the commodity futures trading industry and its self-regulatory oversight regime. Commodity futures remain the only financial market where participants have no statutory insurance system. The CFTC’s oversight is critical given, among other things, the composition of futures markets’ participants. Generally speaking, there are two significant, yet often, diametrically opposed participants, speculators and bona fide hedgers. It is important to draw this distinction, despite the systemic issues because the participants play an important role in providing liquidity to the market and as such, the futures markets tend to function efficiently.

Speculators are attempting to predict and profit on a movement in pricing of a particular commodity at a particular point in time. Speculators assume an inherent risk to losing all funds on account, however, they also stand to gain if their bet is correct. On the other hand, companies using the commodity exchanges for the purpose of engaging in risk mitigation are employing hedging as a tool and do not assume the same inherent risk of loss that speculators assume. In the absence of hedging, metals merchants, consumers, and processors are exposed to the volatility of price fluctuations which could have a devastating financial impact on a business.

Although we have argued above that the proposed enhancements to customer protections should go further, we strongly believe that without the critical role that the CFTC plays, there would clearly be even greater abuses in the marketplace and the countless farmers, livestock, energy, metals, etc., currently maintaining a risk mitigation program, would be without any protections. We strongly support the reauthorization of the CFTC and strongly suggest that appropriate budgetary levels are provided so that the CFTC can obtain proper levels of staff to manage its oversight and enforcement responsibilities especially in light of the additional duties under Dodd Frank.

VI. Copper ETFs

A. Copper Basics

The discussion of Copper ETFs contained herein represents our views on the potential danger that Copper ETFs pose to a multitude of industries and ultimately, the United States' economy. The creation and implementation of Copper ETFs will create distortions in the copper marketplace and will invite manipulation of copper prices and copper availability. Copper is widely used as a raw material in many consumer products, U. S. infrastructure development, electric power generation, housing, and defense among other areas of critical economic importance. Copper is not only mined, it is also one of the most widely recycled metals in the world. Copper is traded on a number of commodity exchanges around the world, the London Metal Exchange, the Shanghai Metal Exchange and the Chicago Mercantile Exchange (the "COMEX"), to name a few. Copper cathode is inventoried and stored in exchange approved warehouses ("Exchange Warehouses").

Historically, Copper pricing was determined based on supply and demand fundamentals, however, the last decade or so saw external or non-industry participants influence copper pricing through, among other things, speculation. Copper is attractive to speculators and investors because it is viewed as an indicator of economic activity. Fundamentally, as copper usage increases it tends to reflect robust economic activity. When copper demand and usage increases, the price of copper rises. As a practical matter, copper prices are also affected by the availability of physical copper. Currently, although copper inventories are relatively higher,

copper availability is greatly diminished as discussed below. Add speculation and external investor interest to the basic demand-supply equation and the swings in copper prices become more volatile. Physical copper held in inventory that is kept off the market is unavailable for industrial use.

There are further limitations on the availability of copper cathode and copper scrap. Copper cathode is produced from mined copper ore, yet the processes require considerable long-term capital outlays and sizeable operating costs. Copper supply is supplemented by recycled scrap metals such as copper, brass and bronze. Although there are capital expenditures required for recycling copper scrap, those costs are significantly lower than mining copper and producing cathode. Recycling copper scrap also provides an efficient and environmentally positive allocation of resources. That being said, there remains a finite level of copper available for industrial uses.

B. Issues: An Invitation for Manipulation and Abuse

Copper ETFs pose a number of potential dangers to an already delicate copper market. These dangers not only impact price but also impact the availability of physical copper for manufacturing and industrial applications. Copper ETFs will be supported or backed by physical copper held in inventories. A multitude of issues exist, but for the purposes of this comment only a few issues will be highlighted.

i. Common Control

Currently, owning Exchange Warehouses has been a lucrative business for investment banks. These same investment banks have sought regulatory approval to market and trade Copper ETFs. See **Exhibit D** "SEC ignored risks posed by copper ETF: Southwire." The potential to own the Exchange Warehouses storing copper cathode and trade in funds supported by those inventory stocks invites manipulation, market distortions and a concentrated control over a limited resource critical to the U.S. economy. Too much control in too few hands for a widely used resource is a recipe for disaster. Despite whether the entities that own the Exchange Warehouses are legally separate from those marketing and trading ETFs, the distinction is only a legal distinction. The fact of the matter is that both entities are subsidiaries and/or affiliates of the same organization. Over the course of the last six years or so, we have all been witness to rampant market manipulation and the excuses that use "subsidiaries and affiliates" to hide behind legal distinctions to justify or excuse bad behavior. Those entities will profit from holding material in the Exchange Warehouses and will profit from the movements in copper prices, which, as discussed, are impacted by physical copper's availability in the marketplace. As is commonly recognized by the investment community, profits can be made from rising or falling prices.

ii. Market Distortions and Availability of Copper

As of the date of this comment, there are severe distortions occurring in the copper market. There are a series of articles from the American Metal Market discussing the impact of a natural disaster on copper supply, availability and pricing. See Exhibit E "In-warehouse copper premiums skyrocket." The articles reflect that premiums increase with a decrease in availability and supply. Although copper inventory stocks are supposedly very high, the actual physical metal is not available to end users. In other words, those industries that need to meet their respective production requirements cannot readily obtain copper cathode. As discussed in the article attached as Exhibit F "Copper mine outage sparks shift to scrap." there are increasingly long waits to remove copper from Exchange Warehouses. Again, these Exchange Warehouses are owned by the same investment banks who want to create the Copper ETFs. Some of the Exchange Warehouses have a year-long wait, yet copper and brass mills, manufacturers and end users require delivery of raw materials to meet their respective production requirements. Consumers of copper cathode who are able to use copper scrap as a replacement will reach into the scrap metal market for additional supply. Likewise, there is not an infinite supply of copper scrap; as a result, the price of copper scrap also increases as its demand and consumption increases. Although these movements reflect supply-demand fundamentals, the origin of these issues can be directly traced to the inability to obtain copper cathode on a timely basis from Exchange Warehouses. The longer period of time that copper cathode remains in Exchange Warehouses, higher profits are yielded by those same Exchange Warehouse owners. Accordingly, there is an incentive to delay copper cathode from reaching or supplying the physical copper marketplace.

If copper stored in warehouses is used to back Copper ETFs, as a practical matter, it will not be available for use in the marketplace. Or at the very least, it can be withheld from the marketplace to create a greater demand and/or manipulate copper prices. As mentioned above, the incentive for Exchange Warehouse owners and those investment banks making a market in Copper ETFs is to withhold copper cathode from the physical marketplace. However, the risk to the U.S. economy, manufacturing, electric power generation, and U.S. Consumers, among others, cannot be over-stated. Permitting Copper ETFs places a significant amount of control and influence in the hands of only a few for such a vital raw material. If manufacturers cannot reasonably acquire raw materials to meet production needs, then manufacturers will either relocate where they can obtain raw materials, or cease to exist which means not only the further erosion of manufacturing but even more critical the loss of valuable manufacturing jobs.

Furthermore, the argument that Precious Metals based ETFs are successful so Copper ETFs will also be successful is greatly flawed. As discussed above, copper is a vital raw material used in electric power generation, automobile production, home building, commercial construction, manufacturing of durable goods, consumer electronics, and many other areas. Copper is relied upon as a raw material or a component in countless products. Contrast the wide use of copper

with precious metals' use, copper availability has a much broader impact to the economy and jobs.

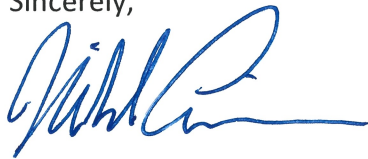
The debate over whether Copper ETFs should be permitted seems to be a classic case of "Wall Street v. Main Street." Do we allow a few investment banks to effectively control a vital raw material and risk already delicate manufacturing jobs and manufacturing capability, or do we make prudent decisions that support vital U.S. manufacturing and valuable U.S. jobs? It seems logical that deference should be afforded the broader economy as opposed to exposing a significant resource to potential manipulation and abuse.

VII. Conclusion

As mentioned above, bona fide hedging employed as a risk mitigation tool protects metals industry participants and Premier's business against exposure to the volatility of metals pricing; similar in purpose and practice to hedging programs employed in the agriculture industry. Bona fide hedging programs are encouraged under the spirit of the Act. Segregated Accounts are the mechanism used to hold initial and variable margin money required to be held on account as collateral with clearing firms. We have asked the CFTC to give full and careful consideration to our requests concerning the critical open issues discussed in Section IV. We support reauthorization of the CFTC and appropriate resources for the CFTC to accomplish its mandates. We also thank the CFTC for taking so many necessary steps to ensure that Commodity Customers' collateral held by FCMs is safe and secure. In order for the market to operate efficiently there must be confidence and mutual trust, neither of which exists right now as a lasting result of the collapse of MF Global and Peregrine.

Additionally, we are deeply concerned that the creation and implementation of Copper ETFs poses a significant risk to those industries that consume, produce, fabricate and manufacture products out of copper and/or copper based products. Likewise, those risks have a direct impact on the U.S. economy as a whole. Copper is too vital a raw material to invite the potential for manipulation and abuse that Copper ETFs pose. The potential negative impact will be irreversible.

Sincerely,



Michael Eisner, President



Mark A. Weintraub, Esq., In-house Counsel

¹ Proposed Rulemaking Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations. (RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012 and 78 Fed. Reg. 4093, January 18, 2013.)

² In 2011, ISRI retained the independent consulting firm of John Dunham and Assoc. to perform an economic impact analysis of the scrap recycling industry on the U.S. economy. The statistics are based on the Economic Impact of the Scrap Recycling Industry in the United States (2011), produced for ISRI, by John Dunham and Associates, 2011.

³ Scrap Recycling Industry Impact Methodology Summary, John Dunham and Associates, 2011.

⁴ The United States Census Bureau and the United States International Trade Commission.

⁵ The United States Census Bureau and the United States International Trade Commission.

⁶ 7 U.S.C § 6a.

⁷ See Exhibits A & B.

EXHIBIT A



Premier Metal Services, LLC.

January 3, 2013

Via Electronic Submission

Gary Barnett, Director
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comments on Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations. (RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012)

I. Introduction

Premier Metal Services, LLC (“Premier”) is a privately held broker and processor of metals. The vast majority of the metal products that Premier brokers, processes and trades are nonferrous metals such as copper, aluminum, and zinc. Premier is engaged in both the import and export of metals. Premier respectfully submits these comments in response to the Notice of Proposed Rulemaking (the “Proposal”) on Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (“Enhanced Customer Protections”). Premier utilizes bona fide hedging as a risk mitigation tool in the ordinary course of business. Never did we consider that the collateral we were required to post for our trading account would itself be put at risk. Although we reserve the right for further comment, Premier’s comments in this letter will be limited to (i) discussing several critical issues that had not been addressed in the Proposal; (ii) offering support for the Proposal for the Enhanced Customer Protections; and (iii) offering full support for the Comment Letter filed by the Institute of Scrap Recycling Industries (ISRI), on behalf of its members on December 4, 2012, Comment Number 58962, and introducing the CFTC to the recycling industry and its significant role in commodity futures trading.

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II. Critical Open Issues and Suggestions for Resolution

In order for the markets to function efficiently, commodity customers must have confidence and trust in the market's financial safeguards. Specifically, in the absence of an FDIC or SIPC insurance type of regime, market participants must have a level of trust and confidence that there will not be a repeat of the circumstances involved in the collapse of MF Global and Peregrine. We applaud the CFTC for taking such strong measures in connection with the Enhanced Customer Protections and we fully support all of the proposals contained in RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012. However, there remain critical open issues of concern involving: (i) FCMs continued unfettered access to pool Customer Funds then hypothecate and re-hypothecate those funds for their own benefit, including, but not limited to FCMs' ability to transfer those funds to overseas subsidiaries to avoid compliance with U.S. regulations; (ii) the scope of investments that FCMs are still permitted to make under the Act; and (iii) the "permitted language" in Commodity Customer Agreements (the "Agreements") that grant FCMs such unreasonably wide latitude to use and invest Customer Funds.

The language that is typically found in Agreements permitting an FCM to use Customer Funds, at the FCM's discretion (or whim), is buried deep within the Agreement. In order to open a commodity trading account with a particular FCM, a Commodity Customer must comply with such a clause. Below is a clause taken from an FCM's Agreement packet and two examples are attached as Exhibit A.

