

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

4 IN THE MATTER OF DETERMINING ) Order No. S-11-0765-12-SC01  
5 whether there has been a violation of the )  
6 Commodity Transactions Act by: ) STATEMENT OF CHARGES AND NOTICE OF  
7 Sterling Precious Metals LLC, Ryan Zofay, ) INTENT TO ENTER AN ORDER TO CEASE AND  
8 and Seth Goldberger, ) DESIST  
9 Respondents )

10 THE STATE OF WASHINGTON TO: Sterling Precious Metals LLC  
11 Ryan Zofay  
12 Seth Goldberger

13 **STATEMENT OF CHARGES**

14 Please take notice that the Securities Administrator of the state of Washington has reason to believe  
15 that Respondents, Sterling Precious Metals LLC, Ryan Zofay, and Seth Goldberger, have each violated  
16 the Commodity Transactions Act and that their violations justify the entry of an order of the Securities  
17 Administrator under RCW 21.30.120 to cease and desist from such violations.

18 The Securities Administrator finds as follows:

19 **TENTATIVE FINDINGS OF FACT**

20 Respondents

21 1. Sterling Precious Metals LLC (“Sterling”) is a Florida limited liability company that was formed  
22 on March 19, 2010. Sterling has its principal place of business in Boca Raton, Florida. During at least  
23 2010, Sterling offered and sold precious metals investments through telemarketing solicitation. Sterling  
24 also maintains an Internet website that promotes precious metals investments. Sterling’s website states  
25 that “Customer satisfaction is our highest priority, we do the work so you can make money!”

1 2. Ryan Zofay (“Zofay”) was a managing member and a sales representative of Sterling. Between  
2 2008 and 2009, Zofay was an Associated Person and Principal at Vista Trading Advisors Inc., which was  
3 registered as an Introducing Broker with the National Future Association. From approximately  
4 September 2009 through March 2011, Zofay was an Associated Person and Principal at Oxford Trading  
5 Group, Inc., a registered Introducing Broker with the National Futures Association.

6 3. Seth Goldberger (“Goldberger”) was a sales representative of Sterling. Between 2008 and 2009,  
7 Goldberger was an Associated Person at Vista Trading Advisors Inc., which was registered as an  
8 Introducing Broker with the National Future Association. From approximately September 2009 through  
9 March 2011, Goldberger was an Associated Person at Oxford Trading Group, Inc., a registered  
10 Introducing Broker with the National Futures Association.

11 Background

12 4. On August 10, 2010, the National Futures Association issued a Complaint, charging Vista  
13 Trading Advisers Inc., Goldberger, and Zofay with making deceptive and misleading sales solicitations  
14 and failing to uphold high standards of commercial honor and just and equitable principles of trade. The  
15 same day, the National Futures Association issued another Complaint charging Oxford Trading Group,  
16 Inc. and Goldberger with making deceptive and misleading sales solicitations and failing to uphold high  
17 standards of commercial honor and just and equitable principles of trade and charging Zofay with failing  
18 to uphold high standards of commercial honor and just and equitable principles of trade. In 2011,  
19 pursuant to settlement offers as part of these actions, Goldberger and Zofay were ordered to terminate  
20 their membership with the National Futures Association.  
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Offering of Leveraged Precious Metals Investments

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

5 6. When offering and selling the investments, Respondents initially sent an unsolicited brochure to  
6 one of the investors and “cold called” the other investor, having no prior contact with the investors.  
7 Respondents touted precious metals as a profitable investment. Respondents each represented to the  
8 investors that Sterling or its designated custodian would hold the precious metals that the investors were  
9 purchasing. Respondents represented that Sterling would allow the investors to “leverage” their  
10 investments by financing a portion of the purchase price of the precious metals. Respondents represented  
11 that the investors could elect to pay a reduced percentage of the total cost of the precious metals that were  
12 being purchased, but the investors would have to provide additional funds to maintain that percentage if  
13 the market value of the metals declined.  
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Misrepresentations or Omissions

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16 7. When offering and selling the investments, Sterling and Zofay each falsely represented to a  
17 Washington investor that the investor could easily earn a return of 30% on his investment and that the  
18 investor would not lose any money on the investment. Respondents each failed to disclose significant  
19 risks of the investments to the investors. Respondents each failed to disclose to the investors that they  
20 would pay sales commissions and fees representing more than 30% of transactions costs. Respondents  
21 each failed to disclose the financial condition of Sterling. Respondents each failed to disclose the source  
22 for making payments to the investors if the value of the precious metals increased. Respondents each  
23 failed to disclose that there was no public market for re-selling the leveraged precious metals  
24 investments. Respondents also failed to disclose to the investors that Zofay and Goldberger were  
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1 subjects of the August 2010 National Futures Association Complaints, as described above, for deceptive  
2 and misleading sales solicitations.

3 Registration Status of Respondents

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

7 9. Ryan Zofay has never been registered with the State of Washington as a commodity broker-  
8 dealer, commodity sales representative, securities broker-dealer, or securities salesperson.

9 10. Seth Goldberger has never been registered with the Washington Securities Division as a  
10 commodity broker-dealer, a commodity sales representative, a securities broker-dealer, or securities  
11 salesperson.

12 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:  
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14 **CONCLUSIONS OF LAW**

15 1. The offer or sale of the leveraged precious metals investments described above constitutes the  
16 offer or sale of a commodity contract in the state of Washington, as defined in RCW 21.30.010 and RCW  
17 21.30.080.

18 2. Respondents Sterling Precious Metals LLC, Ryan Zofay, and Seth Goldberger have each  
19 violated RCW 21.30.020 because the offer and sale of the commodity contracts were made by a person  
20 not exempt under RCW 21.30.030 and the transactions or contract was not exempt under RCW  
21 21.30.040.

22 3. Respondents Sterling Precious Metals LLC, Ryan Zofay, and Seth Goldberger have each  
23 violated RCW 21.30.060 because, in connection with the offer or sale of a commodity contract, the  
24 Respondents each made an untrue statement of a material fact or omitted to state a material fact necessary  
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1 in order to make the statements made, in the light of the circumstances under which they were made, not  
2 misleading.

3 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

4 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities  
5 Administrator intends to order the Respondents to each permanently cease and desist from violating the  
6 registration and the prohibited practices provisions of the Commodity Transactions Act.

7 **AUTHORITY AND PROCEDURE**

8 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist is entered  
9 pursuant to the provisions of RCW 21.30.120, and is subject to the provisions of Chapter 34.05 RCW.  
10 The Respondents, Sterling Precious Metals LLC, Ryan Zofay, and Seth Goldberger, may each make a  
11 written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
12 OPPORTUNITY FOR HEARING accompanying this order. If a respondent fails to request a hearing  
13 within the allowed time, the Securities Administrator intends to adopt the above Tentative Findings of  
14 Fact and Conclusions of Law as final and to enter a permanent cease and desist order against that  
15 respondent.  
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17 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

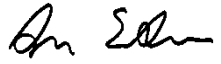
18 Signed and Entered this 29th day of May, 2012  
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WILLIAM M. BEATTY  
Securities Administrator

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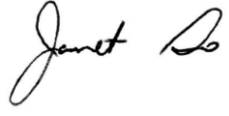
Approved by:



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Suzanne E. Sarason  
Chief of Enforcement

Presented by:



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Janet So  
Enforcement Attorney

Reviewed by:



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Robert Kondrat  
Financial Legal Examiner Supervisor