

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 whether there has been a violation
6 of the Commodity Transactions Act by:

7 Sterling Precious Metals LLC;
8 Ryan Zofay; and
9 Seth Goldberger,

10 Respondents

Order Number S-11-0765-12-FOO2

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL
ORDER TO CEASE AND DESIST, AS TO
SETH GOLDBERGER

11 **INTRODUCTION**

12 On May 29, 2012, the Securities Administrator of the State of Washington issued Statement of
13 Charges and Notice of Intent to Enter an Order to Cease and Desist (“Statement of Charges”), Order
14 Number S-11-0765-12-SC01, against Respondents. The Statement of Charges, together with a Notice of
15 Opportunity to Defend and Opportunity for Hearing (“Notice”) and an Application for Adjudicative
16 Hearing (“Application for Hearing”), were served on Respondent Seth Goldberger on August 13, 2012.

17 The Notice advised that a written application for an administrative hearing on the Statement of
18 Charges must be received within twenty days from the date of receipt of the notice. Respondent did not
19 request an administrative hearing within twenty days of receipt of the Statement of Charges and Notice of
20 Opportunity for Hearing.

21 The Securities Administrator therefore will adopt as final the Findings of Fact and Conclusions of
22 Law as set forth in the Statement of Charges and enter a final order against Respondent Seth Goldberger
23 to cease and desist from any violations of the Commodity Transactions Act.

24 The Securities Administrator makes the following Findings of Fact and Conclusions of Law:

25 ENTRY OF FINDINGS OF FACT AND
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1 **FINDINGS OF FACT**

2 Respondents

3 1. Sterling Precious Metals LLC (“Sterling”) is a Florida limited liability company that was
4 formed on March 19, 2010. Sterling has its principal place of business in Boca Raton, Florida. During
5 at least 2010, Sterling offered and sold precious metals investments through telemarketing solicitation.
6 Sterling also maintains an Internet website that promotes precious metals investments. Sterling’s
7 website states that “Customer satisfaction is our highest priority, we do the work so you can make
8 money!”

9 2. Ryan Zofay (“Zofay”) was a managing member and a sales representative of Sterling. During
10 2010, Zofay was also an Associated Person and Principal at Oxford Trading Group, Inc., which was
11 registered as an Introducing Broker with the National Futures Association. On February 4, 2011,
12 Zofay was ordered to terminate his membership with the National Futures Association.

13 3. Seth Goldberger (“Goldberger”) was a sales representative of Sterling. During 2010,
14 Goldberger was also an Associated Person at Oxford Trading Group, Inc., which was registered as an
15 Introducing Broker with the National Futures Association. On February 4, 2011, Goldberger was
16 ordered to terminate his membership with the National Futures Association.

17 Offering of Leveraged Precious Metals Investments

18 4. From at least September 2010 through December 2010, Respondents offered and sold
19 leveraged precious metals investments in gold, silver, and platinum to at least two Washington
20 investors. The investments totaled more than \$110,000 and both of the investors lost all of their
21 invested funds.

22 5. When offering and selling the investments, Respondents initially sent an unsolicited brochure
23 to one of the investors and “cold called” the other investor, having no prior contact with the investors.

1 Respondents touted precious metals as a profitable investment. Respondents each represented to the
2 investors that Sterling or its designated custodian would hold the precious metals that the investors
3 were purchasing. Respondents represented that Sterling would allow the investors to “leverage” their
4 investments by financing a portion of the purchase price of the precious metals. Respondents
5 represented that the investors could elect to pay a reduced percentage of the total cost of the precious
6 metals that were being purchased, but the investors would have to provide additional funds to maintain
7 that percentage if the market value of the metals declined.

8 Misrepresentations or Omissions

9 6. When offering and selling the investments, Sterling and Zofay each falsely represented to a
10 Washington investor that the investor could easily earn a return of 30% on his investment and that the
11 investor would not lose any money on the investment. Respondents each failed to disclose significant
12 risks of the investments to the investors. Respondents each failed to disclose to the investors that they
13 would pay sales commissions and fees representing more than 30% of transactions costs. Respondents
14 each failed to disclose the financial condition of Sterling. Respondents each failed to disclose the
15 source for making payments to the investors if the value of the precious metals increased. Respondents
16 each failed to disclose that there was no public market for re-selling the leveraged precious metals
17 investments.

18 7. Respondents also failed to disclose to the investors that Zofay and Goldberger were both the
19 subjects of an August 10, 2010 National Futures Association Complaint charging them with deceptive
20 and misleading sales solicitations and with the failure to uphold high standards of commercial honor
21 and just and equitable principles of trade while acting as associated persons with Oxford Trading
22 Group, Inc., an introducing broker for commodity futures trading.

Registration Status of Respondents

8. Sterling Precious Metals LLC has never been registered with the Washington Securities Division as a commodity broker-dealer or as a securities broker-dealer. Sterling Precious Metals LLC has never been registered with the Commodity Futures Trading Commission in any capacity.

9. Ryan Zofay has never been registered with the State of Washington as a commodity broker-dealer, commodity sales representative, securities broker-dealer, or securities salesperson. Ryan Zofay has never been registered with the Commodities Futures Trading Commission as a futures commission merchant or affiliated with a registered futures commission merchant.

10. Seth Goldberger has never been registered with the Washington Securities Division as a commodity broker-dealer, a commodity sales representative, a securities broker-dealer, or securities salesperson. Seth Goldberger has never been registered with the Commodities Futures Trading Commission as a futures commission merchant or affiliated with a registered futures commission merchant.

Based upon the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

1. The offer or sale of the leveraged precious metals investments described above constitutes the offer or sale of a commodity contract in the state of Washington, as defined in RCW 21.30.010 and RCW 21.30.080.

2. Respondent Seth Goldberger has violated RCW 21.30.020 because the offer and sale of the commodity contracts were made by a person not exempt under RCW 21.30.030 and the transactions or contract was not exempt under RCW 21.30.040.

3. Respondent Seth Goldberger has violated RCW 21.30.060 because, in connection with the offer or sale of a commodity contract, the Respondent made an untrue statement of a material fact or

1 omitted to state a material fact necessary in order to make the statements made, in the light of the
2 circumstances under which they were made, not misleading.

3 **FINAL ORDER**

4 Based upon the foregoing and finding it in the public interest:

5 It is hereby ORDERED that Respondent Seth Goldberger shall permanently cease and desist from
6 violating the registration and the prohibited practices provisions of the Commodity Transactions Act.

7 **AUTHORITY AND PROCEDURE**

8 This Final Order is entered pursuant to the provisions of RCW 21.30.120 and is subject to the
9 provisions of Chapter 34.05 RCW. Respondent Seth Goldberger has the right to petition the superior
10 court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
11 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

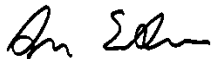
12 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

13 DATED and ENTERED this 18th day of September, 2012

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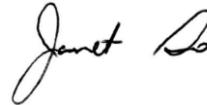
16 WILLIAM M. BEATTY
17 Securities Administrator

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19 Approved by:

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21 Suzanne E. Sarason
22 Chief of Enforcement

Presented by:

23 

24 Janet So
25 Enforcement Attorney

Reviewed by:

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Robert Kondrat
Financial Legal Examiner Supervisor