Except as prohibited by Applicable Law, all collateral now or hereafter held or carried by the clearing firm (CF) for customer may, from time to time, without notice to customer, be pledged, hypothecated, loaned or invested by CF to or with CF or others, separately or with any other property. CF shall not be required to retain in its possession for delivery a like amount of, or to pay interest or to account to customer for any profits on, such property. All transactions for or on customers behalf may be included in a single account whether or not such transactions are segregated on CF's records into separate accounts, either severally or jointly with others.¹

This common clause skirts the spirit of the Act by granting wide latitude to the FCM to use Customer Funds, which the Commodity Customer is required to post for initial and variable margin. Allowing an FCM unfettered use of Customer Funds without a mechanism for such funds to be guaranteed or insured exposes those Customer Funds to risk of loss. The Enhanced Customer Protections do take a significant step towards reducing that risk and potentially providing an early warning mechanism for alerting the CFTC, Commodity Customers, and other oversight entities of the possibility that certain precarious issues may arise. Yet, the

Regulations still prohibit a Commodity Customer from placing margin in a security account or financial instrument that is maintained in the name of the Commodity Customer and is both identifiable and insurable by SIPC or a bank account that is otherwise insured by the FDIC.

Commissioner Chilton has publically endorsed the creation of an insurance regime, which we welcome and endorse as well. However, an insurance regime limited to the amount of \$250,000, as proposed, is inadequate given the margin requirements of most trading accounts, even small accounts. Premier would recommend that an insurable level be determined based on an analysis of average levels held in margin accounts of a reasonable historical period.

Often, unknowingly, Commodity Customers acquiesce to these clauses which are buried deep within a forty or fifty page Agreement. Recognizing that a Commodity Customer must understand the terms of the Agreement, if a Commodity Customer wanted to modify or did not want to grant the FCM the rights as stated in that clause, Commodity Customers are powerless to negotiate changes -- the Agreements are nothing less than contracts of adhesion with regard to all except, perhaps, the very largest Customers.

Below are some examples of terms or modifications to Commodity Customer Agreements that were actually proposed and rejected:

- 1) Require FCMs to provide an alternative to granting them discretionary ability to pool and invest Customer Funds with the full understanding that transaction costs may increase.
- 2) Allow segregated margin funds for hedge accounts to be swept nightly into a securities account that is insurable by SIPC, and/or a commercial bank account insured by the FDIC.
- 3) Allow U.S. Treasury Notes, a permissible instrument to post as margin, to be held in the name of the Commodity Customer, and perhaps consider permitting a UCC filing.
- 4) Modify the scope of SIPC to include Customer funds insured up to a statutory limitation.

As noted above, several of the aforementioned concepts were presented to FCMs in the period following the collapse of MF Global when Commodity Customers were seeking to re-open accounts which were previously at MF Global and that had been transferred to another FCM. The response from the FCMs was that the terms of the Agreements were non-negotiable. Admittedly, some or all of the above suggestions would require FCMs to modify or forego their ability to speculate with Commodity Customers' Segregated Accounts holding margin requirements. However, from a Customer's point of view, these suggestions would go a long way towards leveling the playing field.

The FCMs appear to have no incentive to encourage them to negotiate certain terms of the Agreements with Commodity Customers. Nor are there any consequences set forth that would penalize FCMs for coercing Commodity Customers to agree to those conditions. Likewise, there are no regulations that provide Commodity Customers with rights to decline those conditions or negotiate more mutually agreeable terms. As discussed above, Commodity Customers have attempted to negotiate modifications to the Agreements, however, the responses received indicate that the Commodity Customers, if they want to continue to have an open and active account, must acquiesce.

As mentioned above, Premier would clearly prefer that FCMs not have the ability to invest Customer Funds for the FCMs' benefit. Although the Proposal seeks to create a higher level of trust and confidence that Customer Funds will not be put at risk by the FCMs, the Proposal contains no provisions that provide Commodity Customers with an option to "opt out" of granting FCMs access to their collateral.

We ask the CFTC to mandate that FCMs provide Commodity Customers the option to "opt out" of granting FCMs access to invest Customer Funds including hypothecation and re-hypothecation of those Customer Funds, yet permit those Commodity Customers to continue to actively trade. Alternatively, or in conjunction with an "opt out" provision we are asking the CFTC to consider further enhancements to customer protections that would provide FCMs with an incentive or some reasonable mechanism to negotiate and modify these terms of concern for those Commodity Customers that elect not to grant such wide latitude as is represented by the aforementioned Agreement clause. Mandate that margin money be held in the name of Commodity Customers in accounts, and/or securities, or investment instruments that are identifiable and insurable. Prohibit FCMs from transferring funds to foreign subsidiaries to avoid compliance with U.S. regulations. Examples of reasonable modifications are listed on the prior page.

III. "Enhanced Customer Protection Proposal" Comments

Premier is a business engaged in bona fide hedging as defined under the Act and fully supports the Enhanced Customer Protections. As proposed, the Enhanced Customer Protections do provide a much higher level of customer protection. We recognize that many of the CFTC's requests for specific comments involve assessment of the projected costs that will be incurred by FCMs and we have elected not to comment on those requests. It is our position, from the Commodity Customers' perspective, that the Enhanced Customer Protections proposed by the CFTC and endorsed by Chairman Gensler² clearly serve to achieve their stated goals and we support the Enhanced Customer Protections.

IV. Institute of Scrap Recycling Industries Comment Letter (Portions Restated)

ISRI is a Washington, D.C. based trade association representing the scrap recycling industry. The industry is comprised of businesses engaged in the recycling of various commodities such as metals, plastics, glass, paper, rubber, textiles and electronics. Members of ISRI are involved in the processing, collection, trading and consuming of these commodities; for all intents and purposes the industry is the first link in the manufacturing chain. The scrap recycling industry produced approximately \$100 Billion worth of commodities last year, which is equal to roughly 0.6 percent of GDP,³ and is similar in size to the nation's forestry and fishing industries combined, nearly all of the nation's professional sports teams and the toy industry. In 2011, scrap recycling brokers and processors provided in excess of 459,000 jobs directly and indirectly.⁴ Hedging metals' prices on commodity futures exchanges as a risk mitigation tool is a critical component of the financial and risk management activities conducted by scrap metal recyclers ("Metals Recyclers").

In addition to the impact on the domestic economy, the value of scrap exported by the scrap recycling industry in 2011 increased 32% to approach \$40 Billion in export sales to 161 Countries.⁵ Likewise, by value, scrap exports are one of the top 5 exports from the United States.⁶ Many of the commodities traded by Metals Recyclers are also traded on commodity futures exchanges throughout the world. Hedging is widely used as a risk mitigation tool against metals' price volatility and serves to provide liquidity for the metals recycling industry. Within the metals producing, consuming and scrap industries, there is often a significant time lapse that occurs from the time metal is produced, bought, sold, shipped and consumed by an end-user. This is especially cogent because so many metals are shipped all over the world. Specifically, these commodities, such as copper, aluminum, steel, zinc, and tin, among others, are critical raw materials for both emerging markets as well as mature economies.

The collapse of MF Global exposed several systemic problems within the commodity futures trading industry and its oversight regime. According to the Staff Report Prepared for Rep. Randy Neugebauer, Chairman of the Subcommittee on Oversight & Investigations, Committee on Financial Services, and dated November 15, 2012, there is still in excess of **\$665 Million** missing from Commodity Customers' accounts used for foreign trading, and likely in excess of **\$100 Million** still missing from domestic accounts.⁷ Although the Trustee overseeing the U.S. insolvency proceeding announced further distributions, many Metals Recyclers, as well as their suppliers, customers and consumers continue to represent a significant portion of missing funds in the U.K. insolvency proceedings. It is uncertain whether any of those remaining missing funds will be recovered; and much is now tied up in overseas legal battles stemming from the MF Global U.K. insolvency proceedings.

V. Hedging: Risk Mitigation in the Scrap Metal Recycling Industry

The hedging of metals prices by Metals Recyclers is “bona fide hedging” as defined under the Act⁸ and is in contrast to the often erroneous use and application of the term hedging to other financial investment instruments and activities. Bona fide hedging is encouraged in many industries especially with respect to agriculture, and energy. However, the metals industry, and more specifically, the scrap metal recycling industry has not heretofore provided its input on the many issues exposed by the collapse of MF Global.

As mentioned above, Metals Recyclers use hedging on the commodity futures exchanges to mitigate the risk of exposure to metals’ pricing volatility. In addition to hedging on domestic exchanges, Metals Recyclers hedge a considerable volume of aluminum and other nonferrous metals through U. S. based FCMs on the London Metal Exchange. As a practical matter, Metals Recyclers hedge to ensure, on some level, that the risk of the transaction is removed. Metals Recyclers maintain Segregated Accounts comprised of commodity exchange mandated margin requirements, and cash proceeds typically resulting from changes in trading positions and/or market fluctuations. The margin requirements mandated by the commodity exchange serve as collateral for a Metals Recycler’s trading activities. Inherently, the Metals Recycler, who is hedging, seeks to reduce the risk of exposure to the market and is not assuming risk with respect to its collateral account.

VI. Conclusion

As mentioned above, bona fide hedging employed as a risk mitigation tool protects Premier’s business against exposure to the volatility of metals pricing; similar in purpose and practice to hedging programs employed in the agriculture industry. Bona fide hedging programs are encouraged under the spirit of the Act. Segregated Accounts were the mechanism used to hold initial and variable margin money required to be held on account as collateral with clearing firms. We ask the CFTC to give full and careful consideration to our requests concerning the critical open issues discussed in Section II. We thank the CFTC for taking so many necessary steps to ensure that Commodity Customers’ collateral held by FCMs is safe and secure. In order for the market to operate efficiently there must be confidence and mutual trust, neither of which exists right now as a lasting result of the collapse of MF Global and Peregrine.

Sincerely,



Michael Eisner, President



Mark A. Weintraub, Esq., In-house Counsel

¹ Similar, if not exact, language exists on Commodity Customer Agreements from all FCMs, including MF Global.

² Summary of the Enhanced Customer Protections was compiled from the CFTC Release: PR6396-12 dated October 23, 2012, and Chairman Gensler's Statement of Support dated October 23, 2012.

³ In 2011, ISRI retained the independent consulting firm of John Dunham and Assoc. to perform an economic impact analysis of the scrap recycling industry on the U.S. economy. The statistics are based on the Economic Impact of the Scrap Recycling Industry in the United States (2011), produced for ISRI, by John Dunham and Associates, 2011.

⁴ Scrap Recycling Industry Impact Methodology Summary, John Dunham and Associates, 2011.

⁵ The United States Census Bureau and the United States International Trade Commission.

⁶ The United States Census Bureau and the United States International Trade Commission.

⁷ Staff Report Prepared for Rep. Randy Neugebauer, Chairman, Subcommittee on Oversight & Investigations, Committee on Financial Services, 112th Congress, November 15, 2012, p 73-74.

⁸ 7 U.S.C § 6a.

EXHIBIT A

ACCOUNT AGREEMENT

1. ACCOUNT STATUS

This Account Agreement ("Agreement") sets forth the terms and conditions upon which R.J. O'Brien & Associates, LLC ("R.J. O'Brien") will accept and maintain for the undersigned Customer one or more accounts and act as broker or dealer for Customer in the execution and clearance of orders for transactions (whether domestic or foreign) involving the purchase and sale of futures contracts; options on futures contracts; commodities and forward contracts; security futures contracts ("SSF"); option, spot and forward foreign exchange transactions; exchange for physicals ("EFPs"); and any other cash transaction or derivative, or any similar instruments which may be purchases, sold or cleared by or through an FCM (individually, a "Contract" and collectively, "Contracts"). Customer hereby represents that all responses made in connection with the Account Application and this Agreement are complete and correct, and that R.J. O'Brien will be informed of any material change in such data, including financial information.

If this account has been introduced to us, all references to us in this Agreement shall include your broker, and your broker shall enjoy all benefits and rights hereunder. Customer agrees and acknowledges that broker and R.J. O'Brien may share information with each other regarding or relating to Customer and/or Customer's account (s). Customer warrants to R.J. O'Brien that if Customer is an individual or if this is a joint account, Customer (s) is of legal age and of sound mind. Unless otherwise indicated in the Application, no one except the Customer (s) identified in the Account Application has an interest in the account (s). Customer agrees to permit verification of relevant information by R.J. O'Brien through third parties (including credit reporting entities). In any event, this Agreement and the account (s) permitted hereunder become effective only upon acceptance by an authorized representative of R.J. O'Brien at its principal office in Chicago, Illinois.

