

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

**TRAVIS AND NICOLE GREGORY,
DONALD AND ERI HALEY, CRAIG AND
DIXIE SARGENT, LARRY FISHER,
STEPHEN AND KAREN BEVERLEY,
CHAD AND HEATHER HANSEN, TRACY
WOODBURY, DAVID PETERSON, MIKE
ISRAEL, E. WAYNE LARSON, DARLA
KETCHAM, CARVEL ANDERSON,
KELLY AND AMY SPRINGER, and
WAYNE BAKER, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

vs.

ZIONS BANCORPORATION,

Defendant.

Case No.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

I. NATURE OF THE ACTION

1. Plaintiffs are victims of an enormous Ponzi scheme knowingly assisted by Zions Bank (“Zions Bank” or the “Bank”), a division of Defendant Zions Bancorporation (“Defendant”). By its substantial assistance, including the actions of the Bank and its employees in furtherance of and to facilitate the scheme, and through its actual knowledge that fiduciary funds it held as custodian were being diverted and used for Ponzi payments, Zions Bank aided

and abetted the scheme. Moreover, Zions Bank was negligent in failing to act, as it was required to do once it became aware that investor money, *i.e.*, fiduciary funds for which it acted as custodian, were being diverted.

2. The scheme was perpetrated by Gaylen Rust (“Rust”) and members of his family, who, through Rust’s company, Rust Rare Coin, Inc. (“RRC”), raised money from investors ostensibly to purchase contracts of sale for silver. Rust told investors he was pooling their money in a silver trading pool that he managed (the “Silver Pool”), and through a proprietary trading system he employed, and through a trading account he purportedly held at HSBC Bank, one of the world’s largest financial institutions, was using the money in the Silver Pool to sell silver as market prices rose, and buy silver as market prices fell, thereby increasing the amount of silver in the Silver Pool. Rust also claimed that he maintained large amounts of physical silver owned by the Silver Pool at warehouses owned and operated by Brink’s Incorporated (“Brink’s”) where it was being held for safekeeping.

3. To solicit investors, Rust touted his supposed successful track record in buying and trading silver, luring investors with the promise of double-digit returns averaging 20 to 25% per year on their investment in the Silver Pool. Rust provided investors with periodic statements reflecting those supposed returns.

4. In reality, however, Plaintiffs’ investment in the Silver Pool was a sham. Rust was not buying or selling silver, nor did he have physical silver stored in a Brink’s warehouse. Moreover, neither Rust nor RRC maintained an account at HSBC. Instead, Rust diverted investor money to himself and to his family, to other flailing companies Rust or his family members controlled, and used new investor money to make payments to earlier investors seeking to liquidate all or part of their interests in the Silver Pool. In reality, the statements Rust provided to

his investors and the returns stated thereon were fake. Rust was not earning profits from buying and selling silver, and instead was making those distributions from the money received from new investors. The Silver Pool was not a real business or trading operation, and instead was a Ponzi scheme.

5. Rust could not have perpetrated the Silver Pool scam on his own. Instead, he crucially depended on the knowing participation of his bank, Zions Bank, through which Rust committed his fraud. As explained in more detail herein, the epicenter of Rust's Silver Pool scheme was one account at Zions Bank ending in number 7496, known to investors, and referred to herein as the "Silver Pool Investment Account."

6. Also, as explained in more detail herein, the investigation of Plaintiffs' counsel, which investigation included interviews with many Silver Pool investors, a review and analysis of numerous documents related thereto, and a review and analysis of other documents including documents obtained in a civil enforcement action filed by the Commodity Futures Trading Commission ("CFTC"), and the State of Utah Division of Securities ("Utah"), demonstrates that Zions Bank had *actual knowledge* that: (1) RRC was a precious metal and coin dealer, and thus was a high-risk account, triggering enhanced due diligence requirements for the Bank; (2) RRC had a silver trading operation called the Silver Pool; (3) RRC received investment proceeds from investors in the Silver Pool to be invested by RRC and Rust; (4) RRC and Rust were managing investor money as fiduciaries, and thus the Silver Pool account held fiduciary funds; (5) RRC and Rust were misusing funds from the Silver Pool Investment Account by commingling such funds and transferring them to Rust, his family, and other entities whose business was unrelated to the Silver Pool; and (6) RRC and Rust were misusing investor money to make Ponzi payments.

7. On November 13, 2018, Rust's scheme began to unwind. On that date, the CFTC and Utah filed their civil enforcement action against Rust, certain members of his family, and RRC charging them with fraud and asserting violations of the Commodities and Exchange Act and CFTC Regulations, aiding and abetting those violations, and multiple violations of the Utah Uniform Securities Act.

8. On November 15, 2018, two days later, the Securities and Exchange Commission ("SEC") filed its own action charging Rust and RRC with operating a fraudulent silver trading program. The SEC complaint alleged the same course of conduct alleged by CFTC/Utah; that Rust made material misrepresentations and omissions to solicit investors across the country to invest in his scheme. The SEC also charged Rust and RRC with fraud and asserted numerous violations of the federal securities laws.

9. Plaintiffs and the putative class members were victims of Rust's Silver Pool investment scheme. They invested their personal money in what they believed to be the Silver Pool, and were damaged thereby.

10. Plaintiffs bring this action on their own behalf and on behalf of a class of all persons similarly situated to recover damages from Defendant sustained as a result of the Bank's own independent wrongdoing and knowing assistance in the Silver Pool scam.

IV. PARTIES

11. Plaintiffs Travis and Nicole Gregory are husband and wife and residents of West Valley City, Utah. Mr. and Mrs. Gregory invested in the Silver Pool Investment Program on several occasions from July 2013 to January 2018 and suffered significant financial losses. Some or all of Mr. and Mrs. Gregory's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

12. Plaintiffs Donald and Eri Haley are husband and wife and residents of American Fork, Utah. Mr. and Mrs. Haley invested in the Silver Pool Investment Program on several occasions from May 2015 to March 2018 and suffered significant financial losses. Some or all of Mr. and Mrs. Haley's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

13. Plaintiffs Craig and Dixie Sargent are husband and wife and residents of Coalville, Utah. Mr. and Mrs. Sargent invested in the Silver Pool Investment Program on several occasions from April 2016 to June 2016 and suffered significant financial losses. Some or all of Mr. and Mrs. Sargent's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

14. Plaintiff Larry Fisher is an individual and a resident of North Salt Lake, Utah. Mr. Sargent invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. Fisher's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

15. Plaintiffs Stephen and Karen Beverley are husband and wife and residents of South Jordan, Utah. Mr. and Mrs. Beverley invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. and Mrs. Beverley's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

16. Plaintiffs Chad and Heather Hansen are husband and wife and residents of Lima, Montana. Mr. and Mrs. Hansen invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. and Mrs. Hansen's investments in the Silver Pool

Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

17. Plaintiff Tracy Woodbury is an individual and a resident of Taylorsville, Utah. Ms. Woodbury invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Ms. Woodbury's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

18. Plaintiff David Peterson is an individual and a resident of Bountiful, Utah. Mr. Peterson invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. Peterson's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

19. Plaintiff Mike Israel is an individual and a resident of Riverton, Utah. Mr. Israel invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. Israel's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

20. Plaintiff E. Wayne Larson is an individual and a resident of Centerville, Utah. Mr. Larson invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. Larson's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

21. Plaintiff Darla Ketcham is an individual and a resident of Taylorsville, Utah. Ms. Ketcham invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Ms. Ketcham's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

22. Plaintiff Carvel Anderson is an individual and a resident of West Jordan, Utah. Mr. Anderson invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. Anderson's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

23. Plaintiffs Kelly and Amy Springer are husband and wife and residents of Lehi, Utah. Mr. and Mrs. Springer invested in the Silver Pool Investment Program and suffered significant financial losses. Some or all of Mr. and Mrs. Springer's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

24. Plaintiff Wayne Baker is a resident of Freedom, Wyoming. Mr. Baker invested in the Silver Pool Investment Program and suffered significant losses. Some or all of Mr. Baker's investments in the Silver Pool Investment Program were made to and/or held in the Silver Pool Investment Account at Zions Bank.

25. Defendant Zions Bancorporation is a national bank headquartered in this District at One South Main Street, Salt Lake City, Utah. Zions Bank is an unincorporated division of Defendant Zions Bancorporation that conducts banking business in Utah, Idaho, and Wyoming.

V. RELEVANT NON-PARTIES

26. Gaylen Rust is an individual residing in Layton, Utah. He is the president and sole director of RRC and operates the RRC store in downtown Salt Lake City, Utah.

27. RRC is a Utah corporation with its principal office in Salt Lake City. It was founded in 1966 by Rust's father. RRC claims to sell rare coins, collectible paper money, and precious metal bullion through its retail store and website. Rust is the owner, president, and sole director of RRC. RRC is not named as a defendant because it has been ordered into receivership

and naming it would violate the Court's Order staying any actions against RRC, Docket #22 filed on 11/15/2018 in the CFTC Case.

28. Denise Rust is an individual residing in Layton, Utah. She is Gaylen Rust's wife, and assists in managing RRC's day-to-day operations.

29. Joshua Rust (together with Gaylen Rust, Denise Rust, and RRC, the "Rust Scheme Perpetrators") is an individual residing in Draper, Utah. He is Gaylen and Denise Rust's son, and manages RRC's day-to-day operations.

VI. JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over all counts under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), pursuant to which this Court has diversity jurisdiction because some class members are citizens of States different than Defendant, and because the amount in controversy exceeds the sum or value of \$5,000,000.

31. Venue is proper in this District because many of the acts giving rise to Plaintiffs' claims occurred in this District, and because Defendant is headquartered, and does substantial business in this District.

VII. FACTS

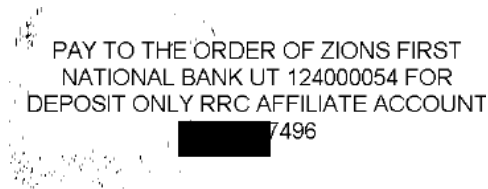
a. Defendant Helps Rust Operate the Silver Pool Investment Program, and Raise Money from Investors.

32. RRC and Rust maintained several accounts with Zions Bank, including the Silver Pool Investment Account ending in 7496. The Silver Pool Investment Account was opened on January 21, 2015,¹ and was intended to provide an easy way for investors to deposit the money they wished to invest in RRC's Silver Pool investment program. Investors wired funds or mailed

¹ See Ex. 1, Zions Bank Signature Card. Prior to account number ****7496, RRC and Rust used account number ****3564. They will both be referred to as the "Silver Pool Investment Account."

checks made out to RRC to Zions Bank, and Zions Bank processed those checks and manually processed those wires – many of which contained the notation “investment” -- and took control and custody of the investors’ money.

33. RRC and Rust stamped the checks deposited in the Silver Pool Investment Account with a stamp that stated: PAY TO THE ORDER OF ZIONS FIRST NATIONAL BANK UT 124000054 FOR DEPOSIT ONLY RRC AFFILIATE ACCOUNT *****7496:



PAY TO THE ORDER OF ZIONS FIRST
NATIONAL BANK UT 124000054 FOR
DEPOSIT ONLY RRC AFFILIATE ACCOUNT
*****7496

34. Most of the wires, which were required to be manually processed and/or reviewed by Defendant’s employees overseeing the Silver Pool Investment Account, indicated on their face, in various wording, that they represented investments in RRC’s silver trading program. An example of a wire received and reviewed by Defendant is below:²

² See, Ex. 2.

Reference Number: 20180226-			
Source	FED	Transaction Type	FTR
Send	26FEB201	Owning Bank	
Date	8	001 Repetitive	
Value	26FEB201	Code	
Date			
Statu			

Debit information	Credit information
Account: • —	Credit: •749
BANK OF AMERICA, N.A., NY NEW YORK, NY	6 RUST RARE COINNC
Amount: 1,000,000.00 USO	DENISE G RUST,GAYLEN D
Recon Ref:	RUST,JOSH RU 242 E BROADWAY
Sending Bank Reference	SALT LAKE CITY UT 84111-2419 84111
2018022600330496 Ordering Bank: S/ BOFAUS3N	Advising instructions:
BANK OF AMERICA, N.A. 222 BROADWAY	Amount: 1,000,000.00 USO
NEW YORK, NY,US	Recon
Originator Reference: 224674716	Ref:
Originator: / 000495460990	Chann
L FAMILY REVOCABLE LIVING TRS	el:
V-- — 111RTEE	LTR
██████████CH CA 93953-1225	Originator to Beneficiary
Bank to Bank information:	information: SILVER INVESTMENT

35. Once investors’ funds were deposited into the Silver Pool Investment Account, investors expected that RRC would withdraw those funds periodically to purchase silver.³ Based on Rust’s statements, investors expected to earn a profit on their investments from Rust’s silver trading program Rust claimed he developed to “buy low, sell high.”⁴

³ See Ex. 3, Hess Dec. ¶16

⁴ See Ex. 4, CFTC Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Preliminary Injunction, and Other Equitable Relief, (“CFTC Motion”), p. 10.

36. Zions Bank allowed Rust and RRC to open and operate the Silver Pool Investment Account notwithstanding their failure to register themselves and the Silver Pool with the Utah Division of Securities, the SEC, or the CFTC.

