

1 Neil A. Goteiner (State Bar No. 083524)
ngoteiner@fbm.com
2 Scott Andrews (State Bar No. 243690)
sandrews@fbm.com
3 FARELLA BRAUN & MARTEL LLP
235 Montgomery Street
4 San Francisco, CA 94104
Telephone: (415) 954-4400
5 Facsimile: (415) 954-4480

6 Attorneys for Plaintiffs
7 MONEX DEPOSIT COMPANY and MONEX
CREDIT COMPANY

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT
10 (SOUTHERN DIVISION – SANTA ANA)

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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

12 MONEX DEPOSIT COMPANY and
13 MONEX CREDIT COMPANY,

14 Plaintiffs,

15 v.

16 JASON GILLIAM, STEVEN
17 BOWMAN, RICHARD GILLIAM,
and DOES 1-10,

18 Defendants.

Case No. SACV 09-287-JVS(RNBx)

**FIRST AMENDED COMPLAINT
FOR DEFAMATION, CIVIL
EXTORTION, CYBERPIRACY,
UNFAIR COMPETITION,
RACKETEERING,
INTERFERENCE WITH
CONTRACT, TRADE LIBEL,
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE, AND TRADE
SECRET MISAPPROPRIATION**

DEMAND FOR JURY TRIAL

The Hon. James V. Selna

23 1. This action arises under 15 U.S.C. § 1125(d) and the Racketeer
24 Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968. The court has
25 jurisdiction pursuant to 28 U.S.C. § 1331. The court has supplemental jurisdiction
26 over claims not arising under those federal statutes, pursuant to 28 U.S.C. §
27 1367(a).

INTRODUCTION

1
2 2. Defendants Jason and Richard Gilliam and Steven Bowman published
3 MonexFRAUD.com, a website rife with defamatory statements about plaintiffs,
4 Monex Deposit Company and Monex Credit Company (collectively “Monex.”)
5 Defendants used the website as part of an integrated scheme and fraud to extort
6 money from Monex. Defendants threatened that, unless Monex paid them \$20
7 million, they would continue to libel Monex on their website, would share
8 information with government regulators, and would interfere with Monex’s
9 relationships with investors and banks. Such an extortionate scheme is unlawful
10 and therefore unprotected by constitutional free-speech guarantees.

11 3. Monex Deposit Company (“MDC”) is a dealer in precious metals. Its
12 affiliate, Monex Credit Company (“MCC”), loans money to customers who wish to
13 finance their metals purchases from MDC. Both MDC and MCC are located in
14 Newport Beach, California. Jason and Richard Gilliam are former Monex
15 customers. The Gilliams lost \$32,600 in their precious metals transactions with
16 Monex. Steven Bowman claimed to be an attorney in Canada representing a group
17 of four people (including himself) who allegedly lost \$5 million trading with
18 Monex, as well as representing other former and present customers of Monex. But
19 Monex has no record of having done business with Bowman and he refuses to give
20 Monex the names of his partners. Together, the Gilliams and Bowman also
21 claimed to represent over 200 customers who lost money with Monex. Each of
22 these customers fell into one of two groups: a group of 184 people listed on a
23 proprietary document that defendants misappropriated and a group of about 50
24 people who, Jason Gilliam claims, contacted him directly. He admitted, however,
25 that not a single person among the 184-member group ever asked him to represent
26 him or her. He also admitted that, when he first demanded money from Monex, no
27 customer had agreed in writing that Jason Gilliam would represent him or her. He
28 also admitted that he has no documentation supporting his contention that any of

1 those more than 200 customers lost money in their transactions with Monex.

2 4. As part of their extortion scheme, defendants used their website to
3 falsely impugn the integrity of Monex and its representatives as well as the value of
4 the goods and services Monex offers. A core part of defendants' extortion caper is
5 their allegation on their website that Monex does not deliver metals or title to the
6 metals to Monex customers, as agreed in account agreements with customers, and,
7 therefore, that Monex is defrauding investors. Defendants continued to make these
8 allegations and to harass a bank depository that stores the customers' precious
9 metals notwithstanding that Monex had given them all the information they needed
10 to see that their allegation is false.

11 5. Defendants freely admit that they intend for their invective and
12 defamatory statements to drive customers and potential customers away from
13 Monex. Defendants also announced that their scheme to mislead Monex customers
14 and potential customers was succeeding. MonexFRAUD.com claimed that over
15 40,000 "unique users" visited the site. Defendants have said on their website and in
16 conversations with Monex's outside counsel that they have successfully deflected
17 Monex customers and potential customers from doing business with Monex.
18 Defendants specifically claimed that their public accusations of fraud and crime
19 have cut Monex's business by 10 percent, based on defendants' communications
20 with potential Monex customers. They recently estimated that they had cost Monex
21 at least \$2 million over two weeks and projected that they would cost Monex \$52
22 million over a year. In addition, at least two people have published comments on
23 MonexFRAUD.com stating that the website persuaded them not to do business with
24 Monex.

25 6. Defendants expanded their scheme into extortion of significant
26 amounts of money from Monex by threatening that, if Monex refused to pay them
27 \$20 million, defendants would publish additional negative statements about Monex
28 and would provide negative information about it to the media and governmental

1 agencies. They said the amount was increasing. They threatened to sue not only
2 Monex but also HSBC Bank USA, N.A., which holds customers' metals for them,
3 for fraud.

4 7. Defendants carried out their threats. They contacted the IRS to offer
5 misappropriated trade secrets to the IRS which they claim were relevant to a tax
6 dispute between Monex and the government. Defendants also repeated their false
7 allegations to the *Orange County Register*, leading to publication of an article in the
8 newspaper that cast Monex in a negative light. They also published additional
9 defamatory statements about Monex on their website after Monex refused to pay
10 them any money.

11 8. Defendants claim to have invested over \$400,000 in their website,
12 partly to assure that they optimized placement on Google's first search page for
13 certain terms, such as "Monex." Defendants' objective was to maximize their
14 extortion scheme by increasing business injury to Monex until it succumbed to their
15 extortionate threats. Defendants partly paid for their extortion scheme with revenue
16 earned by advertising for Monex's competitors, which had links on defendants'
17 MonexFRAUD.com website. Defendants also sought donations from users of their
18 website. Monex brings this action to stop defendants' extortion, defamation, and
19 other torts, and to be compensated for its injuries.

20 9. On April 9, 2009, the Hon. James V. Selna issued Findings Of Fact,
21 Conclusions Of Law, and a Preliminary Injunction in this action. He found that
22 defendants had damaged Monex's business by publishing negative material about
23 Monex on their websites, had threatened to publish additional negative facts unless
24 Monex paid them \$20 million, had not retracted their extortionate demands, were
25 likely to continue publishing negative material about Monex, and that the websites
26 are likely to harm Monex irreparably.

27 10. Judge Selna also concluded that plaintiffs have a reasonable
28 probability of success in this action on one or more theories, including defamation,

1 extortion, trade libel, and interference with contract and with economic advantage,
2 and that defendants' fraudulent statements about Monex are not protected by the
3 First Amendment.

4 11. Judge Selna's preliminary injunction requires defendants not to extort
5 consideration from Monex, not to operate www.MonexFRAUD.com or any other
6 website address using the name Monex in combination any modifier which implies
7 illegal, unlawful or unethical conduct, and not to publish any of the following
8 statements: Monex does not have title to or the ability to deliver precious metals
9 sold under contract to any Monex customer, Monex was expelled from the National
10 Futures Association for fraud, Monex operates as a boiler room, Monex violates
11 any federal or state statutes regulating the business operations of Monex, Monex
12 has been charged by the Internal Revenue Service with tax evasion, or Monex fails
13 to accurately disclose to customers account and trading terms. Judge Selna also
14 ordered defendants to remove from the web as many of the preceding statements as
15 possible, to refrain from disclosing, using, and retaining Monex proprietary
16 information, and to return all documentation of Monex trade secrets.

17 12. All allegations in this complaint that are made on information and
18 belief are likely to have evidentiary support after a reasonable opportunity for
19 further investigation or discovery.

20 **PARTIES**

21 13. Plaintiff MDC is a California limited partnership, with its principal
22 place of business at 4910 Birch Street, Newport Beach, California 92660. MDC
23 deals in precious metals such as gold and silver.

24 14. Plaintiff MCC is a California limited partnership, with its principal
25 place of business at 4910 Birch Street, Newport Beach, California 92660. MCC
26 finances transactions for investors doing business with Monex.

27 15. Both plaintiffs are referred to collectively and individually in this
28 complaint as "Monex." Each reference to Monex is a reference to MDC, MCC, and

1 both of them.

2 16. Defendants Richard and Jason Gilliam are individuals whose primary
3 residence is 3426 Bahia Blanca West, Unit B, Laguna Woods, California.

4 17. Plaintiffs are informed and therefore believe that defendant Steven
5 Bowman is an individual living and working in Toronto, Canada.

6 18. Plaintiffs are ignorant of the true names or capacities of the defendants
7 sued herein under the fictitious names DOES ONE through TEN.

8 19. Each defendant was the agent, joint venturer, and employee of each of
9 the remaining defendants and in doing the things alleged in this complaint, each
10 was acting within the course and scope of said agency, employment, and joint
11 venture with the advance knowledge, acquiescence, or subsequent ratification of
12 each and every remaining defendant.

13 20. Each reference to "defendants" and "Defendants" in this complaint
14 refers to each individual defendant, to all defendants collectively, and to all
15 combinations of fewer than all defendants.

16 **MONEX'S BUSINESS**

17 21. MDC buys precious metals from and sells precious metals to members
18 of the public.

19 22. MCC finances customer purchases from MDC and loans commodities
20 to customers.

21 23. Monex customers who purchase on credit or store goods through
22 Monex enter into written account agreements with Monex. The agreement with
23 MDC is the Atlas Account Purchase and Sale Agreement. The agreement with
24 MCC is the Atlas Account Loan, Security and Storage Agreement. Those contracts
25 govern the interactions and relationship between customers and Monex. Monex
26 customer accounts are non-discretionary; Monex cannot make any trades without
27 the customer's authorization.

28 24. The risk of loss for people trading in precious metals is high. The

1 Atlas Account agreements make clear that customers trading with Monex risk
2 losing money, mentioning "risk" no less than 20 times. For example, the Purchase
3 and Sale Agreement states in bold lettering in its third paragraph: "Because of the
4 volatile nature of the commodities markets, the purchase and sale of commodities
5 involve a high degree of risk and are not suitable for all persons. Customer
6 represents that he has read and understands this Agreement and represents that he is
7 aware of the nature and extent of Customer's rights and obligations and the risks
8 involved under this Agreement."

9 25. MDC sells precious metals to the investing public in either of two
10 ways: fully paid for in cash or pursuant to financed transactions. In a fully paid
11 cash purchase, Monex delivers the metals directly to the customer or to an
12 independent depository for safekeeping. Financed purchases are always stored at
13 an independent depository on the customer's behalf. When metal is stored for a
14 customer, title to the metal is conveyed to the customer, subject to a security
15 interest in favor of MCC for any loan balance or unpaid charges.

16 26. MDC was formed for the purpose of selling physical precious metals
17 to members of the public and complies with the California Commodity Code and
18 with similar legislation in various states.

19 27. MCC was formed to provide financing for MDC customer purchases
20 and to loan commodities to customers. Precious metals purchased by MDC's
21 customers serve as security for any credit that MCC extends to them.

22 28. The following paragraphs describe the structure of financed precious
23 metals transactions entered into by Atlas customers.

24 29. Monex customers generally learn of the companies from the Internet,
25 through television advertising, or by referral from another Monex customer.

26 30. Following contact with a prospective customer, an MDC account
27 representative speaks by telephone with the prospect to determine his investment
28 interests. The account representative then mails or gives an Atlas brochure

1 containing the Atlas Account Agreements to the customer or directs him to a copy
2 of the agreement on-line at the Monex website. Those agreements (copies of which
3 are attached hereto collectively as Exhibit A) must be executed and returned if the
4 customer decides to open an Atlas Account to finance and/or store metals.
5 Execution of the agreements is unnecessary if the customer wishes to make full
6 payment for metals and take personal delivery.

7 31. Following the prospective customer's receipt of the Atlas brochure and
8 account document information, the account representative will follow up the initial
9 contact with further telephone calls. Account representatives confirm on tape, prior
10 to acceptance of a customer's first Atlas Account transaction, that the customer has
11 received and read the Atlas Account agreements and agrees to be bound by the
12 terms of those agreements in any transactions with Monex. The account
13 representatives also are trained to answer any questions that a potential customer
14 might have before executing a transaction for his account.

15 32. If the customer chooses to finance his purchase, he pays a down
16 payment on the purchase price equal to at least 20 percent of the price, plus
17 commission. For example, assuming an initial purchase by the customer of 20 gold
18 coins at \$1,000 per coin, a 20 percent down payment would be equivalent to
19 \$4,000, plus a commission of \$300. Upon receipt of \$4,300 from the customer and
20 clearance of the customer's check, MCC will loan to the customer the remaining
21 \$16,000 of the customer's purchase price. MCC will pay the proceeds of this loan
22 directly to MDC. MDC delivers all 20 coins to an independent bank or depository
23 to be held for the customer's benefit. Title to the coins passes to the customer upon
24 delivery to the depository.

25 33. A Monex financed precious metals transaction contemplates — and
26 has been structured to assure — prompt delivery of the commodity purchased or
27 sold, with title passing upon delivery, within 28 days (or such shorter period as
28 required by state law) after MDC's receipt of payment in good funds.

1 34. The independent depository issues a written notice to the customer
2 confirming receipt and storage of precious metals for the customer's benefit and to
3 which the customer holds title. In conformity with the MCC Loan, Security and
4 Storage Agreement and the commodity statutes of various states, customer
5 commodities are stored on a fungible basis with the commodities of other
6 depository customers and the customer receives title to an undivided share of the
7 fungible lot.

8 35. Under the terms of the customer's Loan, Security and Storage
9 Agreement, MCC acquires a security interest in the precious metal delivered to the
10 independent depository for the customer, which is perfected (as permitted by
11 Section 9-304(3) of the Uniform Commercial Code), by notice to the depository of
12 MCC's security interest. The depository's written notice to the customer indicates
13 the existence of the security interest.

14 36. To return to the example in paragraph 32, in which the customer buys
15 20 gold coins with a \$4,300 down payment and a \$16,000 loan from MCC, the
16 coins are on deposit with the depository subject to the security interest of MCC.
17 MCC pays MDC in full for such commodities. The customer then has an
18 outstanding debt to MCC of \$16,000 which accrues interest on a daily basis. Such
19 interest is billed to the customer monthly. The customer may either pay such
20 interest or add it to the principal amount of the loan from MCC. The customer may
21 pay down the loan in full or in part at any time without any prepayment penalty and
22 with, of course, the resulting reduction in the customer's interest charges. The
23 customer receives a monthly statement showing the value of his collateral (the gold
24 coins, in this example), his outstanding loan balance, the monthly interest charged,
25 and a monthly account service fee. The customer is required to maintain sufficient
26 equity in his collateral at all times and may be called upon to reduce his loan if the
27 value of his collateral is below a prescribed level.

28 37. The customer may at any time pay off the outstanding loan balance

1 and take personal possession of the metal. There is a well-established market for
2 the sale of precious metals by members of the general public. While MDC is under
3 no obligation to repurchase the precious metals purchased from it by a customer,
4 MDC has for the past twenty-two years maintained a market for the purchase of
5 precious metals and expects to continue generally to do so. MDC's customers may
6 therefore utilize this market and avoid any inconvenience that might be associated
7 with finding a retail precious metals dealer or coin shop willing to purchase the
8 customer's precious metals. The customer always has the alternative of selling its
9 metals to a third party. He may do this by first paying off his loan balance and then
10 taking personal delivery, or he may arrange for the third party to pay off his
11 outstanding loan from MCC after which delivery can be made to the third party.

12 38. In a commodity loan transaction, when the customer borrows bullion
13 from MCC and sells it to MDC to speculate on prices dropping, the fundamentals
14 are no different. MCC lends him bullion on a full recourse basis. Title to the
15 commodity loaned by MCC is transferred to the customer at the custodian bank,
16 and then to MDC when the customer sells the commodity to MDC. To secure a
17 customer's obligation to return a commodity borrowed from MCC, MCC will
18 receive from the customer a deposit equal to 20 percent or more of the purchase
19 price, as well as the entire purchase price paid for the commodity if it is sold to
20 MDC. If the customer borrows the commodity for any other purpose, he must
21 deposit 120 percent of its then-current value before he may remove it from the
22 custodian's control. To fulfill his obligation to MCC, the customer may at any
23 time buy the necessary bullion or coins in the marketplace or from MDC. If the
24 market price of the commodity should rise while his obligation is still outstanding,
25 MCC may require additional collateral, and if that collateral is not forthcoming, or
26 if the customer's equity falls below required levels, MCC will be entitled to effect a
27 forced purchase for the customer's account to protect MCC's interest.

28 39. MDC sells and buys commodities to and from its customers at prices

1 which are competitive in retail and wholesale markets. Indeed, Monex has many
2 competitors such as Goldline International Inc., Kitco and USA Gold (Centennial
3 Precious Metals).

4 40. Atlas Account transactions must be completed by delivery and no
5 offsets are allowed.

6 DEFAMATORY STATEMENTS

7 41. Defendants made defamatory statements on the website
8 MonexFRAUD.com and on other websites, including www.youtube.com,
9 http://digg.com/business_finance/Monex_Precious_Metals_FRAUD,
10 <http://www.cartogis.org/Members/lcarabini/monex>,
11 <http://goldismoney.info/forums/showthread.php?t=309631>,
12 <http://americannepali.blogspot.com/2007/03/monex-deposit-company.html>,
13 <http://www.ripoffreport.com/reports/0/386/RipOff0386012.htm>,
14 <http://www.blackinbusiness.org/2008/08/23/fix-the-economy-with-your-vote>,
15 [http://peakoiljournal.com/topic/archive/monex-precious-metals-investment-fraud-](http://peakoiljournal.com/topic/archive/monex-precious-metals-investment-fraud-1506.html)
16 [1506.html](http://anti-fraud.classifieds1000.com/Financial/Monex_Deposit_Company), [http://anti-](http://anti-fraud.classifieds1000.com/Financial/Monex_Deposit_Company)
17 [fraud.classifieds1000.com/Financial/Monex_Deposit_Company](http://profiles.classifieds1000.com/Jason_G),
18 http://profiles.classifieds1000.com/Jason_G,
19 [http://orangecounty.citysearch.com/profile/37913228/newport_beach_ca/monex_int](http://orangecounty.citysearch.com/profile/37913228/newport_beach_ca/monex_international.html#profileTab-reviews)
20 [ernational.html#profileTab-reviews](http://chinab2bguide.com/financial-money/exchange-traded-funds-your-investment-options-continue-to-grow.html), [money/exchange-traded-funds-your-investment-options-continue-to-grow.html](http://chinab2bguide.com/financial-
21 <a href=),
22 <http://www.quatloos.com/Q-forum/viewtopic.php?f=7&p=46519>, and
23 <http://monexfraud.mindsay.com>.

24 42. A not necessarily comprehensive list of the defamatory statements is
25 below in paragraphs 44 through 100, taken from MonexFRAUD.com on February
26 7, 13, and/or 24, 2009, and from other websites listed above (or from cached
27 versions of them) on May 1, 2009. Each of these statements is a false statement of
28 fact. Each statement was made to the general public over the web.

1 43. On MonexFRAUD.com, defendants' general method of presentation
2 was to combine purportedly factual statements and articles by defendants about
3 Monex's operations with what they claimed was inside information from current
4 and former Monex employees. Defendants then combined these, and true
5 statements, with defamatory statements from purported Monex customers who
6 allegedly lost money and allegedly supported defendants' contentions about
7 Monex's alleged misdeeds. By far the most frequent poster to the website's forum,
8 however, was the site's administrator, "monexfraud," i.e., one or more of the
9 defendants. In this way, defendants sought to make the website appear factually
10 based and grounded in defendants' actual investigation of Monex. They thus strove
11 to give the impression to potential and actual Monex customers that the site
12 provided hard facts of Monex's alleged overall fraudulent scheme, along with
13 supporting anecdotal information from individual customers.

14 44. Defendants published statements that Monex was a fundamentally
15 fraudulent and criminal enterprise by, for example:

16 a. Calling Monex a "criminal" and "predator" that was committing
17 "crimes" by lying to customers in connection with the customers' purchase
18 of metals in Monex's Atlas program. Specifically, defendants stated, falsely,
19 that Monex lied to customers when it asserted that it delivers customers'
20 metals to banks upon Monex's receipt of payment, that it passes title to the
21 metals to the customers, and that various bank depositories hold the metals
22 for the benefit of the customers and recognize that title is in the customers'
23 name. Defendants also published statements that service fees were
24 "fictitious," that customers had no title to metals, and that Monex was thus a
25 "total scam," and "I sadly regret that I still have friends that are part of this
26 nationwide scam." (The last two comments, about "scams," purportedly
27 were made by former employees of Monex in emails to one or more of the
28 defendants, and published by defendants on MonexFRAUD.com.)

1 b. Stating "Every one of these insiders will tell you that Monex is a
2 scam operation perpetrating despicable acts of fraud on its unsuspecting
3 victims, many of which [sic] are retired and living on fixed incomes."

4 c. Referring to a bank with which Monex does business as
5 Monex's "partner in crime."

6 d. Stating that "Monex feels it is better to place blame on the
7 victims of its crimes than to do the right thing and pay those victims what
8 they are owed."

9 e. Stating that "Monex Deposit Company has been scamming
10 customers out of 10s and even 100s of thousands of dollars for decades now."

11 f. Stating that "Their fraud is boundless, it seems."

12 45. Defendants published the following statement: "Monex Deposit
13 Company has been financially raping its clients for tens and even hundreds of
14 thousands of dollars for over 40 years by intentionally over-leveraging and
15 extremely poor money management. Unlike most investment firms they are NOT
16 government regulated. They especially prey on those who not only don't know the
17 truth about Monex, but who don't have any or enough experience trading."

18 46. Defendants published the following statement: "For those that are
19 unaware of who Terry Parsons is, he was the number one account rep at Monex.
20 That means he lied cheated and stole more than any other account rep in the history
21 of the company."

22 47. Defendants published the following statement: "The Monex
23 corporation has been doing some housecleaning, and stealing of books of business to
24 include others such as one Norm Cooper whose tenure also ended one week prior
25 after serving there for close to 8 years or thereabouts. Honor amongst thieves ...
26 probably not." (This statement was purportedly written for MonexFRAUD.com by
27 "John Doe," who defendant Jason Gilliam claims is an "insider.")