2. ACCOUNT RISKS

- A.) TRADING IN CONTRACTS IS HIGHLY SPECULATIVE AND IN NO SENSE MAY BE CONSIDERED A CONSERVATIVE INVESTMENT;
- B.) BECAUSE OF THE LOW MARGIN DEPOSITS NORMALLY UTILIZED AND THE VOLATILE PRICE MOVEMENTS WHICH CAN OCCUR IN THE MARKETS FOR CONTRACTS, THE POSSIBILITY OF RAPID AND SUBSTANTIAL LOSSES IS CONTINUALLY PRESENT;
- C.) TRADING IN CONTRACTS IS APPROPRIATE ONLY FOR THOSE PERSONS FINANCIALLY ABLE TO WITHSTAND SUBSTANTIAL LOSSES, SOMETIMES GREATLY EXCEEDING THE VALUE OF THEIR MARGIN DEPOSITS; AND
- D.) NO ONE (INCLUDING FUTURES COMMISSION MERCHANTS, ASSOCIATED PERSONS, INTRODUCING BROKERS, FUND MANAGERS, COMMODITY TRADING ADVISORS OR POOL OPERATORS) CAN GUARANTEE PROFITS OR THE ABSENCE OF LOSSES. CUSTOMER AGREES TO PROMPTLY NOTIFY THE R.J. O'BRIEN COMPLIANCE DEPARTMENT IF ANY SUCH GUARANTEE IS SUGGESTED.

3. MARGINS

All checks and funds from Customer, to be credited to Customer's account(s), must be payable only to "R.J. O'Brien". Customer agrees at all times to maintain such margin in his account(s) as R.J.

O'Brien may from time to time (at its sole discretion) require, and will meet all margin calls in a reasonable amount of time. Customer agrees that, if requested to do so, Customer will promptly wire-transfer such funds. Market conditions permitting, R.J. O'Brien agrees to make reasonable efforts to notify Customer of margin calls and/or deficiencies and to allow a reasonable period for Customer to provide funds.

FOR PURPOSES OF THIS AGREEMENT, A REASONABLE AMOUNT OF TIME SHALL BE DEEMED TO BE ONE (1) HOUR, OR LESS THAN ONE HOUR IF, IN R.J. O'BRIEN'S BUSINESS JUDGMENT, MARKET CONDITIONS WARRANT.

Customer further agrees that, notwithstanding anything in this Agreement to the contrary, in the event that the account (s) is under margined, has zero equity or is equity deficit at any time, or in the event that R.J. O'Brien is unable to contact Customer due to Customer's unavailability or due to a breakdown in electronic communications, R.J. O'Brien shall have the right to liquidate all or any part of Customer's positions through any means available, without prior notice to the Customer.

R.J. O'Brien may require margin in excess of that required by applicable law, regulation, exchange or clearinghouse minimums. Customer acknowledges that R.J. O'Brien has no obligation to establish uniform margin requirements among products or customers, that margins required by R.J. O'Brien may exceed the minimum margin requirements of the applicable exchange or clearinghouse, and that margin requirements may be increased or decreased from time to time in R.J. O'Brien's discretion, without advance notice to Customer. All deposits shall be deemed made only when cleared funds are actually received by R.J. O'Brien. If a check is not honored or paid by a bank upon presentment, R.J. O'Brien will immediately debit Customer's account for the amount of the returned check as well as any fees incurred.

Any failure by R.J. O'Brien to call for margin at any time shall not constitute a waiver of R.J. O'Brien's right to do so any time thereafter, nor shall such failure create any liability to the Customer. R.J. O'Brien shall not be liable to Customer for the loss or loss of use of any margin deposits option premiums, or other property, which is caused, directly or indirectly, by the failure or delay by any bank, trust company, exchange, clearing organization, other clearing broker or entity that is holding funds, securities, or other property to pay or deliver the same to R.J. O'Brien. R.J. O'Brien may, for any reason, require Customer to transfer its account (s) to another firm. If Customer does not transfer its positions promptly upon demand by R.J. O'Brien, R.J. O'Brien may liquidate the positions and Customer agrees to indemnify and hold R.J. O'Brien harmless from any and all losses resulting from such liquidation.

Customer acknowledges that R.J. O'Brien is hereby authorized, for its account and benefit, from time to time and without notice to Customer, either separately or with others, to lend, repledge, hypothecate or rehypothecate, either to itself or to others, any and all property (including but not limited to securities, commodities warehouse receipts or other negotiable instruments) held by Customer in any of its accounts and R.J. O'Brien shall not at any time be required to deliver to Customer such identical property but may fulfill its obligation by delivery of property of the same kind and amount.

Continued on Next Page.

9. Security Interest

Customer grants AACC a first lien and security interest in all monies, securities of any kind, open positions in Commodity Interests, documents representing title to commodities such as warehouse receipts and the commodities represented thereby and any other property of Customer (either individually or jointly with others) now or in the future held by AACC in the Account or otherwise in AACC's possession or control for any purpose, including safekeeping (collectively, the "Collateral"), to secure payment and discharge of all obligations of Customer to AACC or any affiliate of AACC, which Collateral is subject to the general lien of, and right of set-off by, AACC for any and all such obligations. Customer agrees to execute any and all documents including Uniform Commercial Code financing statements, as deemed necessary or appropriate by AACC to evidence or perfect its security interest in any Collateral. Customer has not granted and will not grant a security interest in the Collateral or its Account (other than the security interest granted to AACC hereunder) to any other party without AACC's written consent.

Except as prohibited by Applicable Law, all Collateral now or hereafter held or carried by AACC for Customer may, from time to time, without notice to Customer, be pledged, hypothecated, loaned or invested by AACC to or with AACC or others, separately or with any other property. AACC shall not be required to retain in its possession for delivery a like amount of, or to pay interest or to account to Customer for any profits on, such property. All transactions for or on Customer's behalf may be included in a single Account whether or not such transactions are segregated on AACC's records into separate accounts, either severally or jointly with others.

10. Events of Default

The following events shall constitute an "Event of Default," as applicable: (a) Customer breaches, repudiates, or defaults in any way under this Agreement or any other agreement with AACC; (b) AACC, in its sole discretion, determines that it has sufficient grounds for insecurity with respect to Customer's performance of any obligation (including the obligation to deposit additional Collateral or margin) or Customer fails to provide assurance of performance of any obligation satisfactory to

AACC; (c) Customer dies, becomes disabled, becomes incompetent or is subject to a rehabilitation, (d) Customer becomes subject to any bankruptcy, Insolvency, receivership or similar action or proceeding; (e) Customer's Account is garnished or attached; (f) Customer takes any action to effect a dissolution, liquidation, reorganization, winding up of its affairs or any similar event; (g) AACC believes that any information or assertion provided or made to AACC is, or becomes, or will become, in any material way inaccurate or misleading; (h) Customer fails to deposit margin or make premium payments in accordance with the terms of this Agreement or to perform any of its other obligations hereunder, including those respecting delivery, exercise or settlement under any Commodity Interest held in the Account; or (i) AACC has reason to believe that any of the foregoing is likely to occur immediately.

11. Remedies Upon Default

Customer acknowledges and agrees that upon the occurrence of an Event of Default, or if AACC determines, in its sole discretion, that such action is necessary or advisable for AACC's own protection, AACC, may exercise any one or more of the following remedies, in addition to any other right or remedy available to it at law or in equity: (i) close out or hedge any open positions in Commodity Interests (in whole or in part) in Customer's Account in any manner AACC deems reasonable under the circumstances (including through use of exchange for related positions transactions in accordance with Exchange rules); (ii) apply any Collateral in the form of cash and liquidate or sell any or all non-cash Collateral and apply the proceeds thereof to offset Customer's obligations, (iii) borrow, lend, sell or buy any securities, commodities or other property for Customer's Account to cover or hedge any or all existing positions, (iv) place and/or establish spread transactions, (v) "roll" open positions forward, (vi) cancel any outstanding orders, commitments or obligations made by AACC on behalf of Customer; or (vii) terminate this Agreement, all without prior demand or notice to Customer. Any such sale, purchase, cancellation or other action may be made at AACC's sole discretion on the Exchange where such business is transacted, at public auction or by private sale, without advertising the same. Customer shall remain liable for the amount of

CUSTOMER AGREEMENT

This agreement ("Agreement") sets forth the terms and conditions under which MF Global Inc. and its affiliates ("we" or "us") (collectively "MF Global") will open and maintain one or more accounts (collectively, the "Account") in your name and on your behalf and otherwise transact business in cash commodities, commodity futures, security futures, options and forward contracts thereon, and interests therein (including, but not limited to, exchange-for-physical ("EFP"), exchange-for-swap ("EFS"), exchange-for-options ("EFO") and exchange-for-risk ("EFR") transactions), securities, foreign futures and options and foreign currencies (collectively, "Contracts") with you. If this Account has been introduced to us, all references to us in this Agreement shall include your broker, and your broker shall enjoy all benefits and rights hereunder.

1. APPLICABLE LAW; TRANSACTION FACILITIES

Each Account and all Contracts, transactions and agreements in respect of each Account shall be subject, as applicable, to: (i) the Commodity Exchange Act ("CEA") and all rules and interpretations of the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA"); (ii) the constitution, by-laws, rules, regulations, policies, procedures, interpretations and customs of any applicable U.S. or non-U.S. board of trade, exchange, contract market, trading facility or execution facility, including, without limitation, an electronic trading system, facility or service, or clearing organization (each, a "Transaction Facility") or of any clearing firm or self-regulatory agency or organization; and (iii) any other laws, rules, interpretations, customs or usage of the trade applicable to your trading of Contracts. All such laws, by-laws, rules, regulations, policies, procedures, interpretations, customs and usage, as in force from time to time, are hereinafter collectively referred to as "Applicable Law."

This paragraph is solely for MF Global's protection and MF Global's failure to comply with any such statute, rule or regulation shall not be a breach of this agreement or otherwise a liability upon MF Global to Customer nor relieve Customer of any obligations under this Agreement.

2. MARGINS

You agree to maintain, without demand from us, such margin, cash or other acceptable collateral as we in our sole discretion may require from time to time, the amount of which may, in our sole discretion, exceed any amount that may be required by Applicable Law. Customer shall provide to and maintain with MF Global margin in such amounts and in such form as MF Global, in its sole discretion, from time to time may determine. Such margin requirements established by MF Global may exceed the margin required of MF Global by an exchange. MF Global may change margin requirements in its sole discretion at any time. If MF Global determines that additional margin is required, Customer agrees to deposit with MF Global such additional margin when and as required and demanded by MF Global, and will promptly meet all margin calls in such manner as MF Global shall designate in its sole discretion. Notwithstanding any demand for additional margin, MF Global at any time may proceed in accordance with Paragraph 4 below, and any failure to proceed shall not be deemed a waiver of any rights by MF Global. No previous margin shall establish any precedent. MF Global shall not be liable to Customer for the loss of any margin deposits which is the direct or indirect result of the bankruptcy, insolvency, liquidation, receivership, custodianship, or assignment for the benefit of creditors of any bank, another clearing broker, exchange, clearing organization, or similar entity.

3. SECURITY INTEREST AND LIEN

As security for the payment of all of your obligations and liabilities to us, we shall have a general lien and continuing perfected first security interest in, and lien upon, all property in which you have an interest held by or through us including, but not limited to, all Contracts, margin, collateral, performance bond, premium, funds, securities, currencies, credit balances, foreign exchange contracts, commercial paper, monies, any other property and all rights you may

have against us (collectively, "Collateral"). In addition, in order to satisfy any outstanding liabilities or obligations you may have to us including, without limitation, any margin call, we may, at any time and without prior notice to you, sell, purchase, use, apply or transfer any of such Collateral interchangeably (including cash and fully paid securities). In the event of a breach or default under this Agreement or any other agreement you may have with us, we shall have all rights and remedies available to a secured creditor under Applicable Law, in addition to the rights and remedies provided herein.

4. LIQUIDATION OF ACCOUNTS

In the event of: (a) the death or judicial declaration of incompetency of Customer; (b) the filing of a petition in bankruptcy, or a petition for the appointment of a receiver, by or against Customer, or any one of the Customers if this is a joint account; (c) the filing of an attachment against any of the Customer's accounts carried by MF Global; (d) insufficient margin as determined by MF Global in its sole discretion, or MF Global's determination that any collateral deposited to protect one or more accounts of Customer is inadequate, regardless of current market quotations, to secure the account; or (e) any other circumstances or developments that MF Global deems to require action necessary for its protection, MF Global is hereby authorized, according to its judgment and in its sole discretion, to take one or more or any portion of the following actions: (1) satisfy any obligation Customer may have to MF Global, either directly or by way of guaranty or suretyship, out of any of Customer's funds or property in the custody or control of MF Global; (2) sell any or all futures Contracts, commodities, or securities held or carried for Customer or purchase any or all futures Contracts, commodities or securities held or carried as a short position for Customer; and (3) cancel any or all outstanding orders, Contracts, or any other commitments made on behalf of Customer. Any of the above actions may be taken without demand for margin or additional margin, without prior notice of sale or purchase or other notice or advertisement to Customer, his personal representatives, heirs, executors, administrators, legatees, or assigns, and regardless of whether the ownership interest shall be solely Customer's or held jointly with others. In liquidating Customer's long or short position, MF Global, in its sole discretion may sell or purchase in the same contract month or initiate new long or short positions in order to establish a spread or straddle which in MF Global's judgment may be necessary or advisable to protect existing positions in Customer's account, including by means of an EFP, EFS, EFO or EFR transaction (whether we act as broker for you or as principal opposite you in such EFP, EFS, EFO or EFR transactions). Any sales or purchases hereunder may be made according to MF Global judgment and at its discretion on any exchange or other market where such business is then usually transacted or at public auction or at private sale, and MF Global may purchase the whole or any part thereof free from any right of redemption. It is understood that, in all cases, a prior demand, call, or notice of the time and place of a sale or purchase shall not be considered a waiver of MF Global's right to sell or buy without demand or notice as herein provided. Customer at all times shall be liable for the payment of any debit balance upon demand by MF Global, and shall be liable for any deficiency remaining in Customer's account(s) in the event of the liquidation thereof in whole or in part by MF Global or by Customer. In addition,

CUSTOMER AGREEMENT (Continued)

MF Global shall have the right to set off and apply any amount owing from us to you against any indebtedness in your Account, whether matured or unmatured. In the event the proceeds realized pursuant to this authorization are insufficient for the payment of all liabilities of Customer due to MF Global, Customer promptly shall pay, upon demand, the deficit and all unpaid liabilities, together with interest thereon and all costs of collection including reasonable attorneys' fees. Customer agrees to pay all expenses, including attorneys' fees, incurred by MF Global to collect any debit balances in Customer's account or to defend any unsuccessful claim Customer may bring against MF Global.