37. Moreover, Individual 1, identified by Plaintiffs' counsel through interviews with investors and the investigation of counsel, was a senior officer at Zions Bank. Individual 1 provided crucial assistance to the Rust Scheme Perpetrators and became aware of the fraud. Specifically, Individual 1 was aware that Rust was operating the Silver Pool and was receiving investor money because Individual 1 was identified and often served as a direct point of contact for investors who had questions or concerns about how to deposit money into the Silver Pool Investment Account. Thus, Individual 1 interacted frequently with investors about their investments, and was well-aware that the funds coming into the Silver Pool Investment Account belonged to investors and were fiduciary funds to be managed by Rust and RRC

38. In addition, Individual 1 was aware that Rust's Silver Pool had no substantive operations because Individual 1 interacted frequently with Rust and his family members and often reviewed the Silver Pool Investment Account. Individual 1 was the contact person to whom Rust's family reached out for any issues pertaining to their accounts. Individual 1 engaged in various business dealings with Rust and his family including through processing loans to them extended by Zions Bank, which loans required a detailed examination of the Rust family's entire financial operations prior to approval. Individual 1 necessarily reviewed the Silver Pool Investment Account because the Silver Pool Investment Account experienced an enormous amount of insufficient fund events, each of which had to be reviewed manually by a senior person at Zions Bank as part of the Bank's procedure whereby it had to decide whether to honor each payment on Rust's behalf. Further, Individual 1 reviewed the Silver Pool Investment

Account in connection with Rust and RRC's applications for financing, and also pursuant to Defendant's anti-money laundering and Bank Secrecy Act policies and procedures, more fully described below. Thus, Individual 1 saw the transactions in the Silver Pool Investment Account, including the lack of any disbursements for the purchase of silver, the diversions to Rust and his businesses, the use of investor money to repay a loan to Zions Bank,⁵ and the use of new investor money to pay prior investors.

b. Rust and RRC Were Fiduciaries of Plaintiffs and the Other Investors.

39. Rust and RRC were fiduciaries of Plaintiffs and the other investors in the Silver Pool scheme. Rust encouraged investors to turn over their money to the Silver Pool for Rust to invest on their behalf using his proprietary trading plan. Plaintiffs and the other investors were required to rely entirely on the skill and intelligence of Rust to manage their investments. Rust and RRC were acting as fiduciaries for Plaintiffs and the other Silver Pool investors.

c. The Silver Pool Investment Program Was a Ponzi Scheme.

40. Plaintiffs and other investors who invested in the Silver Pool were told that the money would be used to buy and sell silver. Rust and RRC told investors that they would sell silver held in the Silver Pool as the market prices rose, and buy silver for the Silver Pool as market prices fell. Rust told investors that he had a personal relationship with a commodity analyst through which Rust was able to obtain information regarding when the bank and other market participants planned to sell large quantities of physical silver, driving down market prices. By trading silver in this manner, Rust claimed he was able to generate extraordinarily high returns, averaging twenty to twenty-five percent per year, and sometimes as high as forty percent or more. The silver was allegedly stored at a Brink's facility in either Salt Lake City or

⁵ See, Ex. 12, showing monthly loan repayments paid out of the Silver Pool Investment Account.

Los Angeles, and the silver transactions were allegedly made through an account Rust claimed he maintained at HSBC. Rust and RRC provided investors with account statements that showed him making money on every single trade he purportedly executed on behalf of the Silver Pool.

41. Rust further told investors that Rust and RRC used the profit he generated from his trades to repurchase larger amounts of silver at the lower price, thereby continually increasing the amount of silver he holds for investors and thus increasing the value of each investor's account. Rust and RRC also represented to investors that Rust and RRC possessed approximately \$77 to \$80 million of physical silver on behalf of the Silver Pool they stored at Brink's.

42. In reality, Rust was operating a Ponzi scheme. The Silver Pool Investment Account did not reflect any transactions in silver. Instead, the majority of the new investor money was used to pay prior investors in facially obvious Ponzi fashion, and much of the rest of the investor money in the Silver Pool Investment Account was diverted to other businesses controlled by Rust, including R. Legacy Entertainment, R. Legacy Racing, and R. Legacy Investments. None of those entities were involved in or had anything to do with the purchase or sale of silver. Ex. 11, Blaylock Dec. ¶9.

43. Other distributions were made to family members for a variety of personal uses, including to Rust's wife, Denise Rust, his son, Joshua, and his daughter, Aleesha. All of those conspicuous distributions were made out of the Silver Pool Investment Account.

44. Documents obtained by the CFTC directly from Zions Bank, which included, among other things, copies of bank account statements, canceled checks and wire data, demonstrate Rust's misappropriation. Specifically, between May 1, 2018 and August 31, 2018, more than \$42 million in new investor funds were deposited and commingled in the Silver Pool

Investment Account. During this same time period, approximately \$28 million, or 67% of the money raised from new investors was used to pay earlier investors in classic and facially obvious Ponzi fashion, as the following three examples demonstrate:

- a. On May 1, 2018, the Silver Pool Investment Account had a balance of \$33,438. On the same day, the account received deposits from various investors totaling \$571,400. On this same day, most of the new investor money -- \$446,620 -- was distributed to earlier investors, and \$34,171 was distributed to Rust's company, R. Legacy Entertainment;
- b. Three weeks later, on May 23, 2018, the Silver Pool Investment Account had a balance of \$16,230.06. On the same day, the account received a \$500,000 deposit from an investor. On this same day, distributions totaling \$453,912 were made to earlier investors, an amount that was approximately 88 percent of the total account balance after the investor deposit;
- c. Similarly, on June 1, 2018, the Silver Pool Investment Account had a balance of \$333,528.96. On the same day, the account received deposits from two investors in the amount of \$1,141,000. On the same day, distributions totaling \$624,000 were paid to other unrelated investors, and \$142,100 was transferred to Rust's company R. Legacy Entertainment.

45. The CFTC documents also reflect examples of investor money being diverted to Rust, the members of his family, and the other business ventures Rust controlled:

- a. Approximately \$7 million of investor money was transferred from the Silver Pool Investment Account to Rust's other accounts at Zions Bank where the investor money was commingled with the revenue and expenses of RRC's coin shop business managed by Rust's son Joshua. Rust, RRC and Joshua used just over \$15 million of those commingled funds to purchase precious metals and coins from wholesalers, dealers, and individuals, and in turn, sold just over \$9 million in precious metals and coins to wholesalers, dealers, and individuals, meaning that the net purchases of precious metals amounted to approximately \$5.8 million despite having raised over \$42 million from investors;
- b. Approximately \$6 million was transferred to Rust-controlled companies including Legacy Entertainment, Legacy Racing, and

Legacy Investments;

- c. Over \$130,000 was transferred to Rust's wife, Denise Rust and \$121,500 was transferred to his daughter, Aleesha;

46. The CFTC documents also include examples of specific payments out of the Silver Pool Investment Account for personal expenditures including:

- a. Zions Bank Silver Pool Investment Account check # 19412 for \$35,000, dated April 9, 2018, was made payable to a person or entity to cover his, her or its 2017 taxes; Ex. 10, p. 1
- b. Zions Bank Silver Pool Investment Account check # 19233 for \$50,000, dated March 6, 2018, paid for a concrete pour for a cabin and steel building; Ex. 10, p. 2
- c. Zions Bank Silver Pool Investment Account check # 20114 for \$8,502.47, dated July 17, 2018, paid for a "new roof"; Ex. 10, p. 3
- d. Zions Bank Silver Pool Investment Account check # 19057 for \$15,000, dated February 7, 2018, was used to purchase a Volvo loader; Ex. 10, p. 4
Zions Bank Silver Pool Investment Account check #19449 for \$2,000, dated April 16, 2018, covered wedding expenses; Ex. 10, p. 5
- e. Zions Bank Silver Pool Investment Account check # 19883 for \$1,000, dated June 12, 2018, was used to pay a Wells Fargo credit card bill; Ex.10, p. 6

47. These transactions clearly demonstrate that the Silver Pool operated as a classic Ponzi scheme, Rust was orchestrating a massive fraud and theft of investor money, and that such Ponzi scheme and theft were visible to – and as shown herein were seen by – Defendant in the Silver Pool Investment Account. The scheme was supported solely by new investor money and not transactions in silver, and the account statements Rust was providing to investors showing generous returns were fake. No payments were ever made out of the Silver Pool Investment Account to HSBC to cover the purchase of silver, and no deposits were ever made into the Silver

Pool Investment Account following the sale of silver, since neither Rust nor RRC had an account with HSBC to trade silver. *See Ex. 5* (Dec. of Matt J. Flanigan)

48. Similarly, no fees were ever paid to Brink's out of the Silver Pool Investment Account to compensate Brink's for the allegedly significant amount of silver that Brink's stored and protected for the Silver Pool investors, since neither Rust nor RRC maintained physical silver at a Brink's warehouse. *See Ex. 6* (Dec. of Shane Housley).

d. The Silver Pool Fraud Was Perpetrated Through a Single Account Maintained by Defendant.

49. While RRC and Rust maintained a few accounts at Zions Bank (Ex. 7, Strong Dec. at pp. 10-11), as the Bank knew, all of the funds deposited by hundreds of Silver Pool investors were deposited into a single account, the Silver Pool Investment Account. The funds deposited by one investor were commingled with funds deposited by other investors, and quite often, used to fund distributions to earlier investors who were seeking to liquidate all or a portion of their holdings.

50. RRC and Rust thus did not try to hide what they were doing from Zions Bank by moving money from one account to another, or from Zions Bank to another bank. All of the deposits and distributions of investor money were made out of this one account. This arrangement made it easier for Defendant to notice the improper operations in the Silver Pool Investment Account, and see the Ponzi scheme payments and misuse of investor money.

e. Defendant Was Aware that Rust Rare Coin Was a Precious Metal and Coin Business, Subject to Heightened Supervision.

51. Defendant became aware that RRC was a precious metal and coin business, when RRC and Rust opened their accounts with Defendant. Thereafter, Defendant's knowledge of RRC's precious metal trading and coin business was reinforced and confirmed through (1)

Rust's ongoing interactions with Defendant's employees in its branch office, and in particular Individual 1, who had a close and detailed knowledge of RRC and Rust's business, and (2) Defendant's repeated review of Rust and RRC's business in connection with their credit applications to Defendant and its extensions of credit to them.

52. First, at the outset of the relationship, and as a result of the due diligence it performed in connection with its opening of bank accounts for RRC and Rust, Defendant learned that RRC was a business that was organized to buy and sell precious metals and coins. Indeed, the very name of RRC indicates that the company was in the business of buying and selling coins. However, Defendant's knowledge was formed through due diligence in addition to reviewing RRC's name.

53. Second, Defendant's employees in the branch office where Rust and RRC banked - and in particular Individual 1 - acquired an intimate and extensive knowledge of the nature of RRC's business, as a result of (1) their frequent interactions with him, (2) their processing of a large amount of wires from investors, which indicated on their face that RRC was running a precious metal trading business, (3) their regular review of RRC's business and the Silver Pool Investment Account as a result of multiple NSF incidents, and (4) their ongoing review of RRC's business and the Silver Pool Investment Account as a result of their BSA/AML duties, described in more detail below.

54. Third, Rust indicated to many investors that they should reach out to Individual 1 in connection with their transfers of investment proceeds to Rust and RRC, to be invested in the Silver Pool. Investors did so, and through their interactions with them Individual 1 learned that (1) the money deposited in the Silver Pool Investment Account came from investors, (2) Rust

was managing the investors' money in a fiduciary capacity, and (3) Rust was telling investors that RRC was a precious metal trading operation.

55. Fourth, Defendant repeatedly reviewed RRC's and Rust's business in connection with their applications for financing submitted to Defendant, and Defendant's due diligence prior to extending such financing.

56. Upon learning that RRC was a precious metal and coin business – each of whom is classified as a “high-risk” operation under the AML rules – Defendant was required by the BSA/AML rules to put RRC on “enhanced due diligence” and subject the Investor Account to heightened supervision, as more fully described in Section “n” below, describing the regulatory framework applicable to Defendant's duties in connection with a high-risk non-bank financial business such as RRC.

57. Defendant discharged its BSA/AML duties and, as a result of the heightened supervision of the RRC Investor Account, its staff, including Individual 1, learned that (1) the Silver Pool Investment Account was holding fiduciary money from numerous investors, (2) the fiduciary money in the Silver Pool Investment Account was commingled, (3) RRC and Rust were misusing money from the Silver Pool Investment Account, and (3) RRC and Rust were running a Ponzi scheme.

f. Defendant Was Aware That the Silver Pool Investment Account Was Holding Fiduciary Funds.

58. Based on the Bank's due diligence procedures and BSA/AML duties described herein, Rust's ongoing interactions with Defendant's employees in its branch office, and in particular Individual 1, who had a close and detailed knowledge of RRC and Rust's business, Defendant's repeated review of Rust and RRC's business in connection with their credit applications to Defendant and its extensions of credit to them, Defendant's frequent review of

the Silver Pool Investment Account in connection with the massive amount of insufficient fund incidents, Defendant's manual processing of a large amount of wires from investors, which indicated on their face that the money was designated for "investment," that fact that investors were instructed to and did reach out to Individual 1 in connection with their transfers of money to Rust and RRC, to be invested in the Silver Pool, the Bank knew that the Silver Pool Investment Account was holding investor money.

59. The Bank further knew that the deposited funds were to be managed by Rust and/or RRC as an investment manager and that Rust and/or RRC served in a fiduciary capacity to those investors.

60. Thus, Zions Bank knew that the Silver Pool Investment Account was holding fiduciary funds.

g. Defendant Received and Sent Wires and Checks Identifying the Money in the Silver Pool Investment Account as Investments.

57. Investors deposits into the Silver Pool Investment Account, clearly indicated that the money was earmarked as an investment in the Silver Pool. For example, A check in the amount of \$500,000 was written on a Zions Bank checking account, and deposited into the Zions Bank Silver Pool Investment Account on June 7, 2018, states in the "memo" section that the check was for an "investment." Ex. 8, p. 1.