28 48. Defendants published the statement that Monex's transactions are

1 worthless: "The reality was, you bought a piece of worthless paper for thousands of
2 dollars that in the end meant nothing." (This statement is allegedly from an email
3 sent to one or more of the defendants by a former employee of Monex and
4 published by defendants on MonexFRAUD.com.)

5 49. Defendants published the following statement: "In 1991 Monex was
6 ejected from the NFA (National Futures Association) by the CFTC (Commodities
7 Futures Trading Commission) for fraud."

8 50. Defendants published the following statement: "Before its expulsion
9 from the NFA Monex"

10 51. Defendants published the following statement: "1991 - Monex ejected
11 from the NFA (National Futures Association) for excessive reparations cases (250
12 total) and other frauds including illegally selling off-exchange leveraged contracts,
13 misrepresentation of risk, failing to place stop orders on trades when requested by
14 customers, violating a trust, etc., etc."

15 52. Defendants published the following statement: "Monex was kicked
16 out of the National Futures Association in 1991 for fraud."

17 53. Defendants published the following statement: "In 1998 the IRS sued
18 Monex for \$134,000,000 for tax evasion."

19 54. Defendants published the following statement: "In 2008 the IRS is
20 suing Monex for \$378,000,000 for tax evasion."

21 55. Defendants published the following statement: "Unlike most
22 investment/trading firms Monex is NOT government regulated."

23 56. Defendants published the following statement: "Monex makes false
24 statements on its website to promote its products and services."

25 57. Defendants published the following statement: "This company is the
26 crookedest company in the entire precious metals industry."

27 58. Defendants published the following statement: "Monex makes claims
28 that simply are not true. In fact these claims are so far from true that they can only

1 be described as flat out lies!”

2 59. Defendants published the following statement: “All I can say is watch
3 out, they [the Monex companies] are sharks and they know how to con people.”
4 (Alleged investor posting to website.)

5 60. Defendants published the following statement: “Mark Ladenheim, a
6 salesman for Monex, used deception and misleading descriptions of the product to
7 get me to buy into the Atlas Account.” (Alleged investor posting to website.)

8 61. Defendants published the following statement: Calling Monex
9 account representatives “boiler room” employees who “intentionally mismanage[]
10 your money to make . . . exorbitant commissions.”

11 62. Defendants published the statement that Monex is comprised of
12 “organized criminals.” (Alleged investor posting to website.)

13 63. Defendants published the following statement: “For those of you that
14 may be thinking of investing money in precious metals (gold or silver) with Monex
15 Deposit Company please see monexfraud.com first. The truth about this multi-
16 billion dollar company is that it is an illegal criminal organization operating outside
17 of government regulation. Do NOT do business with them! . . . They are crooks
18 and must be avoided at all costs! Their Atlas account is a scam!”

19 64. Defendants published the following statement: “The [Monex]
20 representative’s job (like the blackjack dealer) is to cause you to lose.”

21 65. Defendants published the statement that Monex account
22 representatives “deny the loss by claiming an order entry error (fixing the bet) and
23 saying that you made the mistake.”

24 66. Defendants published the following statement: “The reason the above
25 scenario is illegal and fraudulent is that you the trader are actually gambling at a
26 casino [Monex] that is misrepresenting itself as a trading establishment.”

27 67. Defendants published the following statement: “So what we’ve got
28 here is a company [Monex] that’s been bootied or forcibly withdrawn from the NFA

1 due to fraudulent activities about 17 years ago. Then this company decides it would
2 be better off creating its own "exchange" (casino) where the government had no
3 hand in regulating it."

4 68. Defendants published the following statement: "So this company has
5 managed to stay completely outside government regulation, and how do they do
6 it?"

7 69. Defendants published the following statement: "Louis Carabini
8 [founder of Monex] agreed in 1998 to pay the IRS a \$134 million settlement."

9 70. Defendants published the following statement: "Perhaps whomever
10 Carabini may have bribed to make this go away has left office."

11 71. Defendants published the following statement: "I currently have an
12 account with Monex and my complaints are that they do not fully disclose your
13 commission fees each time you make a purchase because they are different each
14 time. I use the max leverage each time I trade and a few months ago when I signed
15 up they said that I can get leverage up to 80%, now the guy is telling me that it is
16 only 75%, and he said it has been like that over a year, he lied." (Alleged investor
17 posting to website.)

18 72. Defendants published the following statement: "It is good that your
19 representative has repeatedly warned you of the risk involved, but you should by no
20 means assume that this behavior is the norm at Monex, because it is not. I have
21 spoken to many people that were totally ignorant of trading basics and willfully
22 misled by Monex into substantial losses. That type of client is Monex's ideal
23 mark."

24 73. Defendants published the following statement: "The other issue was
25 the horrendous commissions which were not disclosed until after the fact when it
26 was already too late."

27 74. Defendants published the following statement: "I consider that an
28 attempt to financially ruin my family and myself that is totally unacceptable and

1 unforgivable. In short they attempted to con us out of everything we have.”

2 75. Defendants published the following statement: “He’s made a lot of
3 money ripping off a lot of people.”

4 76. Defendants published the following statement: “Monex and Mr.
5 Parsons will burn in hell they steal-lie-deceive you-commit fraud-mislead [sic] you
6 and more. Let me give you fair warning, Monex, the battle is just beginning you
7 thieves.” (Alleged investor posting to website.)

8 77. Defendants published the following statement: “Monex took me and
9 my wife for \$52,000 in 11 days they lied-committed fraud [sic] misled us did not
10 return our calls or our e-mails. We took 7 years of hard work and they stole in 11
11 days. Mr. Parsons told us he would make us \$30,000 by Christmas, plus our
12 investment. We were told after the 700 billion dollar bail-out silver would double.
13 They knew. That’s what they do cheat people out of their money.” (Alleged
14 investor posting to website.)

15 78. Defendants published the following statement: “Monex has been
16 known to screw people out of their deliveries, but I think they tend to do it more in
17 an up-trending market, where they feel they would rather keep the gold.”

18 79. Defendants published the following statement: “My husband was
19 ripped off by Monex in early 2008. He tried several weeks to close the account and
20 get out but eventually lost 30K. Dealt with Norm Spears!!” (Alleged investor
21 posting to website.)

22 80. Defendants published the following statement: “If you leverage with
23 Monex you’re being ripped off by the 4% commissions (which are not disclosed
24 until after the fact) as well as their high spreads and finance charges.”

25 81. Defendants published the following statement: “They are supposed to
26 be experts, but not in trading gold, in fleecing the marks that are unfortunate
27 enough to call their little boiler room hot-line!”

28 82. Defendants published the following statement: “Also, as a side note to

1 this discussion, I actually did recommend Monex and Terry Parsons to a friend of
2 mine before I realized what a crooked operation it was.”

3 83. Defendants published the following statement: “Terry [Parsons of
4 Monex] not only managed to get us to put all our money into the market, a practice
5 any money manager will tell you is bad (especially with leverage), but he
6 misrepresented how the money would be managed by giving the impression that a
7 stop loss would be in place that never was.”

8 84. Defendants published the following statement: “AS SEEN ON
9 RIPOFF REPORT! Category: Corrupt Companies By Chris- San Antonio, Texas
10 Submitted: 3/16/2006 6:17:57 PM Modified: 3/17/2006 7:32:52 AM MONEX
11 GOLD SILVER EXCHANGE RIPOFF THIEVES Newport Beach California. I
12 lost \$10,400 to a dishonest broker, ED SPEERS, with Monex. Monex is not
13 regulated by US Government or any legal brokerage entity. After the investigation
14 they felt it was my fault for trusting their broker who was giving me FALSE
15 updates. ED SPEERS is a dishonest man. MONEX is not listed in California with
16 the Board of Corporations, which pulled their charter in 1992. I can’t find a single
17 organization who regulates MONEX. They are Liars and Conmen. STAY
18 AWAY!” (Defendants reprinted the contents of this paragraph from another
19 website.)

20 85. Defendants published the following statement: “AS SEEN ON
21 RIPOFF REPORT! Report: MONEX – BROKER ED SPEERS By Chris – San
22 Antonio, Texas Submitted: 2/22/2006 5:35:45 PM Modified: 2/22/2006 5:36:00
23 PM MONEX – BROKER ED SPEERS RIP-OFF-STOLE MY LIFE SAVINGS!!
24 NEWPORT BEACH California Monex is a BIG RIP OFF and not regulated by
25 any federal organization even though they are brokers.” (Defendants reprinted the
26 contents of this paragraph from another website.)

27 86. Defendants published the following statement: “AS SEEN ON
28 RIPOFF REPORT! Report: MONEX Category: Corrupt Companies by Chris –

1 San Antonio, Texas Submitted: 2/18/2006 10:36:37 PM Modified: 2/18/2006
2 10:37:00 PM I find it inexcusable that some one could misrepresent himself as a
3 learned broker and his company in such a manner. He in essence STOLE my
4 family's life savings from his lack of interest or basic professionalism. I NEVER
5 received a email or phone message of the amount of loss or the position my
6 portfolio was in." (Defendants reprinted the contents of this paragraph from
7 another website.)

8 87. Defendants published the following statement: "Have had dozens of
9 conversations w/David Hwang, a senior broker and others there but have received
10 nothing but lies and the run around." (Defendants reprinted the contents of this
11 paragraph from another website.)

12 88. Defendants published the following statement: "Either the company
13 provided no training or offers no resources to its representatives." (Defendants
14 reprinted the contents of this paragraph from another website.)

15 89. Defendants published the following statement: "Ripped off Mike &
16 Debbie Porretta 2008-11-11 10:52:23 Monex and Mr. Terry Parsons stole our life
17 savings of \$54,000 they lied-mislead-deceived [sic] and committed fraud. Can
18 anyone help us please?" (Alleged investor posting to website.)

19 90. Defendants published the following statement: "Trading Gold with the
20 Monex Atlas Account[.] Take some of the negative risk factors of options trading
21 such as time decay (in the form of monthly finance charges) and high spreads,
22 combine them with all the negative factors of futures trading such as margin calls,
23 add in astronomical commissions, and then throw in an account representative that
24 intentionally mismanages your money to make his exorbitant commissions, then
25 top that off with a legal agreement that has you signing your legal rights away, and
26 you have the Monex Atlas Account."

27 91. Defendants published the following statement: "Has Monex ever
28 cancelled a delivery outright? According to at least 3 complaints I've read, yes they

1 have. And in those cases, according to the complaints, they actually kept the
2 money too! Hard to imagine, I know, but not so much so once you've REALLY
3 researched the company. They basically don't give a rat's ass who they screw,
4 unless that person has some connections."

5 92. Defendants published the following statement: "So technically you've
6 been scammed, since they've made the difference in the recent drop of the last 2
7 weeks on you."

8 93. Defendants published the following statement: "Nobody deserves the
9 experience of doing business with that den of thieves [Monex]!"

10 94. Defendants published the following statement: "When this lying sack
11 of shit [Louis Carabini, Monex founder] doesn't know the answers he makes them
12 up. I just wish he didn't feel that to get rich he needed to rob innocent non-rich
13 folks to do it, which is exactly what he's doing."

14 95. Defendants published the following statement: "I agreed to sign up for
15 the Atlas Account (Bad Idea) whereby they would leverage my money into huge
16 monthly profits. (Little did I know this was a fraudulent way of taking control of
17 other peoples' assets)." (Alleged investor posting to website.)

18 96. Defendants published the following statement: "Monex is a scam
19 operation, those [delivery] fees are fictitious, as Monex doesn't have your metals at
20 all. . . . What Monex says is that your metals are transferred to your name, until
21 sold, or delivered. Lies, your metals are all in Monex' name, and Monex also says
22 the status of your metals does not depend on the financial state of Monex, lie,
23 nothing is in your name." (Alleged investor posting to website.)

24 97. Defendants published the following statement: "[A]s any intelligent
25 human being can see we have irrefutable proof that Monex is a scam operation.
26 And what's more, HSBC is in collusion with them in the fraud."

27 98. Defendants published the following statement: "This also confirms
28 that the statement "[...] The books and records of the bank or depository will

1 identify you as the owner [...]” is an outright lie. The fact that Monex reworded this
2 statement on February 26, 2009, only goes further to confirm that it is a lie.”

3 99. Defendants published the following statement: “I also hope you
4 realize that under these conditions the entire concept that you have “secure legal
5 title” to a product that is supposedly not dependent on Monex or HSBC’s
6 “individual or collective financial condition” is completely and totally false, since if
7 Monex were to close its doors tomorrow, and you were to go to HSBC for your
8 metal, you would have absolutely nothing in your name at HSBC, and therefore
9 you would have absolutely nothing coming.”

10 100. Defendants published the statement that Monex’s practices threaten
11 the life of an ill child: “[The child’s father, a Monex customer] didn’t know that
12 Monex was a multi-billion dollar scam operation that had been stealing the savings
13 of Americans for over 40 years. He didn’t know that the company was run by a
14 ruthless sociopath by the name of Michael Carabini, a man that knows nothing
15 about empathy or compassion. He also didn’t know that Brandyn Kennedy was one
16 of the company’s top account reps, not because he made his book of clients so
17 much money, but because he made Monex so much money stealing from them.
18 Joseph’s father felt confident in his choice of investment that the television had
19 assured was trustworthy, but unknown to him was that Brandyn Kennedy was
20 plotting and scheming to steal every last dollar for his employers at Monex. Monex
21 took the \$100,000 Joseph’s father had to invest, and swindled away every last
22 dollar. But if that wasn’t bad enough they convinced him to take out a loan on his
23 home for another \$100,000 which they also stole. . . . In short, thanks to the scam
24 at Monex promoted by CNN and others, Joseph [the ill child] is going to die!”

25 **EXTORTIONATE AND OTHERWISE TORTIOUS THREATS //**
26 **ADMISSIONS THAT DEFENDANTS HAVE CAUSED AND LIKELY**
27 **WILL CAUSE MONEX TO LOSE MONEY**

28 101. On February 12, 2009, defendant Steve Bowman called Michael
Carabini, the President of MCC’s general partner at home at 10 p.m., offering secret

1 information to him and demanding \$5 million in payment for alleged losses due to
2 Monex transactions. Mr. Carabini told Bowman not to call him again and instead
3 to visit Monex the next day.

4 102. Instead of Bowman, defendants Jason Gilliam and Richard Gilliam
5 visited Monex on February 13, 2009. Jason Gilliam spoke with Mr. Carabini and
6 provided him with a letter that he said contained his demands. That letter, signed
7 by Bowman, demanded \$15 million from Monex. Although the letter is undated, it
8 states that it was written the day after Bowman spoke with Michael Carabini by
9 telephone, thus indicating that it was written on February 13, 2009.

10 103. The letter from Bowman advises that defendants are “prepared to bring
11 our business with you to its final conclusion.” He threatens to go to “all your media
12 outlets, most importantly CNN, MSNBC, and FOX,” with unspecified “evidence.”
13 He states that this will result in those media outlets suing Monex and posting
14 “public apologies for their role in propagating your advertisements.” He claims that
15 “[t]he damage done by MonexFRAUD.com’s marketing efforts is nothing short of
16 10% of your total business, which translates into millions of dollars in lost revenues
17 to Monex every week.” He states that defendants “will strongly consider
18 cooperating with any and all federal agencies actively investigating Monex, and its
19 principals and employees.” He concludes his letter by stating “I require \$10 million
20 as a partial recovery to distribute amongst the 234 people that were defrauded by
21 Monex, all its subsidiaries, and principals as well as \$5 million to fulfill the
22 promises made to me by Terry Persons, a now terminated employee of Monex.”

23 104. When asked by Monex outside counsel on February 13 and by
24 subsequent email requests, defendants repeatedly refused to provide any
25 information about the 234 people they claim to represent or the group of about four
26 Monex investors whom Bowman claimed to represent. Bowman also refused to
27 provide his business address or any address where he could be reached. Plaintiffs
28 were able to determine that Bowman works in Toronto at a law-firm marketing

1 company, according to Steve Lamprinos, the president and chief executive officer
2 of the company. Further, plaintiffs are informed and therefore believe that
3 Bowman is not a lawyer licensed to practice law either in California or Canada.

4 105. The Gilliams and Bowman represent no one except themselves and
5 their partners in their scheme to extort \$20 million from Monex.

6 106. Also on February 13, 2009, defendants Jason Gilliam and Steve
7 Bowman spoke by telephone with Monex's outside counsel. During that call,
8 Bowman said that he was a lawyer in Canada. He stated that he wanted \$5 million
9 to recoup losses incurred by a four-person investment group in which he was a
10 member. Monex has no record of having done business with anyone named Steven
11 Bowman. Bowman refused to disclose the names of his investment partners.
12 Bowman twice volunteered in that telephone call that defendants' effort to recover
13 money might look like extortion.

14 107. During the same call, Bowman said that he participated in 30 to 40
15 telephone calls during which potential Monex customers said that they wouldn't
16 invest in Monex after having read MonexFRAUD.com. Jason Gilliam stated that
17 he had received many emails from potential investors who said that they didn't
18 invest in Monex after reading MonexFRAUD.com. Gilliam also took credit for an
19 increase in the number of Better Business Bureau complaints about Monex.
20 Gilliam claimed that MonexFRAUD.com had cost Monex at least two percent of its
21 revenues and probably more like ten percent of its revenues. He said he was
22 thrilled to be "clobbering" plaintiffs.

23 108. On MonexFRAUD.com, at least one of the defendants stated: "As a
24 result of this site, based on just the emails I've received and messages posted I'd
25 say they've [Monex] lost at least \$2 million in business in the last couple weeks. It
26 could be much higher than that, but not everyone tells me what they do as a result
27 of this site and some people do not give actual numbers. Many people say things
28 like 'I was going to give them a significant portion of my life savings' or 'I was

1 preparing to cash out my IRA and invest it in Monex until ...'[] so I have no way of
2 knowing the real amount. It wouldn't shock me to find out that in the last two
3 weeks they'd lost \$5,000,000 in business. . . . But if we go with the minimum it's
4 going to cost them \$52,000,000 this year for fu**ing [sic] with me. Life is good.
5 I've never felt so empowered! The financial loss I've taken could never bought
6 such happy feelings. I can honestly say that I have no regrets."

7 109. On February 13, 2009, defendant Jason Gilliam sent an email to
8 Monex's outside counsel, with copies to defendants Bowman and Richard Gilliam,
9 repeating the threat to accuse Monex of crimes to the Federal Bureau of
10 Investigation if Monex did not, by February 18, 2009, pay defendants the money
11 they had demanded.

12 110. On February 13, 2009, defendant Jason Gilliam also emailed Monex's
13 counsel defendants' "Plan of Action Outline," which duplicated a similar document
14 which Bowman provided with his letter demanding \$15 million. The "Plan of
15 Action Outline" threatens to use MonexFRAUD.com to "damage Monex marketing
16 efforts," continue "to spread awareness of the Monex scam to the public," and to
17 build lawsuits against Monex as well as CNN, MSNBC, FOX, Google, and
18 Monex's banks, among others. In the same email, defendant Jason Gilliam also
19 threatens to provide negative and false information to various entities. Such false
20 information includes allegations that Monex resells futures, Monex "knowingly and
21 intentionally defrauds its clients," that "retired individuals are the ideal targets of
22 the fraud," that "Monex fires account reps that do not abuse clients and . . . gives
23 higher pay to the most abusive account reps," that a Monex employee "frequently
24 liquidates clients' trades for complaining," that Monex breaches its contracts, that
25 Monex sells the same identical physical product to multiple investors at the same
26 time, and that Monex customers do not get title to the precious metals they buy.
27 Jason Gilliam threatened to provide this false and negative information to the IRS,
28 the Securities and Exchange Commission, the National Futures Association, the

1 Commodity Futures Trading Commission, the Federal Trade Commission, the
2 Federal Communications Commission, the Justice Department, the "USDA," the
3 FBI, and "Major Media outlets and newspapers." In the same email, Jason Gilliam
4 threatened to sue Monex for damages in excess of \$1 billion.

5 111. Later on February 13, 2009, defendant Jason Gilliam responded to
6 Monex's requests for information about his claims of unlawful actions on Monex's
7 part by telephoning Monex's outside counsel and stating that he would not produce
8 any more information and that unless defendants' demands for money were met
9 they would follow through with their threats to spread false information about
10 Monex to law-enforcement agencies, regulatory entities, and news outlets. Gilliam
11 followed up this phone call with an email confirming that Monex had until the
12 following Wednesday to comply with defendants' extortion demand.

13 112. On February 19, 2009, Bowman sent an email message to Monex's
14 outside counsel stating, "As for identifying myself and the account I had along with
15 the group's information and total losses, we will reveal ourselves only to the
16 principals of Monex when we feel and are convinced they are prepared to deal."
17 Bowman went on to state that defendants "are and will continue to damage the
18 credibility of Monex every day until they reimburse the money they stole from us."

19 113. Later on February 19, 2009, Bowman sent another email message to
20 Monex's outside counsel implying that defendants would approach the IRS to make
21 accusations against plaintiffs if they did not pay defendants the money demanded.
22 (Monex and the IRS are involved in a dispute involving collection of a judgment
23 from Monex's predecessor corporations.) The email stated, in part, "I have in my
24 possession a document that contains the names and telephone numbers of 37
25 individuals and companies that had accounts with Terry Parsons [a former Monex
26 employee] from before 1998 (some go back into the 80s), which means they were
27 originally customers of Monex International. This is an indestructible link between
28 Monex International and Monex Deposit Company, proving that Monex Deposit

1 Company is the same company with the identical business model and even
2 employees as Monex International. To me personally this is not that significant,
3 however, to the IRS this is a silver bullet piece of evidence for them to prove once
4 and for all what they've been saying that these companies are only different in
5 name. This information is powerful enough to ensure that the IRS successfully
6 achieves the judgment that it seeks against Monex. The IRS is currently unaware of
7 this document's existence. . . . If you are interested in speaking to me on behalf of
8 Monex . . . I am ready and willing."

9 114. Also on February 19, Bowman wrote to Monex's outside counsel:
10 "[T]he IRS states in writing that they will award us up to 30% of the total judgment
11 they have against Monex with our assistance. We can prove what they have been
12 trying to get proof of for some time."

13 115. Monex, through its outside counsel, told defendants in responsive
14 emails over the period from February 13 through February 19 that: (1) Monex
15 would not pay defendants' extortion demands; (2) defendants' website allegations
16 were defamatory; (3) defendants should identify their clients whom they purport to
17 represent; (4) defendants should provide to Monex their underlying documents and
18 other facts supporting their contentions, so that Monex could evaluate their
19 allegations further; (5) defendants should review pleadings attached to a February
20 18, 2009, email from Monex's outside counsel which disprove one of defendants'
21 core defamatory allegations, namely that Monex did not deliver title to precious
22 metals to certain customers; and (6) defendants should retract their defamatory
23 allegations, stop the extortionate threats, and close down their website, all by the
24 close of business Monday, February 23, 2009. Monex's February 21, 2008 email
25 demand for retraction and website closure is attached as Exhibit B hereto.