5. FEES AND CHARGES

You understand and agree that we will charge commissions and other fees for clearing, execution, give-up, custody, storage, delivery, reports, quotes, processing, inactive Accounts, Account maintenance or any other service furnished to you, and you agree to pay such commissions, fees and interest on monies owed to us at our then-prevailing rates. You understand and agree further that such commissions, fees and interest rates may be changed from time to time. You also agree to pay any and all regulatory fees, any taxes imposed on transactions for your Account by any competent taxing authority and any other charges that may be imposed on such transactions. You will also be charged a fee for positions transferred to another broker. You understand that we may act as principal in certain transactions with you, including, but not limited to, cash market transactions, forward contracts, or EFP, EFS, EFO or EFR transactions.

6. FREE CREDIT BALANCES; TRANSFER ARRANGEMENTS

You authorize us to transfer funds, securities or other property to, between or among any of your futures Accounts and any other Account(s) held by us, when in our sole judgment a transfer of any excess funds in such Account(s) may be necessary to satisfy margin calls or to satisfy or reduce any debit balances or deficit in any such Account. We agree to confirm any such transfer to you in writing, and such confirmation shall be deemed reasonable notice. All such transfers shall be made in compliance with the CEA and the applicable regulations promulgated thereunder.

7. CONSENT TO LOAN OR PLEDGE

You hereby grant us the right, in accordance with Applicable Law, to borrow, pledge, repledge, transfer, hypothecate, rehypothecate, loan or invest any of the Collateral, including, without limitation, utilizing the Collateral to purchase or sell securities pursuant to repurchase agreements or reverse repurchase agreements with any party, in each case without notice to you, and we shall have no obligation to retain a like amount of similar Collateral in our possession and control.

8. STATEMENTS AND CONFIRMATIONS

You acknowledge that you are bound to the actual executions of transactions on the exchanges and understand that all reports of execution price quotations and other market information are subject to change and errors as well as delays in reporting. You agree that you rely upon such information at your own risk.

Confirmations of trades and any other similar notices, including but not limited to purchase and sale statements, sent to you shall be conclusive and binding unless you notify us to the contrary, (i) where a report is made orally, at the time delivered to Customer, or (ii) where a report or notice is in writing, prior to the opening of trading on the next day following delivery of the report on which the relevant Transaction Facility is open for business. Your account statement shall be conclusive and binding unless you notify us to

the contrary immediately upon delivery to you. ANY OBJECTION TO A TRADE CONFIRMATION OR SIMILAR NOTICE OR A MONTHLY STATEMENT MUST BE MADE IN WRITING AND DIRECTED TO OUR COMPLIANCE DEPARTMENT ADDRESSED TO 440 SOUTH LASALLE STREET, 20TH FLOOR, CHICAGO, IL 60605 ATTENTION: COMPLIANCE 42, OR VIA FACSIMILE TRANSMITTED TO (312) 902-6169, WITHIN THE TIME PERIOD SET FORTH ABOVE. YOUR FAILURE TO PROVIDE SUCH TIMELY WRITTEN OBJECTION IN THE MANNER SPECIFIED SHALL CONSTITUTE RATIFICATION OF ALL ACTIONS TAKEN BY US OR OUR AGENTS.

9. INDEMNIFICATION; COSTS OF COLLECTION

You agree to indemnify and hold harmless each of us and our respective shareholders, directors, officers, employees, successors and assigns and agents from and against any liability, damage, cost or expense (including, without limitation, legal fees and expenses, amounts paid in settlement of any claims, interest and any fines or penalties imposed by any Transaction Facility, self-regulatory agency or organization or governmental agency) incurred as a result of your violation of any of your representations, agreements or obligations under this Agreement. You agree to pay and authorize us to charge you for any direct or indirect costs of collection, defense and enforcing any of our rights under this Agreement including, but not limited to, interest, legal fees, court costs and other expenses.

10. LIMITATION OF LIABILITY

You shall have no claim against us for any loss, damage, liability, cost, charge, expense, penalty, fine or tax caused directly or indirectly by: (a) any order transmitted by fax, electronic mail, instant messaging or other medium for execution which is accepted on a "not held" basis, that is you agree that we shall not be held liable for any failure regarding proper execution unless it is due to our fraudulent activity; (b) any Applicable Law, or any order of any court, governmental agency or other regulatory body; (c) suspension or termination of trading; (d) restrictions, exchange or market halts or rulings, acts of terrorism, riot, sovereign conduct or other acts of state, war or civil or labor disturbance; (e) any delays or inaccuracies in the transmission or reporting of orders or other information due to a breakdown or failure of any Transaction Facility or any other transmission or communication facilities for any reason; (f) failure or delay for any reason of any broker, bank, depository, Transaction Facility or custodian to fulfill its obligations or to pay in full any amounts owed to us or to you; (g) failure or delay by any entity which, consistent with Applicable Law, is holding customer segregated Collateral, to pay or deliver same to us; or (h) any other causes beyond our control.

In executing transactions on a Transaction Facility, we may use floor brokers (who may or may not be our employees or other agents of ours), but we will not be responsible to you for negligence or misconduct of an independent floor broker if, at the time the floor broker was selected, the floor broker was authorized to act as such under the rules of the relevant Transaction Facility and the appropriate regulatory agency. You also agree that we shall not be liable to you for any losses, costs, expenses or other damages sustained by you in the event of any failure or delay by any Transaction Facility, bank or other depository institution where any of your Collateral is maintained, or a failure or delay by any member, bank or agent of any of the foregoing to enforce its rules, to fulfill its obligations or to make any payment, for any reason whatsoever. You waive any claim, cause of action or right as against us, our directors, officers, employees or agents that may arise or occur as a result thereof. In no event will we be liable to you for any consequential, incidental or special damages under or relating to this Agreement. We will not be responsible to you in the event of error, failure, negligence or misconduct on the part of any intermediary, trading advisor, or other person acting on your behalf

CUSTOMER AGREEMENT (Continued)

and, without limitation, we have no obligation to investigate the facts surrounding any transaction in your account which is introduced by such intermediary, trading advisor, or other person. In addition to any other agreement to indemnify us or any other party set forth in this Agreement or in any other agreement, you agree to indemnify us and hold us harmless from and against any and all liabilities, penalties, losses and expenses, including legal expenses and attorneys' fees, incurred by us as a result of any error, failure, negligence or misconduct on the part of any such intermediary, trading advisor or other person acting on your behalf. We shall only be liable for actions or inactions by us which amount to gross negligence or willful misconduct.

11. TELEPHONE CONVERSATIONS

For the protection of both you and us, and as a way of correcting misunderstandings, you hereby authorize us, at our discretion and without prior notice to you, to monitor and/or record (with or without tone warning devices) any or all telephone conversations between you and any of our employees or agents. You waive any right you may have to object to the admissibility of such recording into evidence in any legal proceeding between us or in any other proceeding to which we are a party and our records are subpoenaed.

12. MAKING DELIVERY; LIQUIDATION INSTRUCTIONS

- (a) You must give us liquidating instructions on open positions maturing in a current delivery month at least five (5) business days prior to the first notice day in the case of long positions and, in the case of short positions, at least five (5) business days prior to the last trading day. Alternatively, you must deliver to us sufficient funds to take delivery or the necessary delivery documents within the same periods described above. If we receive neither instructions, funds nor documents, we, without notice, may either liquidate your position or make or receive delivery on your behalf upon such terms and by such methods which we deem reasonable.
- (b) If at any time you fail to deliver to us any property previously sold by us on your behalf or fail to deliver property, securities or financial instruments in compliance with futures contracts, or we shall deem it necessary (whether by reason of the requirements of any exchange, clearing house or otherwise to replace any securities, financial instruments, or other property previously delivered by us for your account with other property of like or equivalent kind or amount, you authorize us in our judgment to borrow or to buy any property necessary to make delivery thereof or to replace any such property previously delivered and to deliver the same to such other party to whom delivery is to be made. We may repay subsequently any borrowing thereof with property purchased or otherwise acquired for your Account. You shall pay us for any cost, loss and damage from the foregoing (including consequential damages, penalties and fines) which we may be required to incur or which we may sustain from our inability to borrow or buy any such property.
- (c) Absent customer instructions to the contrary, expiring at or in-the-money long options will be exercised or abandoned pursuant to applicable Transaction Facility rules, and short options will be assigned futures positions pursuant to applicable Transaction Facility practices. You should not assume that an expiring out-of-the-money short option will be abandoned, as it is the buyer's right to exercise at any level. Notwithstanding the foregoing, we shall not have any obligation to exercise any long option contract unless you have furnished us with timely exercise instructions and sufficient initial margin with respect to each underlying contract. If we sell any property at your direction

and you fail for any reasons to supply us with such property, we may (but shall not be obligated to) borrow or buy for you any property necessary to make such delivery. Under no circumstances shall we be obliged to make any payment or delivery to you except against prior receipt of payment or delivery by you of monies or other property requested by us. You shall be responsible for providing insurance coverage for any deliveries made or accepted by you. We do not provide any insurance coverage. If you do not provide insurance coverage, you agree to bear the risk of loss.

13. GOVERNING LAW; JURISDICTION AND VENUE; SERVICE OF PROCESS; LIMITATION ON ACTIONS; WAIVER OF JURY TRIAL

In order to induce us to accept this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you hereby agree to the following:

- (a) This Agreement is made, upon acceptance by us, in the State of Illinois, and shall be governed by, and the rights and liabilities of the parties, except as otherwise expressly stated herein, shall be determined in accordance with, the laws of the State of Illinois, without regard to any of its conflicts of laws principles or rules, by the laws of the United States and, where appropriate, by other Applicable Law.
- (b) All actions or proceedings, whether initiated by you or us, with respect to any controversy arising out of or related to this Agreement, shall be litigated only in courts whose situs is in the State of Illinois. You hereby submit to the jurisdiction of the United States District Court of the Northern District of Illinois, Eastern Division, and any other court of competent jurisdiction whose situs is in Chicago, Illinois. If you bring any arbitration (including, but not limited to, NFA arbitration), administrative or reparations proceedings against us, you hereby authorize and direct such arbitrators, administrative law judges, or judgment officers to hold any such proceedings in Chicago, Illinois. You hereby waive any right you may have to transfer or to change the venue of any litigation you may bring against us, or to move that such litigation is brought in an inconvenient forum or that forum is improper.
- (c) You agree to accept court service of process by registered or certified mail addressed to you at the address you provided in your Customer Account Application, or to such other addresses as you have supplied to us in writing, and such service shall constitute personal service of process, subject to the provisions of CFTC Regulation 15.05 with respect to non-United States persons.
- (d) You shall not bring any action, regardless of form, arising out of or relating to this agreement or transactions hereunder more than one year after the cause of action arose, provided, however, that any action brought under the provisions of Section 14 of the Commodity Exchange Act may be brought at any time within two years after the cause of action accrues.
- (e) You hereby waive any right you may have to a trial by jury.

14. WAIVER, ASSIGNMENT AND NOTICES

Neither our failure to insist at any time upon strict compliance with this Agreement or with any of the terms hereof nor any continued course of such conduct on our part shall constitute or be considered a waiver by us of any of our rights or privileges hereunder. We may assign this Agreement and your Account upon notice to you. Any

CUSTOMER AGREEMENT (Continued)

assignment of your rights and obligations hereunder or interest in any Collateral held by or through us without obtaining the prior written consent of an authorized representative of ours shall be null and void. Notices or other communications, including margin calls, delivered or mailed, including by facsimile or electronic transmission, to the address provided by you, shall, until we have received notice in writing of a different address, be deemed to have been personally delivered to you as of the date and time of transmission. Notices or other communications shall be provided to us in writing at the address set forth in Section 8 of this Agreement.