58. Similarly, the following wires and checks were deposited into the Silver Pool Investment Account with similar notations:

- a. A check dated October 2, 2017 for \$100,000, made out to Rust Coin, with a "Rust Coin Investment" notation, Ex. 8, p. 2
- b. A check dated April 22, 2014 for \$99,500 made out to Rust Coin, with an "additional investment" notation; Ex. 8, p. 3.

- c. A check dated April 25, 2018 for \$62,000, made out to Rust Rare Coin, with an “IRA Transfer” notation; Ex. 8 p. 4.
- d. A check dated April 16, 2018 for \$500,000 made out to Rust Rare Coin, with an “Investment” notation; Ex. 8, p. 4.
- e. A wire dated April 24, 2018 for \$165,000, sent to the account of Rust Rare Coin, with an “Investment for [redacted]” notation; Ex. 8, p. 5.
- f. A check dated January 29, 2018 for \$330,000, made out to Rust Coin, with a “Silver Investment” notation; Ex. 8, p. 6.
- g. A check dated April 17, 2018 for \$240,000 made out to Rust Rare Coin, with a “Silver Investment” notation; Ex. 8, p. 7.
- h. A check dated May 15, 2018 for \$24,992.50 made out to Rust Coin, with a “Silver Investment” notation; Ex. 8, p. 8.
- i. A check dated February 2, 2018 for \$600,000 made out to Rust Rare Coin Inc., with a “silver account” notation; Ex. 8, p. 9.
- j. A check dated June 6, 2018 for \$100,000 made out to Rust Coin, with a “Silver Account” notation; Ex. 8, p. 10
- k. A check dated June 9, 2015 for \$64,040 made out to Rust Rare Coin, with a “Silver Fund” notation; Ex. 8, p. 11
- l. A check dated June 26, 2018 for \$100,000 made out to Rust Coin, with a “Rollover Acct.” notation; Ex. 8, p. 12.
- m. A check dated February 14, 2018 for \$50,000 made out to Rust Rare Coin, with a “Silver Investment” notation; Ex. 8, p. 13
- n. A check dated February 5, 2017 for \$45,006.30 made out to Rust Rare Coins, with a “trading account” notation; Ex. 8, p. 14.
- o. A wire dated December 12, 2017 for \$60,000 with the following instruction: **“These funds are for Gaylen Rust to invest in my silver account at the special offer of \$14.”** Ex. 8, p. 15.

61. Rust and RRC also used the Silver Pool Investment Account to distribute funds to earlier investors in the Silver Pool that were clearly marked as investment distributions:

- a. Zions Bank Silver Pool Investment Account check dated February 26, 2018 for \$16,550, with a “Feb 2018/1000 oz @ 16.55” notation; Ex. 9, p. 1
- b. Zions Bank Silver Pool Investment Account check dated August 7, 2018 for \$30,940, with a “2000 oz @ 15.47” notation; Ex. 9, p. 2;
- c. Zions Bank Silver Pool Investment Account check dated March 12, 2018 for \$2,500, with a “Mar2018/silver” notation Ex. 9, p. 3
- d. ETF for \$171,793.02 sent by RRC from the Zions Bank Silver Pool Investment Account to an earlier investor Ex 3, Hess Decl. ¶36].

h. Defendant Knew That Rust Was Managing an Investment Pool.

62. For the reasons stated above, and as a result of its frequent review of the Silver Pool Investment Account, Zions Bank knew that the Silver Pool Investment Account was an investment account which pooled a great number of investors’ funds.

63. Checks and wires were deposited into the Silver Pool Investment Account by investors, many of whom included notations in the check or wire indicating that the money was going toward the Silver Pool investment.

64. Zions Bank knew that RRC was in the precious metal business, subjecting the Bank and the Silver Pool account to heightened scrutiny and supervision. *See* Section (e) above. Zions Bank knew that the Silver Pool Investment Account contained funds contributed by investors and was not simply RRC’s standard operating account.

65. RRC and Rust were commodity pool operators, subject to the provisions of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2012). As the CFTC indicated in its Complaint against RRC and Rust, “[u]nder Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012), silver is a statutorily-defined commodity.” *See also* 7 U.S.C. § 23(b)(1) (listing commodities such as silver bullion and bulk silver coins). Further, the Silver Pool was a commodity pool as

defined in Section 1(a)(10) of the Act, and RRC and Rust were commodity pool operators as defined Section 1(a)(11) of the act.

66. The Commodity Exchange Act (CEA) and CFTC regulations require commodity pool operators to keep the property of their pool segregated, and prohibits them from commingling pool assets with the property of any other person. 17 C.F.R. § 4.20(c).

i. Defendant Was Aware of a Massive Amount of Insufficient Fund Events.

67. Zions Bank offers overdraft protection under certain circumstances on its business accounts. An overdraft occurs when a customer does not have sufficient funds in the account to cover a transaction. According to publicly obtained documents, in that circumstance, the Bank may, in its discretion, cover the transaction for the customer for a fee. According to the Bank's Business Accounts Schedule of Fees, the Bank charges its business customers an Insufficient Funds Fee ("Insufficient Funds Fee" or "NSF") of \$32 per transaction posted against insufficient funds. The Bank had to manually review any overdrafts in the exercise of its discretion whether to honor the item presented for payment, meaning that the Bank reviewed the transactions in the account.

68. Documents obtained by the CFTC directly from Zions Bank, which included copies of bank account statements, cancelled checks, deposit slips, debit and credit memos, wire transfer advices, wire data, and account setup and signature documentation for four RRC and nineteen related party bank accounts, show a massive amount of insufficient fund events in the Silver Pool Investment Account.

69. Specifically, between January 2018 and August 2018 alone, items were presented for payment from the Silver Pool Investment Account on twenty-two separate days on which the account did not have sufficient funds to pay, often with multiple items presented for payment on

a given day. For example, on January 9, 2018, the Silver Pool Investment Account was charged Insufficient Funds Fees of \$416, meaning that thirteen different items were presented for payment on that day for which the account did not have sufficient funds to pay. A week later, on January 17, 2018, the Investor Account was charged another \$96 for Insufficient Funds, meaning that three items were presented for payment for which the Investor Account did not have sufficient funds to pay.

70. That pattern continued, as the Silver Pool Investment Account was charged for Insufficient Funds Fees once in February and March 2018 respectively, on three different days in April, on four different days in May, three different days in June, four different days in July, and three different days in August. Based on the amounts charged, each of those situations necessarily involved multiple items presented for payment on a given day, as set forth below.

Date	Account	Amount Charged	Description
1/9/18	Zions – 7496	\$416	Insuf. Funds Fees (13 items)
1/17/18	Zions – 7496	\$96	Insuf. Funds Fees (3 items)
2/21/18	Zions – 7496	\$192	Insuf. Funds Fees (6 items)
3/21/18	Zions – 7496	\$96	Insuf. Funds Fees (3 items)
4/5/18	Zions – 7496	\$128	Insuf. Funds Fees (4 items)
4/26/18	Zions – 7496	\$32	Insuf. Funds Fee (1 item)
4/27/18	Zions – 7496	\$128	Insuf. Funds Fees (4 items)
5/8/18	Zions – 7496	\$128	Insuf. Funds Fees (4 items)
5/9/18	Zions – 7496	\$448	Insuf. Funds Fees (14 items)
5/25/18	Zions – 7496	\$96	Insuf. Funds Fees (3 items)
5/30/18	Zions – 7496	\$128	Insuf. Funds Fees (4 items)

6/6/18	Zions – 7496	\$128	Insuf. Funds Fees (4 items)
6/19/18	Zions – 7496	\$64	Insuf. Funds Fees (2 items)
6/28/18	Zions – 7496	\$160	Insuf. Funds Fees (5 items)
7/6/18	Zions – 7496	\$32	Insuf. Funds Fee (1 item)
7/9/18	Zions – 7496	\$320	Insuf. Funds Fees (10 items)
7/10/18	Zions – 7496	\$352	Insuf. Funds Fees (11 items)
7/26/18	Zions – 7496	\$64	Insuf. Funds Fees (2 items)
8/1/18	Zions – 7496	\$128	Insuf. Funds Fees (4 items)
8/10/18	Zions – 7496	\$64	Insuf. Funds Fees (2 items)
8/30/18	Zions – 7496	\$96	Insuf. Funds Fees (2 items)

71. In addition, the Bank imposes a Daily Overdraft Service Fee of \$5, beginning the fifth consecutive calendar day the account is overdrawn more than \$5. On July 9, 2018, the same day the Silver Pool Investment Account was charged \$320 in Insufficient Funds Fees, the account was also charged a \$15 Daily Overdraft Service Fee, meaning that the account was in an overdraft situation that lasted five business days before the fee was imposed.

j. Defendant Was Aware of Commingling.

72. Over 200 investors deposited funds into the Silver Pool Investment Account. Ex.4, p. 2. The CFTC case documents numerous instances of investor money being commingled with Rust’s other accounts at the Bank. The SEC Complaint provided a concise statement of Rust’s commingling: “[f]unds are heavily commingled among these [the Silver Pool Investment Account and Rust’s his other account ending in 3564] accounts because Rust transferred funds to and from them frequently.”

73. Based on all of the factors described herein, including the Bank's close scrutiny of Rust's businesses and the activity in his accounts, Zions Bank knew that investors' money was not being segregated for each investor's account as in a normal commodities trading operation.

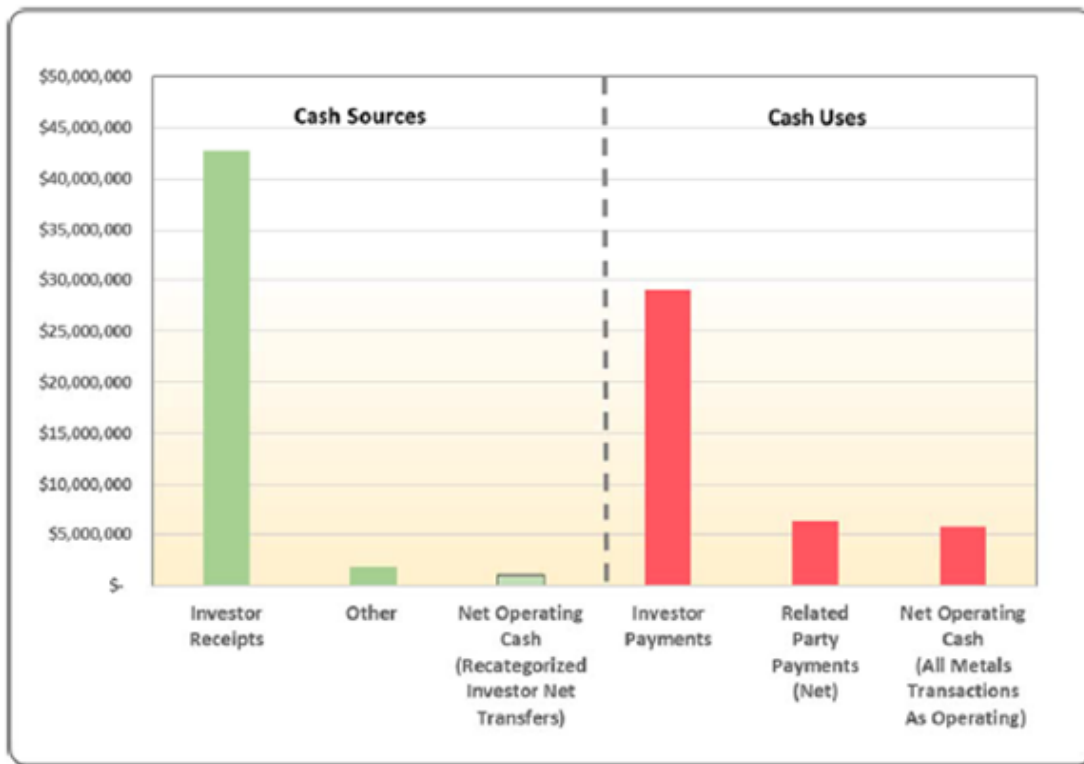
74. Zions Bank knew that investors' proceeds that were deposited for purported silver trading were being commingled with other non-investor money.

75. Zions Bank knew that investors' funds were being commingled with Rust's personal funds and that the money in the Silver Pool Investment Account was being used to fund personal expenses and unrelated businesses that Rust was running.

k. Defendant Knew That the Vast Majority of Distribution Payments to Investors Came from Other Investors' Deposits, in Ponzi Fashion.

76. According to the CFTC investigation, the vast majority of distributions from the Silver Pool Investment Account were Ponzi scheme payments. The CFTC investigator determined that 67% of the funds raised from new investors were used to pay earlier investors and that the only source of RRC funds large enough to cover payments to the earlier investors is

from new investor funding. *See* Ex. 7, Strong Dec. ¶¶39, 46.



77. All of these payments were processed from the Silver Pool Investment Account, and Zions Bank knew that this was the account where investors' funds were deposited.

78. Based on the multiple sources of knowledge alleged herein including Rust's ongoing interactions with Defendant's employees in its branch office, in particular Individual 1, who had a close and detailed knowledge of RRC and Rust's business, Defendant's repeated review of Rust and RRC's business in connection with their credit applications to Defendant and its extensions of credit to them, Defendant's employees' in the branch office where Rust and RRC banked - and in particular Individual 1 - intimate and extensive knowledge of the nature of RRC's business as a result of their frequent interactions with him, their processing of a large amount of wires from investors, their regular review of RRC's business and Silver Pool Investor Account as a result of multiple NSF incidents, their ongoing review of RRC's business and

Silver Pool Investor Account as a result of their BSA/AML duties, the fact that all of Rust's Silver Pool activity was conducted through a single account at the Bank, Individual 1 and other Bank employees directly saw the transactions in the Silver Pool Investment Account, revealing that Silver Pool had no substantive operations, the only money flowing into the account was new investor money, that no money was being disbursed for the purchase of silver or expenses related thereto, and that new investor money was being used to pay prior investors.