26 116. Defendants have refused to comply with Monex's February 21 email
27 demand referred to in paragraph 115.

28 117. A Monex employee met with Richard Gilliam on March 19, 2009, at

1 Mr. Gilliam's request.

2 118. Mr. Gilliam told the employee that defendants were working with a
3 national media company that planned to publish a negative piece about Monex that
4 could destroy the company.

5 119. Mr. Gilliam also said that he had a secret document tying Monex to a
6 former Monex company and which would be useful to the IRS in a tax dispute it
7 had with Monex.

8 120. Mr. Gilliam said that he and his son, defendant Jason Gilliam, would
9 take down www.MonexFRAUD.com in return for \$20 million.

10 121. Mr. Gilliam said taking down the website would greatly diminish the
11 negative impact of the national media company's negative article about Monex.

12 122. Mr. Gilliam said that he and Jason Gilliam would keep a portion of the
13 money for themselves and their use.

14 123. Mr. Gilliam said that, also in return for the \$20 million payment, he
15 would give the secret tax-related document to Monex and would not give it to the
16 IRS.

17 124. Mr. Gilliam said that his son had committed his "whole life" to his
18 work against Monex, until the company paid them \$20 million.

19 **CONSPIRACY/AIDING AND ABETTING**

20 125. The defendants, or some of them, agreed among themselves to commit
21 the wrongful acts alleged in this complaint and thereby to injure plaintiffs and each
22 of them.

23 126. The defendants were aware that each or at least one other of the
24 defendants planned to commit the wrongful acts alleged in this complaint.

25 127. Each defendant gave substantial assistance to each other defendant, or
26 at least one of them, who performed the wrongful acts alleged in this complaint.

27

28

**FIRST CLAIM FOR DEFAMATION
BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

1
2
3 128. Plaintiffs incorporate by this reference each and all of the allegations
4 contained in Paragraphs 1–127, as fully as though set forth at length herein.

5 129. Defendants made the defamatory statements set forth above to persons
6 other than Monex.

7 130. Plaintiffs are informed and therefore believe that such other persons
8 reasonably understood that the statements were about Monex.

9 131. Plaintiffs are informed and therefore believe that such other persons
10 reasonably understood the statements to mean that Monex and its employees
11 misrepresented facts to the investing public, committed one or more crimes,
12 engaged in other types of unlawful action, and treated customers and potential
13 customers unethically and unfairly.

14 132. Defendants' statements were false.

15 133. Because of the facts and circumstances known to the readers and/or
16 listeners of the statements, the statements exposed Monex to hatred, contempt,
17 ridicule, and obloquy.

18 134. Because of the facts and circumstances known to the readers and/or
19 listeners of the statements, defendants' statements caused Monex customers and
20 potential customers either to terminate their relationship with Monex or to avoid
21 investing with Monex.

22 135. Because of the facts and circumstances known to the readers and/or
23 listeners of the statements, defendants' statements had a tendency to injure Monex's
24 business.

25 136. Defendants failed to use reasonable care to determine the truth or
26 falsity of the statements, or defendants knew the statements were false and/or had
27 serious doubts about the truth of the statements.

28 137. In making the statements, defendants acted with malice, oppression,

1 and/or fraud, if they knew the statements were false and/or had serious doubts about
2 the truth of them.

3 138. The defamation caused injury to Monex, in the form of harm to its
4 property and business, including loss of money that defendants caused it to spend to
5 try to stop the defendants' defamation and to correct the harm to Monex's
6 reputation and business caused by the defamation, and including lost profits.

7 139. Defendants' defamatory statements were a substantial factor in causing
8 general and special damage and harm to Monex.

9 WHEREFORE, plaintiffs pray for judgment as set forth below.

10 **SECOND CLAIM FOR TRADE LIBEL**
11 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

12 140. Plaintiffs incorporate by this reference each and all of the allegations
13 contained in Paragraphs 1-139, as fully as though set forth at length herein.

14 141. In their statements on the Internet, including the website
15 MonexFRAUD.com, defendants labeled the products and services of Monex as
16 investments that were unworthy of purchase due to Monex's allegedly criminal,
17 fraudulent, and otherwise wrongful conduct.

18 142. The products and services of Monex are not substantially tainted by
19 any crime, fraud, or wrongful conduct of Monex. Defendants' statements, as
20 described in this complaint, are therefore false.

21 143. By labeling Monex as criminal, fraudulent, and otherwise inferior, in
22 order to obtain profit from Google ad links to Monex's competitors, contributions
23 from website visitors, and from defendants' extortionate demands, defendants have
24 intentionally disparaged the quality of the products and services offered by
25 plaintiffs.

26 144. The trade libel committed by defendants was done with malice,
27 oppression, and/or fraud.

28 145. Monex was harmed and suffered pecuniary damage in the form of lost

1 revenue, including lost sales, and lost business opportunities due to the trade libel
2 by defendants, and was forced to pay additional money above and beyond its
3 normal costs to counteract defendants' disparagement of its goods and services.

4 146. The trade libel of defendants was a substantial factor in causing the
5 harm, pecuniary damage, and special damages to Monex.

6 WHEREFORE, plaintiffs pray for judgment as set forth below.

7 **THIRD CLAIM FOR EXTORTION**
8 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

9 147. Plaintiffs incorporate by this reference each and all of the allegations
10 contained in Paragraphs 1-146, as fully as though set forth at length herein.

11 148. Defendants, with intent to extort money from plaintiffs, sent and
12 delivered to plaintiffs at least one letter and other writings expressing and implying,
13 and adapted to imply, threats

- 14 a. to do an unlawful injury to the person and property of plaintiffs,
- 15 b. to accuse plaintiffs of crimes,
- 16 c. to expose, or to impute to plaintiffs, disgrace and alleged crimes,
17 and
- 18 d. to expose secrets affecting plaintiffs.

19 149. Defendants also communicated orally the threats described in
20 paragraph 148.

21 150. Defendants made the threats described above to extort money from
22 plaintiffs, *i.e.* to obtain money from plaintiffs with their consent, which consent
23 defendants sought to induce by a wrongful use of fear.

24 151. The property that defendants sought to obtain from plaintiffs was a
25 total sum of money of \$20 million.

26 152. Defendants made the following specific threats in order wrongfully to
27 generate fear in Monex, its principals, and its managers: 1) to make defamatory
28 statements about plaintiffs on MonexFRAUD.com and other websites, 2) to make

1 false accusations about Monex and disclose its information, including proprietary
2 information, to various media, law-enforcement, and regulatory entities, alleging
3 that Monex had committed crimes and other unlawful acts, 3) to damage Monex
4 with racketeering activity, and 4) to continue tortiously to interfere with the
5 contractual relations and prospective economic advantages of plaintiffs by, inter
6 alia, calling and writing to one of Monex's depository banks threatening lawsuits
7 and directing the bank to defendants' website.

8 153. The extortion was a substantial cause of harm to Monex, including
9 requiring it to expend money and devote the time of its personnel in order to
10 respond to the threats.

11 WHEREFORE, plaintiffs pray for judgment as set forth below.

12 **FOURTH CLAIM FOR INTENTIONAL INTERFERENCE**
13 **WITH CONTRACTUAL RELATIONS**
14 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

15 154. Plaintiffs incorporate by this reference each and all of the allegations
16 contained in Paragraphs 1-153, as fully as though set forth at length herein.

17 155. Defendants intentionally interfered with valid contracts between
18 Monex and its customers.

19 156. Defendants knew of the contracts.

20 157. Defendants intended to disrupt contractual relationships between
21 Monex and its customers by making defamatory statements about Monex.

22 158. Defendants' conduct persuaded Monex customers to decline to follow
23 through with precious metals transactions which the customers and Monex had
24 previously entered pursuant to Atlas account agreements.

25 159. Defendants committed these acts of intentional interference with the
26 contracts with malice, oppression, and/or fraud.

27 160. Defendants' intentional interference with Monex's contractual
28 relations with its customers was a substantial factor in causing harm to Monex,
including special damages caused by lost profits, lost business opportunities, lost

1 customers, and costs incurred in rehabilitating Monex's reputation.

2 WHEREFORE, plaintiffs pray for judgment as set forth below.

3 **FIFTH CLAIM FOR INTENTIONAL INTERFERENCE**
4 **WITH PROSPECTIVE ECONOMIC ADVANTAGE**
5 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

6 161. Plaintiffs incorporate by this reference each and all of the allegations
7 contained in Paragraphs 1-160, as fully as though set forth at length herein.

8 162. Defendants intentionally interfered with existing economic
9 relationships between Monex and prospective and actual Monex customers, as well
10 as between Monex and its depository banks. Those economic relationships
11 probably would have resulted in economic benefits to Monex.

12 163. Defendants knew of the relationships.

13 164. Defendants intended to disrupt the relationships by defaming Monex
14 as part of defendants' extortionate scheme.

15 165. Defendants disrupted the relationships between Monex and its
16 prospective and actual customers, and between Monex and its depository banks.

17 166. Defendants committed the acts of intentional interference with
18 prospective economic advantage with malice, oppression, and/or fraud.

19 167. Defendants harmed Monex by their intentional interference with
20 Monex's prospective economic advantage, or were a substantial factor in harming
21 Monex. The harm included special damages caused by lost profits, lost business
22 opportunities, lost customers, and costs incurred in rehabilitating Monex's
23 reputation.

24 WHEREFORE, plaintiffs pray for judgment as set forth below.

25 **SIXTH CLAIM FOR NEGLIGENT INTERFERENCE**
26 **WITH PROSPECTIVE ECONOMIC ADVANTAGE**
27 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

28 168. Plaintiffs incorporate by this reference each and all of the allegations
29 contained in Paragraphs 1-167, as fully as though set forth at length herein.

30 169. Defendants negligently interfered with economic relationships

1 between Monex and prospective and actual customers. Those economic
2 relationships probably would have resulted in economic benefits to Monex.

3 170. Defendants knew or should have known of the relationships.

4 171. Defendants knew or should have known that the relationships would
5 be disrupted if they failed to act with reasonable care.

6 172. Defendants failed to act with reasonable care.

7 173. Defendants' negligence was per se because their acts that constituted
8 interference violated the California statutes against defamation and extortion.

9 174. Defendants' interference with Monex's prospective economic
10 advantage was a substantial factor in causing harm to Monex. The harm included
11 special damages caused by lost profits, lost business opportunities, lost customers,
12 and costs incurred in rehabilitating Monex's reputation.

13 WHEREFORE, plaintiffs pray for judgment as set forth below.

14 **SEVENTH CLAIM FOR CIVIL RACKETEERING**
15 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

16 175. Plaintiffs incorporate by this reference each and all of the allegations
17 contained in Paragraphs 1-174, as fully as though set forth at length herein.

18 176. Defendants violated the Racketeer Influenced and Corrupt
19 Organizations Act, 18 U.S.C. §§ 1961-1968.

20 177. Defendants have received income derived from a pattern of
21 racketeering activity, as alleged below, and used or invested at least a part of that
22 income, or the proceeds of such income, in the operation of an enterprise that was
23 engaged in, and the activities of which affected, interstate and foreign commerce.

24 178. Defendants, through a pattern of racketeering activity, acquired and
25 maintained interest in and control of an enterprise that was engaged in, and the
26 activities of which affected, interstate and foreign commerce.

27 179. Defendants were employed by and associated with an enterprise
28 engaged in, and the activities of which affected, interstate and foreign commerce.

1 180. The enterprise with which defendants were associated, and/or by
2 which they were employed, was the group of individual defendants, or a least two
3 of them, that are associated in fact by their joint pursuit of extortion, defamation,
4 and other torts against Monex, as described in this complaint.

5 181. Plaintiffs are informed and therefore believe that the enterprise of
6 defendants, or some of them, had an ascertainable structure separate from that
7 inherent in the racketeering activity described herein.

8 182. Defendants and their joint enterprise engaged in the following
9 racketeering activity: acts and threats involving extortion, and acts that were
10 indictable under 18 U.S.C. §§ 1343, 1344, 1951, and 1952. These acts and threats
11 were the same as the acts and threats that constituted the extortion, defamation, and
12 other torts described in this complaint.

13 183. The acts and threats of defendants involving extortion, and the acts of
14 defendants that were indictable under 18 U.S.C. §§ 1343, 1344, 1951, and 1952
15 constituted a pattern of racketeering activity because at least one of the acts or
16 threats occurred after the effective date of Chapter 96 of Part I of Title 18 of the
17 United States Code and a second such act or threat occurred within ten years of the
18 first act.

19 184. The racketeering activities have sufficient continuity so as to pose a
20 threat of continued criminal activity by defendants. The pattern of activities was
21 carried out with a common scheme, plan, and motive to defame and extort money
22 from Monex.

23 185. Defendants have received income derived from the provision of
24 commercial advertising on the website MonexFRAUD.com, the publication and
25 operation of which constituted a pattern of racketeering activity because the
26 website, which was updated regularly, was used as the vehicle for carrying out
27 extortionate threats, and for making defamatory statements about Monex.

28 186. Plaintiffs are informed and therefore believe that defendants used or

1 invested at least a part of the advertising income, or the proceeds of such income, in
2 the operation of their enterprise, including their extortion scheme and the
3 MonexFRAUD.com website.

4 187. In the course of conducting such operations, defendants' enterprise
5 was engaged in, and the activities of it affected, interstate and foreign commerce
6 because the website was available internationally, because it injured the interstate
7 commercial activity of Monex, and because the defendants used telephones
8 (including one with a Canadian area code) and email, thus employing interstate and
9 international wires, to make extortionate threats.

10 188. Defendants, through the pattern of racketeering activity described
11 above, acquired and maintained interest in and control of their enterprise to defame
12 and extort money from Monex.

13 189. Plaintiffs are informed and therefore believe that defendants
14 knowingly agreed with one another to facilitate the scheme of extortion,
15 defamation, and other torts described in this complaint, which scheme included the
16 operation and management of a racketeering enterprise, as set forth above.

17 190. Plaintiffs are informed and therefore believe that each defendant
18 knowingly and willfully became a member of this conspiracy by objectively
19 indicating, through his words or actions, his agreement to conduct or participate,
20 directly or indirectly, in the conduct of the affairs of the enterprise through a pattern
21 of racketeering activity.

22 191. Plaintiffs are informed and therefore believe that defendants knew that
23 the basic object of the alleged conspiracy was conducting the enterprise through a
24 pattern of racketeering activity described above, and that defendants knowingly and
25 willfully agreed to personally commit, or aid and abet the commission of, at least
26 two acts of the racketeering described above.

27 192. The acts of racketeering by defendants were committed with malice,
28 oppression, and/or fraud.

1 193. The racketeering activities of defendants entitle plaintiffs to recover
2 their attorney's fees and cost of suit.

3 194. Monex was harmed by the racketeering activities in which defendants
4 engaged.

5 195. The wrongful conduct of defendants, specifically their racketeering
6 activities, was a substantial factor in causing the harm to the businesses and
7 property of Monex. The harm included special damages caused by lost profits, lost
8 business opportunities, lost customers, and costs incurred in rehabilitating Monex's
9 reputation.

10 WHEREFORE, plaintiffs pray for judgment as set forth below.

11 **EIGHTH CLAIM FOR UNFAIR BUSINESS PRACTICES**
12 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**
13 **(CAL. BUS. AND PROF. CODE §§ 17200-17208)**

14 196. Plaintiffs incorporate by this reference each and all of the allegations
15 contained in Paragraphs 1-195, as fully as though set forth at length herein.

16 197. Defendants engaged in unfair competition by performing unlawful,
17 unfair, and fraudulent business acts and practices, including, specifically, by
18 making defamatory statements, including those described above, by making
19 extortionate threats against Monex, by committing trade libel, by interfering with
20 contractual relations, by negligent interference with prospective economic
21 advantage, by intentional interference with prospective economic advantage, and by
22 racketeering.

23 198. The acts of unfair competition by defendants were business acts or
24 practices because they were carried out in connection with the efforts of defendants
25 to obtain revenue for the display of commercial advertisements on the same website
26 that published the defamatory statements and which was the vehicle by which
27 defendants threatened to carry through on their extortionate threats.

28 199. The acts of unfair competition complained of herein caused harm to
Monex. The harm included special damages caused by lost profits, lost business

1 opportunities, lost customers, and costs incurred in rehabilitating Monex's
2 reputation.

3 200. The acts of unfair competition of defendants were each a substantial
4 factor in causing the harm to Monex.

5 201. The acts of unfair competition of defendants are continuing.

6 202. Plaintiffs are informed and therefore believe that the acts of unfair
7 competition of defendants will continue unless enjoined by the Court.

8 203. There is no adequate remedy at law for the unfair competition of
9 defendants as alleged herein.

10 **NINTH CLAIM FOR MISAPPROPRIATION OF TRADE SECRETS**
11 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

12 204. Plaintiffs incorporate by this reference each and all of the allegations
13 contained in Paragraphs 1–203, as fully as though set forth at length herein.

14 205. Monex owns lists of its customers that identify those customers and
15 their activities with Monex.

16 206. The information in the lists of Monex's customers is secret in that it is
17 not generally known to the public or to other persons who can obtain economic
18 value from its disclosure or use, including Monex's competitors in the business of
19 trading precious metals.

20 207. Monex makes efforts that are reasonable under the circumstances of its
21 operations to maintain the secrecy of the information in its lists of its customers.
22 Monex uses shredders to destroy such information and trains its employees to keep
23 this information confidential and not to leave the work premises with this
24 information. Monex has also in the past commenced legal proceedings to
25 preliminarily and permanently enjoin the misappropriation of Monex's trade
26 secrets. Plaintiffs demanded from defendants the return of these trade secrets and
27 all other trade secrets and proprietary information in defendants' possession.
28 Monex believes that defendants obtained this proprietary information from former

1 or present employees, as alleged below. Defendants have refused to return these
2 documents and this information, except for one document returned pursuant to the
3 temporary restraining order in this action.

4 208. Monex's efforts are reasonably calculated to keep the information
5 secret, given the level of competition in Monex's industry and Monex's resources.

6 209. The information in the lists of Monex's customers derives independent
7 economic value from not being generally known to the public or to other persons
8 who could obtain economic value from its disclosure or use, including Monex's
9 competitors in the business of trading precious metals.

10 210. The information in the lists of Monex's customers was compiled only
11 with a substantial amount of time, money, or labor on the part of plaintiffs. The use
12 or disclosure of that information by or to any of Monex's competitors would save
13 them substantial time, money, and labor.

14 211. Plaintiffs are informed and therefore believe that defendants acquired
15 the information in the list of Monex's customers by improper means, including
16 misrepresentation to the people who originally had possession of the information
17 and/or inducing Monex's current and/or former employees to breach their duties to
18 maintain the information's secrecy.

19 212. Defendants either knew or had reason to know that they and each of
20 them acquired the information in Monex's customer lists by the improper means
21 described in paragraph 211.

22 213. Defendants disclosed and/or used the secret information belonging to
23 Monex that is in the lists of Monex's customers, including using them as part of
24 defendants' scheme to extort money from Monex and to obtain revenues from
25 directing MonexFRAUD.com visitors to sites of Monex's competitors.

26 214. No plaintiff gave implied or express consent to defendants or any of
27 them to disclose or use the information in the lists of Monex's customers.

28 215. At the time defendants disclosed and/or used the information in the

1 lists of Monex's customers, defendants knew or had reason to know that their and
2 each of their knowledge of the secrets was derived from or through a person, such
3 as a former or current employee of Monex, who had utilized improper means to
4 acquire the information or who owed a duty to plaintiffs to maintain the secrecy of
5 that information and to limit its use.

6 216. Defendants conceded in a letter to Monex of February 23, 2009, that
7 the information in the lists was Monex's property.

8 217. Defendants also conceded that the information in the document they
9 returned to Monex pursuant to the temporary restraining order contained trade
10 secrets belonging to Monex.

11 218. Defendants' and each of their misappropriation of trade secrets
12 complained of herein caused harm to Monex, or was a substantial factor in causing
13 such harm. The harm included special damages caused by costs incurred in
14 regaining control of documents containing the misappropriated secrets.

15 219. The misappropriation of trade secrets by defendants is continuing.

16 220. The misappropriation of trade secrets by defendants was willful.
17 Defendants had a purpose or willingness to commit the acts and engage in the
18 conduct that constituted the misappropriation, such acts and conduct were not
19 reasonable under the circumstances at the time of the misappropriation, and such
20 acts and conduct were not undertaken in good faith.

21 221. The misappropriation of trade secrets by defendants was malicious.
22 Defendants acted with an intent to injure Monex and engaged in conduct that was
23 despicable and was done with a willful and knowing disregard for the rights of
24 Monex. Defendants were aware of the probable harm the misappropriation would
25 cause to Monex and deliberately tried to achieve those consequences and/or failed
26 to avoid such consequences. The conduct of defendants, including
27 misrepresentations to people who had the information before defendants and/or
28 inducements to former or current Monex employees to breach their duties to

1 Monex, was so vile, base, and wretched that ordinary decent people would look
2 down on such conduct.

3 222. Defendants committed their misappropriation with oppression and/or
4 fraud.

5 223. Plaintiffs are informed and therefore believe that defendants'
6 misappropriation of trade secrets will continue unless enjoined by the Court.

7 224. There is no adequate remedy at law for the misappropriation of trade
8 secrets by defendants as alleged herein.

9 225. Defendants were unjustly enriched by the misappropriation of trade
10 secrets by them and each of them. The misappropriation brought defendants
11 benefits that would not otherwise have been achieved.

12 226. The misappropriation of trade secrets by defendants was a substantial
13 factor in causing the unjust enrichment of defendants.

14 **TENTH CLAIM FOR CYBERPIRACY**
15 **BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS**
16 **(15 U.S.C. § 1125(d))**

17 227. Plaintiffs incorporate by this reference each and all of the allegations
18 contained in Paragraphs 1–226, as fully as though set forth at length herein.

19 228. The word “Monex” is a trademark. “Monex” is a word and name that
20 Monex and Monex’s predecessors have used for more than 40 years to identify and
21 distinguish their goods from those of others and to indicate the source of those
22 goods.

23 229. The word “Monex” is also a service mark. “Monex” is a word and
24 name used by plaintiffs to identify and distinguish their services from those of
25 others and to indicate the source of such services.