15. CLEARANCE ACCOUNTS; GIVE UPS

If your Account has been introduced to us by another broker, that broker is acting as your agent and that broker in this relationship is not an agent of or affiliated with us. You agree that your broker and its employees are third-party beneficiaries of this Agreement. Unless we receive from you prior written notice to the contrary, we may accept from such other broker, without any inquiry or investigation: (a) orders for the purchase or sale of Contracts, on margin or otherwise; and (b) any other instructions concerning your Account or the Collateral therein. **You understand and agree that by agreement with your broker we may pay a substantial portion of the brokerage commissions charged to your Account to your broker in consideration of introducing and servicing your Account. You further understand and agree that our role is limited to execution, clearing and bookkeeping for transactions made pursuant to instructions from you or your broker, and we generally will not inquire into the circumstances surrounding any transaction for your Account. We are not responsible for any acts or omissions of any independent introducing broker, including, but not limited to, sales practices, trading practices or recommendations. You agree to look solely to your independent introducing broker for redress of any loss or damage arising out of circumstances other than our own gross negligence or willful misconduct in the execution, clearance or bookkeeping of transactions for your Account.**

Absent a separate written agreement with you with respect to give-ups, we, in our discretion, may, but shall not be obligated to, accept from other brokers Contracts executed by such brokers for you and to be given up to us for clearance or carrying in an Account.

16. RESTRICTIONS

You understand that we may decline to accept any order, or restrict or prohibit trading in, or close, your Account for any reason whatsoever. **Without limiting the foregoing, we may, in our sole discretion, refuse to allow you to make or take delivery in your Account. You acknowledge that we may, from time to time, place an Account in which there is no trading on inactive status and you agree to provide whatever information we may require upon your request to reactivate any such inactive Account.**

17. CREDIT INFORMATION AND INVESTIGATION

You authorize us and, if applicable, your broker, to make and obtain reports concerning your identity, credit standing and business conduct.

18. LEGALLY BINDING

This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and supersedes any prior agreements between the parties with respect to the subject matter hereof. You further agree that all purchases and sales shall be exclusively for your Account in accordance with your oral or written instructions or those of any party authorized to enter orders on your behalf. You hereby waive any and all defenses that any such

instruction was not in writing as may be required by the statute of frauds or any similar law, rule or regulation.

19. AMENDMENT

You agree that we may modify the terms of this Agreement at any time upon notice to you, including notice by electronic means, provided you trade through us electronically or have agreed to receive confirmations and statements from us electronically. If you trade through us electronically or have agreed to receive confirmations and statements from us electronically, you further agree that any communications concerning your Accounts or services provided by us, including legal notices and agreements, may be sent to you via electronic mail. By continuing to trade through us, you signify your acceptance of the terms of such communication. If you do not accept the terms of such communication, you must notify us thereof in writing as provided in Section 8 above (including by electronic means, if applicable) and your Account may then be terminated, but you will still be liable thereafter to us for all remaining liabilities and obligations. Otherwise, this Agreement may not be waived or modified absent a written instrument signed by an authorized representative of ours. No oral agreements or instructions purporting to amend this Agreement will be recognized or enforceable.

20. SEVERABILITY

If any provision hereof is or should become or be deemed to be inconsistent with any present or future law, rule or regulation of any court, arbitral body, sovereign government or regulatory body having jurisdiction over the subject matter of this Agreement, such provision shall be deemed to be rescinded or modified in accordance with any such law, rule or regulation. In all other respects, this Agreement shall continue to remain in full force and effect.

21. ADDITIONAL RIGHTS AND REMEDIES

The rights and remedies granted herein to us are in addition to any other rights and remedies provided to us in any other agreement you may have with us, and you hereby appoint us as your agent to take any action necessary to perfect ourselves with respect to the security interest granted to us in this Agreement.

22. AUTHORITY

You represent that this Agreement has been duly authorized and executed by you, and that you have full power and authority to trade the Contracts. You further represent to us that, if you are employed in the financial services industry or by any Transaction Facility or self-regulatory agency or organization, you will obtain or have obtained all necessary consents to open this Account and will provide us with written proof of such consent.

23. CUSTOMER'S REPRESENTATIONS AND WARRANTIES

You represent to us that all information supplied by you in connection with the opening of your Account is accurate and complete and that we are legally entitled to rely on such information, and you agree to report immediately to us any material change in such information. In particular, you understand that all transactions effected for your Account are at your risk, and that you are solely liable therefor under all circumstances. You agree to inform us immediately if you cease to be willing or financially able to sustain such losses. You further represent, warrant and covenant to us that: (i) transactions entered into pursuant to this Agreement will not violate any Applicable Law, judgment, order or agreement to which you or your property is subject or by which you or your property are bound; (ii) except as disclosed in writing to us, you are acting solely as principal and not as agent for any other party and no other person or entity has any interest in the

CUSTOMER AGREEMENT (Continued)

Account; and (iii) you have reviewed the registration requirements of the CEA, CFTC and NFA relating to commodity pool operators and commodity trading advisors and have determined that you and any person that has trading authority or control over your Account are in compliance with such requirements. In entering into this Agreement and opening the Account, we are relying on your representations, warranties and covenants contained in this Agreement and you will immediately notify us of any material changes to the accuracy thereof.

24. CURRENCY EXCHANGE RISK; NON-U.S. FUNDS

You shall bear all risk and cost in respect of the conversion of currencies incident to transactions effected on behalf of you pursuant hereto. Unless otherwise specified in the reports sent to you with respect to your Contracts and Accounts, all margin deposits in connection with any Contracts, and any debits or credits to your Account(s), shall be stated in U.S. Dollars. By placing an order in a Contract settled in a particular currency (the "Contract Currency"), you agree to convert to the Contract Currency funds sufficient to meet the applicable margin requirement. Any conversions of currency shall be at a rate of exchange determined by us in our sole discretion based on prevailing money market rates of exchange for such currencies.

25. INFORMATION AND POSITIONS

Any information on the market or on matters incidental to the operation of any of your Accounts or the nature of any of the Contracts provided by us is solely incidental to the conduct of our business as an FCM. We make no representation as to the accuracy, completeness or reliability of any such information. We and our directors, officers and employees may take, hold or liquidate positions in, or provide such information to other customers with respect to, Contracts that are the subject of such information furnished by us to you, and such other positions and/or information may be inconsistent with the positions held by you or information given to you.

26. CFTC REGULATIONS

You acknowledge that you are aware that CFTC Regulation 1.35(a-2)(2) requires you to create, retain and produce upon the

29. HEADINGS

The headings of the sections hereof are for descriptive purposes only and shall not modify or qualify any of the rights or obligations set forth in such sections, or in any way limit the applicability of or affect the meaning of any such provisions.

30. U.S. FUTURES EXCHANGE

You should be aware that the Company's parent company has an ownership interest in U.S. Futures Exchange and that the Company salespeople receive additional compensation for transactions executed on U.S. Futures Exchange. This additional compensation does not result in any charge to your account.

31. CUSTOMER ACKNOWLEDGMENTS; PLEASE INITIAL APPROPRIATE CLAUSE(S) BELOW:

(a) RISK DISCLOSURE ACKNOWLEDGMENT:

Customer hereby acknowledges that Customer has received the Disclosure Statement prescribed by the CFTC and furnished herewith. Customer understands that we are relying on Customer to familiarize itself with any disclosure in MF Global's booklet(s) that is or may become applicable to Customer's trading.



Initial

Initial

Initial

Initial

request of the CFTC, the United States Department of Justice and the applicable Transaction Facility, documentation of cash transactions underlying EFP, EFS, EFR or EFO transactions and, if you effect any such exchange of futures, you will comply with Regulation 1.35 (a-2)(2). If you are a non-United States person, you acknowledge that: (a) CFTC Regulation 15.05 designates us as the agent of foreign brokers, customers of foreign brokers, and foreign traders for certain purposes; and (b) CFTC Regulation 21.03 authorizes the CFTC to request, when unusual market circumstances exist, certain Account information from us as well as foreign brokers and traders, and you agree to provide such information upon such request.

27. ONLINE SERVICES; ELECTRONIC STATEMENTS; ELECTRONIC SIGNATURES

If we provide you with access to online brokerage service facilities, you must agree to the terms of the "Electronic Order Entry and Account Access Agreement," provided under separate cover, the terms and conditions of which are incorporated in this Agreement as if set forth herein.

28. CONSENT TO CROSS TRANSACTIONS

This consent is being provided in order to comply with exchange rules regarding cross trade procedures and the execution of trades in which a floor broker or brokerage firm may be directly or indirectly involved as a principal to a transaction on any exchange that, from time to time, adopts rules requiring customer consent for these transactions. Customer hereby consents that MF Global, its agents, or floor brokers handling MF Global orders, may, without prior notice, execute Customer's orders in which MF Global, its directors, officers, employees, agents, or the floor broker, may directly or indirectly, become the buyer to Customer's sell order or the seller to Customer's buy order, provided that such executions are made in accordance with exchange rules and any applicable provisions of the Commodity Exchange Act or regulations of the Commodity Futures Trading Commission. This consent shall be continuous and remain in effect until revoked in writing by Customer.

EXHIBIT B



Institute of
Scrap Recycling
Industries, Inc.

www.isri.org

Scott J. Horne
Vice President &
General Counsel
Direct: +1 202 662 8513
ScottHorne@ISRI.org

December 4, 2012

Via Electronic Submission

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comments on Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations. (RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012)

I. Introduction

The Institute of Scrap Recycling Industries (ISRI), on behalf of its members, respectfully submits these comments in response to the Notice of Proposed Rulemaking (the "Proposal") on Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations ("Enhanced Customer Protections"). ISRI's comments will be limited to (i) introducing the CFTC to the recycling industry and its significant role in commodity futures trading; (ii) discussing several critical issues that had not been addressed in the Proposal; and (iii) offering support for the Proposal for the Enhanced Customer Protections.

II. Institute of Scrap Recycling Industries

ISRI is a Washington, D.C. based trade association representing the scrap recycling industry. The industry is comprised of businesses engaged in the recycling of various commodities such as metals, plastics, glass, paper, rubber, textiles and electronics. Members of ISRI are involved in the processing, collection, trading and consuming of these commodities; for all intents and purposes the industry is the first link in the manufacturing chain. The scrap

recycling industry produced approximately \$100 Billion worth of commodities last year, which is equal to roughly 0.6 percent of GDP,¹ and is similar in size to the nation's forestry and fishing industries combined, nearly all of the nation's professional sports teams and the toy industry. In 2011, scrap recycling brokers and processors provided in excess of 459,000 jobs directly and indirectly.² Hedging metals' prices on commodity futures exchanges as a risk mitigation tool is a critical component of the financial and risk management activities conducted by scrap metal recyclers ("Metals Recyclers").

In addition to the impact on the domestic economy, the value of scrap exported by the scrap recycling industry in 2011 increased 32% to approach \$40 Billion in export sales to 161 Countries.³ Likewise, by value, scrap exports are one of the top 5 exports from the United States.⁴ Many of the commodities traded by Metals Recyclers are also traded on commodity futures exchanges throughout the world. Hedging is widely used as a risk mitigation tool against metals' price volatility and serves to provide liquidity for the metals recycling industry. Within the metals producing, consuming and scrap industries, there is often a significant time lapse that occurs from the time metal is produced, bought, sold, shipped and consumed by an end-user. This is especially cogent because so many metals are shipped all over the world. Specifically, these commodities, such as copper, aluminum, steel, zinc, and tin, among others, are critical raw materials for both emerging markets as well as mature economies.

The collapse of MF Global exposed several systemic problems within the commodity futures trading industry and its oversight regime. According to the Staff Report Prepared for Rep. Randy Neugebauer, Chairman of the Subcommittee on Oversight & Investigations, Committee on Financial Services, and dated November 15, 2012, there is still in excess of \$665 Million missing from Commodity Customers' accounts used for foreign trading, and likely in excess of \$100 Million still missing from domestic accounts.⁵ Many Metals Recyclers, as well as their suppliers, customers and consumers continue to represent a significant portion of the missing **\$765+ Million**. It is uncertain whether any of the remaining missing funds will be recovered; and much is now

¹ In 2011, ISRI retained the independent consulting firm of John Dunham and Assoc. to perform an economic impact analysis of the scrap recycling industry on the U.S. economy. The statistics are based on the Economic Impact of the Scrap Recycling Industry in the United States (2011), produced for ISRI, by John Dunham and Associates, 2011.

² Scrap Recycling Industry Impact Methodology Summary, John Dunham and Associates, 2011.