I. Defendants Provided a Crucial Financial Lifeline to Rust's Ponzi Scheme, Allowing It to Continue to Operate and Victimize Investors

79. Defendant provided a crucial financial lifeline to RRC and Rust, thus allowing them to continue to operate their Ponzi scheme and victimize investors for far longer than it would have otherwise been able to. Defendant did so by (1) offering short-term emergency financing to cover RRC's frequent cash shortfalls, through an overdraft protection credit facility, and by (2) offering a considerable amount of credit to RRC and Rust, which was used by them to finance their fraudulent scheme.

80. First, Defendant's short-term emergency financing in the form of an overdraft protection credit facility provided critical help to avoid RRC's early collapse. As with any Ponzi scheme, RRC's ability to continue to recruit new investors depended on making "clockwork" distribution payments to existing investors and honoring withdrawal requests promptly. A failure to make prompt payments – or worse, a check that "bounced" because of insufficient funds – would have quickly become known among the groups of investors who invested in RRC, many of whom knew each other. Once word of RRC's inability to repay investors got out, investors would have asked for their money back, prompting a "run on the bank," exposing RRC's Ponzi scheme, and precipitating its collapse – as always happens with Ponzi schemes. And, as it always happens with Ponzi schemes once payments are not made as promised and checks start to

bounce, investors would have alerted law enforcement or regulatory agencies, which would have quickly shut down the scheme. Indeed, that is precisely what appears happened with RRC – only much later, because of Defendant’s financial assistance: once Rust and RRC were unable to promptly honor an investor’s request to withdraw a considerable amount of money, that investor alerted the authorities and likely other investors.

81. For each NSF or Insufficient Fund incident, typical banking procedures, which were also followed by Defendants, require the review of the incident and account at issue by the branch manager or a senior branch officer – here, Individual 1. This review is typically performed first thing in the morning after the branch opens, as to all new NSF incidents when various bank customers submitted payment requests to the bank in excess of the funds in their accounts.

82. In RRC’s case, Defendant chose to extend credit to RRC as to each NSF incident, to make up for the chronic shortage of funds in the Investor Account.

83. Defendant’s financial lifeline allowed Rust and RRC to postpone the inevitable collapse of their scheme by a considerable period of time, during which they continued to victimize new investors. As described above, in 2018 alone Defendant saved RRC from collapse several times *each month* and offered financing to cover a total of over 100 insufficient fund (NSF) incidents in the Investor Account – 100 incidents that, without Defendant’s intervention, would have each prompted a chain of events culminating in RRC’s collapse and the exposure of its fraud.

84. In addition, Defendant offered RRC and Rust much needed financing that they used to keep their fraudulent operation in business and avoid detection and exposure.

Specifically, Defendant offered Rust and RRC a considerable amount of credit, which bank records show was repaid to Defendant on a monthly basis through 2018.

85. The financing that Defendant offered to RRC and Rust allowed them, as Defendant knew from its ongoing review of the NSF incidents in the Silver Pool Investment Account, to avoid financial collapse. With the considerable financing from Defendant – likely in the six figures, based on bank records – RRC and Rust were able to continue to operate their fraudulent Ponzi scheme and victimize new investors.

86. Lastly, Defendant’s financing was repaid by RRC and Rust with funds from the Silver Pool Investment Account, which as Defendant knew contained money whose provenance was typically investment proceeds from new investors in the Silver Pool. In effect, Defendant’s financial lifeline enabled RRC and Rust to continue to stay in business and victimize new investors, and in turn it was repaid by RRC and Rust with money that came from those new investors.

87. Defendant offered RRC and Rust the critically needed financial lifeline that allowed them to continue to perpetrate their scheme, with knowledge that (1) the Investor Account contained fiduciary funds from investors; (2) money from the Investor Account was being commingled and misappropriated; and (3) money from the Investor Account was being used for Ponzi payments to other investors.

m. The SEC, CFTC, and Utah Securities Regulators Charge Rust with Ponzi Scheme, Detail Defendants’ Role.

88. On November 13, 2018, the CFTC and Utah filed their civil enforcement action against defendants RRC, Gaylen Rust, and certain relief defendants charging Rust and RRC with fraud and asserting violations of the Commodities and Exchange Act and CFTC Regulations, aiding and abetting those violations, and multiple violations of the Utah Uniform Securities Act.

See, Case No. 2:18-CV-00892-TC (D. Utah) (“CFTC/Utah”). On the same day, the CFTC and Utah filed an emergency, *ex parte* motion to freeze the defendants’ assets, grant the CFTC and Utah immediate access to the books, records and other documents of defendants, appoint a temporary receiver, and permit expedited discovery.

89. On November 15, 2018, two days later, the SEC filed its action charging Rust and RRC with operating a fraudulent silver trading program. See, Case No. 1:18-cv-00147 (D. Utah Nov. 15, 2018). The SEC complaint alleged the same course of conduct alleged in CFTC/Utah; that Rust had been making material misrepresentations and omissions to solicit investors across the country to invest in his scheme. The SEC also charged Rust and RRC with fraud and asserted numerous violations of the federal securities laws.

90. Both cases – CFTC/Utah and the SEC -- are pending before Judge Tena Campbell of the United States District Court for the District of Utah. Based on the docket activity, CFTC/Utah is the lead case.

91. On November 27, 2018, the Court approved the parties’ consent order of preliminary injunction in CFTC/Utah and appointed a Receiver.

92. Following certain limited discovery, on December 6, 2018, the CFTC and Utah filed an amended complaint charging Rust, RRC, and new defendants Denise Rust and Joshua Rust, with operating a Ponzi scheme through which they misappropriated investor funds, used those funds to make payments to other investors, transferred money to other companies owned by Rust, and paid personal expenses.

93. The CFTC and Utah alleged that from as early as 2008 through the date of filing, Rust and his co-defendants Denise and Joshua were engaged in a massive scheme to defraud over 430 individuals from Utah and at least sixteen other states, and fraudulently solicited over

\$200 million from investors between May 2013 and August 2018 alone. The CFTC and Utah charged Rust and his co-defendants with tricking investors into believing that Rust was pooling investor funds for the purpose of entering contracts of sale for silver. According to the CFTC and Utah, Rust and RRC told investors that they would sell silver held in the pool as the market prices rose, and buy silver for the pool as market prices fell.

94. According to CFTC/Utah, Rust's pitch to investors included a claim that he conducted his transactions through a trading account at HSBC Bank, and that he had a personal relationship with a commodity analyst through which Rust was able to obtain information regarding when the bank and other market participants planned to sell large quantities of physical silver, driving down market prices. By trading silver in this manner, Rust claimed he was able to generate extraordinarily high returns, averaging twenty to twenty-five percent per year, and sometimes as high as forty percent or more. Rust and RRC provided investors with account statements that showed him making money on every single trade he purportedly executed on behalf of the pool.

95. Rust and RRC further told investors that Rust used the profit he generated from his trades to repurchase larger amounts of silver at the lower price, thereby continually increasing the amount of silver he holds for investors and thus increasing the value of each investor's account. Rust and RRC also represented to investors that Rust and RRC possessed approximately \$77 to \$80 million of physical silver on behalf of the silver pool, and they kept that silver at Brink's Incorporated's depositories in Salt Lake City and Los Angeles, California for safekeeping.

96. In reality, according to the CFTC and Utah, the statements made by Rust and RRC were false. Neither Rust nor RRC ever had a trading account at HSBC. Rather than use

investor funds to buy silver, Rust diverted most of the investor funds to his other entities, to personal uses, such as, for example, mortgage payments on the home of a family member, and to make payments to other investors in the pool in the manner of a Ponzi scheme. The account statements Rust provided to investors were fake, and Rust and RRC possessed only approximately \$200,000 worth of physical silver and did not store any silver at Brink's.

97. All three regulators described the key role Defendant played in the Rust scheme. Specifically, according to CFTC/Utah, between January 1, 2018 and August 31, 2018, Rust and RRC received over \$42 million in new contributions from investors, all of which was deposited in the Silver Pool Investment Account. During that time period, Rust and RRC made approximately \$28 million in payments from the Silver Pool Investment Account to Silver Pool investors. During that same time period, Rust and RRC transferred approximately \$7 million from the Silver Pool Investment Account to RRC's other Zion's Bank accounts, where it was commingled with funds from RRC's coin shop business. Rust and RRC also transferred large sums from the Silver Pool Investment Account to Rust's other business interests including R Legacy Entertainment, R Legacy Racing, and R Legacy Investments, as well as to the personal bank accounts of the defendants and relief defendants.

98. The SEC Complaint also describes Defendant's role in the Rust scheme and how Rust used the Silver Pool Investment Account, along with his other account ending in 3564 to perpetrate his scheme. According to the SEC Complaint, "[f]unds are heavily commingled among these accounts because Rust transferred funds to and from them frequently."

99. The CFTC/Utah case is proceeding ahead. On January 3, 2019, the Court entered an order requiring the defendants to provide a written and verified accounting by January 12, 2019 and allowing discovery to begin immediately.

n. Regulatory Framework Applicable to Zions Bank's Relationship with RRC; Zions Bank's Enhanced Due Diligence Duties as to RRC

100. Banks such as Zions Bank are required by federal law to know their customers and understand their banking activities and conduct. They must supervise their customers' accounts and engage in due diligence both at the outset of the relationship and continuously during the relationship with the customer. Such duties are heightened as to customers that deal with precious metals and coins, such as RRC, which are deemed to be high-risk customers and require "enhanced due diligence."

101. Pursuant to applicable banking regulations, a bank is required to collect and maintain information concerning its customers. The bank must maintain procedures that allow it to "form a reasonable belief that it knows the true identity of each customer." 31 C.F.R. § 1020.220(a)(1).

102. To discharge its duties, the bank is required to collect information about the holder of each account. 31 C.F.R. § 1020.220(a)(2). When a corporate entity rather than an individual opens an account, the bank must obtain information about the individuals with authority or control over the account. 31 C.F.R. § 1020.220(a)(2)(ii)(C).

103. Pursuant to the applicable federal rules and regulations, the bank must develop, administer, and maintain a program that ensures and monitors the bank's compliance with the Bank Secrecy Act (BSA). C.F.R. § 21.21. Such program must be approved by the bank's board of directors and noted in the board meeting minutes. A bank's compliance program must include a system of internal controls designed to ensure ongoing compliance, independent testing of the bank's compliance, daily coordination and monitoring of compliance by a designated person, and training of appropriate personnel.

104. Under the applicable rules and regulations, a bank must also develop a customer due diligence program that assists the bank in predicting the types of transactions, dollar volume, and transaction volume each customer is likely to conduct, and which provides the bank with a way to identify unusual or suspicious transactions for each customer. A bank's customer due diligence program allows it to maintain an awareness of the unique financial activity of its customers and the ability to predict the type and frequency of transactions in which its customers are likely to engage.

105. The FDIC rules and regulations require banks to identify a BSA compliance officer who is a senior bank official responsible for coordinating and monitoring compliance with the BSA. FDIC Rules & Regulations § 326.8. The compliance officer must designate an individual at each office or branch to monitor the bank's day-to-day compliance with the BSA.

106. The Federal Financial Institutions Examination Council (FFIEC) was established by the federal government in 1979 to prescribe uniform principles, standards, and report forms and to promote uniformity in the supervision of financial institutions. The FFIEC's Bank Secrecy Act Anti-Money Laundering Manual contains an overview of BSA and anti-money laundering compliance program requirements, risks and risk management expectations, industry sound practices, and examination procedures. The FFIEC Manual is based on BSA laws and regulations and BSA and anti-money laundering directives issued by federal banking agencies such as the Federal Reserve, Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of Currency. *See* FFIEC BSA/AML Examination Manual p. 1 and Appendix A (2014). https://www.ffiec.gov/bsa_aml_infobase/documents/bsa_aml_man_2014.pdf

107. The FFIEC identifies precious metal dealers such as RRC as types of "nonbank financial institution" that can expose banks to higher risks. *Id.* at 299-300. The FFIEC further

cautions banks that customers who deal with precious metals and coins must be subjected to “enhanced due diligence.” *Id.* at 283. The FFIEC provides special guidance to banks regarding the heightened supervision of customers like RRC, that use their bank accounts in connection with coins and precious metal. *Id.* at 20, 283.

108. According to the FFIEC, banks that hold accounts for nonbank financial institutions such as RRC should: 1) develop policies, procedures, and processes to assess the risks posed by these particular type of clients; 2) conduct adequate and ongoing customer due diligence; 3) ensure the relationship is appropriately considered within the bank’s suspicious activity monitoring and reporting systems, and 4) conduct further due diligence in a manner commensurate with any potential heightened risk. *Id.* at 300-301; *see also* 12 C.F.R. § 21.21 (requiring banks to develop, administer, and maintain a program that ensures compliance with the BSA).