26 230. The word “Monex” is also a trade name and commercial name.
27 “Monex” is a word used by plaintiffs to identify their business and to distinguish it
28 from the business of others. “Monex” symbolizes the reputation of plaintiffs’
business as a whole.

1 231. Plaintiffs own the trademark, service mark, trade name, and
2 commercial name "Monex."

3 232. Defendants have bad faith intent to profit from the "Monex" mark by
4 using it to extort money from plaintiffs and by using it to attract users to the website
5 MonexFRAUD.com and thus attract them to click on advertising links on the
6 website and to contribute to MonexFRAUD.com, thereby earning revenue for
7 defendants.

8 233. The intent of defendants to profit from the "Monex" mark was in bad
9 faith, in part because extortion is a tort and a crime.

10 234. Defendants registered, bought, trafficked in, and used
11 www.MonexFRAUD.com.

12 235. The domain name www.MonexFRAUD.com is confusingly similar to
13 the "Monex" mark.

14 236. The domain name www.MonexFRAUD.com is dilutive of the
15 "Monex" mark.

16 237. Defendants, some of defendants, or each of them are the registrant(s)
17 or authorized licensee(s) of the registrant(s) of the domain name
18 www.MonexFRAUD.com.

19 238. Defendants' and each of their cyberpiracy as complained of herein
20 caused harm to Monex. The harm included special damages caused by lost profits,
21 lost business opportunities, lost customers, and costs incurred in rehabilitating
22 Monex's reputation.

23 239. The cyberpiracy by defendants was a substantial factor in causing the
24 harm to Monex.

25 **PRAYER**

26 WHEREFORE, plaintiffs pray for judgment and relief against defendants as
27 follows:

28 1. Treble the sum of money, in a base amount to be determined but

1 estimated by defendants to be at least \$5 million, that reasonably would compensate
2 plaintiffs for the harm caused by defendants as set forth above. The amount
3 required to compensate Monex includes general damages. It also includes special
4 damages in an amount estimated by defendants to be at least \$5 million caused by
5 lost profits, lost customers, and lost business opportunities. In addition, the special
6 damages include additional costs Monex incurred in responding to defendants'
7 torts, above and beyond attorney's fees and court costs.

8 2. Injunctions against defendants barring them each from:

- 9 a. making any extortionate threats against any of the plaintiffs;
10 b. making negative statements about plaintiffs and each of them;
11 c. operating the MonexFRAUD.com website or any similar
12 website;
13 d. interfering in any contract to which a plaintiff is a party;
14 e. interfering in any prospective economic advantage of plaintiffs
15 or any of them;
16 f. continuing their unlawful, unfair, and fraudulent business
17 practices;
18 g. attempting to convert the property of any plaintiff;
19 h. libeling the products and services offered by plaintiffs; and
20 i. misappropriating the trade secrets of any plaintiff.

21 3. Orders that defendants

- 22 a. divest each of themselves of any interest, direct or indirect, in
23 the enterprise described above, and
24 b. forfeit or cancel MonexFRAUD.com and any other domain
25 names used unlawfully, or transfer MonexFRAUD.com and any other domain
26 names used unlawfully to plaintiffs.

27 4. Disgorgement of profits obtained by defendants or any of them from

28 MonexFRAUD.com, from any other forum in which defendants defame or carry

- 1 out threats against plaintiffs or any of them, or from defendants' extortion;
- 2 5. Punitive damages;
- 3 6. Prejudgment interest;
- 4 7. Attorney's fees;
- 5 8. Costs of suit; and
- 6 9. Such other relief as the Court deems just.

7 Dated: May 7, 2009

FARELLA BRAUN & MARTEL LLP

8
 9 By: Neil Goteiner
 10 Neil A. Goteiner
 Scott Andrews

11 Attorneys for Plaintiffs
 12 MONEX DEPOSIT COMPANY and
 13 MONEX CREDIT COMPANY
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: May 7, 2009

FARELLA BRAUN & MARTEL LLP

By: Neil Goteiner
Neil A. Goteiner
Scott Andrews

Attorneys for Plaintiffs
MONEX DEPOSIT COMPANY and
MONEX CREDIT COMPANY

EXHIBIT A

Purchase and Sale Agreement

- 1 **Parties.** This Agreement is entered into between Monex Deposit Company ("MDC") and Customer(s) ("Customer") signing below.
- 2 **Purpose of Agreement.** This Agreement provides for the establishment of an account for Customer with MDC for the purchase and sale of commodities and shall apply to all such transactions between Customer and MDC. Customer represents that all of Customer's transactions with MDC shall be for investment or other commercial purposes and not for any personal, family, household or other consumer purposes.
- 3 **Acknowledgment of Risk.** Because of the volatile nature of the commodities markets, the purchase and sale of commodities involve a high degree of risk and are not suitable for all persons. Customer represents that he has read and understands this Agreement and represents that he is aware of the nature and extent of Customer's rights and obligations and the risks involved under this Agreement. Customer further acknowledges Customer's understanding that transactions subject to this Agreement are cash trades with MDC and that such trades are not subject to regulation by the Commodity Futures Trading Commission or the National Futures Association.
- 4 **Role of MDC.** MDC acts as a principal and as such sells to and buys from Customers on its own behalf. This means that MDC is a market maker and dealer in precious metals. MDC is not an exchange or brokerage house. Neither MDC nor any of its employees acts as an agent or fiduciary for any of MDC's customers. MDC does not offer managed accounts.
- 5 **Commodities Currently Offered by MDC.**
- 5.1 **Gold Bullion (10 Oz.)** — ten troy ounces of at least .995 fine gold.
- 5.2 **Gold Bullion Coins** — American 1 troy ounce, 1/2 ounce, 1/4 ounce and 1/10 ounce Eagles; American 1 troy ounce Buffalos; South African 1 troy ounce Krugerrands; Canadian 1 troy ounce, 1/2 ounce, 1/4 ounce and 1/10 ounce Maple Leafs; Austrian 1 troy ounce, 1/2 ounce, 1/4 ounce and 1/10 ounce Vienna Philharmonics. The one ounce coins are sold in units of 10 coins. The other coins are sold in 20-coin units. There is no mixing of coins.
- 5.3 **Silver Bullion** — 1,000 troy ounces of at least .999 fine silver.
- 5.4 **Silver Ingots** — 100 troy ounces of .999 fine silver.
- 5.5 **90% U.S. Silver Coins** — \$1,000 face value bags of U.S. silver coins of a single denomination minted prior to 1965. Each bag contains approximately 715 troy ounces of pure silver.
- 5.6 **40% U.S. Silver Coins** — \$1,000 face value bags of U.S. silver Kennedy half-dollars minted from 1965 through 1970. Each bag contains approximately 295 troy ounces of pure silver.
- 5.7 **Silver Bullion Coins** — American Eagle, Canadian Maple Leaf and Austrian Vienna Philharmonic one troy ounce coins. Each sold in units of 100 coins.
- 5.8 **Platinum Bullion** — 10 troy ounces of at least .9995 fine platinum.
- 5.9 **Platinum Bullion Coins** — American 1 troy ounce, 1/2 ounce, 1/4 ounce and 1/10 ounce Eagles; Canadian 1 troy ounce, 1/2 ounce, 1/4 ounce and 1/10 ounce Maple Leafs. The one ounce coins are sold in units of 10 coins. The other platinum coins are sold in 20-coin units. There is no mixing of coins.
- 5.10 **Palladium Bullion** — 10 troy ounces of at least .999 palladium bullion.
- 5.11 **Palladium Bullion Coins** — Canadian Maple Leaf 1 troy ounce coins sold in units of 10 coins.
- 2
- 5.12 **Commodities may be added to or deleted from the above list by MDC at any time.**
- 6 **Relationship Between Coin and Bullion Prices.** To the extent that a coin or ingot sells for more than the value of its metal content, that difference is called a "premium." When a coin or ingot sells for less than its underlying metal value, that difference is called a "discount." The premium or discount on each type of coin or coin-like ingot offered by MDC may vary significantly from day to day.
- 7 **Terms of Purchase, Sale and Delivery.**
- 7.1 **Customer Purchases.** At the time of verbal confirmation of a purchase, Customer will be advised of the full amount due and, should Customer wish to purchase on credit with financing provided by MDC's affiliate, Monex Credit Company ("MCC"), the initial required minimum payment. The amount due is immediately payable to MDC upon verbal confirmation of Customer's purchase. If sufficient funds are not already in Customer's account, Customer will be required to send the funds immediately. **Required funds must be sent to MDC within 24 hours of the transaction and received by MDC within 2 business days or such shorter period as may be imposed by MDC.** Failure to make such payment within this period shall constitute a default by Customer. Upon such default, MDC will be relieved of all its obligations under the transaction and may recover from Customer as liquidated damages the difference between the purchase price agreed to by Customer and MDC's bid price for the commodities at the time of default, plus MDC's buy and sell charges. Receipt and credit by MDC of Customer's funds after said 2 day period, or shorter period when imposed, shall not waive or limit MDC's remedies for default. Customer shall not be entitled to any market gains on a transaction on which he has defaulted. If Customer is purchasing from MDC on credit or for storage for the first time, Customer will be required to sign and return this Agreement and MCC's Loan, Security and Storage Agreement to MDC and MCC.
- 7.2 **Customer Sales.** Upon verbal confirmation of a sale of commodities to MDC, Customer will be advised that Customer has 2 days or such shorter period as may be imposed to make delivery to MDC. Full payment shall be made to or on behalf of Customer upon delivery to and verification by MDC. Failure by Customer to effect delivery within the required time period shall constitute a default. Upon default, MDC will be relieved of all its obligations under the transaction and may recover from Customer as liquidated damages the difference between the sale price agreed to by Customer and MDC's asked price for the commodities at the time of default, plus MDC's buy and sell charges. Receipt of commodities from Customer after said 2 day period, or shorter period when imposed, shall not waive or limit MDC's remedies for default.
- 7.3 **Delivery to Customer or on Customer's Behalf.** Upon receipt of good funds from Customer or on Customer's behalf in full payment for the purchase of commodities, MDC shall, as agreed, either deliver the commodities (i) to Customer, or (ii) to Customer's appointed agent or designee, or (iii) deliver or deposit such commodities for the benefit of Customer to or with Farmers and Merchants Bank of Long Beach, California, HSBC Bank USA, New York, NY or such other banks or depositories used for the purpose of safekeeping Customer commodities (collectively referred to as "Bank").
- Upon receipt of good funds from Customer in partial payment for commodities purchased on credit, MDC shall deliver to Bank, within 28 days, or such lesser period as required by law, all of the commodities purchased, to be held for Customer. Customer may take physical possession of all commodities purchased on credit at any time upon making full payment of the loan balance due to MCC.
- If Customer purchases gold, silver, platinum or palladium from MDC in bullion form, as described herein, for delivery to Bank, whether on a fully-paid or financed basis, MDC may, at its sole

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discretion, deliver to Bank an equivalent quantity of such metal in the form of any bullion, ingots or coins described herein, provided they are of at least equal fineness. If Customer purchases gold, silver, platinum or palladium coins, as described herein, from MDC for delivery to Bank, whether on a fully paid or financed basis, MDC may, at its sole discretion, deliver to Bank an equivalent quantity of such metal in the form of coins of a different denomination from the same country of origin, as described herein, provided that they are of at least equal fineness and value. If Customer subsequently requests possession of Customer's commodities for which an alternative form has been delivered to Bank, Customer agrees that MDC shall have the right to exchange the form of the metal delivered to Bank for that which Customer purchased, at no exchange cost to Customer.

When a customer wishes to take personal delivery of a 1,000 troy ounce silver unit, MDC may deliver a bar weighing nominally 1,000 troy ounces. When a customer wishes to take personal delivery of a 10 troy ounce palladium unit, MDC may deliver bars or coins of various weights totaling 10 ounces or, for deliveries of more than one unit of palladium, include larger bars weighing nominally 100 ounces. Actual weight of the silver and larger palladium bars is plus or minus 10%. On personal delivery of bars of nominal weight, prices will be adjusted to actual weight. Any overage or underage will be priced based upon MDC's prevailing asked or bid price, respectively, for 1,000 troy ounce silver units or 10 troy ounce palladium units, as appropriate, at the time of delivery.

When taking personal delivery, Customer may convert a 10 troy ounce gold bullion unit, a 1,000 troy ounce silver unit, or a 10 troy ounce platinum unit to an equivalent number of ounces of any combination of gold coin, silver coin, or platinum coin units of the same metal then being offered by MDC. Any such conversion must be to full units. When so converting bullion to coins, Customer will be charged MDC's prevailing coin premium(s) and/or credited MDC's prevailing coin discount(s) at the time delivery takes place.

- 7.4 **Passage of Title.** Title to commodities purchased by Customer shall pass to Customer upon delivery to Customer, Customer's appointed agent or designee or to Bank to be held for Customer. Commodities transferred to Bank for Customer will be delivered as an undivided share of a fungible lot and held in safekeeping on a fungible basis with the commodities of other Bank Customers. Upon delivery of commodities for Customer to Bank, Customer will receive title to an undivided share of the commodities so held. Title to commodities purchased by MDC from Customer shall pass to MDC upon receipt of the commodities by MDC or Bank for MDC.
- 7.5 **Delivery to MDC.** Customer commodities sold to MDC which are at Bank may be delivered to MDC at Bank. Customer commodities sold to MDC which are not at Bank must be delivered to MDC at MDC's direction.
- 7.6 **Payment.** Customer payments to MDC may be made by cashier's check drawn on a commercial bank, personal check or bank wire. Customer payments which are not bank wires will be deemed "hold funds" for delivery purposes, other than to Bank, for 12 business days after receipt by MDC. MDC may reduce the 12-day holding period on a check upon receipt of a written guarantee of payment from the issuing bank. Customer acknowledges that funds received by MDC from Customer will be credited to Customer's account at 5:00 p.m., Pacific Coast Time, on the day of receipt.

- 8 **Pricing Policies; Spreads.** MDC quotes a price at which it will sell (asked price) and a price at which it will buy (bid price). These prices are established by MDC upon its analysis of each commodity and may change many times during the day. MDC bid and asked prices are not tied to prices quoted by any other organization and there are no established daily limits on the amount those prices may change.

The difference or "spread" between MDC bid and asked prices varies. Historically, the spread on bullion prices has usually

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been about 3% to 5%. Spreads on coin products are usually higher than on bullion. During times of high volatility in market prices, spreads can widen substantially. There are no assurances that spreads will remain within a given range.

MDC reserves the right to increase or decrease its prices and spreads prospectively, at its sole discretion, at any time. Customers are encouraged to compare MDC prices with those offered by other dealers. Prices of precious metals from other sources are quoted daily in the Wall Street Journal, many local newspapers and on the Internet.

9 **Buy/Sell Charges (Commissions), Shipping and Handling Charges.**

- 9.1 **Buy/Sell Charges (Commissions).** Customer will pay to MDC for each purchase or sale the prevailing commission applicable thereto. MDC's regular published commissions are as follows:

Less Than 1 Unit	1 Unit	2-4 Units	5-9 Units	10-19 Units	20-49 Units	50+ Units
2.00%	1.75%	1.50%	1.25%	1.00%	.75%	.50%

- 9.2 **Shipping and Handling Charges.** Shipping and handling charges apply upon personal delivery of commodities to Customer. Such charges do not apply to commodities delivered to or received from Bank for the benefit of Customer. Shipment of commodities to Customer's order generally will be made by registered mail. Shipping charges will vary depending on weight, value, destination, and method of shipment. The charge is \$15 per transaction plus \$1 per ounce of metal delivered for all gold, platinum and palladium products. The charge is \$85 per 1,000 ounce silver bar and \$75 per bag of 90% or 40% U.S. silver coins. Other silver bullion coins or ingots are \$15 per transaction plus \$5 per 100 ounces. There is a handling charge per unit delivered to Customer of \$75 for gold and platinum bullion, \$100 for palladium bullion and \$25 for silver bullion. Additional handling fees shall be charged on all shipments to Canada. Customer may request to take delivery of ten 100 ounce silver bars, if available, instead of a 1,000 ounce silver bar. Customer shall pay a premium for such substituted bars as quoted by MDC at the time of delivery.

Customer mailing or shipping commodities to MDC bears all risk of loss or non-delivery until the shipment is received and accepted by MDC. Customer wishing to make delivery to MDC is required to give at least 3 days advance notice and make delivery to MDC's designated facility. Deliveries of commodities to MDC must be in a form acceptable to MDC and may require inspection and assay at the expense of Customer.

Customer may arrange for pick-up of Customer's commodities from a designated pick-up vault facility. Currently such facility is Brinks, Inc., 1120 W. Venice Blvd., Los Angeles, CA. MDC must be advised at least 24 hours in advance for pick-up of Customer commodities. MDC will make all appointments and arrangements for pick-up by Customer with the appropriate facility. Customer must satisfy all payments due MDC and MCC before appointments for pick-up may be made. All communications to arrange a pick-up must be made with MDC and not with the vault facility.

- 9.3 **Adjustment of Charges.** MDC reserves the right to change prospectively at any time and at its sole discretion the rate of any of its commissions, shipping or handling fees.
- 10 **Customer Responsibility, Discretionary Authority and Authorized Customer Orders.**
- 10.1 **Customer Responsibility; Discretionary Authority.** Customer is solely responsible for all purchasing, selling and borrowing decisions for Customer's account. MDC and its Account Representatives shall neither accept nor exercise any authority to direct or control purchases or sales in Customer's account; provided however, this provision shall not limit in any way MDC's rights under Sections 7, 11, 12, 13 or 14 of this Agreement.

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10.2 Authorized Customer Orders. Orders placed by Customers must be for specified quantities of commodities at MDC's prevailing quoted price at the time the order is placed (market orders), or at specified prices (limit, stop and stop-limit orders). All such orders must be confirmed orally to Customer by the MDC order desk with a tag number. No other types of orders can be accepted.

11 Limit, Stop and Stop-Limit Orders. Under certain conditions, MDC will accept orders for purchases or sales of commodities to be executed at prices which are higher or lower than its prevailing quoted market prices (limit, stop and stop-limit orders). Unless otherwise specified, limit, stop and stop-limit orders are effective for thirty calendar days. However, they may be cancelled early. Limit, stop and stop-limit orders will not be accepted outside of regular business hours (approximately 5:30 a.m. to 4:00 p.m. Pacific Coast Time, Monday through Friday (excluding company holidays)). Unless otherwise agreed, they will become effective at the opening of business on the trading day following the day they are accepted. Limit, stop and stop-limit orders are only subject to execution during regular and extended MDC business hours between approximately 5:30 a.m. and 8:00 p.m. Pacific Coast Time, Monday through Friday (excluding company holidays).

With a limit order, Customer may place an order to purchase commodities from MDC at a specified price which is lower than MDC's prevailing quoted asked price for that commodity. If during the time the limit order is open and subject to execution, MDC's quoted asked price for that commodity declines to, or below, the price specified in Customer's order, MDC will sell the commodity to Customer at that price, or if that asked price is never touched, the first price quoted which is lower (better) than the price specified in Customer's order. Conversely, Customer may place a limit order to sell a commodity to MDC at a specified price which is higher than MDC's prevailing quoted bid price for that commodity. In this case, Customer's order will be executed during its term if MDC's quoted bid price for the commodity increases to, or above, the price specified in Customer's order. Execution will be at the price specified, or if such price is never touched, the first price quoted which is higher (better) than the price specified in Customer's order.

Like limit orders, stop orders may be used either to buy or sell a commodity. However, unlike a limit sell order, a stop sell order is an order to sell a particular commodity at a price lower than the prevailing MDC bid price. A stop sell order will be executed at the first quoted MDC bid price which is equal to or lower than the specified stop price during the order's term. Conversely, a stop buy order is an order to buy a particular commodity at a price higher than the prevailing MDC asked price. Such orders will be executed at the first quoted MDC asked price which is equal to or higher than the specified stop price while the order is effective. Thus, the price at which a stop order is executed may be lower (worse) than the stop price in the case of a sell order and higher (worse) than the stop price in the case of a buy order.

A stop-limit order may be used to limit the price range within which a stop order will be executed. Such orders must include a specified stop price and a specified limit price. A stop-limit order will be executed per the terms of a stop order only if the MDC applicable quoted bid or ask price falls at or within the range between the specified stop price and the specified limit price while the order is effective. If a limit price is not specified, the stop-limit order will be executed as a stop order. Thus, unless specified by Customer, the limit price will be zero in the case of a sell order and infinity in the case of a purchase order.

Verbal communication of limit, stop and stop-limit orders may be tape recorded by MDC at the time the order is accepted. Only limit, stop and stop-limit orders which are verbally confirmed to Customer by MDC's order desk will be effective. Written confirmation of such orders or their cancellation will not be issued. Trades resulting from execution of limit, stop and stop-limit orders will be confirmed in writing and must be paid for in MDC's normal required manner.

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Customer may cancel a pending limit, stop or stop-limit order at any time during regular MDC business hours. Only such cancellation orders which are verbally confirmed to Customer by MDC's order desk will be executed. Limit, stop or stop limit orders in effect will automatically be cancelled when they are pre-empted by market orders placed by Customer, or by a forced liquidation by MCC.

Execution of limit, stop and stop-limit orders will be based on the prevailing MDC unit price for the commodity for which the order is placed. Bid prices will be used for all sell orders and asked prices for all buy orders.

MDC reserves the right to refuse acceptance of a limit, stop or stop-limit order from Customer at any time. During times of abnormal conditions in precious metals markets, MDC may suspend the execution of pending limit, stop and stop-limit orders.

Stop and stop-limit orders placed to attempt to limit losses will not necessarily achieve their objectives. Market conditions may extend the time for, or prevent, the execution of such orders.

Limit, stop and stop-limit orders may be placed only on the preceding terms.

12 Customer Acknowledgment:

Investments in precious metals (commodities) involve substantial risk. Historically, there have been periods of varying length during which prices of commodities have moved adversely. Market prices are volatile and unpredictable and may be affected by a variety of factors including, among others, general economic conditions, political events, monetary policies of various countries, fluctuations in production and demand, stockpiles, speculative activity, transactions and events in futures markets and the degree of concern people have about these matters. It is impossible to forecast accurately how or to what degree these or other factors will affect prices.

Investments in precious metals should only be made with discretionary funds and not with monies necessary to cover or produce Customer's day-to-day living expenses.

What is suitable for one customer with a given financial means may not be suitable for the goals or emotional makeup of a second customer of the same means. Before Customer chooses to buy or sell, Customer must determine in Customer's own mind Customer's ability to understand the transaction and to meet all financial commitments to be made. The Customer must also determine Customer's ability to accept, among other things, when purchasing on credit or borrowing commodities, that Customer may be called to provide substantial additional funds and that some or all of Customer's collateral may be foreclosed upon without advance notice. Persons with limited investment experience or low incomes or assets should be particularly sensitive to the risk and requirements involved in commodity investing.