³ The United States Census Bureau and the United States International Trade Commission.

⁴ The United States Census Bureau and the United States International Trade Commission.

⁵ Staff Report Prepared for Rep. Randy Neugebauer, Chairman, Subcommittee on Oversight & Investigations, Committee on Financial Services, 112th Congress, November 15, 2012, p 73-74.

tied up overseas in legal battles stemming from the MF Global insolvency proceedings.

III. Hedging: Risk Mitigation in the Scrap Metal Recycling Industry

The hedging of metals prices by Metals Recyclers is “bona fide hedging” as defined under the Act⁶ and is in contrast to the often erroneous use and application of the term hedging to other financial investment instruments and activities. Bona fide hedging is encouraged in many industries especially with respect to agriculture, and energy. However, the metals industry, and more specifically, the scrap metal recycling industry has not heretofore provided its input on the many issues exposed by the collapse of MF Global.

As mentioned above, Metals Recyclers use hedging on the commodity futures exchanges to mitigate the risk of exposure to metals’ pricing volatility. In addition to hedging on domestic exchanges, Metals Recyclers hedge a considerable volume of aluminum and other nonferrous metals through U. S. based FCMs on the London Metal Exchange. As a practical matter, Metals Recyclers hedge to ensure, on some level, that the risk of the transaction is removed. Metals Recyclers maintain Segregated Accounts comprised of commodity exchange mandated margin requirements, and cash proceeds typically resulting from changes in trading positions and/or market fluctuations. The margin requirements mandated by the commodity exchange serve as collateral for a Metals Recycler’s trading activities. Inherently, the Metals Recycler, who is hedging, seeks to reduce the risk of exposure to the market and is not assuming risk with respect to its collateral account.

IV. Critical Open Issues

In order for the markets to function efficiently, commodity customers must have confidence and trust in the market’s financial safeguards. Specifically, in the absence of an FDIC or SIPC insurance type of regime, market participants must have a level of trust and confidence that there will not be a repeat of the circumstances involved in the collapse of MF Global and Peregrine. We applaud the CFTC for taking such strong measures in connection with the Enhanced Customer Protections and we fully support all of the proposals contained in RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012. However, there remain critical open issues of concern to Metals Recyclers that we would ask the CFTC to consider. The open issues stem from a combination of the scope of

⁶ 7 U.S.C § 6a.

investments that FCMs are still permitted to make under the Act and the “permitted language” in Commodity Customer Agreements (the “Agreements”) that grant FCMs unreasonably wide latitude to use and invest Customer Funds.

The language that is typically found in Agreements permitting an FCM to use Customer Funds, at the FCM’s discretion (or whim), is buried deep within the Agreement. In order to open a commodity trading account with a particular FCM, a Commodity Customer must comply with such a clause. Below is a clause taken from an FCM’s Agreement packet and two examples are attached as Exhibit A.

Except as prohibited by Applicable Law, all collateral now or hereafter held or carried by the clearing firm (CF) for customer may, from time to time, without notice to customer, be pledged, hypothecated, loaned or invested by CF to or with CF or others, separately or with any other property. CF shall not be required to retain in its possession for delivery a like amount of, or to pay interest or to account to customer for any profits on, such property. All transactions for or on customers behalf may be included in a single account whether or not such transactions are segregated on CF’s records into separate accounts, either severally or jointly with others.⁷

This common clause skirts the spirit of the Act by granting wide latitude to the FCM to use Customer Funds, which the Commodity Customer is required to post for initial and variable margin. Allowing an FCM unfettered use of Customer Funds without a mechanism for such funds to be guaranteed or insured exposes those Customer Funds to risk of loss. The Enhanced Customer Protections do take a significant step towards reducing that risk and potentially providing an early warning mechanism for alerting the CFTC, Commodity Customers, and other oversight entities of the possibility that certain precarious issues may arise. Yet, the Regulations still prohibit parking margin in a security account that is otherwise insured by SIPC or a bank account that is otherwise insured by the FDIC.

Often, unknowingly, Commodity Customers acquiesce to these clauses which are buried deep within a forty or fifty page Agreement. Recognizing that a Commodity Customer must understand the terms of the Agreement, if a Commodity Customer wanted to modify or did not want to grant the FCM the rights as stated in that clause, Commodity Customers are powerless to negotiate

⁷ Similar, if not exact, language exists on Commodity Customer Agreements from all FCMs, including MF Global.

changes -- the Agreements are nothing less than contracts of adhesion with regard to all except, perhaps, the very largest Customers.

Below are some examples of terms or modifications to Commodity Customer Agreements that were actually proposed and rejected:

- 1) Require FCMs to provide an alternative to granting them discretionary ability to pool and invest Customer Funds with the full understanding that transaction costs may increase.
- 2) Allow segregated margin funds for hedge accounts to be swept nightly into a securities account that is insurable by SIPC, and/or a commercial bank account insured by the FDIC.
- 3) Allow U.S. Treasury Notes, a permissible instrument to post as margin, to be held in the name of the Commodity Customer, and perhaps consider permitting a UCC filing.
- 4) Modify the scope of SIPC to include Customer funds insured up to a statutory limitation.

As noted above, several of the aforementioned concepts were presented to FCMs in the period following the collapse of MF Global when Commodity Customers were seeking to re-open accounts which were previously at MF Global and that had been transferred to another FCM. The response from the FCMs was that the terms of the Agreements were non-negotiable. Admittedly, some or all of the above suggestions would require FCMs to modify or forego their ability to speculate with Commodity Customers' Segregated Accounts holding margin requirements. However, from a Customer's point of view, these suggestions would go a long way towards leveling the playing field.

The FCMs appear to have no incentive to encourage them to negotiate certain terms of the Agreements with Commodity Customers. Nor are there any consequences set forth that would penalize FCMs for coercing Commodity Customers to agree to those conditions. Likewise, there are no regulations that provide Commodity Customers with rights to decline those conditions or negotiate more mutually agreeable terms. As discussed above, Commodity Customers have attempted to negotiate modifications to these Agreements; however, the responses received indicate that the Commodity Customers, if they want to continue to have an open and active account, must acquiesce.

Many Metals Recyclers who, as mentioned above, have hundreds of millions of dollars or more still tied up in both the domestic and the U.K. MF Global cases

would clearly prefer that FCMs not have the ability to invest Customer Funds for the FCMs' benefit. The Customer Funds that are still unavailable from the MF Global case represent a significant level of working capital that may never be recovered. Although the Proposal seeks to create a higher level of trust and confidence that Customer Funds will not be put at risk by the FCMs, the Proposal contains no provisions that provide Commodity Customers with an option to "opt out" of granting FCMs access to their collateral.

We ask the CFTC to mandate that FCMs provide Commodity Customers the option to "opt out" of granting FCMs access to invest Customer Funds, yet permit those Commodity Customers to continue to actively trade. Alternatively, or in conjunction with an "opt out" provision we are asking the CFTC to consider further enhancements to customer protections that would provide FCMs with an incentive or some reasonable mechanism to negotiate and modify these terms of concern for those Commodity Customers that elect not to grant such wide latitude as is represented by the aforementioned Agreement clause. Examples of reasonable modifications are listed on the prior page.

V. "Enhanced Customer Protection Proposal" Comments

Within ISRI's governance regime, the Non-Ferrous Division (a group comprised of many businesses engaged in bona fide hedging) formed a sub-committee to study, review and comment on the Proposal from a Commodity Customer's perspective. We believe that the Enhanced Customer Protections, as proposed, provide a much higher level of customer protection. We recognize that many of the CFTC's requests for specific comments involve assessment of the projected costs that will be incurred by FCMs and we have elected not to comment on those requests. It is our position, from the Commodity Customers' perspective, that the Enhanced Customer Protections proposed by the CFTC and endorsed by Chairman Gensler⁸ clearly serve to achieve their stated goals and on behalf of ISRI's members we support the Enhanced Customer Protections.

VI. Conclusion

As mentioned above, bona fide hedging employed as a risk mitigation tool protects Metals Recyclers against exposure to the volatility of metals pricing; similar in purpose and practice to hedging programs employed in the agriculture industry. Bona fide hedging programs are encouraged under the spirit of the Act.

⁸Summary of the Enhanced Customer Protections was compiled from the CFTC Release: PR6396-12 dated October 23, 2012, and Chairman Gensler's Statement of Support dated October 23, 2012.

David Stawick, Secretary
Commodity Futures Trading Commission
RIN 3038-AD88, 77 Fed. Reg. 67866, November 14, 2012
December 4, 2012

Page 7 of 7

Segregated Accounts were the mechanism used to hold initial and variable margin money required to be held on account as collateral with clearing firms. We ask the CFTC to give full and careful consideration to our requests concerning the critical open issues discussed in Section IV. We thank the CFTC for taking so many necessary steps to ensure that Commodity Customers' collateral held by FCMs is safe and secure. In order for the market to operate efficiently there must be confidence and mutual trust, neither of which exists right now as a lasting result of the collapse of MF Global and Peregrine.

Sincerely yours,



Scott J. Horne

Cc: Gary Gensler, Chairman, CFTC
Bart Chilton, Scott D. O'Malia, Jill E. Sommers, Mark Wetjen
Commissioners, CFTC
Gary Barnett, Director, Division of Swap Dealer and Intermediary
Oversight
Robin Wiener, President, ISRI
Jerry Simms, Chairman, ISRI
Doug Kramer, Chair – Elect, ISRI
Mark Lewon, Vice Chair, ISRI
Brian Shine, Secretary/Treasurer, ISRI
Matthew Heitmeier, Chair Non-Ferrous Division, ISRI. Director
NonFerrous Metals Marketing, Padnos
Joseph Pickard, Chief Economist/Director of Commodities, ISRI
Matthew Kripke, President, Kripke Enterprises.
Michael A. Eisner, President, Premier Metal Services, LLC
Mark A. Weintraub, In-house Counsel/Metals Trader, Premier Metal
Services, LLC.

EXHIBIT A

R.J. O'Brien

ACCOUNT AGREEMENT

1. ACCOUNT STATUS

This Account Agreement ("Agreement") sets forth the terms and conditions upon which R.J. O'Brien & Associates, LLC ("R.J. O'Brien") will accept and maintain for the undersigned Customer one or more accounts and act as broker or dealer for Customer in the execution and clearance of orders for transactions (whether domestic or foreign) involving the purchase and sale of futures contracts; options on futures contracts; commodities and forward contracts, security futures contracts ("SSF"); option, spot and forward foreign exchange transactions; exchange for physicals ("EFPs"); and any other cash transaction or derivative, or any similar instruments which may be purchases, sold or cleared by or through an FCM (individually, a "Contract" and collectively, "Contracts"). Customer hereby represents that all responses made in connection with the Account Application and this Agreement are complete and correct, and that R.J. O'Brien will be informed of any material change in such data, including financial information.

If this account has been introduced to us, all references to us in this Agreement shall include your broker, and your broker shall enjoy all benefits and rights hereunder. Customer agrees and acknowledges that broker and R.J. O'Brien may share information with each other regarding or relating to Customer and/or Customer's account (s). Customer warrants to R.J. O'Brien that if Customer is an individual or if this is a joint account, Customer (s) is of legal age and of sound mind. Unless otherwise indicated in the Application, no one except the Customer (s) identified in the Account Application has an interest in the account (s). Customer agrees to permit verification of relevant information by R.J. O'Brien through third parties (including credit reporting entities). In any event, this Agreement and the account (s) permitted hereunder become effective only upon acceptance by an authorized representative of R.J. O'Brien at its principal office in Chicago, Illinois.

2. ACCOUNT RISKS

- A.) TRADING IN CONTRACTS IS HIGHLY SPECULATIVE AND IN NO SENSE MAY BE CONSIDERED A CONSERVATIVE INVESTMENT;
- B.) BECAUSE OF THE LOW MARGIN DEPOSITS NORMALLY UTILIZED AND THE VOLATILE PRICE MOVEMENTS WHICH CAN OCCUR IN THE MARKETS FOR CONTRACTS, THE POSSIBILITY OF RAPID AND SUBSTANTIAL LOSSES IS CONTINUALLY PRESENT;
- C.) TRADING IN CONTRACTS IS APPROPRIATE ONLY FOR THOSE PERSONS FINANCIALLY ABLE TO WITHSTAND SUBSTANTIAL LOSSES, SOMETIMES GREATLY EXCEEDING THE VALUE OF THEIR MARGIN DEPOSITS; AND
- D.) NO ONE (INCLUDING FUTURES COMMISSION MERCHANTS, ASSOCIATED PERSONS, INTRODUCING BROKERS, FUND MANAGERS, COMMODITY TRADING ADVISORS OR POOL OPERATORS) CAN GUARANTEE PROFITS OR THE ABSENCE OF LOSSES. CUSTOMER AGREES TO PROMPTLY NOTIFY THE R.J. O'BRIEN COMPLIANCE DEPARTMENT IF ANY SUCH GUARANTEE IS SUGGESTED.