109. Customer due diligence policies, procedures and processes are the “cornerstone of a strong BSA/AML compliance program.” FFIEC BSA/AML Examination Manual p. 56 (2014). This is even more so for those customers who present a higher risk for money laundering. The objective of customer due diligence is to “enable the bank to predict with relative certainty the types of transactions in which a customer is likely to engage.” *Id.* An adequate customer due diligence program should “assist the bank in determining which transactions are potentially suspicious.” *Id.*

110. A bank’s customer due diligence (“CDD”) processes “should include enhanced CDD for higher-risk customers and ongoing due diligence of the customer base.” *Id.* “Enhanced due diligence (EDD) for higher-risk customers is especially critical in understanding their anticipated transactions and implementing a suspicious activity monitoring system that reduces

the bank's reputation, compliance, and transaction risks. Higher-risk customers and their transactions should be reviewed more closely at account opening and more frequently throughout the term of their relationship with the bank." *Id.*

111. For high-risk accounts such as RCC's Silver Pool Investment Account, a bank's enhanced due diligence duties may include obtaining, both when the account is opened and throughout the relationship with the customer, information regarding:

- a. The purpose of the account.
- b. The source of funds and wealth.
- c. Occupation or type of business.
- d. Proximity of the customer's residence, place of employment, or place of business to the bank.
- e. Description of the business operations, the anticipated volume of currency and total sales, and a list of major customers and suppliers.
- f. Explanations for changes in account activity.

Id. at pp. 57-58. Lastly, "[a]s due diligence is an ongoing process, a bank should take measures to ensure account profiles are current and monitoring should be risk-based. Banks should consider whether risk profiles should be adjusted or suspicious activity reported when the activity is inconsistent with the profile." *Id.* at p. 58.

112. As part of their customer due diligence for higher-risk customers, banks like Defendant are required to apply a risk rating to customers such as RRC. To determine RRC's risk rating, Defendant was required to obtain information about RRC to develop a "transaction profile" that incorporated an understanding of normal and expected activity for RRC's business operations. See, *Id.*, Appendix K.

113. Banks such as Defendant must also ensure that their employees are following BSA guidelines. Banks make compliance a condition of employment and incorporate compliance with the BSA and its implementing regulations into job descriptions and performance evaluations.

114. Accordingly, banks such as Defendant are required to train all operational personnel whose duties may require knowledge of the BSA, on the BSA, including identification of various “red flags” discussed below. *See* FFIEC BSA/AML Examination Manual pp. 32-33 (2014).

115. The FFIEC has identified “red flags” that should cause a bank or its employees to inquire further and potentially file a suspicious activity report. The Silver Pool Investment Account triggered at least the following “red flags,” which resulted in Defendant’s review of the Account:

- a. Frequent and large deposits or withdrawals with no apparent business source;
- b. Frequent wire transfers not justified by the nature of the business;
- c. Accounts with a high volume of activity and frequently overdrawn;
- d. High volume of wire transfers with low balance or overdrawn account;
- e. Inconsistent deposit and withdrawal activity;
- f. Transactions that are not consistent with the customer’s business;
- g. Intra-bank transfers between accounts owned or controlled by the same individuals;
- h. Appearance of using account as a temporary repository for funds;
- i. Deposits and immediate requests for wire transfers or cash shipments;
and
- j. Large deposits.

116. Banks such as Defendant must investigate red flags that could indicate suspicious activity. *Id.* at 269. Such investigation must include the review of customer documents. “Reliable documentation is critical in identifying potentially suspicious activity.” *Id.*

117. Pursuant to its BSA/AML duties, Defendant learned that RCC and its Silver Pool – a business that dealt in precious metals and coins – qualified as a high-risk business that warranted enhanced due diligence.

118. Pursuant to its BSA/AML duties, Defendant had an opportunity to review, and did review RCC and the Silver Pool and the Silver Pool Investment Account, and learned that:

- a. RCC was a precious metal and coin dealer;
 - b. RCC had a silver trading operation called the Silver Pool;
 - c. RCC received investment proceeds from investors in the Silver Pool, to be invested by RCC and Rust;
 - d. RCC and Rust were managing investor money as fiduciaries, and the Silver Pool account held fiduciary funds;
 - e. RCC and Rust were misusing funds from the Silver Pool account, by commingling such funds and transferring them to Rust, his family, and other entities whose business was unrelated to the Silver Pool;
 - f. RCC and Rust were misusing investor money for Ponzi payments;
 - g. The Silver Pool was not a real business or trading operation, but a Ponzi scheme.
- o. Defendant’s Knowledge of Rust’s Fraud and Breach of Fiduciary Duty**

119. The multiple sources of Defendant’s actual knowledge of Rust’s fraud and breach of fiduciary duties, described above in more detail, are summed-up as follows.

120. First, Defendant became aware that RCC was a precious metal and coin business, when RCC and Rust opened their accounts with Defendant as a result of the Bank’s customer

due diligence process. That due diligence process identified the Silver Pool Investment Account as a high risk account requiring enhanced due diligence.

121. Second, Defendant's knowledge of RRC's precious metal trading and coin business was reinforced and confirmed through (1) Rust's ongoing interactions with Defendant's employees in its branch office, and in particular Individual 1, who had a close and detailed knowledge of RRC and Rust's business, (2) Defendant's ongoing due diligence as to RRC and the Silver Pool Investment Account, and (3) Defendant's repeated review of Rust and RRC's business in connection with their credit applications to Defendant and its extensions of credit to them.

122. Third, Defendant's employees in the branch office where Rust and RRC banked - and in particular Individual 1 - acquired an intimate and extensive knowledge of the nature of RRC's business and transactions in the Silver Pool Investment Account, as a result of (1) their frequent interactions with him, (2) their processing of a large amount of wires from investors, which indicated on their face that RRC was running a precious metal trading business, (3) their regular review of RRC's business and Silver Pool Investor Account as a result of multiple NSF incidents, and (4) their ongoing review of RRC's business and Silver Pool Investor Account as a result of their BSA/AML duties, described in more detail above.

123. Fourth, Rust indicated to many investors that they should reach out to Individual 1 as a point of contact in connection with their transfers of investment proceeds to Rust and RRC, to be invested in the Silver Pool. Many investors did so, and through Individual 1's interactions with investors, Individual 1 learned that (1) the money deposited in the Silver Pool Investment Account came from investors, (2) Rust was managing the investors' money in a fiduciary capacity, and (3) Rust was telling investors that RRC was a precious metal trading operation.

124. Fifth, Defendant repeatedly reviewed RRC's and Rust's business in connection with their applications for financing submitted to Defendant, and Defendant's due diligence prior to extending such financing.

125. Sixth, all of Rust's Silver Pool activity was conducted through a single account at the Bank. This account received close attention from employees of Defendant, particularly Individual 1. Individual 1 necessarily reviewed the Silver Pool Investment Account because the Silver Pool Investment Account experienced an enormous amount of insufficient fund events, each of which had to be reviewed manually by a senior person at Zions Bank as part of the Bank's procedure whereby it had to decide whether to honor each payment on Rust's behalf, and also in connection with Defendant's review and approval of Rust and RRC's application for financing, and pursuant to Defendant's AML/BSA ongoing due diligence review. Thus, Individual 1 and other Bank employees directly saw the transactions in the Silver Pool Investment Account, including that Silver Pool had no substantive operations, the only money flowing into the account was new investor money, the lack of any disbursements for the purchase of silver or expenses related thereto, the diversions to Rust and his businesses and his family members, the use of investor money from the Silver Pool Investment Account to repay a loan to Zions Bank, and the use of new investor money to pay prior investors in Ponzi scheme fashion.

126. Each of the above factors individually is sufficient to support actual knowledge, but cumulatively, they overwhelmingly support Defendant's knowledge that Rust was operating a Ponzi scheme and using investor money for improper purposes.

p. Defendant Provided Crucial and Substantial Assistance to RRC and Rust's Ponzi Scheme.

127. As described above, Defendant knowingly provided crucial and substantial assistance to RRC and Rust's Ponzi scheme, in several ways: first, Defendant lent RRC and Rust

a financial lifeline without which their Ponzi scheme could not have continued to operate, through (1) the short-term financing designed to cover the frequent and ongoing insufficient fund incidents and (2) the considerable amount of credit to both Rust and RRC, which enabled them to continue to run their fraudulent operations.

128. Second, Defendant knowingly executed transactions with investor, fiduciary funds that were on their face a misuse of such fiduciary funds: transfers to Rust's other businesses, himself, and his family, and commingling, in violation of RRC and Rust's fiduciary duties to investors and also in violation of the commodities rules and regulations that prohibited commingling.

129. Third, Defendant knowingly executed transactions that it knew were Ponzi payments, by transferring money to investors that it knew belonged to other investors.

130. Fourth, Defendant's employees, and in particular Individual 1, helped facilitate RRC and Rust's Ponzi scheme by interacting with investors in connection with their investments, facilitating their deposits of funds into the Silver Pool Investment Account, and "covering up" for RRC and Rust and assisting them despite the clear evidence of misconduct.

131. Defendant's knowing assistance was a substantial departure from the typical banking operations, and was essential to the perpetration of the Silver Pool fraud. Without Defendant's help, Rust and RRC's fraud would not have been able to continue and would have quickly collapsed and been exposed.

r. Discovery Rule

132. The Silver Pool scheme's fraudulent and illegal acts and omissions were, by their nature, self-concealing. The perpetrators of the Silver Pool scheme actively suppressed the dissemination of truthful information regarding the Silver Pool scam and actively sought to

prevent Plaintiffs and the putative class members from discovering their fraudulent and illegal acts and omissions.

133. Plaintiffs could not have discovered, and in fact did not discover, the facts surrounding the fraudulent Silver Pool scam, and Defendant's involvement therein, until the Commodity Futures Trading Commission and State of Utah Division of Securities filed their Complaint on November 13, 2018. (CFTC et al. v. Rust Rare Coin, Inc. et al., Case No. 18-00892, U.S. District Court for the District of Utah, Dkt. No. 1).

VIII. CLASS ACTION ALLEGATIONS

134. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and a putative class of persons defined below:

All persons and entities that paid for an interest in the Silver Pool scheme and that deposited or wired payments for such interest in an account maintained by Defendant (the "Class").

136. Excluded from the Class are (1) Defendant, (2) any person, firm, corporation, or other entity related to or affiliated with Defendant, or in which the Defendant has or had a controlling interest; (3) Gaylen Rust, Denise Rust, Joshua Rust, and their immediate family members; (4) all other employees of Rust Rare Coin, Inc.; and (5) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded person. The requirements for maintaining this action as a class action are satisfied as follows.

Fed. R. Civ. P. 23(a)(1): Numerosity. The proposed class is so numerous and so geographically dispersed that the individual joinder of all absent class members is impracticable. While the exact number of absent class members is unknown to Plaintiffs at this time, it is ascertainable by appropriate discovery and Plaintiffs are informed and believe that the proposed class includes more than 400 members, thus satisfying the requirements of Rule 23(a)(1).

Members of the proposed class may be identified from records maintained by Defendant and RRC, and may be notified of the pendency of this action by mail using a form of notice similar to that customarily used in class actions.

135. Fed. R. Civ. P. 23(a)(2): Common Questions of Law or Fact Predominate.

Common questions of law or fact exist as to all members of the proposed class and predominate over any questions which affect only individual members of the proposed class. These common questions of law or fact include, but are not limited to:

- a. Whether RRC, Gaylen Rust, Denise Rust, and/or Joshua Rust defrauded Plaintiffs and the other investors in the Silver Pool scheme;
- b. Whether RRC, Gaylen Rust, Denise Rust, and/or Joshua Rust violated the federal and state securities and/or commodities laws in connection with the Silver Pool scheme;
- c. Whether RRC, Galyen Rust, Denise Rust, and/or Joshua Rust converted monies in invested in the Silver Pool Investment Program;
- d. Whether Defendant owed Plaintiffs and the putative class members legal duties, and the scope of any such duties;
- e. Whether Defendant breached any fiduciary and/or legal duty to Plaintiffs and the putative class members;
- f. Whether Defendant had knowledge of the fraudulent Silver Pool scheme and RRC, Gaylen Rust, Denise Rust, and/or Joshua Rust's fraudulent and illegal activities;

- g. Whether Defendant participated in and/or substantially assisted in the fraudulent Silver Pool scheme and RRC, Gaylen Rust, Denise Rust, and/or Joshua Rust's fraudulent and illegal activities;
- h. Whether Defendant acted negligently in connection with the Silver Pool scheme;
- i. Whether Plaintiffs and the putative class members suffered damages as a result of Defendant's conduct;
- j. Whether Plaintiffs and the putative class members are entitled to damages and, if so, the amount of such damages;

136. Fed. R. Civ. P. 23(a)(3) and (4): Typicality and Adequacy. Plaintiffs' claims are typical of the claims of the putative class members, and Plaintiffs will fairly and adequately represent the interests of the class members. Plaintiffs have retained counsel with substantial experience in prosecuting complex class-action cases. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class, and have the financial resources to do so. Neither Plaintiffs nor their counsel has any interests adverse to those of the class members.

137. Fed. R. Civ. P. 23(b)(1)(A): A class action is appropriate because the prosecuting of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.

138. Fed. R. Civ. P. 23(b)(3): A class action is appropriate because the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. There is no special interest in the class members in individually

controlling the prosecution of separate actions. Absent a class action, many class members would likely find the cost of litigating their claims to be prohibitive, and will have no effective remedy at law. Absent class action, class members will continue to suffer harm and Defendants misconduct will proceed without remedy. The class treatment of common questions of law or fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

IX. LEGAL CLAIMS

COUNT I: AIDING AND ABETTING FRAUD

139. Plaintiffs and the putative class members hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

140. The Silver Pool scheme was fraudulent because, among others, the Rust Scheme Perpetrators knowingly misrepresented that:

- a. The Silver Pool generated profits for investors by selling silver when market prices were high and purchasing silver when market prices were low;
- b. The Silver Pool generated consistent double-digit returns, and had occasionally generated returns as high as forty percent, by trading physical silver;
- c. Investor funds were used to purchase physical silver stored at Brink's storage facilities in Salt Lake City, Utah and Los Angeles, California;
- d. The Rust Scheme Perpetrators used all of the funds raised from investors to purchase physical silver for the Silver Po; and
- e. The Rust Scheme Perpetrators could and would sell silver to fund any liquidation request by an investor.