Transactions in MDC commodities involve buy and sell charges, spreads and, in some cases, finance and/or service charges. Lease fees, shipping and handling charges, and a sales or use tax may also be payable. These charges can result in a loss despite favorable price movement.

MDC and its account representatives are not agents for Customer and owe no fiduciary duty to Customer.

Account Representatives may not be able to contact you at all times that you would like. These and other circumstances may make it impossible at times for your Account Representative to stay in close touch with you concerning your account. Therefore, it is your responsibility to monitor your account and to stay in touch with MDC concerning your account and market conditions. Do not wait to be contacted.

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Any representations that Customer will be notified or that Customer's commodity will be sold at particular price levels if the market turns against Customer are not authorized by MDC and may not be relied upon.

Neither MDC nor its representatives can guarantee any market movement.

While MDC intends to maintain a buy and sell market for its commodities, there is no guarantee that MDC will continue to do so. In the event that MDC is unable or unwilling to quote firm prices at any time, Customer may be obliged to dispose of Customer's commodities in another market.

MDC will rely upon instructions and orders given by Customer over the telephone. It is the practice of the industry that all trades placed over the telephone are binding contracts and must be honored. Once a trade is placed by Customer and accepted by an authorized MDC employee, a contract is created. Trades may be reversed only upon mutual consent of the parties to this Agreement.

In times of highly volatile markets, MDC phone lines may be busy due to the volume of incoming and outgoing calls. It is also possible for telephone lines to fail for reasons beyond MDC's control. Because of this, Customer is advised and will be responsible to have alternative methods to communicate with MDC (e.g., e-mail, courier messenger service, etc.) should it become necessary to do so.

In purchases of commodities on credit, it is possible for Customer to lose substantially more than the amount of the payments Customer has made. In such cases, Customer can lose up to the full amount of the commodities purchased.

Customer's account with MDC is self-directed. This means Customer makes and is responsible for all trading decisions for Customer's account. If Customer ever believes that a transaction has been entered for Customer's account that has not been authorized by Customer, or that a transaction has been accepted by MDC for Customer's account and has not been executed by MDC, Customer will immediately notify Customer's Account Representative's Supervisor or MDC's Compliance Department by phone at (949) 752-1400 or (800) 849-4653 and immediately confirm such notification in writing to MDC at 4910 Birch Street, Newport Beach, California 92660. Similarly, if Customer believes that any representative of MDC has made a verbal or written representation that is inconsistent with the terms or risks set forth herein (e.g., "At its current price, your metal can only go up in value.") or is offensive or unprofessional in nature (e.g., high pressure or unresponsive to requests), Customer will notify MDC's Compliance Department immediately. If Customer fails to make the required notification by the tenth business day following the date on which the event first became known to Customer, Customer waives all right to contest such order, matter or omission and Customer's account will stand, as is, as of the end of such business day.

MDC and its Account Representatives earn income based upon the volume and type of transactions with Customers. In the process of selling precious metals to, and buying precious metals from, Customer, the interests of MDC and its Account Representatives conflict with the interests of the Customer. At times, MDC provides cash, merchandise and travel incentives to its Account Representatives based upon the type and/or volume of the metals sold. Customer must make the final decision as to whether Customer wishes to enter into any particular transaction and should keep the foregoing in mind when making that decision. **Customer is solely responsible for all purchasing, selling and borrowing decisions for Customer's account.** This does not, however, limit in any way MDC's rights under Sections 7, 11, 12, 13 or 14 of this Agreement.

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Tax consequences of transactions with MDC are the sole responsibility of Customer. Customer shall pay to MDC any sales, use or other tax applicable to transactions with MDC. Commodities delivered to depositories located outside California for Customer are intended for use by Customer outside California. If physical possession of such commodities is taken subsequently by Customer within California, sales and use tax may apply, depending upon the commodity purchased.

Customer is a sophisticated investor who understands that precious metals products can be purchased from and sold to competitors of MDC.

If you have any questions, need any information, or wish to place an order, call your Account Representative immediately. If your Account Representative is not available, call his or her Back-up Account Representative or Sales Director.

13 Security Agreement.

13.1 Property and Rights Subject to Security Interest. As security for the performance of all of Customer's obligations hereunder, whether now existing or hereafter incurred, Customer hereby grants MDC a security interest in each and every commodity purchased by Customer from MDC and all other sums, property and rights, whether individually or jointly held, at any time standing to Customer's credit on MDC's books or at any time in MDC's possession or Bank's possession, for any purpose.

13.2 MDC Rights and Remedies. Upon default under this Agreement, MDC shall have, in addition to all other rights and remedies conferred on MDC hereby, all rights and remedies of a secured party under the California Commercial Code.

13.3 California Commercial Code Filing. MDC may file this Agreement and such other documents as MDC may request, which Customer agrees to provide, in order to perfect MDC's security interest hereunder.

14 Acceleration Upon Default. Upon default by Customer, MDC may, at its election, declare any or all of Customer's obligations immediately due and payable.

15 Miscellaneous.

15.1 Notices. All communications shall be sent to MDC at 4910 Birch Street, Newport Beach, CA 92660 and to Customer at the address set forth following the signatures to this Agreement or such other address subsequently provided to MDC by Customer in writing. All communications given by MDC to Customer by mail shall be effective 48 hours after deposit in the United States mail, postage prepaid, or upon receipt, whichever is earlier; if hand delivered, when delivered to Customer's address; if telephonic, at the time of such phone conversation or facsimile transmission; or if by e-mail, on the day of transmission.

15.2 Force Majeure. In the event of adverse conditions in the marketplace or other factors beyond the control of MDC, including, but not limited to, acts of God, national emergencies, adverse governmental actions, or suspension of trading of silver, gold, platinum or palladium futures contracts by U.S. commodity exchanges, or the delivery of the commodities underlying such contracts, or the failure or delay of suppliers, the maximum time for delivery of such commodities may be extended indefinitely during the period of such adverse circumstances. MDC will not be responsible for delays or failures in the transmission, receipt or execution of orders, payments, deliveries or information due to the incapacity or failure of computer, transmission or communication facilities which are beyond the control of MDC.

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- 15.3 Entire Agreement.** This Agreement constitutes the entire and whole Agreement among its parties and is intended as a complete and exclusive statement of the terms of their agreement. This Agreement may be amended only upon execution of a subsequent agreement between the parties or upon Customer's failure to object, within 10 days, to modifications contained in written material sent to Customer by MDC. This Agreement shall supersede any oral representations between the parties.
- 15.4 Individual Authority of Customer.** Any party signing this Agreement as Customer is authorized to deal fully with the account opened hereunder, for purposes of placing orders, receiving funds or commodities or otherwise. Any action taken by any such party shall be binding on all other parties with an interest in that account. Each such party shall hold MDC harmless for relying hereon. All obligations of Customer under this Agreement are joint and several.
- 15.5 Electronic Recordation.** Customer agrees that MDC may monitor and may electronically record any conversation between MDC, its employees or agents and Customer or Customer's agents.
- 15.6 Waiver.** Failure to exercise or delay in exercising any right, power or remedy hereunder by MDC shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy of MDC hereunder preclude any other or future exercise thereof or the exercise of any other right, power or remedy.
- 15.7 Bank Indemnification.** Customer agrees that Bank may act upon any instructions received from MDC concerning delivery, transfer, sale or disposition of commodities held by Bank on Customer's behalf. Customer further agrees to indemnify the Bank from any liability to Customer for actions taken by Bank in conformity with such instructions.
- 15.8 Limited Right to Rescind.** Customer purchasing a commodity from MDC for the first time has a limited right to rescind that transaction. Customer may rescind such transaction during a period of 10 business days from the day on which Customer made the purchase, so long as Customer sent the necessary funds to Monex within 24 hours of such purchase, as required by Section 7.1 hereof. If Customer chooses to rescind Customer's trade, Customer shall be assessed any actual price losses accruing from the time at which Customer entered into the purchase to the time that the trade was rescinded. Such losses do not include buy/sell charges, spread or finance charges. Actual price losses accruing to the position are calculated by subtracting the MDC asked price of the commodity at the time the transaction was rescinded from the MDC asked price at which the commodity was purchased. Customer shall not be entitled to any gains accruing on a rescinded transaction. Customer may rescind Customer's transaction by a telephone call to Customer's MDC Account Representative. Rescission is effective when confirmed on tape with an Account Representative.
- 15.9 Governing Law.** This Agreement is entered into in accordance with and shall be governed by California law; provided that, if any California law shall dictate that the laws of another jurisdiction be applied in any proceeding, such California laws shall be superseded by this paragraph and the remaining laws of California shall nonetheless be applied in such proceeding.
- 15.10 California Contract.** The formation of this Agreement constitutes the making of a contract within Orange County, California, notwithstanding the manner, timing or location of the delivery of receipt of the acceptance of this Agreement by either party hereto. The making of this contract will cause the following events, among others, to occur in Orange County, California: the solicitation and negotiation of this contract will have taken place and been completed in Orange County, California; the contract will be executed in Orange County, California; initial payment monies and any subsequent monies paid by Customer will be delivered to and paid in Orange County, California; and written confirmation of each transaction

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will be provided from Orange County, California. Customer and MDC agree that Orange County, California is a mutually and reasonably convenient place for the filing of any action and for any hearing concerning disputes relating to Customer's transactions with MDC or to this Agreement.

15.11 Arbitration

a. Arbitration of Claims. The parties agree that any and all disputes, claims or controversies arising out of or relating to any transaction between them or to the breach, termination, enforcement, interpretation or validity of this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be subject to the terms of the Federal Arbitration Act and shall be submitted to final and binding arbitration before JAMS, or its successor, in Orange County, California, in accordance with the laws of the State of California for agreements made in and to be performed in California. The parties also agree that this Agreement and the transactions entered into pursuant to it are commercial in nature (i.e., for investment) and do not involve consumer transactions (i.e., transactions entered into for personal, family or household purposes) under JAMS rules, or otherwise.

b. Additional Participants in this Agreement to Arbitrate. All partners of MDC and their officers and directors, and all employees, representatives, agents and affiliates of MDC, past, present or future, are beneficiaries of, and participants in, this arbitration agreement. They will have the same rights and obligations under this arbitration agreement as the parties, to the extent they are named as respondents in any dispute, claim or controversy subject to or arising from this Agreement, or could have been so named.

c. Initiation of Arbitration. Any party may commence the arbitration process by filing a written demand for arbitration with the JAMS office in Orange County, California, with a copy to the other party(ies).

d. Arbitration Rules. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the provisions of JAMS Comprehensive Arbitration Rules and Procedures in effect at the time of filing the demand for arbitration (the "JAMS Rules"). The JAMS Rules shall apply regardless of the amount of the claims or cross claims in the proceeding. Discovery may be taken by the parties only in the manner prescribed by the JAMS Rules. In the discretion of the arbitrator(s), pre-arbitration conferences and hearings may be telephonic.

Customer can find the JAMS Rules on JAMS' Internet web site: www.jamsadr.com. Customer can also obtain a copy of the JAMS Rules and information concerning JAMS' administrative and arbitrator fees by calling JAMS national toll free number at 800-352-5267.

e. Arbitrators. The parties agree that the number, selection and replacement of arbitrators shall be in accordance with the JAMS Rules, except that: i) each arbitrator shall be a retired judge of either the California Superior Court or a United States District Court located in California, and ii) any party may require a panel of three neutral arbitrators.

f. Decision of the Arbitrator(s). Subject only to a party's right to a JAMS appeal under Subsection 15.11g. below, the arbitration shall be final, conclusive and binding on the parties and the award of the arbitrator(s) shall be enforceable in any court of competent jurisdiction.

g. Right to Appeal. A final decision by one arbitrator may be appealed to JAMS by any party. A final decision by a three-arbitrator panel is final and may not be appealed. Appeals to JAMS shall be subject to the following rules and procedures:

1. The appeal panel will consist of three neutral arbitrators selected in the same manner and subject to the same requirements as an initial tripartite panel under Subsection 15.11e. above.

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2. The procedure for filing and arguing an appeal is as follows:

(i) Any party may appeal a final arbitration award issued by one arbitrator. The appeal must be served, in writing, on JAMS and on the opposing party within 14 calendar days after the award becomes final. The appealing party must specify in writing those parts of the award being appealed and must contain a brief statement of the appeal.

(ii) Within 7 calendar days of the service of the appeal, the opposing party may serve on JAMS and on the opposing party a cross-appeal from any part of the award. The written cross-appeal must specify those parts of the award that the party is cross appealing and must contain a brief statement of the basis for the cross-appeal.

(iii) The record on appeal will consist of the stenographic or other record of the arbitration hearing and all exhibits, deposition transcripts and affidavits that the arbitrator has accepted into the record. The parties will cooperate with JAMS in compiling the appellate record. No evidence not previously accepted by the arbitrator will be considered by the appellate arbitrators, unless the basis of the appeal is non-acceptance by the arbitrator of certain evidence or unless the appellate arbitrators determine that there is good cause to re-open the record pursuant to the applicable JAMS arbitration rules.

(iv) The parties may elect to rely on the memoranda or briefs previously submitted to the arbitrators. In the absence of such election, JAMS will obtain the agreement of the parties on a briefing schedule. If no agreement is reached, JAMS will set the briefing schedule. Ordinarily, according to JAMS rules, only opening briefs (of no more than 25 double-spaced pages) will be allowed. The briefs may be in the form of a letter.

(v) The appellate arbitrators will hear oral argument if a party requests such argument. If there is to be oral argument, JAMS will obtain the agreement of the parties on both the date of such argument and the duration, including the allocation of argument time between the parties. In the absence of agreement, the appellate arbitrators will set the date and duration of the oral argument, including the allocation of time.

3. Once a party has filed an appeal, JAMS will no longer consider the arbitration award final.

4. The appellate arbitrators will apply the same standard of review that the first level appellate court in the jurisdiction would apply to an appeal from the trial court decision, were the dispute being heard in state court instead of JAMS. The appellate arbitrators will respect the evidentiary standard set forth in Rule 22(d) of the JAMS Rules. The appellate arbitrators may affirm, reverse or modify an award.

The appellate arbitrators may not remand to the original arbitrator, but may re-open the record in order to review any evidence that had been improperly excluded by the arbitrator or any evidence that is now necessary in light of the appellate arbitrators' interpretation of the relevant substantive law. The appellate arbitrators, absent good cause for an extension, will issue the decision within 21 calendar days of the date of either oral argument, the receipt of the new evidence or receipt of the record and of all briefs, whichever is applicable or later. The appeal panel will make its decision by majority vote. The appellate arbitrators' decision will consist of a concise written explanation, unless the parties all agree otherwise.

5. If a party refuses to participate in the appeal, the appellate arbitrators will maintain jurisdiction over the appeal and will consider the appeal as if all parties were participating, including retaining the authority to modify any award or element of an award that had previously been entered in favor of the non-participating party, assuming the arbitrators believe that

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the record, after application of the appropriate standard of appeal, justifies such action.

6. After the appellate arbitrators have rendered a decision, JAMS will issue the decision by serving copies on the parties. Service will be deemed effective five 5 calendar days after deposit in the U.S. Mail. Upon service of the appellate decision, the award will be final for purposes of judicial review.

h. No Waiver of Any Right to Provisional or Injunctive Relief.

Nothing contained in this Agreement shall in any way deprive a party of its right to obtain provisional, injunctive, or other equitable relief from a court of competent jurisdiction, pending dispute resolution and arbitration. For purposes of any proceeding for provisional, injunctive or other equitable relief, the parties consent to the jurisdiction of, and venue in, the courts of the State of California and the United States District Court, located in Orange County, California.

I. No Consolidation or Class Actions.

1. Disputes and controversies between the party-signatories to this specific Agreement between MDC and Customer (as such agreement may be amended from time to time) shall not be joined or consolidated with the disputes or controversies of any customer of MDC that is not a party-signatory to this specific Agreement. Customer may not assert claims on behalf of a class or group of persons. Customer acknowledges that there are court decisions in federal and state courts that under certain circumstances deny enforcement of arbitration provisions that prohibit consolidation of claims and class actions. By signing this Agreement, Customer is waiving (i.e., giving up) the right to make any such argument in opposition to the enforcement of the parties' arbitration agreement contained in Section 15.11 and this Subsection 15.11.1's preclusion of consolidated claims and class actions.

2. Should a court of competent jurisdiction issue a final decision denying the enforceability of Subsection 15.11.1 and permitting Customer to pursue a consolidated action or class action with or on behalf of other Customers, the parties agree that the court shall sever Subsection 15.11.1 from this Agreement and enforce the remainder. In such circumstance, the parties further agree that all subsequent matters related to such case, including but not limited to, issues of class representation, class certification, class notice and to a decision on the merits shall be determined in arbitration before JAMS pursuant to JAMS Class Action Procedures then in effect, and by an arbitration panel of three arbitrators selected in accordance with the provisions of Subsection 15.11e. of this Agreement.

J. Allocation of Costs.

1. Basic Arbitration Costs. Each side (i.e. claimant(s) on the one hand and respondent(s) on the other) agrees that it will share equally in the basic arbitration costs, including administrative fees and the fees of the arbitrator, if only one arbitrator is used. If a three arbitrator panel is required by any party, each side shall share equally in JAMS' administrative fees, but the party requiring the panel shall pay all arbitrator fees.

2. Costs of Appeal. The side appealing an arbitrator's award shall be responsible for all costs of the appeal, including the fees of the appellate arbitrators. If both sides appeal, all appellate costs shall be split equally between them.

3. Class Actions. Notwithstanding the foregoing, if Borrower brings a consolidated action or class action which a court permits to proceed in spite of the provisions of Subsection 15.11.1 hereof, the parties agree that each side will share equally all JAMS administrative and arbitrators' fees associated with such arbitration.

k. Available Damages and Remedies. The parties agree that the damages available to any party bringing an action under this Agreement shall be limited to any actual contract damages and

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tort damages incurred by the party and proximately caused by and resulting from the other party's alleged breach. This paragraph states the exclusive damage remedies available to the parties. In all matters, each party shall be responsible for his, her or its own attorneys fees.

I. Waiver of Litigation Rights and Jury Trial. By signing this Agreement, each party to this Agreement is agreeing to have all claims, disputes and controversies arising out of, or relating to, Customer's transactions with MDC or to this Agreement decided by arbitration and is giving up any right to have such claims, controversies and disputes determined in a court of law by a judge or by a jury, except that court-ordered injunctive relief may be available as set forth above. By signing this Agreement, each party is similarly giving up his, her or its rights to appeal, unless expressly provided for herein. If any party refuses to abide by the terms of this Agreement such party may be compelled to comply with its terms.

m. Voluntary Agreement; Revocation Each party's agreement to arbitrate is voluntary. Customer may revoke Customer's agreement to arbitrate under Section 15.11 by written notice delivered to MDC at 4910 Birch Street, Newport Beach, California within 30 days of Customer's first transaction with MDC or MCC.

15.12 Assignment. The provisions of this Agreement shall be continuous and shall inure to the benefit of MDC, its successors and assigns, and shall be binding upon Customer and/or the estate, personal representatives, administrators and successors of Customer. MDC may assign its rights and delegate its duties as to any or all transactions under this Agreement. Customer shall not delegate any obligations hereunder without the prior written consent of a duly authorized officer of MDC, and any attempt at such delegation without such consent shall be void.

15.13 Transaction Charges. Customer agrees that to the extent that any charges imposed by MDC are held to be in excess of those allowable under any law, such charges shall be reduced to the legal maximum.

15.14 Severability. In the event that any provision of this Agreement shall be determined by a trier of fact of competent jurisdiction to be unenforceable in any jurisdiction, such provision shall be unenforceable in that jurisdiction and the remainder of this Agreement shall remain binding upon the parties as if such provision was not contained herein. The enforceability of such provision shall otherwise be unaffected and remain enforceable in all other jurisdictions.

15.15 Obligations Due in U.S. Currency. Customer shall pay all obligations owing under this Agreement in the currency of the United States of America.

15.16 Taxpayer I.D. Number. Customer certifies under the penalties of perjury that the Taxpayer Identification Number (Social Security Number) or Employer Identification Number provided below is correct and that Customer has not been notified by the Internal Revenue Service that he is a "payee under-reporter" under section 3406(a)(1)(c) of the Internal Revenue Code.

15.17 Tax Treatment. MDC does not offer advice on the tax treatment of purchasing, selling or borrowing precious metals. Customer must consult with his or her personal tax advisor with respect to such matters.

16 AS CUSTOMER, I AFFIRM MY UNDERSTANDING AND ACKNOWLEDGE THAT:

a. I am of legal age and legally competent to enter into this Agreement.