3. MARGINS

All checks and funds from Customer, to be credited to Customer's account(s), must be payable only to "R.J. O'Brien". Customer agrees at all times to maintain such margin in his account(s) as R.J.

O'Brien may from time to time (at its sole discretion) require, and will meet all margin calls in a reasonable amount of time. Customer agrees that, if requested to do so, Customer will promptly wire-transfer such funds. Market conditions permitting, R.J. O'Brien agrees to make reasonable efforts to notify Customer of margin calls and/or deficiencies and to allow a reasonable period for Customer to provide funds.

FOR PURPOSES OF THIS AGREEMENT, A REASONABLE AMOUNT OF TIME SHALL BE DEEMED TO BE ONE (1) HOUR, OR LESS THAN ONE HOUR IF, IN R.J. O'BRIEN'S BUSINESS JUDGMENT, MARKET CONDITIONS WARRANT.

Customer further agrees that, notwithstanding anything in this Agreement to the contrary, in the event that the account (s) is under margined, has zero equity or is equity deficit at any time, or in the event that R.J. O'Brien is unable to contact Customer due to Customer's unavailability or due to a breakdown in electronic communications, R.J. O'Brien shall have the right to liquidate all or any part of Customer's positions through any means available, without prior notice to the Customer.

R.J. O'Brien may require margin in excess of that required by applicable law, regulation, exchange or clearinghouse minimums. Customer acknowledges that R.J. O'Brien has no obligation to establish uniform margin requirements among products or customers, that margins required by R.J. O'Brien may exceed the minimum margin requirements of the applicable exchange or clearinghouse, and that margin requirements may be increased or decreased from time to time in R.J. O'Brien's discretion, without advance notice to Customer. All deposits shall be deemed made only when cleared funds are actually received by R.J. O'Brien. If a check is not honored or paid by a bank upon presentment, R.J. O'Brien will immediately debit Customer's account for the amount of the returned check as well as any fees incurred.

Any failure by R.J. O'Brien to call for margin at any time shall not constitute a waiver of R.J. O'Brien's right to do so any time thereafter, nor shall such failure create any liability to the Customer. R.J. O'Brien shall not be liable to Customer for the loss or loss of use of any margin deposits option premiums, or other property, which is caused, directly or indirectly, by the failure or delay by any bank, trust company, exchange, clearing organization, other clearing broker or entity that is holding funds, securities, or other property to pay or deliver the same to R.J. O'Brien. R.J. O'Brien may, for any reason, require Customer to transfer its account (s) to another firm. If Customer does not transfer its positions promptly upon demand by R.J. O'Brien, R.J. O'Brien may liquidate the positions and Customer agrees to indemnify and hold R.J. O'Brien harmless from any and all losses resulting from such liquidation.

Customer acknowledges that R.J. O'Brien is hereby authorized, for its account and benefit, from time to time and without notice to Customer, either separately or with others, to lend, repledge, hypothecate or rehypothecate, either to itself or to others, any and all property (including but not limited to securities, commodities warehouse receipts or other negotiable instruments) held by Customer in any of its accounts and R.J. O'Brien shall not at any time be required to deliver to Customer such identical property but may fulfill its obligation by delivery of property of the same kind and amount.

Continued on Next Page.

9. Security Interest

Customer grants AACC a first lien and security interest in all monies, securities of any kind, open positions in Commodity Interests, documents representing title to commodities such as warehouse receipts and the commodities represented thereby and any other property of Customer (either individually or jointly with others) now or in the future held by AACC in the Account or otherwise in AACC's possession or control for any purpose, including safekeeping (collectively, the "Collateral"), to secure payment and discharge of all obligations of Customer to AACC or any affiliate of AACC, which Collateral is subject to the general lien of, and right of set-off by, AACC for any and all such obligations. Customer agrees to execute any and all documents including Uniform Commercial Code financing statements, as deemed necessary or appropriate by AACC to evidence or perfect its security interest in any Collateral. Customer has not granted and will not grant a security interest in the Collateral or its Account (other than the security interest granted to AACC hereunder) to any other party without AACC's written consent.

Except as prohibited by Applicable Law, all Collateral now or hereafter held or carried by AACC for Customer may, from time to time, without notice to Customer, be pledged, hypothecated, loaned or invested by AACC to or with AACC or others, separately or with any other property. AACC shall not be required to retain in its possession for delivery a like amount of, or to pay interest or to account to Customer for any profits on, such property. All transactions for or on Customer's behalf may be included in a single Account whether or not such transactions are segregated on AACC's records into separate accounts, either severally or jointly with others.

10. Events of Default

The following events shall constitute an "Event of Default," as applicable: (a) Customer breaches, repudiates, or defaults in any way under this Agreement or any other agreement with AACC; (b) AACC, in its sole discretion, determines that it has sufficient grounds for insecurity with respect to Customer's performance of any obligation (including the obligation to deposit additional Collateral or margin) or Customer fails to provide assurance of performance of any obligation satisfactory to

AACC; (c) Customer dies, becomes disabled, becomes incompetent or is subject to a rehabilitation, (d) Customer becomes subject to any bankruptcy, insolvency, receivership or similar action or proceeding; (e) Customer's Account is garnished or attached; (f) Customer takes any action to effect a dissolution, liquidation, reorganization, winding up of its affairs or any similar event; (g) AACC believes that any information or assertion provided or made to AACC is, or becomes, or will become, in any material way inaccurate or misleading; (h) Customer fails to deposit margin or make premium payments in accordance with the terms of this Agreement or to perform any of its other obligations hereunder, including those respecting delivery, exercise or settlement under any Commodity Interest held in the Account; or (i) AACC has reason to believe that any of the foregoing is likely to occur immediately.

11. Remedies Upon Default

Customer acknowledges and agrees that upon the occurrence of an Event of Default, or if AACC determines, in its sole discretion, that such action is necessary or advisable for AACC's own protection, AACC, may exercise any one or more of the following remedies, in addition to any other right or remedy available to it at law or in equity: (i) close out or hedge any open positions in Commodity Interests (in whole or in part) in Customer's Account in any manner AACC deems reasonable under the circumstances (including through use of exchange for related positions transactions in accordance with Exchange rules); (ii) apply any Collateral in the form of cash and liquidate or sell any or all non-cash Collateral and apply the proceeds thereof to offset Customer's obligations, (iii) borrow, lend, sell or buy any securities, commodities or other property for Customer's Account to cover or hedge any or all existing positions, (iv) place and/or establish spread transactions, (v) "roll" open positions forward, (vi) cancel any outstanding orders, commitments or obligations made by AACC on behalf of Customer; or (vii) terminate this Agreement, all without prior demand or notice to Customer. Any such sale, purchase, cancellation or other action may be made at AACC's sole discretion on the Exchange where such business is transacted, at public auction or by private sale, without advertising the same. Customer shall remain liable for the amount of

EXHIBIT C



SPEECHES & TESTIMONY

"The End-User Bill of Rights"**Statement of Commissioner Bart Chilton****April 3, 2013**

We are one week away from an important date in Dodd-Frank implementation: the April 10 compliance date for Dodd-Frank swap reporting rules for end-users. This date represents the first major compliance date for the end-user community, a class of market participants that includes many who have not been regulated by the CFTC until now.

As we move one step closer to the full implementation of Dodd-Frank, I'm reminded of another important transition, one from over 220 years ago, the transition of this great nation from a colonial monarchy to a national democracy. At the dawn of the United States of America, the founding fathers set out ten principles, the "Bill of Rights" that would bind the new national democratic government. Similarly, today I am setting out ten principles to guide the Commission as we move into a new, more transparent Dodd-Frank regulatory regime. I believe these principles best protect our consumers and end-users who help move our economy forward—and let's keep in mind that these end-users were not the cause of the financial crisis that led to financial reform. In fact, end-users were among the many victims of the crisis and much of Dodd-Frank was drafted with their interests in mind.

The futures and swaps markets wouldn't exist without end-users. The primary public benefit of derivatives markets is that they provide end-users risk management opportunities that, in turn, allow them to more easily fund operations and investments and thereby generate economic growth. The ability of end-users to fund their operations is directly related to the prices paid by consumers and the overall well-being of our economy; so protecting the end-users is akin to protecting the every-day consumer. The End-User Bill of Rights therefore focuses on what I believe should be the inalienable rights of end-users:

1. Right to reasonable Dodd-Frank implementation. Dodd-Frank needs to be implemented and needs to be implemented quickly, but that does not mean it should be done so harshly. Back in December 2012, I supported the Commission providing good faith forbearance relief for swap dealers (SDs) and major swap participants (MSPs) until July 31, 2013 (under certain circumstances) when trying in earnest to come into compliance with new CFTC Dodd-Frank rules. Consistent with that six month forbearance relief, I will not approve an action against end-users seeking to comply with CFTC Dodd-Frank rules in good faith, provided they act in ways consistent with a good faith intention to comply, until after October 31, 2013.

2. Right to legal certainty. The Commission and the Commission staff need to provide the market as much legal certainty as possible as we move through a challenging implementation period. End-users and other market participants should have little doubt as to the status of their activities and the Commission and staff should respond thoughtfully and diligently to requests for legal certainty. When an answer isn't easy to provide, then the Commission or staff should be as transparent as possible with the public. The Commission or staff should strive to provide the market relief or clarity well in advance of a compliance date—last minute relief and clarification should be avoided. Finally, during this implementation of Dodd-Frank, I will not support an action against an end-user, exchange, or anyone else on an issue deserving clarity that is the subject of an outstanding request for interpretive guidance.

To provide a specific example of where the Commission could assist the end-user community with additional legal clarity, take the legal status of trade options. The Commission should tighten our guidance on commodity contracts with volumetric optionality, consistent with Commission precedent. At the same time, the Commission

should focus on implementing Dodd-Frank for non-trade option swaps and broaden the trade option exemption in order to minimize any market disruptions in the trade options market. We should give end-users the opportunity to meet their statutory obligation to report trade options through an annual Form TO so that the Commission can monitor these markets for problems or evasion.

3. Right to compete in the markets. End-users should be able to hedge without getting mauled by cheetahs or crushed by Massive Passives. To protect end-users' right to compete in the markets, the Commission should start with two common sense rulemakings: First, we need high-frequency trader registration and conduct rules to prevent cheetahs from going feral. We should also provide the public market quality metrics designed to help end-users and other non-cheetahs from distinguishing between false cheetah liquidity and true liquidity. Second, we need caps on speculation so that the commodity markets return to their principal role as risk management markets for end-users. The commodity markets worked best when end-users were the predominant players. The Commission should move quickly on a new proposal on speculation limits by May 1.

4. Right to safe accounts. We need strong rules and rigorous auditing to ensure that futures commission merchants (FCMs) don't abuse their role as intermediaries while not imposing undue burdens on FCMs that provide end-users access to critical risk management markets (including a sensible compromise on residual interest). End-users should also have the right to choose between full segregation or to have their money at an FCM. If we require the availability of this option, the market will provide end-users better and more competitively-priced access to full segregation. Congress should also act to give end-users backstop protection through federally-mandated insurance.

5. Right to have confidence in the commodity markets. End-users should be confident that their intermediaries, FCMs and SDs in particular, are appropriately regulated and supervised. The Commission needs to establish rules that do this and ensure they are being enforced. The Commission needs bigger penalties to deter the abuses that threaten the health and stability of the markets. I have called for raising civil monetary penalty maximums to \$10 million for entities and \$1 million for individuals. The current \$140,000 maximum civil monetary penalty is simply an inadequate deterrence for an agency tasked with, among other things, deterring manipulation and preventing systemic risk. Today's regulatory infractions can spawn tomorrow's financial meltdown and the Commission should be able to seek penalties to deter the malfeasance and negligence that can contribute to systemic problems.

6. Right to clear (or not to clear). The right to clear or not to clear should be protected for end-users. Central hedging units for non-financial end-users should be free to clear or not to clear on transactions that mitigate commercial risks for their corporate group. End-users that use inter-affiliate swaps to centralize and manage risk across a corporate group through a central hedging unit should be given the flexibility to clear or not to clear. End-users' inter-affiliate swaps should also be exempt from transaction-by-transaction reporting. The Commission should move quickly to provide relief from reporting requirements for inter-affiliate transactions for end-users.

7. Right to margin flexibility and reasonable capital rules. Under-collateralization has not been an end-user problem. Accordingly, I support the latest February 2013 IOSCO/Basel consultation that would exempt non-financial entities that are not systemically important from prescriptive margin requirements. The Commission also needs to come up with a sensible compromise on capital requirements for non-financial SDs. The Commission should encourage non-financial SDs to register. Non-financial SDs provide competition to financial SDs and their presence lets end-users hedge their risks on more competitive terms. On the one hand, Commission capital rules should ensure non-financial SDs have adequate capital to fall back on in the event of market or portfolio stresses. On the other hand, these rules should not put non-financial SDs at a competitive disadvantage.