141. The Rust Scheme Perpetrators also disseminated false account statements to investors that purported to show the number of ounces of silver involved in each sale, the price at which the silver was sold and repurchased, and the number of ounces of silver held by RRC increased as a result of each trade. All such information was fabricated.

142. Additionally, the Rust Scheme Perpetrators omitted to disclose certain material facts, including that:

- a. Investor funds were being diverted to pay certain of the Rust Scheme Perpetrators unrelated personal and business expenses, and business expenses of various other entities owned and/or controlled by Gaylen Rust;
- b. Distributions were being paid out of money contributed by other investors, Ponzi-style, and not from sales of silver; and
- c. The Rust Scheme Perpetrators were not licensed to sell securities and the securities were not registered or exempt from registration.

143. The Rust Scheme Perpetrators also failed to disclose any of the information typically included in disclosure documents that accompany the sale of securities.

144. Such misrepresentations and omissions were material—indeed, essential—to the Plaintiffs and putative class members, who had no reason to believe their money would not be used in the manner represented.

145. The Rust Scheme Perpetrators intended the Plaintiffs and putative class members to rely on such misrepresentations and omissions, and they did rely thereon when investing.

146. Plaintiffs and the putative class members lost a significant portion of their investments when their money was misused as described above.

147. Defendant had actual knowledge of the Silver Pool scheme and its fraudulent nature. Among other things, and as discussed in detail above, Defendant knew that:

- a. The Rust Scheme Perpetrators utilized a single account at Zions Bank;
- b. The Rust Scheme Perpetrators's business involved the purchase and sale of precious metals, a business subject to heightened supervision;
- c. The Silver Pool was not registered with the Utah Division of Securities or the United States Securities and Exchange Commission;
- d. The Rust Scheme Perpetrators managed an investment pool (by virtue of the fact that they received funds described as "investments[s]");
- e. The Rust Scheme Perpetrators' account was holding fiduciary funds, to be used by Rust and RRC to purchase, store, and trade silver for the Silver Pool investors;
- f. Investor funds were commingled with Rust's personal funds and the money in the Silver Pool account was used to fund Rust's personal and unrelated business expenses;
- g. Payments to certain investors were being made out of the same account and with the same funds that other investors used to invest in the Silver Pool;
- h. No money was deposited into the Silver Pool Investment Account resulting from trading profits by Rust or RRC, or as a result of any of the activities of the Silver Pool;
- i. No payments were ever made out of the Silver Pool Investment Account to HSBC to account for the purchase of silver;

- j. No storage fee payments were ever made out of the Silver Pool Investment Account to Brinks;
- k. The Silver Pool Investment Account ordinarily had a low or negative balance, and incurred a significant number of insufficient fund events; and
- l. Rust and RRD only made distributions when deposits were made by new investors.

148. Despite knowing about the Silver Pool's fraudulent nature, Defendant knowingly participated in and provided substantial assistance to the Silver Pool scheme by, among other things:

- a. Through its employees and agents including Individual 1, helping facilitate the Silver Pool scheme by interacting with investors regarding their investments and facilitating the deposit of their investments into the Silver Pool Investment Account;
- b. Divesting and misdirecting a significant portion of the investors' money, which were fiduciary funds, to the Rust Scheme Perpetrators personal and business accounts;
- c. Making Ponzi-style payments to investors, which investors believed to be distributions on their investments, with knowledge that such money came from investor proceeds deposited by others;
- d. Extending short term financing to Rust and RRC designed to cover the frequent insufficient funds events; and
- e. Extending considerable amounts of credit to Rust and RRC which enabled them to continue to run the fraudulent Silver Pool scheme.

149. Defendant's misconduct was the proximate cause of Plaintiffs' and the putative class members' losses, because it directly and proximately resulted in the misuse and misappropriation of their investments.

150. As a direct and proximate consequence of Defendant's misconduct as described above and throughout this Complaint, Plaintiffs and the putative class members lost a substantial portion of the money they invested in the Silver Pool in an amount to be determined at trial but well in excess of \$5,000,000.

COUNT II: AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

151. Plaintiffs and the putative class members hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

152. The Rust Scheme Perpetrators owed fiduciary duties to the Silver Pool investors because they managed the Silver Pool and promised investors they would carefully and diligently invest their money, and because the investors relied entirely on the skill and diligence of the Rust Scheme Perpetrators to manage their investments. The Rust Scheme Perpetrators touted their superior knowledge, skill, diligence, and expertise in buying and selling silver, and the investors relied on such representations and entrusted their money to the Rust Scheme Perpetrators because they believed they would use their superior skill and expertise to manage the investments.

153. The Rust Scheme Perpetrators breached their fiduciary duties to the investors by, among other things, defrauding them and misusing their money, as described in detail above.

154. As described in detail above, Defendant had actual knowledge that the Rust Scheme Perpetrators owed the Silver Pool investors fiduciary duties, and that they had engaged and were engaging in the conduct described above in violation of those fiduciary duties.

155. Despite this knowledge, Defendant knowingly participated in and provided substantial assistance to the Rust Scheme Perpetrators' breaches of their fiduciary duties by, among other things:

- a. Through its employees and agents including Individual 1, helping facilitate the Silver Pool scheme by interacting with investors regarding their investments and facilitating the deposit of their investments into the Silver Pool Investment Account;
- b. Divesting and misdirecting a significant portion of the investors' money, which were fiduciary funds, to the Rust Scheme Perpetrators personal and business accounts;
- c. Making Ponzi-style payments to investors, which investors believed to be distributions on their investments, with knowledge that such money came from investor proceeds deposited by others;
- d. Extending short term financing to Rust and RRC designed to cover the frequent insufficient funds events; and

156. Extending considerable amounts of credit to Rust and RRC which enabled them to continue to run the fraudulent Silver Pool scheme. Defendant's misconduct was the proximate cause of Plaintiffs' and the putative class members' losses, because it directly and proximately resulted in the misuse and misappropriation of their investments.

157. As a direct and proximate consequence of Defendant's misconduct as described above and throughout this Complaint, Plaintiffs and the putative class members lost a substantial portion of the money they invested in the Rust Scheme in an amount to be determined at trial but well in excess of \$5,000,000.

COUNT III: BREACH OF FIDUCIARY DUTY

158. Plaintiffs and the putative class members hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

159. Defendant served as an escrow custodian for the Silver Pool investors' money, and therefore owed to Plaintiffs and the putative class members a fiduciary duty with respect the monies deposited in the Silver Pool Investment Account under its oversight and custody.

160. Defendant breached this fiduciary duty by, among other things:

- a. Through its employees and agents including Individual 1, helping facilitate the Silver Pool scheme by interacting with investors regarding their investments and facilitating the deposit of their investments into the Silver Pool Investment Account;
- b. Divesting and misdirecting a significant portion of the investors' money, which were fiduciary funds, to the Rust Scheme Perpetrators personal and business accounts;
- c. Making Ponzi-style payments to investors, which investors believed to be distributions on their investments, with knowledge that such money came from investor proceeds deposited by others;
- d. Failing to notify the Silver Pool investors about the diversion and misdirection of their funds deposited in the Silver Pool Investment Account;
- e. Extending short term financing to Rust and RRC designed to cover the frequent insufficient funds events; and
- f. Extending considerable amounts of credit to Rust and RRC which enabled them to continue to run the fraudulent Silver Pool scheme.

158. Defendant's misconduct was the proximate cause of Plaintiffs' and the putative class members' losses, because it directly and proximately resulted in the misuse and misappropriation of their investments.

159. As a direct and proximate consequence of Defendant's misconduct as described above and throughout this Complaint, Plaintiffs and the putative class members lost a substantial portion of the money they invested in the Rust Scheme in an amount to be determined at trial but well in excess of \$5,000,000.

COUNT IV: AIDING AND ABETTING CONVERSION

161. Plaintiffs and the putative class members hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

162. The Rust Scheme Perpetrators willfully misappropriated the investors' funds in the Silver Pool Investment Account and converted those funds for their own unrelated personal and business purposes.

163. As described in detail above, Defendant had actual knowledge that the Rust Scheme Perpetrators had converted and were continuing to convert the investors' funds in the Silver Pool Investment Account for their own unrelated personal and business purposes.

164. Despite this knowledge, Defendant knowingly participated in and provided substantial assistance to the Rust Scheme Perpetrators' ongoing conversion by, among other things:

- a. Through its employees and agents including Individual 1, helping facilitate the Silver Pool scheme by interacting with investors regarding their investments and facilitating the deposit of their investments into the Silver Pool Investment Account;

- b. Divesting and misdirecting a significant portion of the investors' money, which were fiduciary funds, to the Rust Scheme Perpetrators personal and business accounts;
- c. Making Ponzi-style payments to investors, which investors believed to be distributions on their investments, with knowledge that such money came from investor proceeds deposited by others;
- d. Extending short term financing to Rust and RRC designed to cover the frequent insufficient funds events; and
- e. Extending considerable amounts of credit to Rust and RRC which enabled them to continue to run the fraudulent Silver Pool scheme.

165. Defendant's misconduct was the proximate cause of Plaintiffs' and the putative class members' losses, because it directly and proximately resulted in the misuse and misappropriation of their investments.

166. As a direct and proximate consequence of Defendant's misconduct as described above and throughout this Complaint, Plaintiffs and the putative class members lost a substantial portion of the money they invested in the Rust Scheme in an amount to be determined at trial but well in excess of \$5,000,000.

COUNT V: NEGLIGENCE

167. Plaintiffs and the putative class members hereby incorporate by reference the preceding paragraphs as though fully set forth herein.

168. Defendant owed Plaintiffs and the putative class members a duty to act as a reasonable financial institution would under the circumstances.

169. Defendant was negligent and breached this duty by, among other things:

- a. Through its employees and agents including Individual 1, helping facilitate the Silver Pool scheme by interacting with investors regarding their investments and facilitating the deposit of their investments into the Silver Pool Investment Account;
- b. Divesting and misdirecting a significant portion of the investors' money, which were fiduciary funds, to the Rust Scheme Perpetrators personal and business accounts;
- c. Making Ponzi-style payments to investors, which investors believed to be distributions on their investments, with knowledge that such money came from investor proceeds deposited by others;
- d. Failing to notify the Silver Pool investors about the diversion and misdirection of their funds deposited in the Silver Pool Investment Account;
- e. Extending short term financing to Rust and RRC designed to cover the frequent insufficient funds events; and

170. Extending considerable amounts of credit to Rust and RRC which enabled them to continue to run the fraudulent Silver Pool scheme. Defendant's negligence was the proximate cause of Plaintiffs' and the putative class members' losses, because it directly and proximately resulted in the misuse and misappropriation of their investments.

171. As a direct and proximate consequence of Defendant's misconduct as described above and throughout this Complaint, Plaintiffs and the putative class members lost a substantial portion of the money they invested in the Rust Scheme in an amount to be determined at trial but well in excess of \$5,000,000

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the putative class members respectfully request that the Court enter judgment in their favor and against Defendant as follows:

- A. Determine that the action is a proper class action pursuant to Fed. R. Civ. P. 23; appoint Plaintiffs as class representatives; and appoint Plaintiffs' counsel as counsel for putative class members;
- B. Awarding money damages, including prejudgment interest, on each claim in an amount to be established at trial.
- C. Awarding statutory attorneys' fees and costs, and other relief.
- D. Granting such other and further relief as to this Court may seem just and proper.

XI. JURY DEMAND

Plaintiffs and putative class members request that all issues herein shall be tried to a jury.

January 8, 2019

Respectfully submitted,

/s/ Samuel Adams

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marty@sagwlaw.com

Interim Class Counsel for Plaintiffs

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Travis & Nicole Gregory, Donald & Eri Hayley, Craig & Dixie Sargeant, Larry Fisher, Stephen & Karen Beverley, Chad & Heather Hansen, et al

(b) County of Residence of First Listed Plaintiff Salt Lake County
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Samuel Adams, Adams Davis, 35 West Broadway, Suite 203, Salt Lake City, UT 84101, 801-532-9500

DEFENDANTS
 Zions Bancorporation

County of Residence of First Listed Defendant Salt Lake County
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 430 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

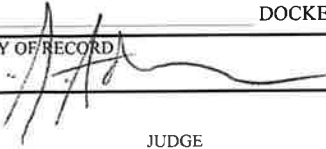
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION
 Brief description of cause:
Class Action Breach of Fiduciary Duty

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Tena Campbell DOCKET NUMBER 2:18-cv-00892

DATE 01/08/2018 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT 1

Zions First National Bank Signature Card					
Account Title: RUST RARE COIN INC			87-0278077	Branch ID: 0003 Cost Center: 00003	
Account Structure: Corporation			Date: 01/21/2015		
Supersedes Card dated:		Replaced by Card dated:		FileNet Document ID:	
Account Number	Opened Date	Opened/Revised By	Acct Type	Approved	Closed Date
7496	01/21/2015	Thais Sharp 2	DDA 107	<i>[Signature]</i>	
Authorized Signers:					
1.	RUST RARE COIN INC	Signature	Relationship		
		<i>[Signature]</i>	Type: Corporation TIN: 87-0278077		
2.	DENISE G RUST	<i>[Signature]</i>	Type: Non-Title TIN: 9879		
3.	GAYLEN D RUST	<i>[Signature]</i>	Type: Non-Title TIN: 2862		
4.	JOSH RUST	<i>[Signature]</i>	Type: Non-Title TIN: 1402		
5.			Type: TIN:		
6.			Type: TIN:		
TAX REPORTING INFORMATION - W-9 CERTIFICATION					
Complete this section only if you are a U.S. citizen or U.S. resident alien.					
Under penalties of perjury, I certify that:					
<input type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Trust <input type="checkbox"/> Estate <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other <input type="checkbox"/> LLC or Corporation <input type="checkbox"/> LLC or S Corporation <input type="checkbox"/> LLC Partnership					
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person, and 4. I am exempt from FATCA reporting.					
Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.					
Signature of U.S. Person: <i>[Signature]</i>					Date: 1-21-2015

The account owner named above ("Customer"), through its authorized signers signing above, hereby requests that Zions Bank (the "Bank") open the account designated and agrees:

- The account listed on this signature card above shall be governed by the most current version of the following documents ("Deposit Documents"), receipt of which is hereby acknowledged, and which are incorporated herein: 1) Zions Bank Deposit Agreement, 2) Interest & Service Fees Schedule. The Deposit Documents and this Signature Card, as they may be amended from time to time by Bank, constitute a contractual agreement between Customer and Bank.
- Bank is authorized to accept instructions of any kind with respect to the account from any one of the authorized signers listed above.
- The Fair Credit Reporting Act prohibits obtaining certain consumer reports relating to business accounts unless consent is obtained. By signing above, each authorized signer consents to Zions Bank making inquiry of and ordering reports from credit reporting, check clearing and other such entities concerning each signer's personal financial and other information, even though this may be a business account, to be used for evaluating and handling this and other deposit and loan accounts at Zions Bank, and to disclose information about the account to credit reporting agencies and to other persons or agencies who, in Bank's judgment, have a legitimate business purpose for obtaining such information. Upon request, Bank will inform Customer if a consumer report has been obtained and will provide Customer with the name and address of the agency furnishing the report.