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b. All of my transactions with MDC shall be for investment or other commercial purposes and not for any personal, family, household or other consumer purposes. (See Section 2)

c. The purchase and sale of commodities involve a high degree of risk and are not suitable for all persons. (See Section 3)

d. Required funds must be sent to MDC within 24 hours of the transaction and received by MDC within 2 business days or such shorter period as may be imposed by MDC. (See Sec. 7.1)

e. I will immediately notify MDC's Compliance Department, in writing, if any statement made to me by an Account Representative is inconsistent with the risks and terms set forth in this Agreement or is what I consider to be offensive or unprofessional in nature.

f. I will not convey any discretionary authority concerning my account to my Account Representative or to MDC. This means that I make and that I am responsible for all trading decisions for my account. If I believe that a transaction has not been authorized by me, or has not been executed by MDC as I directed, I will immediately notify my Account Representative's Supervisor or MDC's Compliance Department. I waive all rights to contest such transaction or omission if I fail to make such notification within ten (10) business days after such event first becomes known to me. (See Sec. 10.1 and Sec. 12)

g. Only limit, stop and stop-limit orders which are verbally confirmed to me by MDC's order desk will be effective. (See Sec. 11)

h. There are numerous factors which affect commodity prices and it is impossible to forecast accurately how or to what degree such factors will affect prices. I understand that I will lose money unless the value of the commodities I purchase or borrow moves sufficiently in price to compensate me for commissions, bid/ask spreads, interest, lease fees and any other applicable charges. (See Sec. 12)

i. I have determined in my own mind that I am financially, intellectually and emotionally suitable to enter into the transactions which are the subject of this Agreement and able to accept the risks and to meet the financial commitments being made. (See Sec. 12)

j. I understand there are no assurances or guarantees by MDC or its representatives as to the future value of the commodities I purchase, borrow or sell.

k. I am solely responsible for all purchasing, selling and borrowing decisions for my account. (See Secs. 10 and 12)

l. MDC may monitor and electronically record any conversations between me or my agents and MDC, its employees or agents. (See Sec. 15.5)

m. By signing this Agreement, I authorize MDC and its representatives to call me at any telephone number, and to send me e-mails at any e-mail address, that I have provided to MDC, concerning matters regarding my MDC account and for promotional purposes. Such authorization shall continue until such time as I notify MDC in writing of its revocation or of a change in its terms.

n. I have carefully read and understand the foregoing. I understand that I am agreeing to submit all disputes, claims and controversies arising out of, or relating to, my transactions with MDC or this Agreement to binding arbitration before JAMS, which is a private dispute resolution

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procedure, as set forth in Section 15.11 above. I understand that by agreeing thereto, I am also agreeing to pay JAMS administrative fees and arbitrators fees according to the terms of Subsection 15.11, and to give up my rights to a jury trial of any claims. (See Section 15.11)

Customer Name(s) (Print) _____

Customer Signature **A** _____ Date _____

Customer Signature _____ Date _____

Address _____

City _____ State _____ Zip _____

Social Security or Employer Identification Number(s) _____

Home Telephone _____ Business Telephone _____

e-mail address _____

Account No. _____

Single Owner Limited Liability Company

Joint Tenants with Right of Survivorship Trustee For (Name of Trust, Pension or Profit Sharing Plan)

Tenants in Common _____

Corporation _____

Partnership Other: _____

Monex Deposit Company - For Official Use Only

By: _____ Date _____

FORM KK

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Loan, Security and Storage Agreement

1 **Terms and Conditions.** The Customer(s) signing below ("Borrower") promises to pay to **Monex Credit Company ("MCC")** at its office in California on demand, or if no demand, 5 years from the date of the latest cash advance, the sum of all outstanding cash advances made by MCC to or for the benefit of Borrower, together with interest thereon from the dates of the respective advances at MCC's prevailing announced finance rate, as such rate may change from time to time. Borrower also promises to return to MCC, on demand, or if no demand, 5 years from the date of the latest borrowing of commodity, all such unreturned commodities as Borrower may have borrowed from MCC, together with lease fees thereon from the dates of the respective borrowings at MCC's prevailing announced lease rates, as such rates may change from time to time. Borrower's failure to make such payments or return such commodities, as required, shall constitute a default by Borrower and MCC shall have the right to dispose of all collateral and security provided by Borrower or on Borrower's behalf, as provided in Paragraph 13 hereof, and apply such proceeds against the obligations due it hereunder. Such right shall be without limitation to the value of the collateral and security and any other remedies granted to it by this Agreement or otherwise by law.

Cash Advances (Borrowing Cash): When Borrower borrows cash, MCC will impose interest charges (sometimes referred to as finance charges) on the unpaid balance of such cash advances. Interest (finance) charges are calculated by multiplying MCC's prevailing periodic daily interest percentage rate (MCC's annual interest percentage rate divided by 365) by the amount of the unpaid balance and by the number of applicable days. Interest charges are made to the account on the last day of each calendar month and at such other times as there is activity in the account. Activity in the account is any change in the unpaid balance (debit or credit) and any transaction involving borrowed commodities. The interest rate charged by MCC on cash advances will be a variable rate over the prime rate, but will not exceed the prime rate by more than 5% per annum. The term "prime rate" means the current prime rate as correctly published in the Western Edition of the Wall Street Journal. MCC may change its interest rate at any time.

Interest rates in effect are stated by MCC on Borrower's Monthly Statement and in other documents used by MCC from time to time to notify Borrower of such rates.

Any account balance due may be prepaid in full by Borrower at any time without penalty.

Interest charges on a cash advance that is remitted to Borrower commences at the time Borrower's account is debited. Interest on a cash advance that is remitted to Monex Deposit Company ("MDC") on behalf of Borrower for payment towards a purchase commences on the day of such purchase.

If any interest charges under this Agreement are determined by a trier of fact of competent jurisdiction to exceed those allowable under applicable law, such charges shall be reduced to the legal maximum.

Borrower represents that all cash advances by MCC to Borrower will be used for the purchase of commodities for investment or for other commercial purposes and not for any personal, family, household or other consumer purposes.

Borrowing Commodities: When borrowing commodities from MCC, a lease fee is charged or credited to Borrower's account. Lease charges or credits are calculated by multiplying MCC's prevailing daily lease percentage rate for the commodity borrowed (MCC's prevailing annual lease percentage rate for the commodity borrowed divided by 365) by the value of the commodity borrowed and by the number of days the commodity is borrowed. The value of the commodity for this purpose is the bid price as quoted by MDC at the time the commodity is borrowed.

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The lease rates quoted by MCC are net rates that MCC establishes upon its analysis of the commodity markets and its consideration of any offsetting value of cash security deposits. The lease rates quoted by MCC are not tied to and may differ from lease rates quoted by other dealers and organizations. Lease rates are subject to rapid change, vary for each commodity borrowed, and can be zero, positive (earned) or negative (charged). Lease rates are variable and may be changed by MCC at any time and are not subject to limits. Commercial dealer to dealer precious metal lease rates are published by Bloomberg LP, New York, NY. MCC lease rates in effect are stated on Borrower's Monthly Statement.

On the last day of every month, any unpaid lease charges for that month shall be debited to Borrower's account. Such debit will reduce Borrower's equity.

Borrower may return commodities borrowed from MCC at any time without penalty.

Borrower represents that all borrowing of commodities by Borrower from MCC is for investment or other commercial purposes and not for any personal, family, household or other consumer purposes.

- 2 **Borrower's Authorization.** Cash advances and borrowing of commodities may be obtained from MCC at the oral or written request of any Borrower under this Agreement or by MDC for or on the specific authorization of Borrower. Each such party is authorized to request cash advances and borrow commodities and direct disposition thereof until written notice of the revocation of such authority is received by MCC.

Any such advance or borrowing shall be conclusively presumed to have been made to or for the benefit of Borrower when made in accordance with such requested directions and when said advance is paid or sale of borrowed commodity is made on behalf of Borrower to MDC.

Cash advances will be made pursuant to Section 22650 of the California Financial Code, to the extent that section is applicable. Borrower hereby waives diligence, presentment, protest, demand and notice of every kind and (to the full extent permitted by law) the right to plead any statute of limitations as a defense to any demand hereunder or in connection with any security herefor.

- 3 **Borrower's Equity Obligations.** Borrower agrees to keep Borrower's obligations at all times fully secured, to the satisfaction of MCC, and to make additional cash payments on Borrower's account or deposit additional property or commodity as security, should the value of the security for such obligations at any time suffer a decline or for any reason be at any time insufficient to secure such obligations to the satisfaction of MCC. Borrowing of commodities must be secured by cash or commodity deposits, the value of which at all times exceed the prevailing market value of the commodities borrowed by Borrower.

Investment in commodities on credit and the borrowing of commodities involve a high degree of risk. Borrower anticipates being called upon from time to time by MCC to reduce Borrower's outstanding loan balance, and to deposit additional funds as security for borrowed commodities. In the case of a cash advance, if such a request is not responded to with the designated payment within the time specified (which may be as short as 24 hours), the property pledged as security may be sold by MCC and the proceeds applied to the repayment of amounts owed to it. Similarly, in the case of a borrowed commodity, if the request for an increase in Borrower's security deposit is not met within the time specified (which may be as short as 24 hours), MCC may purchase the commodities borrowed using the funds deposited with MCC to secure such borrowing to satisfy Borrower's obligations to MCC. MCC also has the right to effect such a sale or purchase without making, or before the deadline for response to, a request for the reduction of the outstanding balance due MCC or an increase in Borrower's security deposit, if at any time MCC deems the collateral securing the obligations of Borrower to MCC to be inadequate. This will most frequently occur due to changes in the market value of the subject commodities.

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- 4 **Payment.** Borrower payments to MCC may be made by cashier's check drawn on a commercial bank, personal check or bank wire. Borrower payments which are not bank wires will be deemed "hold funds" for delivery purposes, other than to Bank, for 12 business days after receipt by MCC. MCC may reduce the 12-day holding period on a check upon receipt of a written guarantee of payment from the issuing bank. Borrower acknowledges that funds received by MCC from Borrower will be credited to Borrower's account at 5:00 p.m. Pacific Coast Time, on the day of receipt.

- 5 **Collection Costs.** Borrower promises to pay all costs of collection, including reasonable attorneys' fees, incurred in the collection of amounts due under this Agreement.

- 6 **Security Interest.** In consideration of any accommodation given to Borrower by MCC, and as security for the satisfaction of all obligations now or hereafter existing, including any assigned to MCC by MDC, of Borrower or any one or more of them to MCC (the "Indebtedness"), Borrower hereby grants to MCC a security interest in: (a) all commodities belonging to Borrower and held for Borrower by Farmers and Merchants Bank of Long Beach, California, HSBC Bank USA, New York, NY, or any other bailee or bailees substituted by MCC (such bailees are hereinafter referred to individually and collectively as "Bank"), either directly or in other depositories; (b) all commodities or contractual rights in which Borrower has an interest which shall hereafter be delivered to or come into the possession, custody or control of Bank, MDC or MCC in any manner or for any purpose; (c) all cash deposited with MCC or MDC by or for Borrower; and (d) all accounts and debts of Borrower derived from Borrower's transactions with MCC. Bank may hold all or any part of such property (the "Collateral") in, or transfer or deliver such property to, any vault owned by Bank or any vault or facility rented or otherwise used by Bank, provided that any such vault or facility used is identified herein or identified to the Borrower in writing at least 30 days prior to such use. In addition to Bank's own vaults, Bank is now using or may use the following facilities for such purposes: (1) Delaware Depository Service Company, LLC, Wilmington, DE; (2) Brooks Armored Car Service, Wilmington, DE; (3) Brinks Incorporated, Los Angeles, CA; and (4) any depository approved by Commodity Exchange, Inc., the Chicago Board of Trade, or the New York Mercantile Exchange for the storage of precious metals.

Borrower may take personal possession of commodities held as security upon full payment of the loan balance and any applicable storage and delivery charges.

- 7 **Passage of Title.** Commodities transferred to Bank for Borrower will be delivered as an undivided share of a fungible lot and held in safekeeping on a fungible basis with the commodities of other Bank customers. Upon delivery of commodities for Borrower to Bank, Borrower will receive title to an undivided share of the commodities so held by Bank. Title to commodities sold by Borrower to MDC is transferred to MDC at the time of sale. Title to commodities borrowed by Borrower passes to Borrower upon delivery to or on behalf of Borrower.

- 8 **Risk of Decline in Value of Commodities.** Borrower acknowledges that all risks of decline in the value of Borrower's commodities held by the Bank are Borrower's and not those of Bank or MCC.

- 9 **Service, Shipping and Handling Charges.** A monthly service charge is imposed on Borrower's account on the last day of each month based on the units of commodities in Borrower's account at that time. The monthly service charge per unit is currently \$2.50 for gold, \$3.50 for platinum, palladium and 40% U.S. silver coins, \$4.50 for silver and \$8.00 for gold kilo bars.

Shipping and handling charges apply upon personal delivery of commodities to Borrower. However, such charges do not apply to commodities delivered to or received from Bank for the benefit of Borrower. Borrower may arrange for pick-up of his or her commodities. Shipment of commodities to Borrower's order generally will be made by registered mail. Shipping charges will vary depending on weight, value, destination, and method of shipment. The charge is a \$15 per transaction plus \$1 per ounce of metal

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delivered for all gold, platinum and palladium products. The charge is \$85 per 1,000 ounce silver bar and \$75 per bag of 90% or 40% U.S. silver coins. Other silver bullion coins or ingots are \$15 per transaction plus \$5 per 100 ounces. There is a handling charge per unit delivered to or received from Borrower of \$75 for gold and platinum bullion, \$100 for palladium bullion and \$25 for silver bullion. Additional handling fees shall be charged on all shipments to Canada. Borrower may request to take delivery of ten 100 ounce silver bars, if available, on a 1,000 ounce silver bullion purchase. Borrower shall pay a premium for such substituted bars as quoted by MDC at the time of delivery.

A Borrower mailing or shipping commodities to MCC bears all risks of loss or non-delivery until the shipment is received and accepted by MCC. A Borrower wishing to make delivery to MCC, except on demand by MCC, is required to give at least 3 day's advance notice and make delivery to MDC's designated facility.

Borrower may arrange for pick-up of Borrower's commodities from a designated pick-up vault facility. Currently such facility is Brinks, Inc., 1120 W. Venice Blvd., Los Angeles, CA. MCC must be advised at least 24 hours in advance for pick-up of Borrower commodities. MCC will make all appointments and arrangements for pick-up by Borrower with the appropriate facility. Borrower must satisfy all payments due MCC and MDC before pick-up. All communications to arrange a pick-up must be made with MCC and not with the vault facility.

MCC reserves the right to change prospectively at any time and at its sole discretion any of its service, shipping or handling fees.

- 10 **Protection of Security Interest.** Borrower authorizes MCC to take any actions it believes necessary to protect or preserve its security interest in the Collateral. MCC may file this Agreement and such other documents as MCC may request (which Borrower agrees to provide upon such request) with the appropriate authorities in order to perfect MCC's security interest under this Agreement. Until the indebtedness is repaid in full, Borrower shall not sell, encumber or otherwise transfer any interest in the Collateral or permit to exist any encumbrance of any kind on the Collateral other than the security interest of MCC under this Agreement.
- 11 **Attorneys' Fees.** All advances and expenses, including reasonable attorneys' fees, incurred or paid by MCC in exercising any right, power or remedy conferred by this Agreement or in its enforcement, shall become a part of the indebtedness and shall be paid to MCC by Borrower immediately and without demand.
- 12 **Events of Default and Foreclosure.** At the option of MCC and without necessity of demand or notice, all or any part of the indebtedness (including any borrowing of commodities by Borrower) shall immediately become due and payable upon the happening of any of the following events ("Events of Default"): (a) Borrower's failure to meet or perform any of the terms or provisions of this Agreement (including, without limitation, Borrower's default in payment of the unpaid balance of cash advances or interest charges thereon or any indebtedness to MCC when due); (b) Borrower's equity in the Collateral falls below 50% of MCC's prevailing equity call level; or (c) Borrower's indebtedness is not secured to the satisfaction of MCC, at MCC's sole discretion, at any time. **In such event, MCC shall have the right, but not the obligation, to foreclose upon all or any part of the Collateral. Foreclosure may be effected at any time of the day or night, on regular business days or otherwise, without prior notice, even though (1) a demand for additional security or repayment has not been made; (2) such a demand is outstanding and has not yet been met; or (3) Borrower's equity in the Collateral has subsequently risen above MCC's minimum permissible level due to an increase in the value of the Collateral. Borrower agrees to independently monitor the world markets in all precious metals on which Borrower holds loans from MCC and to closely monitor Borrower's equity in the Collateral to reduce the likelihood of foreclosure. Borrower acknowledges the increased risk of foreclosure if Borrower fails to do so. Borrower also agrees that funds received from Borrower by**

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MCC will be credited to Borrower's account at 5:00 p.m. Pacific Coast Time, on the day of receipt. MCC reserves the right to change its equity call level at its sole discretion at any time.

- 13 **Rights and Remedies.** In the event of Borrower's failure to satisfy any indebtedness when due, or upon the happening of any Event of Default as previously specified, or upon demand by Bank, MCC may, at any time, at its election, apply, set off, collect or sell, in one or more sales, with or without any previous demands, notice or advertisement, the whole or any part of the Collateral, in such order as MCC may elect, and purchase any commodities borrowed by Borrower with the funds deposited to secure such borrowings. Any such sale or purchase may be made either at public or private sale at MCC's place of business or elsewhere, either for cash or upon credit or for future delivery, at such price as MCC may deem fair, and MCC may be a bidder on or the purchaser of any or all Collateral so sold, whether at public or private sale, and hold the same thereafter in its own right free from any claim of Borrower or right of redemption. In such circumstances, MCC is also entitled to take possession and control of any proceeds resulting from the sale or other disposition of any of the Collateral. Borrower hereby appoints MCC its Attorney-in-Fact to make any transfer of the Collateral permitted by this Agreement and to deliver all instruments to accomplish such transfer. Bank may act upon instructions from MCC concerning the sale or other disposition of the Collateral. Borrower agrees to indemnify Bank from any liability to Borrower for actions taken by Bank in conformity with such instructions. Borrower agrees that the commodities comprising the Collateral or borrowed by Borrower may decline or increase speedily in value and are of the type customarily sold on a recognized market and that MCC may treat and deal with such commodities in any fashion it deems appropriate, in its absolute discretion, to preserve such commodities or their value. Any sale hereunder may be conducted by any officer or agent of MCC.
- 14 **Waiver.** Borrower waives any right to require MCC to (a) proceed against any particular person, (b) proceed against or exhaust any part of the Collateral, or (c) pursue any other remedy in MCC's power prior to or as a condition of proceeding against Borrower or any part of the Collateral. Borrower further waives any defense arising by reason of any disability or other defense of Borrower or any other person. Until all indebtedness shall have been paid or otherwise satisfied in full, Borrower shall have no right of subrogation and waives any benefit and/or any right to participate in any Collateral or security whatsoever now or hereafter held by MCC. Borrower authorizes MCC without notice of demand and without affecting Borrower's liability hereunder or on the indebtedness to: (a) change the time for payment or otherwise change the terms of the indebtedness, or any part thereof, including the rate of interest thereon; (b) take and hold security, other than the Collateral, for the payment of the indebtedness or any part thereof, and exchange, enforce, waive and release the Collateral, or any part thereof, or any such security, and; (c) release or substitute Borrower, or any endorser or guarantor of the indebtedness, or any part thereof.
- 15 **Release of Collateral.** MCC may at any time release all or part of the Collateral to any Borrower. MCC shall be discharged from any liability for the Collateral so delivered.
- 16 **Deficiency of Collateral; Recourse Against Separate Property.** Borrower shall be jointly and severally liable to MCC for any deficiency remaining after the Collateral is exhausted and expressly agrees that recourse may be had against Borrower's separate property for all of the indebtedness.
- 17 **Borrower Acknowledgment:**
- Borrower has read and understands this Agreement and is aware of the nature and extent of Borrower's rights and the risks involved under this Agreement.

Borrower's Account with MCC is self-directed. This means Borrower makes and is responsible for all decisions for his or her account. If Borrower ever believes that a loan transaction has been entered for Borrower's account with

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MCC that has not been authorized by Borrower, or that a transaction has been accepted by MCC for Borrower's Account and has not been executed by MCC, Borrower will immediately notify Borrower's MDC Account Representative's supervisor or MCC's Compliance Department by phone at (949) 752-1400 or (800) 949-4653 and immediately confirm such notification in writing to MCC at 4910 Birch Street, Newport Beach, California 92660. If Borrower fails to make such notification by the tenth business day following the date on which the event first became known to Borrower, Borrower waives all right to contest such transaction or omission and Borrower's account will stand, as is, as of the end of such business day.

Transactions subject to this Agreement are financing and commodity borrowing transactions with MCC and are not subject to regulation by the Commodity Futures Trading Commission or the National Futures Association. MCC is not a fiduciary and does not owe Borrower any fiduciary duty.

In purchases of commodities on credit or borrowing commodities, it is possible for the Borrower to lose substantially more than the amount of the payments or deposits Borrower has made. Borrowing money to acquire commodities increases the risk of the investment.

At times, Borrower may be called upon to deposit substantial additional collateral with MCC to secure the obligations of Borrower to MCC. It is possible for some or all of the Collateral in Borrower's account to be foreclosed upon without prior notice to Borrower.

MCC will rely upon instructions and orders given by Borrower over the telephone. It is the practice of the industry that such orders and instructions are binding.

In times of highly volatile markets, MCC phone lines may be busy due to the volume of calls. It is also possible for telephone lines to fail for reasons beyond MDC's control. Because of this, Borrower is advised and will be responsible to have alternative methods to communicate with MCC (e.g., telegraph, courier messenger service, etc.) should it become necessary to do so.

It is Borrower's responsibility to monitor Borrower's account and to stay in touch with MCC concerning the account. Do not wait to be contacted.

Representations that Borrower will be notified or that Borrower's collateral will be liquidated or that commodity will be bought to satisfy Borrower's borrowed commodity obligations, at particular commodity price levels, are not authorized by MCC and may not be relied upon.

Important information about the owning of a specific commodity (collateral) against which Borrower has borrowed funds while Borrower concurrently owes commodity which Borrower has borrowed and has an obligation to deliver, (sometimes called a hedge). Hedges can be in the same (like-to-like) or different (cross product) commodities:

a. While in place, changes in the market value of the commodity Borrower owes will (in a like-to-like hedge) or may (in a cross-product hedge) be offset by changes in the market value of the commodity Borrower owns. Borrower will, however, incur interest (finance) charges, lease fees and service fees and be subject to calls for additional collateral and the possibility of foreclosure upon some or all of the collateral in Borrower's account.

b. Prior to entering into a hedge of the same commodity, Borrower should seriously consider the alternatives of doing nothing or liquidating Borrower's existing position.

c. Borrower may satisfy Borrower's obligation to deliver the commodities borrowed with an equal quantity of the identical commodity that Borrower already owns without any handling and delivery charges or any additional commission or spread costs.

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d. Entering into a hedge in the same commodity is probably in Borrower's economic interest only if Borrower believes the market will move against Borrower's existing position, and Borrower does not wish to close out the position and realize Borrower's existing gains or losses; or in the case of a different commodity, if Borrower believes that changes in the market values of the two commodities relative to one another will be to Borrower's benefit.

Any interest earned on funds deposited with MCC to secure borrowing of commodities by Borrower shall inure to the benefit of MCC. While MCC may, at its sole discretion, pass through a portion of such interest to Borrower, Borrower acknowledges that MCC has no obligation to do so.

If, at any time, Borrower finances the purchase of commodities through MCC and Borrower concurrently borrows commodities from MCC, any funds or commodities received by MCC as payment or security in Borrower's MCC account shall first be applied to any outstanding balance for commodities financed and only upon satisfaction of such balance as security for the commodities borrowed.

If you have any questions, need any information or wish to borrow or return commodities, call your Account Representative immediately. If he or she is not available, call his or her Back-Up Account Representative or Sales Director.