8. Right to hedge. Speculative position limits should encourage and not unduly complicate prudent commercial risk management practices. Public power end-users using swaps to hedge commercial risk should have the same access to risk management markets as privately-owned utilities. This should be done preferably through regulatory relief.

9. Right to smart regulation. As we move through implementation, we are going to find

smarter ways to accomplish regulatory policy goals. The Commission owes the end-user community a commitment that it will amend its rules when these smarter ways become apparent. For example, there may be more prudent ways to implement Part 46 historical swaps reporting for end-users that the Commission should consider. In the interim, the Commission should give end-users a six month reprieve, through October 2013, for historical swaps reporting requirements.

10. Right to be heard. SDs and MSPs are, by definition, big boys and girls who've seen the writing on the wall for years. As Commission registrants and as large financial conglomerates, they can go to the NFA or industry organizations like ISDA for guidance on how to comply with our rules. NFA and ISDA and similar organizations have experience orchestrating change on an industry-wide basis. Many end-users, on the other hand, are not used to having their swaps activity subject to CFTC regulation. During and after Dodd-Frank implementation we need a venue for end-users to air their concerns. I call for an End-User Advisory Committee (EUAC) with regularized meetings. End-users face an array of unique compliance challenges and legitimate business and regulatory concerns that warrant the Commission's focused attention.

Just like the Constitution is subject to amendment (some of the best amendments came almost eighty years after the first ratified draft), so is this document. I look forward to working with end-users, consumers, SDs, MSPs, FCMs, and others as we move through an exciting and challenging implementation period and invite their comments on this End-User Bill of Rights. If we do our jobs as regulators and implement Dodd-Frank quickly and reasonably, the markets will improve for the benefit of end-users and the American public. That was the goal of Congress and that continues to be my goal.

Last Updated: April 3, 2013

EXHIBIT D

American Metal Market

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SEC ignored risks posed by copper ETF: Southwire

Mar 26, 2013 | 10:09 AM | Andrea Hotter

NEW YORK — The Securities and Exchange Commission (SEC) ignored warnings over the impact a physical copper exchange-traded fund (ETF) sponsored by JP Morgan Chase & Co. could have on lengthy queues at London Metal Exchange warehouses and on the incentives and premiums paid for metal, according to a court filing by a major U.S. copper consumer.

Carrollton, Ga.-based copper fabricator Southwire Co. said in documents filed with the U.S. Court of Appeals in Washington that the SEC failed to consider evidence it had provided showing the launch of a physical ETF could exacerbate a "bidding war" for copper among competing warehouse owners and end users.

The market is "already being severely constricted as a result of owners of LME warehouses paying huge premiums to metal producers to place copper that otherwise would be available for immediate delivery into warehouses with lengthy queues for physical delivery," the filing said.

Copper premiums in Antwerp jumped to as much as \$100 per tonne last week, in line with incentives being offered by traders and warehouses to draw the metal into storage, according to *AMM* sister publication *Metal Bulletin*.

"Such practices by warehouse owners have led to vast amounts of such copper being stored in LME warehouses in New Orleans, Antwerp and Johor (Malaysia) where, when sold, it may not be available for physical delivery for months," the filing said. This is "a phenomenon which has effectively eliminated those warehouses as markets for copper available for immediate delivery, thus substantially shrinking the market for copper available for immediate delivery to whatever is delivered to a port where it could go on warrant in an LME warehouse or sold to an end user."

"The SEC not only failed to analyze the market as it exists today, but failed to analyze what the impact would be as authorized participants begin to vie with warehouse owners and end users for the limited supply of copper when it arrives in an LME port city such as New Orleans, Antwerp or Johor," the filing said. "The SEC looked only at existing premiums, concluded that they fluctuate, and failed completely to analyze what the premiums would be—and the cost to industrial end users and their customers—when shares of the (ETF) begin to be listed and traded."

Southwire made the comments in its continuing appeal of a decision by the U.S. regulator to allow JP Morgan's physical copper ETF (amm.com, Feb. 13).

The filing written by lawyer Robert Bernstein, a partner at New York law firm Eaton & Van Winkle, listed a number of factors Southwire alleges the SEC had failed to examine despite having been alerted to the

company's concerns, including how much copper is currently being held by JP Morgan's LME-approved warehouse subsidiary Henry Bath, as well as the development of queues at those sites' warehouses.

The filing said the SEC had not examined the impact on copper consumers of the premiums they must now pay as a result of the warehouse queues, and how those premiums might change once the physical ETF is introduced.

JP Morgan argued that any copper taken out of LME warehouses for the ETF would not disrupt copper supplies because it would "remain available for immediate delivery to consumers and participants in the physical markets."

The bank plans to start small and build up. The product will be backed by less than 10,000 tonnes of copper when it initially launches and eventually reach an estimated 61,800 tonnes, although JP Morgan could seek to increase this if the product proves to be successful.

Southwire said in the filing that the ETF will create an "investor-financed squeeze" of the market, and together with the recently approved BlackRock Inc. physical copper ETF the products could remove 180,000 tonnes of copper from the market—nearly 40 percent of LME copper stocks (amm.com, Feb. 25).

Southwire has not yet formally appealed the SEC's decision to approve the BlackRock ETF, but the company's comments in the JP Morgan filing indicate it will do so and then move to consolidate the two appeals, a person familiar with the matter said.

The SEC did not identify or discuss alternatives to alleviate concerns over the ETF, the filing said, such as imposing "reasonable limits" on the amount of copper the ETF may hold or requiring that LME-grade copper held in the physical ETF be limited to metal that is on warrant, "which would at least keep copper acquired by the (ETF) subject to the LME's anti-squeeze rules."

Southwire complained that the SEC held a meeting with representatives of JP Morgan and its counsel to discuss the ETF Dec. 6 that it did not disclose until January, when the rule had already been approved (amm.com, Dec. 17). But on Dec. 5 the SEC formally denied a request for a similar meeting by Southwire and other industrial users who were part of a consortium opposed to the ETF before it was launched, the filing said.

The consortium included Southwire, AmRod Corp., Newark, N.J., Encore Wire Corp., McKinney, Texas, and London-based Luvata UK Ltd., along with metals-focused hedge fund RK Capital Management LLC, London. The other consortium members have dropped out of the appeal process, which is likely to be time consuming and costly.

EXHIBIT E

American Metal Market

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In-warehouse copper premiums skyrocket

Apr 18, 2013 | 02:30 PM | Suzy Waite

NEW YORK — In-warehouse premiums for copper at London Metal Exchange-approved warehouses have skyrocketed after an April 10 wall slide at Kennecott Utah Copper Corp.'s Bingham Canyon Mine forced the company to declare force majeure.

Traders told AMM that in-warehouse duty unpaid premiums for material in Chicago, New Orleans and St. Louis locations were being quoted at around \$50 per tonne this week and as high as \$60 per tonne in St. Louis, up from between \$30 and \$45 per tonne in St. Louis previously and a far cry from the \$5-to-\$10-a-tonne range reported in Chicago and New Orleans prior to the mine collapse.

"Ten dollars (a tonne) really has no bearing on today's market, which is totally different from a week ago. What meaning does \$10 have when you're taking 25,000 tonnes of production out of the system? Don't be surprised when (premiums) go from \$10 (a tonne) when it's dead to \$50 (a tonne) when it's not," one copper trader said of in-warehouse premiums.

A second trader agreed that \$50 a tonne for copper in St. Louis warehouses was fair in today's market, although he added that he "personally would quote higher."

"Chicago would be \$50 a tonne as well," the second trader said, adding that if he were to hear of any cheaper offers in the Midwest city, he plans to snap up the warrants himself.

A third copper trader agreed these much higher premiums to obtain LME copper warrants are not surprising given the Kennecott outage.

Kennecott informed customers in an April 15 letter that this month's copper cathode shipments would not be impacted as a result of its recent mine collapse but that May's refined copper shipments will be reduced. "Thereafter, we do not anticipate the ability to make further shipments for the foreseeable future," the company said at the time (amm.com, April 16).

As a result of the incident, London-based Rio Tinto Plc, which owns Kennecott, lowered its initial forecast of mined copper production to 540,000 tonnes this year from February's estimates of 665,000 tonnes and dropped its refined copper forecast to 205,000 tonnes from 305,000 tonnes previously (amm.com, April 16).

With a possible supply crimp on the horizon, more consumers may look to warehoused metal to meet their needs, hence putting upward pressure on in-warehouse premiums. Sources have predicted physical

delivered copper premiums will also go up as buyers scramble to find material, with some already reporting higher quotes ([amm.com, April 17](#)).

Stocks in LME-approved warehouses in New Orleans have spiked to 176,200 tonnes as of April 16 from 75,775 tonnes on Jan. 2, with sources estimating that queues to get material from that city are as long as five months.

Stocks in Chicago and St. Louis have dipped from earlier this year, however, with Chicago holding 5,975 tonnes on April 16, down from 6,400 tonnes at the start of the year, and St. Louis stocks easing to 22,550 tonnes from 36,100 tonnes in January.

The rising cost of transferring ownership of copper warrants comes at a time when warehouses are also offering traders and producers attractive incentives to store material with them, which traders pegged at around \$100 a tonne in some locations ([amm.com, Oct. 12, 2012](#)).

The fact that traders have taken these deals means their material is committed for some time to come however, a third trader said.

"My copper is all slated into New Orleans and it's all slated (to stay there) for X amount of time," the third trader said.

This means some will have to look to import new material, he said.

EXHIBIT F

American Metal Market

COPYING AND DISTRIBUTING ARE PROHIBITED WITHOUT PERMISSION OF THE PUBLISHER

Copper mine outage sparks shift to scrap

Apr 18, 2013 | 06:05 PM | [Barbara O'Donovan](#)

NEW YORK — Domestic copper consumers that can use high-grade scrap are "scrambling" to find out about its availability in the wake of an outage at Kennecott Utah Copper's Bingham Canyon Mine.

"We've had some scrap buying. Those that can take scrap as well as copper cathode are looking to ramp up their buying," a scrap broker source told AMM.

Kennecott, a division of Rio Tinto Plc, declared *force majeure* earlier this week after an April 10 wall slide forced it to suspend mining at the Utah mine ([amm.com, April 16](#)).

Purchases so far have been limited as some take a wait-and-see stance, but sellers expect sales to spike as Kennecott's inventories run down.

"(Some) want to get in before the spreads get way out of whack," the scrap broker source said.

The higher demand combined with lower Comex copper prices served to reduce discounts on high-grade copper scrap.

The discount for brass mill No. 1 copper scrap has narrowed to 1 to 3 cents per pound below Comex from a 3- to 5-cent discount a week earlier, putting prices at \$3.16 to \$3.18 per pound based on a May-delivery Comex copper contract settlement price of \$3.1875 per pound April 17.

The Comex price is down 6.7 percent from \$3.418 per pound a week earlier as the market takes its lead from economic sentiment rather than supply and demand fundamentals, sources said.

The price decline has led market participants to predict more trades will take place at a premium to Comex following one unconfirmed sale by a broker last week at 2 cents above the July Comex price.

Kennecott customers aren't guaranteed deliveries after May, according to the *force majeure* notice. This will mean consumers will continue to look for alternative sources of feedstock.

Copper cathode inventories in London Metal Exchange-listed warehouses, while high, aren't a guaranteed source of material, market participants said ([amm.com, April 18](#)). Queues to get copper out of approved warehouses in New Orleans are at about five months, while consumers would have to wait more than a year to get their hands on material in Detroit warehouses, traders said.

"Even if warehouse stocks are high, most agree that it takes way too long to get metal out," a second broker said.

Continued scrap supply tightness helped narrow the discounts on other grades of copper scrap in the face of declining Comex copper prices and a slightly improved demand outlook.

The discount on refiners No. 1 copper scrap has declined to 9 to 11 cents per pound from 12 to 14 cents previously, putting prices at \$3.08 to \$3.10 per pound vs. \$3.28 to \$3.20 per pound April 10. The refiners No. 2 copper scrap discount moved to 27 to 29 cents per pound from 30 to 32 cents previously.

"(The discounts) are all coming in. Supply is pretty darned tight and demand is slightly better than it was," a third scrap broker said.

Brass ingot makers' copper scrap is following a similar trend, with the discount for bare bright material falling to 4 to 6 cents per pound from 6 to 8 cents previously, and the discount for brass ingot makers' No. 1 copper scrap at 13 to 15 cents per pound, down from 15 to 17 cents.

Ingot makers are having to compete with exporters for No. 2 copper scrap, the second broker said. As a result, the discount for No. 2 narrowed to 27 to 31 cents per pound from 30 to 34 cents previously.

Barbara O'Donovan

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