CORPORATE RESOLUTION (Corp/Incl/Co/Ltd)
 Professional (Services) Corporation (PC/Chtr/PA)

The undersigned individuals certify that (a) they are corporate officer(s) or other authorized representative(s) of the corporation named on this Signature Card; and (b) the following resolution was adopted at a meeting of the corporation's Board of Directors duly called and held in accordance with applicable state laws where the corporation is incorporated. The corporation is hereafter referred to as "Entity".

Secretary _____ and/or *[Signature]* and/or _____
 Date: 1-21-15
 President / Vice President: *[Signature]* / *[Signature]*
 Authorized Representative, Title: *[Signature]*

EXHIBIT 2

Advanced Search

Reference Number: 20180226- 00003664

Source FED	Transaction Type FTR
Send Date 26FEB2018	Owning Bank 001
Value Date 26FEB2018	Repetitive Code
Status Sent	Outgoing Network ID
Rate	Incoming Network ID 0226B6B7HU1R00787902261204FT01
Contract	
Consumer X-Border	

Debit Information

Account: [REDACTED]
BANK OF AMERICA, N.A., NY
NEW YORK, NY
Amount: 1,000,000.00 USD
Recon Ref:
Sending Bank Reference 2018022600330496
Ordering Bank: S/ BOFAUS3N
BANK OF AMERICA, N.A.
222 BROADWAY
NEW YORK, NY, US
Originator Reference: 224674716
Originator: / 000495460990
L [REDACTED] FAMILY REVOCABLE LIVING TRS
V [REDACTED] L [REDACTED] TRTEE
[REDACTED]
PEBBLE BEACH CA 93953-1225
Bank to Bank Information:

Credit Information

Credit: [REDACTED] 7496
RUST RARE COIN INC
DENISE G RUST, GAYLEN D RUST, JOSH RU
242 E BROADWAY
SALT LAKE CITY UT 84111-2419 84111
Advising Instructions:
Amount: 1,000,000.00 USD
Recon Ref:
Channel: LTR
Originator to Beneficiary Information:
SILVER INVESTMENT



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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

GAYLEN DEAN RUST, an individual, and
RUST RARE COIN INC., a Utah corporation,

DEFENDANTS.

DECLARATION OF HOWARD HESS

Case No.: 2:16-cv-_____

Judge _____

I, Howard Hess, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 21 and a resident of the State of Utah. I make this declaration based upon my personal knowledge. If called to testify, I could and would competently testify to the following facts:

Employment with Rust Rare Coin Inc.

2. Beginning in November 2016, I performed contract Information Technology (“IT”) work for Rust Rare Coin Inc. (“RRC”) and Gaylen Rust (“Rust”). In June 2017, I

accepted full-time employment with RRC as an IT specialist. I provided IT services to both R Legacy Entertainment (“RLE”) and RRC, as well as to other subsidiaries that I understood to be owned and controlled by Rust. I was supervised by and reported directly to Rust during my entire full-time employment at RRC.

3. During my employment with Rust I came to know that RRC operated in two ways: 1) A retail store buying and selling precious metals (gold, silver, platinum, etc.), rare coins, and rare Mormon currency; 2) the operation of a silver-bullion trading program (the “silver trading program”), through which Rust managed the investments of others (Rust’s clients). Further, I came to understand that while the retail operation is profitable, the silver trading program provided the vast majority of Rust’s profits. In fact, to my knowledge, none of the other entities operating under RLE are cash flow positive and require infusion from Rust, either from RRC or Rust personally.

4. I worked in RRC’s corporate office located at 252 East 300 South in Salt Lake City. As part of my job, I had access to the business offices of RRC. I was authorized to access RRC’s computers. Although I did not review RRC’s financial records, I am familiar with its business operations.

5. In July 2018, my employment with RRC was terminated based on a disagreement between me and the employees of one of the RRC subsidiaries. My termination did not have anything to do with the silver trading program described below.

Rust’s Description of the Silver Trading Program

6. When I negotiated full-time employment with RRC in June 2017, Rust offered that my compensation would be part in regular payroll and part as a \$35,000 investment in RRC’s silver trading program. At the time I accepted these terms of employment, Rust explained

to me that, through this program, he raises funds from investors to purchase silver bullion and that he trades the silver bullion to make a profit for his investors.

7. During this conversation, Rust also told me that years ago he began business relationship with a national metals investing association. Through the associations he developed there, Rust became familiar with a metals investment strategy that he uses to determine his trades. Rust explained that it is the volatility in the metals markets that provide the opportunity to execute trades profitably, both during down turns and up swings.

8. Rust said that he follows the trades executed by HSBC Bank plc (“HSBC”), who he stated is the largest bank in the world, and executes his trades based upon HSBC’s moves. Rust explained that in a down turn, he executes his own sell transaction after the second consecutive sell transaction by HSBC and, once an up swing begins, he executes his own buy transaction after HSBC’s second consecutive buy transaction.

9. Rust stated that he typically uses half the silver ounces held to engage in this trading activity so as to mitigate risk.

10. Rust also said that he uses the proceeds from the silver trading program to repurchase a larger amount of silver at the lower price. By trading this way, Rust claimed to increase the total number of ounces of silver held in the silver trading program. Rust stated that he measures profitability in the silver trading program by calculating the number of ounces generated by his sale and repurchase of silver.

11. Rust also stated that the silver he purchases through his silver trading program is stored in the name of RRC at secure depositories operated by Brink’s Global Services U.S.A. Inc. (“Brink’s”) in Salt Lake City, Utah and Los Angeles, California.

Decision to Invest

12. Based on these representations by Rust, I decided to make a personal investment in Rust's silver trading program, in addition to the \$35,000 investment I received as part of my compensation.

13. I told Rust that my initial investment goal was to hold 8,000 ounces of silver. Rust told me he would trade 4,000 of these ounces on my behalf as part of his silver trading program.

14. Therefore, on or around July 5, 2017, I invested \$96,000 in Rust's silver trading program, which money came from my savings account at Zion's Bank N.A. and the payment was made via a cashier's check payable to Rust Rare Coin. A copy of that cashier's check is attached as Exhibit 1.

15. Rust did not ask me about the source of my funds, my risk tolerance, or my net worth.

Account Statements

16. In December 2017 and then again in June 2018, Rust gave me account statements that reflected both the balance of my investment measured in dollars and ounces of silver, as well as the silver trades executed on my behalf through the silver trading program. Copies of these account statements are attached as Exhibit 2.

17. The statements include my name but include no other identifying information. I became suspicious about the statements because they were not created or sent on any regular basis. They appear to have been created individually in Excel at Rust's convenience.

18. Each of the trades shown on these statements involved a sale of silver and a subsequent repurchase of a larger amount of silver, often on the same day, or sometimes one or two days after the sale. On every trade listed on these statements, Rust appeared to have sold

silver for a higher price per ounce and then repurchased a larger amount of silver at a lower price per ounce. On each trade listed on these statements, Rust's repurchase of silver resulted in an increase in the number of ounces of silver I held in my share of the silver trading program.

19. Because of the formatting of these statements, I had doubts about their accuracy and authenticity. I therefore used my work computer at RRC's offices to compare one of my monthly statements with that of another investor.

20. Based on Rust's description of the trades he made through the silver trading program, I expected the account statements for all investors to show the same trade dates, sale prices, and purchase prices. Instead, when I compared my statements with those of the other investor, I noticed that the trades did not match on the two statements. Because Rust had stated that he executes only a single trade representing the entire investment pool, this discrepancy deepened my concern and suspicion.

Representations Regarding Returns

21. Rust made several different representations to me about the historical returns earned through the silver trading program. On separate occasions between June 2017 and August 2018 he told me that the silver investment has never earned less than a 20% annual return, that the last couple of years were "really good," and that one year the investment doubled.

The August 6, 2018 Conversation with Rust

22. Due to my growing concerns regarding Rust's silver trading program, I arranged to have a meeting with Rust on August 6, 2018.

23. During that meeting, Rust again made representations regarding returns earned through the silver trading program, stating that the worst returns in the history of his trading

silver was 12%; that in the last five years, his worst returns had been 40%; and that for 30 years, he's consistently seen an average of 20% to 25% returns.

24. Rust also told me that he took physical possession of the silver purchased and uses Brink's in Utah and Los Angeles to transport and store the silver.

25. Rust further told me that he conducts his silver trades for all investors through a single account held by RRC at HSBC and that he personally knows an HSBC analyst.

26. Rust told me that he pools the investor money, that he stores all investor silver together, and that he never trades more than half of the silver at any one time.

27. Rust told me that RRC had approximately 150 investors and about \$80 million under management.

28. During this meeting I asked Rust about the survivorability of the silver trading program if he were unable to continue to act in his capacity either through death or accident. Rust's response was that others had asked him the same questions, but he wasn't overly concerned. He said that if he were unable to continue, others knew enough to unwind the investments, handle transactions with clients, and close things out, although he did not specify who these other individuals were.

29. I asked specifically about Josh Rust's involvement (Rust's oldest son, who manages the store operation), and Rust responded that he might involve Josh in the silver trading program sometime in the future when Josh was more mature and seasoned in the business.

30. During the conversation, Rust told me that although my employment terminated, he would continue to manage my investment, or I could withdraw. But he advised me that given the market price, I should stay with the investment.

My Observations During my Employment with Rust

31. During the time I was employed with Rust, I observed that Rust concerned himself with the daily cash flow of RRC and the status of incoming funds and the scheduled disbursements. Never did I observe any conversation or communication regarding shipments to or from Brinks, nor did I observe any activity associated with tracking or reconciling trades with or through HSBC.

32. During my entire time with Rust and inclusive of all my day-to-day interactions with Rust and other employees, it was increasingly curious and concerning to me how Rust managed the silver account and client contacts. Rust's wife Denise Rust, assistant Felicia Frey, and internal accountant Michael Allred each were involved, but Rust kept each person's involvement segmented and separate. Felicia handled phone calls with clients and helped Rust track and monitor client requests, Michael handled bank deposits and withdrawals. In my experience, these individuals were only involved in administrative matters related to the silver trading program.

33. Rust always met with clients alone in his office. Account statements were personally prepared by Rust and placed in sealed envelopes by Rust before given to Felicia.

Decision to Withdraw Investment

34. On or about August 14, 2018, I decided to cash out my investment in Rust's silver trading program. I called Rust and asked him to sell my share of the silver and provide me with my funds. Rust told me it would take about a week for me to get my money. Shortly after our phone call, Rust emailed me a final account statement. A copy of this statement is attached as Exhibit 3.

35. It took, not one week, but three weeks before the funds were transferred into my account at Zions Bank. During this three week period I made three or four inquiries about the status via both email and phone calls and was told each time that things were in normal process.

36. On or about September 4, 2018, I received an electronic funds transfer from RRC for \$171,793.02.

37. Based on all of my interactions with Rust and observations while working at RRC, I have come to believe that Rust has not actually been trading in silver as he described and represented and that his representations regarding his silver trading business are false. I have also come to believe that Rust's representations regarding the returns he has generated from the silver trading program are false.

38. Had I known that Rust was not managing the silver investments as represented, either through HSBC or any other financial institution, brokerage institution, or trading firm, or that he was not actually generating substantial investment returns through the silver trading program, I never would have invested with Rust.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 12th day of October, 2018.

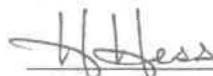

Howard Hess

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>COMMODITY FUTURES TRADING COMMISSION, and</p> <p>STATE OF UTAH DIVISION OF SECURITIES, through Attorney General, Sean D. Reyes,</p> <p>Plaintiffs,</p> <p>v.</p> <p>RUST RARE COIN INC., a Utah corporation, and GAYLEN DEAN RUST, an individual,</p> <p>Defendants;</p>	<p>PLAINTIFFS' EX PARTE MOTION FOR STATUTORY RESTRAINING ORDER, EXPEDITED DISCOVERY, PRELIMINARY INJUNCTION, AND OTHER EQUITABLE RELIEF</p> <p>Case No. 2:18cv00892</p> <p>Judge: Bruce S. Jenkins</p>
---	--

and

DENISE GUNDERSON RUST, an individual,
JOSHUA DANIEL RUST, an individual,
ALEESHA RUST FRANKLIN, an individual,
R LEGACY RACING INC, a Utah
corporation, R LEGACY ENTERTAINMENT
LLC, a Utah limited liability company, and R
LEGACY INVESTMENTS LLC, a Utah
limited liability company.