18 Utilizing Other Dealers. If at any time, Borrower wishes to sell Borrower's commodities to a person or dealer other than MDC, MCC will, upon written or verbal request from Borrower, confirm to such person or dealer the quantity and description of the commodities held by Bank for Borrower and Borrower's unpaid balance owing to MCC. Should Borrower wish to sell Borrower's commodities to someone other than MDC without first paying Borrower's unpaid balance in full and taking personal delivery of the commodities, the following requirements must first be met: (1) Borrower must send a signed and notarized statement directing the transfer of Borrower's commodities to such person; (2) if the commodities are to be delivered to such person, the unpaid balance in Borrower's account plus any applicable delivery charges must be paid to MCC in full; (3) if the commodities are to be left on deposit at Bank, such person must send a written statement to MCC accepting transfer of Customer's commodities and submit a properly executed MDC Purchase and Sale Agreement and MCC Loan, Security and Storage Agreement to MDC and MCC. Upon fulfillment of these conditions, as appropriate, transfer of title of Borrower's commodities will be directed to the third party. This service offers Borrower the opportunity to sell Borrower's commodities to another buyer during times when MDC is not making a market or when the price offered by another buyer is more attractive to Borrower than MDC's price.

If, at any time, Borrower wishes to return commodities which Borrower has borrowed from MCC and plans to purchase such commodities from a person or dealer other than MDC, MCC will upon written or verbal request from Borrower, confirm to such person or dealer the quantity and description of the commodities owed MCC and the amount of Borrower's security deposit. MCC will, upon written authorization from Borrower, remit to such person or dealer all or any portion of the security deposit in Borrower's account following receipt of the borrowed commodities by MCC. This service offers the Borrower who does not have possession of the borrowed commodity the opportunity to purchase such commodity from any source the Borrower deems most favorable.

19 Assignment. This Agreement inures to the benefit of MCC and its successors and assigns. Upon transfer of all or any part of the indebtedness, MCC may transfer its security interest in all or any part of the Collateral and shall be fully discharged from all liability with respect to the Collateral so transferred, and the transferee shall be vested with all the rights and powers of MCC with respect to such Collateral. Borrower may not assert against any such transferee any claim or defense Borrower has against MCC. MCC may, at any time, without notice to Borrower, assign all or any part of its rights and privileges

- 23 under this Agreement to another party ("Lender") in exchange for financing. In the event MCC assigns its security interest under this Agreement in Borrower's Collateral to Lender, Borrower agrees that Lender may, at any time, at its election and sole discretion, without notice or demand to Borrower, sell, apply, set off or otherwise liquidate the Collateral. Borrower further agrees to hold Lender harmless from any claims asserted by Borrower arising out of any such sale, liquidation or set off of the Collateral by Lender. Borrower may not delegate or assign any obligations or rights hereunder without the prior written consent of a duly authorized officer of MCC, and any attempt at such delegation or assignment without such consent shall be void.
- 20 **Continuing Agreement.** This is a continuing agreement and all the rights, powers, and remedies hereunder shall apply to all past, present and future indebtedness of Borrower to MCC. This Agreement may be revoked only upon written notice to MCC given by each Borrower signing this Agreement and then only if at that time there is no indebtedness outstanding.
- 21 **Cumulative Rights.** The rights, powers and remedies given to MCC by this Agreement are cumulative and not exclusive of any other rights, powers and remedies MCC may otherwise have. All rights, powers and remedies given to MCC by virtue of the California Commercial Code or any other law of California or any other jurisdiction shall also be available to MCC. No forbearance, failure or delay by MCC in exercising any right, power or remedy under this Agreement shall be deemed to be a waiver thereof, or of any other right, power or remedy hereunder; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other further exercise thereof or of any other right, power or remedy hereunder. Each right, power and remedy of MCC hereunder shall continue in full force and effect until specifically waived in writing by MCC.
- 22 **Joint and Several Obligations.** All words used herein in the singular shall be deemed to have been used in the plural, and vice versa, as appropriate, and the obligations and undertakings of Borrower hereunder shall be joint and several. Neither the discharge of any Borrower for any reason other than payment or other satisfaction in full of all indebtedness, nor any extension, forbearance, change in the annual percentage interest rate, or acceptance, release or substitution of Collateral or any impairment of MCC's rights, powers or remedies against one Borrower shall affect the liability or obligations of any other Borrower hereunder. Each Borrower waives any right to require MCC to proceed against one Borrower before any other.
- 23 **Notices.** All communications required or permitted hereunder shall be sent to MCC at 4910 Birch Street, Newport Beach, CA 92660, and to Borrower at the address set forth below his name on the Purchase and Sale Agreement between Borrower and MCC, or such other address subsequently provided to MCC by Borrower in writing. All communications from MCC to Borrower by mail shall be effective 48 hours after deposit in the United States mail, postage prepaid, or upon receipt, whichever is earlier; if hand delivered, when delivered to Borrower's address; if telephonic, at the time of such phone conversation or facsimile transmission; or if by e-mail, on the day of transmission.
- 24 **Force Majeure.** In the event of adverse conditions in the market place or other factors beyond the control of MCC, including, but not limited to, acts of God, national emergencies, or adverse governmental actions, or suspension of trading of silver, gold, platinum or palladium futures contracts by U.S. commodity exchanges, the maximum time for delivery of a Borrower's commodities may be extended during the period of such circumstances and for a reasonable time thereafter. Also, in such instances, MCC may liquidate collateral, or purchase commodities in the case of a borrowed commodity without prior notice if it deems the collateral securing borrower's obligations under this Agreement to be inadequate. MCC will not be responsible for delays or failures in the transmission, receipt or execution of orders, payments, or information due to the incapacity or failure of computer, transmission or communication facilities which are beyond the control of MCC.
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- 25 **Entire Agreement.** This Agreement constitutes the entire and whole Agreement among its parties and is intended as a complete and exclusive statement of the terms of their agreement. This Agreement may be amended only upon execution of a subsequent written agreement between the parties or upon Borrower's failure to object, within 10 days, to modifications contained in written material sent to Borrower by MCC. This Agreement shall supersede any oral representations between the parties.
- 26 **Individual Authority of Customer.** Any party signing this Agreement as Borrower is authorized to deal fully with the account opened hereunder. Any action taken by any such party shall be binding on all parties with an interest in that account. Each such party shall hold MCC harmless for relying hereon. All obligations of Borrower under this Agreement are joint and several.
- 27 **Electronic Recordation.** Borrower agrees that MCC may monitor and may electronically record any conversation between MCC, its employees or agents and Borrower or his or her agents.
- 28 **Bank Indemnification.** Borrower agrees that Bank may act upon any instructions from MCC concerning delivery, transfer, sale or disposition of commodities held by Bank on Borrower's behalf. Borrower further agrees to indemnify Bank from any liability to Borrower for actions taken by Bank in conformity with such instructions.
- 29 **Governing Law.** This Agreement is entered into in accordance with and shall be governed by the laws of the State of California; provided that, if any California law shall dictate that the laws of another jurisdiction be applied in any proceeding, such California law shall be superseded by this paragraph and the remaining California laws shall nonetheless be applied in such proceeding.
- 30 **California Contract.** The formation of this Agreement constitutes the making of a contract in Orange County, California, notwithstanding the manner, timing or location of the delivery or receipt of the acceptance of this Agreement by either party hereto. The making of this contract will cause the following events, among others, to occur in Orange County, California: the solicitation and negotiation of this contract will have taken place and have been completed in Orange County, California; the contract will be executed in Orange County, California; MCC is located in Orange County, California; all deposits and payments made by Borrower will be delivered to and paid in Orange County, California; all cash advances and borrowed commodities transactions made by MCC will be made from and paid in Orange County, California; and statements of Borrower's account will be generated in and transmitted from Orange County, California. Borrower and MCC agree that Orange County, California is a mutually and reasonably convenient place for the filing of any action and for any hearing concerning disputes relating to Customer's transactions with MCC or to this Agreement.
- 31 **Arbitration**
- 31.1 **Arbitration of Claims.** The parties agree that any and all disputes, claims or controversies arising out of or relating to any transaction between them or to the breach, termination, enforcement, interpretation or validity of this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be subject to the terms of the Federal Arbitration Act and shall be submitted to final and binding arbitration before JAMS, or its successor, in Orange County, California, in accordance with the laws of the State of California for agreements made in and to be performed in California. The parties also agree that this Agreement and the transactions entered into pursuant to it are commercial in nature (i.e., for investment) and do not involve consumer transactions (i.e., transactions entered into for personal, family or household purposes) under JAMS rules, or otherwise.
- 31.2 **Additional Participants in this Agreement to Arbitrate.** All partners of MCC and their officers and directors, and all employees, representatives, agents and affiliates of MCC, past,

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present or future, are beneficiaries of, and participants in, this arbitration agreement. They will have the same rights and obligations under this arbitration agreement as the parties, to the extent they are named as respondents in any dispute, claim or controversy subject to or arising from this Agreement, or could have been so named.

31.3 Initiation of Arbitration. Any party may commence the arbitration process by filing a written demand for arbitration with the JAMS office in Orange County, California, with a copy to the other party(ies).

31.4 Arbitration Rules. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the provisions of JAMS Comprehensive Arbitration Rules and Procedures in effect at the time of filing the demand for arbitration (the "JAMS Rules"). The JAMS Rules shall apply regardless of the amount of the claims or cross claims in the proceeding. Discovery may be taken by the parties only in the manner prescribed by the JAMS Rules. In the discretion of the arbitrator(s), pre-arbitration conferences and hearings may be telephonic.

Borrower can find the JAMS Rules on JAMS' Internet web site: www.jamsadr.com. Borrower can also obtain a copy of the JAMS Rules and information concerning JAMS' administrative and arbitrator fees by calling JAMS national toll free number at 800-352-5267.

31.5 Arbitrators. The parties agree that the number, selection and replacement of arbitrators shall be in accordance with the JAMS Rules, except that: i) each arbitrator shall be a retired judge of either the California Superior Court or a United States District Court located in California, and ii) any party may require a panel of three neutral arbitrators.

31.6 Decision of the Arbitrator(s). Subject only to a party's right to a JAMS appeal under Subsection 31.7 below, the arbitration shall be final, conclusive and binding on the parties and the award of the arbitrator(s) shall be enforceable in any court of competent jurisdiction.

31.7 Right to Appeal. A final decision by one arbitrator may be appealed to JAMS by any party. A final decision by a three-arbitrator panel is final and may not be appealed. Appeals to JAMS shall be subject to the following rules and procedures:

a. The appeal panel will consist of three neutral arbitrators selected in the same manner and subject to the same requirements as an initial tripartite panel under Subsection 31.5 above.

b. The procedure for filing and arguing an appeal is as follows:

(i) Any party may appeal a final arbitration award issued by one arbitrator. The appeal must be served, in writing, on JAMS and on the opposing party within 14 calendar days after the award becomes final. The appealing party must specify in writing those parts of the award being appealed and must contain a brief statement of the appeal.

(ii) Within 7 calendar days of the service of the appeal, the opposing party may serve on JAMS and on the opposing party a cross-appeal from any part of the award. The written cross-appeal must specify those parts of the award that the party is cross appealing and must contain a brief statement of the basis for the cross-appeal.

(iii) The record on appeal will consist of the stenographic or other record of the arbitration hearing and all exhibits, deposition transcripts and affidavits that the arbitrator has accepted into the record. The parties will cooperate with JAMS in compiling the appellate record. No evidence not previously accepted by the arbitrator will be considered by the appellate arbitrators, unless the basis of the appeal is non-acceptance by the arbitrator of certain evidence or unless the appellate arbitrators determine that there is good cause to re-open the record pursuant to the applicable JAMS arbitration rules.

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(iv) The parties may elect to rely on the memoranda or briefs previously submitted to the arbitrators. In the absence of such election, JAMS will obtain the agreement of the parties on a briefing schedule. If no agreement is reached, JAMS will set the briefing schedule. Ordinarily, according to JAMS rules, only opening briefs (of no more than 25 double-spaced pages) will be allowed. The briefs may be in the form of a letter.

(v) The appellate arbitrators will hear oral argument if a party requests such argument. If there is to be oral argument, JAMS will obtain the agreement of the parties on both the date of such argument and the duration, including the allocation of argument time between the parties. In the absence of agreement, the appellate arbitrators will set the date and duration of the oral argument, including the allocation of time.

c. Once a party has filed an appeal, JAMS will no longer consider the arbitration award final.

d. The appellate arbitrators will apply the same standard of review that the first level appellate court in the jurisdiction would apply to an appeal from the trial court decision, were the dispute being heard in state court instead of JAMS. The appellate arbitrators will respect the evidentiary standard set forth in Rule 22(c) of the JAMS Rules. The appellate arbitrators may affirm, reverse or modify an award.

The appellate arbitrators may not remand to the original arbitrator, but may re-open the record in order to review any evidence that had been improperly excluded by the arbitrator or any evidence that is now necessary in light of the appellate arbitrators' interpretation of the relevant substantive law. The appellate arbitrators, absent good cause for an extension, will issue the decision within 21 calendar days of the date of either oral argument, the receipt of the new evidence or receipt of the record and of all briefs, whichever is applicable or later. The appeal panel will make its decision by majority vote. The appellate arbitrators' decision will consist of a concise written explanation, unless the parties all agree otherwise.

e. If a party refuses to participate in the appeal, the appellate arbitrators will maintain jurisdiction over the appeal and will consider the appeal as if all parties were participating, including retaining the authority to modify any award or element of an award that had previously been entered in favor of the non-participating party, assuming the arbitrators believe that the record, after application of the appropriate standard of appeal, justifies such action.

f. After the appellate arbitrators have rendered a decision, JAMS will issue the decision by serving copies on the parties. Service will be deemed effective five 5 calendar days after deposit in the U.S. Mail. Upon service of the appellate decision, the award will be final for purposes of judicial review.

31.8 No Waiver of Any Right to Provisional or Injunctive Relief. Nothing contained in this Agreement shall in any way deprive a party of its right to obtain provisional, injunctive, or other equitable relief from a court of competent jurisdiction, pending dispute resolution and arbitration. For purposes of any proceeding for provisional, injunctive or other equitable relief, the parties consent to the jurisdiction of, and venue in, the courts of the State of California and the United States District Court, located in Orange County, California.

31.9 No Consolidation or Class Actions.

a. Disputes and controversies between the party-signatories to this specific Agreement between MCC and Borrower (as such agreement may be amended from time to time) shall not be joined or consolidated with the disputes or controversies of any customer of MCC that is not a party-signatory to this specific Agreement. Borrower may not assert claims on behalf of a class or group of persons. Borrower acknowledges that there are court decisions in federal and state courts that under certain circumstances deny enforcement of arbitration provisions that prohibit consolidation of claims and class actions. By signing

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this Agreement, Borrower is waiving (i.e., giving up) the right to make any such argument in opposition to the enforcement of the parties' arbitration agreement contained in Section 31 and this Subsection 31.9a.'s preclusion of consolidated claims and class actions.

b. Should a court of competent jurisdiction issue a final decision denying the enforceability of Subsection 31.9a. and permitting Borrower to pursue a consolidated action or class action with or on behalf of other Borrowers, the parties agree that the court shall sever Subsection 31.9a.1 from this Agreement and enforce the remainder. In such circumstance, the parties further agree that all subsequent matters related to such case, including but not limited to, issues of class representation, class certification, class notice and to a decision on the merits shall be determined in arbitration before JAMS pursuant to JAMS Class Action Procedures then in effect, and by an arbitration panel of three arbitrators selected in accordance with the provisions of Subsection 31.5 of this Agreement.

31.10 Allocation of Costs.

a. **Basic Arbitration Costs.** Each side (i.e., claimant(s) on the one hand and respondent(s) on the other) agrees that it will share equally in the basic arbitration costs, including administrative fees and the fees of the arbitrator, if only one arbitrator is used. If a three arbitrator panel is required by any party, each side shall share equally in JAMS' administrative fees, but the party requiring the panel shall pay all arbitrator fees.

b. **Costs of Appeal.** The side appealing an arbitrator's award shall be responsible for all costs of the appeal, including the fees of the appellate arbitrators. If both sides appeal, all appellate costs shall be split equally between them.

c. **Class Actions.** Notwithstanding the foregoing, if Borrower brings a consolidated action or class action which a court permits to proceed in spite of the provisions of Subsection 31.9a. hereof, the parties agree that each side will share equally all JAMS administrative and arbitrators' fees associated with such arbitration.

31.11 **Available Damages and Remedies.** The parties agree that the damages available to any party bringing an action under this Agreement shall be limited to any actual contract damages and tort damages incurred by the party and proximately caused by and resulting from the other party's alleged breach. This paragraph states the exclusive damage remedies available to the parties. In all matters, each party shall be responsible for his, her or its own attorneys fees.

31.12 **Waiver of Litigation Rights and Jury Trial.** By signing this Agreement, each party to this Agreement is agreeing to have all claims, disputes and controversies arising out of, or relating to, Borrower's transactions with MCC or to this Agreement decided by arbitration and is giving up any right to have such claims, controversies and disputes determined in a court of law by a judge or by a jury, except that court-ordered injunctive relief may be available as set forth above. By signing this Agreement, each party is similarly giving up his, her or its rights to appeal, unless expressly provided for herein. If any party refuses to abide by the terms of this Agreement such party may be compelled to comply with its terms.

31.13 **Voluntary Agreement; Revocation.** Each party's agreement to arbitrate is voluntary. Borrower may revoke Borrower's agreement to arbitrate under Section 31 by written notice delivered to MCC at 4910 Birch Street, Newport Beach, California within 30 days of Borrower's first transaction with MDC or MCC.

32 **Severability.** In the event that any provision of this Agreement shall be determined by a trier of fact of competent jurisdiction to be unenforceable in any jurisdiction, such provision shall be unenforceable in that jurisdiction and the remainder of this Agreement shall remain binding upon the parties as if such provision was not contained herein. The enforceability of such provision shall otherwise be unaffected and remain enforceable in all other jurisdictions.

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33 **Obligations Due in U.S. Currency.** Borrower shall pay all monetary obligations owing under this Agreement in the currency of the United States of America.

34 **Tax Treatment.** MCC does not offer advice on the tax treatment of the various fees paid or charged or the profits or losses relative to transactions and holdings in an Atlas Account. Borrower must consult with his or her personal tax advisor with respect to such matters.

35 **Notification of Statement Errors:** If you think your account statement contains an error, or if you need more information about a transaction on your statement, write MCC's Compliance Department, giving the following information: the amount of the suspected error, and a description of the error and an explanation of why you believe there is an error. If you need more information, describe the item you believe is erroneous. In order for you to preserve your rights, MCC must hear from you in writing no later than 60 days after it sent you the first statement on which the error or problem appeared. MCC will acknowledge your letter within 30 days, unless it has corrected the error by then. Within 90 days, MCC will either correct the error or explain why it believes the statement is correct. You do not have to pay any amount in question while MCC is investigating, but you are still obligated to pay the other parts of your statement that are not in question. While MCC investigates your question, it will continue to charge your account for the amount in question, including finance charges, but it will not take action to collect the amount in question. If MCC finds that it has made a mistake on your statement, you will not have to pay any interest charges relative to the questioned amount. If MCC did not make a mistake, you are obligated to pay all amounts charged to your account when due.

36 AS BORROWER, I REAFFIRM MY UNDERSTANDING AND ACKNOWLEDGE THAT:

a. I am of legal age and legally competent to enter into this Agreement.

b. All loans of funds and commodities I receive from MCC shall be for investment or other commercial purposes and not for any personal, family, household or other consumer purposes. (See Sec. 1)

c. Purchasing commodities on credit and the borrowing of commodities involve a high degree of risk. (See Sec. 3)

d. I must maintain equity in my account at or above the allowable minimum. I anticipate being called upon by MCC to restore equity in my account. If I do not meet an equity call within the time required, MCC may foreclose upon the collateral which I have pledged as security. (See Sec. 3)

e. All risks of decline in the value of my commodities held by the Bank are mine and not those of Bank or MCC. (See Sec. 8)

f. If at any time the equity in my account falls below 50% of MCC's minimum permissible level, MCC has the right, but not the obligation, to foreclose upon my collateral without prior notice even if an equity call is in effect. (See Sec. 12)

g. In purchasing commodities on credit or borrowing commodities it is possible for me to lose substantially more than the amount of payments or deposits I have made. I understand that I will lose money unless the value of the commodities I purchase or borrow moves sufficiently in price to compensate me for commissions, bid/ask spreads, service charges, interest (finance) charges and lease charges. (See Sec. 17)

h. While in a hedge transaction, I will incur interest, lease charges and service fees and be subject to calls for additional collateral and the possibility of foreclosure upon some or all of the collateral in my account. Entering into a hedge in the same commodity is in my interest only if I believe market prices will move against my existing

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position and I do not wish to close that position and realize my gains or losses. Entering into a hedge in different commodities is in my interest only if I believe that price changes in the market values of the commodities relative to one another will be sufficient to exceed the transaction costs of entering into and maintaining the hedge. (See Sec. 17)

i. I understand there are no assurances or guarantees by MCC or its representatives as to the future value of the commodities I purchase, borrow or sell.

j. If I believe that a transaction has not been authorized by me, or has not been executed by MCC as I directed, I will immediately notify MCC's Compliance Department. I waive all rights to contest such transaction or omission if I fail to make such notification within ten (10) business days after such event first becomes known to me. (See Sec. 17)

k. I am solely responsible for all purchasing, selling and borrowing decisions for my account. (See Sec. 17)

l. MCC may monitor and electronically record any conversations between me or my agents and MCC, its employees or agents. (See Sec. 27)

m. By signing this Agreement, I authorize MCC and its representatives to call me at any telephone number, and to send me e-mails at any e-mail address, that I have provided to MCC, concerning matters regarding an MCC account and for promotion purposes. Such authorization shall continue until such time as I notify MCC in writing of its revocation or of a change in its terms.

n. I have carefully read and understand the foregoing. I understand that I am agreeing to submit all disputes, claims and controversies arising out of, or relating to, my transactions with MCC or this Agreement to binding arbitration before JAMS, which is a private dispute resolution procedure, as set forth in Section 31 above. I understand that by agreeing thereto, I am also agreeing to pay JAMS administrative fees and arbitrators fees according to the terms of Subsection 31.10 and to give up my rights to a jury trial of any claims. (See Section 31)

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Borrowers Name(s) (Print)	
B	
<input checked="" type="checkbox"/>	Date
Borrower Signature	
<input checked="" type="checkbox"/>	Date
Borrower Signature	

AUTHORIZATION TO TRANSFER FUNDS	
I hereby authorize Monex Deposit Company and Monex Credit Company to transfer excess funds that I hold in any account with either of those companies to any other account that I hold with those companies, without further authorization or notice necessary, to prevent or meet a call for additional collateral, or prevent a default, to pay for, collateralize or finance any cash purchase or borrowed commodity transaction that I have made, or to pay monthly service charges, delivery fees and handling costs in any of my accounts with those companies.	
This authorization shall remain in effect until revoked or modified by the undersigned in writing.	
Customer Name(s) (Print)	
C	
<input checked="" type="checkbox"/>	Date
Customer Signature	
<input checked="" type="checkbox"/>	Date
Customer Signature	

Monex Credit Company - For Official Use Only	
By: _____	
Date	

FORM KK

THE CALIFORNIA COMMISSIONER OF CORPORATIONS DOES NOT EXPRESS ANY OPINION REGARDING THE INVESTMENT ASPECTS OF THE TRANSACTIONS COVERED BY THESE AGREEMENTS. FOR INFORMATION REGARDING THE FINANCING TRANSACTION, CONTACT THE DEPARTMENT OF CORPORATIONS. CASH ADVANCES BY MONEX CREDIT COMPANY ARE MADE PURSUANT TO A CALIFORNIA DEPARTMENT OF CORPORATIONS FINANCE LENDERS LICENSE.

MONEX COMPANY PRECIOUS METALS TRANSACTIONS
VERBAL REVIEW SUMMARY

Before you enter into an Atlas Account transaction with Monex Deposit Company or Monex Credit Company, your Account Representative will summarize certain salient points by reading the following summary to you over the phone. This review will be recorded. If you have any questions, we encourage you to discuss them with your Account Representative before any order is placed.

TRANSCRIPT OF RECORDING FOR YOUR RECORDS

This is _____, with my customer
(Account Representative)

(Customer's full name)

As I have previously mentioned to you, I would like to review some important points relating to precious metals transactions. And, as I stated, my review is being recorded. Is that all right?

You have indicated to me that you have received and read the Monex Deposit Company Purchase and Sale Agreement and the Monex Credit Company Loan, Security and Storage Agreement and agree to be bound by their terms. Is that correct? You also understand that no person is authorized to make any representations which conflict with those documents or any other official Monex company documents which you have received or will receive. Is that also correct? Now I'd like to cover some of the points we've talked about which will apply to precious metals transactions with Monex Deposit Company and Monex Credit Company.

1. There are no assurances or guarantees by the Monex companies or their representatives as to the future value of the precious metals you purchase, borrow or sell. Although we hope your transactions will be profitable, no one can guarantee a profit. In Atlas Account transactions, it is possible to lose substantially more than one's initial and subsequent payments.
2. Because of the risk, you should carefully consider whether precious metals transactions are consistent with your investment goals and financial capabilities.
3. Atlas Account transactions require the customer to supply initially only a portion of the potential liability for the entire transaction. Because of this, an adverse market move may require the customer to deposit substantial additional funds in order to meet his obligations.
4. Precious metals transactions can involve commissions, service and finance charges, lease fees, bid/ask spreads, handling and delivery charges.
5. If the equity in your Atlas loan account ever falls below one-half the minimum required level, Monex Credit Company has the right, but not the obligation, without prior notice, to liquidate all or a portion of the collateral held as security for such loans and to purchase precious metals to meet your commodity loan obligations. This may be done whether or not a demand for additional payment has been issued. This provision is for the mutual protection of both you and Monex Credit Company.
6. Coin prices do not always move in direct ratio to their bullion value. Substantial premiums or discounts may occur.
7. Monex Deposit Company and Monex Credit Company act as principals in their transactions with customers. Their precious metals prices may differ from those on commodity exchanges or other markets.
8. Account Representatives of Monex companies are prohibited from accepting discretionary orders. This means that your account is self-directed and that you are responsible for all purchasing, selling and borrowing decisions for your account.
9. It is your responsibility to monitor your account and to stay in touch with your Account Representative concerning the status of the account.
10. If any questions should arise concerning your account with a Monex company, you may contact: _____
(My Backup Account Representative)

(My Sales Director)

11. All monthly statements and written confirmations will be mailed to you at: (Account Representative will state customer's current mailing address). Is that address correct?

12. Appropriate funds must be postmarked or wired within 24 hours of placing a trade. Do you understand that policy, _____?
(Customer Name)

This brief review does not cover all of the significant aspects associated with precious metals transactions with Monex Deposit Company and Monex Credit Company. It is intended only to remind you of some of the more important ones. This covers my summary.

Thank you.

EXHIBIT B

Message

Page 1 of 6

From: NGoteiner@fbm.com
Sent: Saturday, February 21, 2009 11:37 PM
To: me@jasongilliam.com; rg@richardgilliam.com; steve@genacon.com
Cc: SAndrews@fbm.com
Subject: demand for retraction and closing of your sites

Gentlemen:

Monex demands that you immediately close (no later than the close of business this Monday) your Monexfraud.com site (and other such sites under your control) since you are operating them illegally as part of your criminal and civil extortion scheme to defame Monex, to interfere with Monex's economic relationships with customers and others, and to extract \$15 million from Monex. Your Monexfraud site publishes facts that are palpably untrue, which you know are untrue, or which you have no reasonable basis to believe are true. To the extent you truly believe that there is any truth to your statements, you would conclude that there is no truth if you undertook minimum due diligence. After you've made these false statements, your ostrich defense to the truth will not play well in any court, which is exactly where we are marching unless you do the right thing by Monday.

For instance, your comments that HBSC has no documents indicating title in, or ownership by, customers, is false. Your larger innuendo that Mr. Lubicich's letter to Greg Walker is untrue is also false. You could have easily determined this by speaking to Quinn Emanuel lawyers who were class counsel in the Kevin Walker v. Monex matter. If you had you would have determined that your "no delivery," assertion was untrue. But in any event you have no reason to believe that any Monex representations on this point are in the least bit inaccurate. You also could have produced any documents you have in support of your defamatory statements, but you have none. You also could have asked us for documentation to back up Quinn Emmanuel's representations to the Court in decertifying the "storage," class and in settling their class action. You decided not to do so since you would have had even more evidence that your assertions were untrue and defamatory.

I've just seen your posting on the Joseph story, which you've made a new centerpiece of your scheme to extort money from Monex. I've not had the opportunity to review your allegations, and as with all your allegations, I review the facts before communicating with you. But if the Joseph story allegations are anything like your other allegations, I'm sure that these allegations too will be proven untrue. For now, I note that there are obvious inconsistencies in your story, that you also see, that make it highly unlikely that there is any truth to your characterization of the communications between Joseph's father and the Monex Account Representative. But just like your "no delivery," allegations you chose not to put the real facts on your site since they would undercut your illegal objectives of making defamatory statements as part of your extortion scheme.

In any event, please retract all the above and the following illustrative defamatory statements, and any others like them on the monexfraud.com site and on all other sites in your control:

1. Your statements and innuendo implying or stating that Monex is fundamentally fraudulent and a criminal enterprise, for example: "I sadly regret that I still have friends that are part of this nationwide scam," and calling Monex a "criminal" and committing "crimes," in connection with the storage of metal. You repeat others who purportedly say it's a "total scam." "Every one of these insiders will tell you that Monex is a scam operation perpetrating despicable [sic] acts of fraud on its unsuspecting victims, many of which are retired and living on fixed incomes." The fact is that you've no facts to support your statements. While you attempt on your site to give your claims the patina of authenticity, and thereby to mislead the viewing public, you know full well that you are using the ex Monex employees who do not have an accurate picture or background on the facts, and are attempting to obtain your business by criticizing Monex. But you pass off their comments (like in the taped conversation today) as authoritative and accurate. Also, your methods raise the question of whether you have told the ex Monex employee that you are secretly taping their conversation; if you haven't you have violated the California Penal Code. If you disclose that you're taping their conversation, then there's a likelihood that the presented conversation is staged and not authentic.

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Message

2. Your comments about Terry Parsons to the effect that a top broker is at the top because he lies, cheated and stole: "For those that are unaware of who Terry Parsons is, he was number one account rep at Monex. That means he lied cheated and stole more than any other account rep in the history of the company." You of course present no information for this statement that defames both Parsons and Monex, and certainly no court finding or any other verifiable information. Comments by customers who lost money who criticize an employee or Monex because they lost money is not information that supports your contention.
3. That Monex steals books of business: "The Monex corporation has been doing some housecleaning, and stealing of books of business to include others such as one Norm Cooper whose tenure also ended one week prior after serving there for close to 8 years or thereabouts. Honor amongst thieves... probably not." You have no support for this claim.
4. That Monex's transactions are worthless: "The reality was, you brought a piece of worthless paper for thousands of dollars that in the end meant nothing." This is another variation of your baseless claim that the customer in fact buys no metals and that no metals are delivered to the customer.
5. "In 1991 Monex was ejected from the NFA (National Futures Association) by the CFTC (Commodities Futures Trading Commission) for fraud." You have no basis for this claim, which you know to be untrue from calling the NFA and the CFTC, which you claim you've been doing.
6. "Before it's [sic] expulsion from the NFA Monex racked up 250 reparations cases with CFTC." In addition to the expulsion defamatory statement there were not 250 reparation cases.
7. "In 1998 the IRS sued Monex for \$134,000,000 for tax evasion." There was never any tax evasion charge.
8. "In 2008 the IRS is suing Monex for \$378,000,000 for tax evasion." The complaint does not suggest tax evasion, and with both defamatory statements 7 and 8, you are attempting to mislead the public.
9. "Unlike most investment/trading firms Monex is NOT government regulated."
10. "Monex makes false statements on its website to promote its products and services."
11. "Monex makes selective tape recordings of telephone conversations with its clients and uses the recordings against the clients in arbitration and court proceedings." As you know, Monex's recordings of transactions are not selective; they record all transactions so that there is a clear record that the customers entered into a transaction.
12. "Monex makes claims that simply are not true. In fact these claims are so far from true that they can only be described as flat out lies!" You do not list any such claims since you know that Monex makes not claims that are not true.
13. "All I can say is watch out, they are sharks and they know how to con people." Again aside from your pointing out that you and others have lost money, you've no facts to suggest any pattern or even anecdotal information that Monex made any misrepresentations to Monex customers or potential customers. All Monex customers with whom you spoke, including yourselves, have no doubt acknowledged that they knew before investing in precious metals, that such investing was speculative, risky, and that they could lose part of or all their investment. You also have information that each customer knew all trading costs before investing at Monex.
14. "Mark Ladenheim, a salesman for Monex, used deception and misleading descriptions of the product to get me to buy into the Atlas Account." Here is another specific example of a customer who would tell you if you asked that Monex disclosed all the material risks of trading at Monex, including the speculative nature of investing at Monex and all fees that had to be overcome before the customer could make profits.
15. Calling Monex account representatives "boiler room," employees who "intentionally mismanages your money to make his exorbitant commissions. You knew that this statement also is untrue, and is belied what you know about Monex. Salesmen make money from commissions; there is no incentive to mismanage customer accounts. Further you knew that there are no discretionary accounts at Monex. Each customer must make his or her own decision. And you know from your interviews and your own experience at Monex that Monex discloses all commissions to all customers. You also know that Monex does not compel customers to trade there and to pay

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Message

Monex's commissions.

16. Stating that Monex customer has greater loss records than investors in futures contracts. Again you have no evidence of this. You don't know the loss rates of future investors, and you don't know comparative figures for Monex. You also know, since presumably you've done minimum due diligence that experts often believe that over 90% of speculators in futures contracts lose.

17. Monex is comprised of "organized criminals." You have no evidence of this.

18. "Monex makes claims that simply are not true. In fact these claims are so far from true that they can only be described as flat out lies!" You know of none, and to the extent that you've asserted any claims that you label as untrue, you have no reasonable factual basis for your assertions.

19. "While I don't doubt that precious metals can be a great investment when the timing is right, Monex makes claims that simply are not true. In fact these claims are so far from true that they can only be described as flat out lies!" Again you've identified no Monex claims about the timing of investment, and you've identified no instance that Monex representatives has represented anything about the timing of investment that the Monex representative thought was not true.

20. "The representative's job (like the blackjack dealer) is to cause you to lose." Again you know from your experience and from others, as well as from your discussions with ex-Monex employees that Monex wants the customer to make money, not to lose it. Even from your cynical view that Monex account representatives want commissions from customers, you know that the account representatives would want the customer to make money to make additional trades and to recommend other investors to trade at Monex.

21. Account representatives: "deny the loss by claiming an order entry error (fixing the bet) and saying that you made the mistake." First your innuendo is that this happens often and as a pattern. You've no evidence for that innuendo. Second, you have no evidence that this happened at all, and have no reasonable basis to believe that it did happen.

22. "The reason the above scenario is illegal and fraudulent is that you the trader are actually gambling at a casino that is misrepresenting itself as a trading establishment." You know that this is completely untrue and based on your experience illogical and counterintuitive. Unfortunately those potential customers and customers who you are trying to mislead, don't have your experience and can be misled by your false assertions.

23. "So what we've got here is a company that's been booted or forcibly withdrawn from the NFA due to fraudulent activities about 17 years ago. Then this company decides it would be better off creating its own "exchange" (casino) where the government had no hand in regulating it." Again your statement of these facts is entirely without any factual basis. You've never read this and never heard it from anyone who you had reason to believe knew any of these assertions.

24. "So this company has managed to stay completely outside government regulation, and how do they do it?"

25. "That Louis Carabini agreed in 1998 to pay the IRS a \$134 million settlement." You have no evidence for any agreement to pay this amount. All you have is stipulation of judgment, which is not an agreement to pay any specific amount of money.

26. "Perhaps whomever Carabini may have bribed to make this go away has left office." Again you have no basis to believe that anything went "away," or to suggest that anyone bribed anyone. You say that you've been speaking with the IRS. I'm confident that you did not hear this from the IRS, or from anyone else.

Here's a sampling of another site of yours that make false and defamatory assertions in support of your extortion scheme

<http://monexisascam.blogspot.com/2008/05/monex-is-scam.html>

27. Your innuendo that Monex does not fully disclose its commissions: "I currently have an account with

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Monex and my complaints are that they do not fully disclose your commission fees each time you make a purchase because they are different each time." You've no support for the defamatory statement that Monex does not fully disclose the commission fees. You know that Monex does disclose them in the account agreements and elsewhere. You also know that Monex discloses them in the confirmation statements; thus you know that any customer who did not focus on the commission in the account agreement and other Monex materials, would have seen the commission the confirmation statement for each trade

28 Your statements that Monex typically targets unsophisticated investors to defraud them, for instance: "It is good that your representative has repeatedly warned you of the risk involved, but you should by no means assume that this behavior is the norm at Monex, because it is not. I have spoken to many people that were totally ignorant of trading basics and willfully misled by Monex into substantial losses. That type of client is Monex's ideal mark." I've dealt with some of these charges above. In addition you know that a Monex account representative cannot mislead, willfully or otherwise, a customer into substantial losses. You've supplied no evidence, and you know from your own experience that the monthly account statements accurately and carefully provide all customers with the status of their account, indicating at the bottom of each monthly account statement their losses or profits from year to date. If as you claim, there are instances where the account representative doesn't disclose the risk of loss in addition to what the customer reads in the account agreement and online, then the customer will understand no later than his review of the monthly account statement precisely what his losses are. At no later than that point the customer is on notice that he or she has lost, and can act accordingly.

29. "The other issue was the horrendous commissions which were not disclosed until after the fact when it was already too late." Your statements that Monex does not disclose commissions until it's too late, when commissions are crystal clear on the documentation and on the confirmation statements, for instance. As discussed above, if customers don't like the commission structure, they can simply stop trading, and so it's never too late. This claim of yours is equally without any basis, a fact that you know full well from your trading at Monex and from speaking to customers and ex employees:

30. Your statements that Monex attempts to financially ruin families, for instance: "I consider that an attempt to financially ruin my family and myself that is totally unacceptable and unforgivable. In short they attempted to con us out of everything we have." Again, you have no evidence that this ever happened, or that it was even possible for Monex to con anyone out of anything. As discussed above, to the extent that a Monex representative made any claim about big profits, the customer knew, the true risk of losses no later than the first monthly statement showing losses. And of course that assumes for the moment that you've heard from any customer that they did not know of the significant speculative risks of trading in precious metals on margin. You of course did know of these losses given your review of the Monex materials prior to trading.

31. Your statements that any account representative "ripped off," "cheated," and defrauded many people, for instance: "He's made a lot of money ripping off a lot of people." As discussed above, that people lost money does not mean that anyone ripped anyone off. You nonetheless state the rip off narrative as if you have facts to support it. But you know from a short interview with the customers, and from a review of your own trading experience, that it's very difficult indeed for Monex account representatives to defraud customers with this much documentary information including, the Atlas account agreements, other materials reviewed by customers before trading, confirmation slips and fully detailed monthly statements.

32. Your statements that Monex didn't make deliveries without any demonstration that there is one Monex customer who failed to receive delivery of his or her precious metal, for instance: "Monex has been known to screw people out of their deliveries, but I think they tend to do it more in an up-trending market, where they feel they would rather keep the gold. In a down market they tend to take a longer delivery time so they can buy it cheap and then sell it to you at a big profit (since your price was fixed higher). My guess right now is you'll get your gold, but not for at least a few weeks so they can make a bunch of money on the downtrend at your expense." or "What they are doing is taking orders and then waiting for gold to drop so they can buy it cheaper than the price you "locked-in". You'll probably get it, but not till they've made a killing at your expense." You know that all this innuendo and all these statements are without one shred of factual support and certainly no documentary evidence.

33. Your statements and innuendo that Monex blocks transactions for its own illegal profit motive, for instance: "The meaning of this is that you can always open a trade with Monex, but there is absolutely no guarantee that you can close the trade. You may have profits on the table you wish to cash in on or losses you wish to cut, but you can only close your trade if Monex WANTS [sic] to let you close your trade. If closing your trade doesn't suite Monex, like say if you are winning and Monex is losing, then you may be shocked to find your Monex Account

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representative is unavailable!" You know that you have no evidence of these events ever happening and no credible information to support your assertions and innuendo. You also know that your statements don't even make sense given Monex's internal operations and from your experience at Monex. You have never heard of an instance where Monex wouldn't allow a customer to close a trade.

34. Your statements that Monex might decided not to allow the customer to cash out, for instance: "Make no mistake about it, the atlas contracts are worthless anywhere but at Monex, and what's more they are worthless if and when Monex decides it is "unwilling" to allow the customer to cash out."

35. Your statement that Monex is unsuccessful in court and why they chose arbitration: "Also, Monex has a pretty poor win/loss track record in court for obvious reasons. This is why the Atlas Agreement has the client agreeing to arbitration, because the only victory Monex can consistently produce is the one where they don't ever see a courtroom." You also know from your investigation that Monex has lost very few times in a court, and that you can't even name 5 times when that occurred over the entire course of Monex's existence.

As indicated above, your defamatory and illegal statements are so inextricably bound up in your attempt to extort money from Monex, that you must close down your sites in their entirety. Regarding Jason's belief that he has refuge in the anti-slap doctrine from Monex's coming law suit I respectfully suggest that you don't. I'm sure that Steve is aware, and that other attorneys will tell you, that: (1) you have made enough false statements that Monex's claims against you will trump your anti-slap arguments even if you are able to muster enough support to create a question about a few of your claims; and (2) as a threshold matter, the anti-slap authorities are not even applicable where, as here, you have bundled your statements in a scheme to extort.

Neil

Neil A. Goteiner
Attorney at Law

Farella Braun + Martel LLP
RUSS BUILDING
235 MONTGOMERY STREET
SAN FRANCISCO / CA 94104

Office 415.954.4485
Fax 415.954.4480
Cell 415.279.6783
www.fbm.com

-----Original Message-----

From: Goteiner, Neil (24) x4485
Sent: Tuesday, February 17, 2009 9:47 PM
To: 'Jason Gilliam'; 'Richard Gilliam'; steve@genacon.com
Cc: Andrews, Scott (20) x4973

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Subject: Monex v. Gilliam, Bowman and Gilliam/document preservation

If you continue with this spin on what you and Steve wrote and said, I'm confident that the court and jury will find it to be sanctimonious nonsense as well as not believable. Your inappropriate name calling and refusal to produce any supporting facts or to consider inconvenient facts that squarely contradict your story further undermine your credibility.

In any event, since we've informed you of the pending complaint, please keep all your documents, including all your emails among one another and your and your colleagues' notes of any discussions with any parties and witnesses. In short don't destroy anything related at all to your allegations. This documentation will be evidence in Monex's case against you and your colleagues.

While Steve is an attorney, I suggest that you speak with a trial attorney regarding your obligations as litigants to preserve all evidence. Thanks.

Neil

3/4/2009

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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am a resident of the State of California, employed in the County of San Francisco, over the age of eighteen years and not a party to the within action. My business address is: Farella Braun + Martel LLP, 235 Montgomery Street, 17th Floor, San Francisco, California 94104.

On May 7, 2009 I served the within document(s):

FIRST AMENDED COMPLAINT FOR DEFAMATION, CIVIL EXTORTION, CYBERPIRACY, UNFAIR COMPETITION, RACKETEERING, INTERFERENCE WITH CONTRACT, TRADE LIBEL, INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE, AND TRADE SECRET MISAPPROPRIATION

DEMAND FOR JURY TRIAL

 BY ELECTRONIC FILING: the within document(s), the automatically generated notification for which constitutes service pursuant to General Order 45, Section IX(A) and (B).

 PERSONAL DELIVERY: by placing a true copy(ies) thereof, addressed as set forth below and enclosed in a sealed envelope for personal delivery by

 PERSONAL DELIVERY: by placing a true copy(ies) thereof, addressed as set forth below and enclosed in a sealed envelope for personal delivery by

 X **MAIL:** by placing a true copy thereof, addressed as set forth below and enclosed in a sealed envelope with postage thereon fully prepaid and deposited for collection and mailing with the U.S. Postal Service. I am readily familiar with the ordinary business practice of this office for processing mail.

 FEDERAL EXPRESS: by placing a true copy thereof, addressed as set forth below and enclosed in a sealed envelope for delivery by overnight courier to the addressee.

 FACSIMILE TRANSMISSION: a true and correct copy transmitted via facsimile to each addressee listed below.

 ELECTRONIC TRANSMISSION: a true and correct copy transmitted to each of the parties at the electronic notification address last given by said party on any document which he or she has filed in this action and served upon this office.

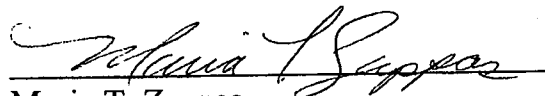
1 Hugo Torbet, Esq.
Hugo Torbet Law Offices
2 807 Montgomery Street
San Francisco, CA 94133
3 Telephone: (415) 986-9400
Facsimile: (415) 358-8650
4 Email: hugotorbet@yahoo.com

5 Attorney for Defendants and
Counterclaimants Jason Gilliam and
6 Richard Gilliam

7

8 (Federal) I declare that I am employed in the office of a member of the bar
9 of this court at whose direction the service was made.

10 I declare under penalty of perjury under the laws of the State of California
11 that the above is true and correct. Executed in San Francisco, California on May 7,
12 2009

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14 Maria T. Zappas

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