Relief Defendants.

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I. INTRODUCTION

Plaintiffs Commodity Futures Trading Commission (“CFTC”) and the State of Utah Division of Securities, through Attorney General Sean D. Reyes (“State of Utah”) (collectively, “Plaintiffs”) have filed a Complaint for Injunctive Relief, Civil Monetary Penalties and Other Equitable Relief (“Complaint”), alleging an ongoing fraudulent scheme being perpetrated by Defendants Gaylen Dean Rust (“Rust”) and Rust Rare Coin, Inc. (“RRC”) (collectively, “Defendants”). Plaintiffs further allege that Relief Defendants Denise Gunderson Rust (“Denise Rust”), Joshua Daniel Rust (“Joshua Rust”), Aleesha Rust Franklin (“Aleesha Rust”), R Legacy Racing, Inc. (“R. Legacy Racing”), R Legacy Entertainment, LLC (“R. Legacy Entertainment”), and R Legacy Investments, LLC (“R. Legacy Investments”) (collectively, “Relief Defendants”) all received transfers of money from Defendants that represent ill-gotten gains of Defendants’ fraudulent scheme to which Relief Defendants have no legitimate claim.

Plaintiffs respectfully move this Court, on an emergency, ex parte basis, for an order, pursuant to Section 6c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1(a) (2012), Section 61-1-20(2) of the Utah Uniform Securities Act (“Securities Act”), and in accordance with Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 65, that (1) freezes the assets of Defendants and Relief Defendants, (2) grants the CFTC and State of Utah immediate access to the books, records, and other documents of Defendants and Relief Defendants; and (3) appoints a temporary receiver (the “Proposed SRO”). Plaintiffs need this emergency relief in order to preserve the status quo; to prevent the dissipation of any assets and ensure that any future equitable relief obtained by Plaintiffs, including any restitution to the victims of Defendants’ fraudulent scheme, can be effective; and to determine the full scope of the fraudulent scheme, identify the victims of the scheme, and locate the remaining assets of Defendants and Relief

Defendants. Providing notice to Defendants and Relief Defendants would give them an opportunity to dissipate funds and destroy books and records evidencing the fraudulent scheme before Plaintiffs have had the opportunity to obtain and serve the Proposed SRO.

Defendants have been engaging in their fraudulent scheme since at least 2008 and continue to solicit new contributions from investors and prospective investors, including as recently as October 8, 2018. Since 2008, Defendants have defrauded at least 200 individuals from Utah and at least sixteen other states. Between May 2013 and August 2018 alone, Defendants have fraudulently solicited over \$170 million from investors. In the first eight months of 2018, Defendants received \$42 million in new contributions from investors. During that same time period, Defendants used over \$28 million—sixty-seven percent of the contributions received—to make Ponzi payments to other investors. During that same time period, Defendants transferred over \$6.2 million to Relief Defendants, over ninety-nine percent of which came from funds contributed by Silver Pool investors.

Defendants have portrayed and continue to portray their scheme as a unique investment opportunity, in which Defendants pool money contributed by investors and generate trading profits by buying and selling physical silver (the “Silver Pool”). Defendants told investors and prospective investors they traded the silver they held for the Silver Pool through an account at HSBC Bank, Inc. (“HSBC”) by selling silver when market prices were high and buying silver back when prices had fallen, thereby increasing the amount of silver they held for the Silver Pool. Defendants further told investors and prospective investors that they earned consistent annual returns trading in this manner, in the range of twenty to twenty-five percent, and in some years generated returns as high as forty percent or even 100 percent. Defendants prepared and

distributed to investors account statements that purportedly depicted Defendants' trading activity and suggested that Defendants earned a profit on every trade they executed for the Silver Pool.

Defendants' statements to investors and prospective investors and these account statements were false. Defendants did not use investor contributions to buy and trade silver in the manner they represented to investors and prospective investors. Instead, Defendants have misappropriated and continue to misappropriate most of the money contributed by investors, using this money to make payments to investors in the manner of a Ponzi scheme, to pay personal expenses, and to fund large transfers to Relief Defendants. By engaging and continuing to engage in this conduct, Defendants have violated and continue to violate Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Commission Regulation ("Regulation") 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018), as well as Sections 61-1-1(2), 61-1-1(3), 61-1-3(1), 61-1-3(2)(a) and 61-1-7 of the Securities Act.

7 U.S.C. § 13a-1(a) (2012) authorizes the CFTC¹ to seek, and the Court to grant, an ex parte restraining order that (1) prohibits any person from destroying, altering, or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents; (2) prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and (3) appoints a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate.² To obtain this relief, Plaintiffs

¹ Under Section 6d(1) of the Act, 7 U.S.C. § 13a-2(1) (2012), the State of Utah is authorized to bring an action against Defendants on behalf of its residents to enjoin Defendants' violations of the Act, to enforce compliance with the Act and Commission Regulations, to obtain damages on behalf of its residents, or to obtain such further and other relief as the Court may deem appropriate. Consequently, the State of Utah is authorized to seek the restraining order requested herein both under 7 U.S.C. § 13a-1 as well as Utah Code Ann. Section 61-1-20(2)..

² 7 U.S.C. § 13a-1(b) provides that "[u]pon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond."

need only make a prima facie showing that Defendants have engaged in acts or practices that violate the Act and Regulations. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978).

The Securities Act authorizes the Court, exercising supplemental jurisdiction, to issue a permanent or temporary, prohibitory or mandatory injunction and issue a restraining order or writ of mandamus. The Securities Act also specifically provides authority to appoint a receiver. Utah Code Ann. § 61-1-20(2)(b)(i), (ii) and (iv).

Pursuant to Fed. R. Civ. P. 65(b)(2), the Proposed SRO will expire in fourteen (14) days. Therefore, Plaintiffs also respectfully move the Court to issue, after a hearing, a preliminary injunction that (1) prohibit further violations of the Act, Regulations, or the Securities Act; (2) continues the freeze on the funds, assets, and other property of the Defendants and Relief Defendants ordered in the Proposed SRO; (3) extends the appointment of the temporary receiver for the duration of this action; and (4) orders any additional relief this Court deems appropriate pending a trial on the merits of this action. Plaintiffs respectfully request that the hearing on their motion for preliminary injunction be scheduled within fourteen days from the date the Court issues the Proposed SRO. Plaintiffs also move the Court to permit the parties to engage in expedited discovery and remove the prohibition set forth in Fed. R. Civ. Proc. 26(d) on discovery before the early meeting of counsel pursuant to Fed. R. Civ. Proc. 26(f).

Plaintiffs' motion for entry of the Proposed SRO incorporates by reference each and every factual allegation made and contained in the Complaint. In accordance with Fed. R. Civ. P. 65(b), this motion is further supported by the sworn statements of the following seven declarants:

1. Howard Hess (“Hess”), a Silver Pool investor with first-hand knowledge about the representations made to him by Rust and RRC and the effect those representations had on his decisions regarding the Silver Pool (**Exhibit A** to this motion);

2. Ray Strong (“Strong”), an experienced forensic accountant, who can attest to his analysis of RRC’s bank records and his comparison of the representations made by Defendants to Silver Pool investors such as Hess and Costanzo with RRC’s actual financial condition (**Exhibit B** to this motion);

3. Liz Blaylock (“Blaylock”), an investigator for the Utah Division of Securities who provides facts regarding Defendants’ and Relief Defendants’ structure and operations (**Exhibit C** to this motion);

4. David Costanzo (“Costanzo”), a Silver Pool investor with first-hand knowledge about the representations made to him by Rust and RRC and the effect those representations had on his decisions regarding the Silver Pool (**Exhibit D** to this motion);

5. Jason Henrikson (“Henrikson”), an FBI special agent who authenticates transcripts of recorded conversations between Rust and two undercover law enforcement employees (**Exhibit E** to this motion);

6. Matt Flanigan (“Flanigan”), an employee of HSBC Securities (USA), Inc. who can attest to the falsity of what Rust tells prospective and current Silver Pool investors about Defendants’ relationship with HSBC (**Exhibit F** to this motion); and

7. Shane Housley (“Housley”), an employee of Brink’s Global Services, U.S.A. Inc. (“Brink’s”) who can attest to the falsity of what Rust tells prospective and current Silver Pool investors about Defendants’ relationship with Brink’s (**Exhibit G** to this motion).

II. THE PARTIES

A. Plaintiffs

Plaintiff **CFTC** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act and Regulations promulgated thereunder.

Plaintiff **State of Utah Division of Securities** is the administrator of the securities laws of the state of Utah and is authorized under Section 6d of the Commodity Exchange Act, 7 U.S.C. § 13a-2 (2012), and Utah law, including Section 61-20-20(2)(a) of the Securities Act, to bring this action on behalf of the State of Utah and its citizens to enforce Utah law (including the Securities Act), the Act, and Regulations.

B. Defendants

Defendant **RRC** is a Utah corporation incorporated on October 5, 1983, with its principal place of business at 242 East 300 South, Salt Lake City, Utah 84111. RRC operates as a coin and precious metal dealer in this district and throughout the United States.

Defendant **Rust** is an individual who resides in Layton, Utah. Rust is the sole owner of RRC and serves as RRC's President and sole Director.

C. Relief Defendants

Plaintiffs' Complaint names six Relief Defendants, each of whom/which has received, are receiving or are about to receive funds, assets or other property as a result of Defendants' violative acts and have been unjustly enriched thereby. The Relief Defendants do not have any legitimate claim to the assets or other property they received as a result of Defendants' violative conduct in connection with the Silver Pool.

Relief Defendant **Denise Gunderson Rust** ("Denise Rust") is an individual who resides in Layton, Utah. Denise Rust is Rust's spouse. She serves as RRC's Secretary and has signatory authority on several of RRC's bank accounts.

Relief Defendant **Joshua Daniel Rust** (“Joshua Rust”) is a resident of Draper, Utah and the son of Rust and Denise Rust. Joshua Rust holds himself out as the manager of RRC, and he has signatory authority on several RRC bank accounts.

Relief Defendant **Aleesha Rust Franklin** (“Aleesha Franklin”) is a resident of Homer, Alaska and the daughter of Rust and Denise Rust.

Relief Defendant **R Legacy Racing** is a Utah corporation incorporated on April 30, 2007, with its principal place of business at 2815 W. Gordon Avenue, Layton, Utah 84041. Rust owns R Legacy Racing, and Rust and Denise Rust serve as its directors.

Relief Defendant **R Legacy Entertainment** is a Utah limited liability company incorporated on December 1, 2009, with its principal place of business at 242 East 300 South, Salt Lake City, Utah 84111. Rust and Denise Rust are the only members of R Legacy Entertainment.

Relief Defendant **R Legacy Investments** is a Utah limited liability company incorporated on March 27, 2002, with its principal place of business at 2815 West Gordon Avenue, Layton, Utah 84041. Rust is the sole member and manager of R Legacy Investments.

III. JURISDICTION AND VENUE

This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). 7 U.S.C. § 13a-1(a) (2012), authorizes the CFTC to seek injunctive and other relief against any person whenever it appears to the CFTC that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder. 7 U.S.C. § 13a-2(1) (2012), authorizes the State of Utah to bring a suit in the district courts of the United States to seek

injunctive and other relief against any person whenever it appears to the Attorney General of Utah, or the administrator of the securities laws of Utah, or such other official that Utah may designate, that the interests of the residents of Utah have been, are being, or may be threatened or adversely affected because of violations of the Act or Regulations.

This Court has supplemental jurisdiction over the State of Utah's claims under Utah law pursuant to 28 U.S.C. § 1367(a) (2012).

Venue lies properly in this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants transacted business in this District, and certain of the acts and practices in violation of the Act, the Regulations, and Utah law occurred, are occurring, or are about to occur within this District, among other places.

IV. FACTS

A. Defendants' Structure and Operations

RRC is a retail coin shop in Salt Lake City, which sells rare coins and precious metals. Blaylock Dec. at ¶ 7. Rust has owned and operated RRC for over thirty years. *Id.* Rust operates RRC with his wife, Relief Defendant Denise Rust, who is listed as RRC's secretary on corporate documents. Blaylock Dec. at ¶ 16. Rust and Denise Rust's son, Relief Defendant Joshua Rust, manages the day-to-day operations of RRC's coin shop. Blaylock Dec. at ¶ 17.

Rust and/or members of his family own and operate approximately eight other businesses. Blaylock Dec. at ¶ 15. Rust owns and operates the three corporate Relief Defendants: (1) R Legacy Investments LLC, which acts as a holding company for Rust's real estate interests; (2) R Legacy Racing Inc., which is in the business of acquiring and racing thoroughbred racehorses; and (3) R Legacy Entertainment LLC, which, among other things, operates a music recording studio. Blaylock Dec. at ¶ 9.

Neither Rust nor RRC has ever been registered with the CFTC in any capacity. Blaylock Dec. at ¶ 13. Rust has never been licensed with the Utah Division of Securities. Blaylock Dec. at ¶ 15. RRC has never been licensed nor made any securities registration or exemption filings with the Utah Division of Securities. Blaylock Dec. at ¶9. The Silver Pool offered and sold by Defendants is not registered in Utah and the Utah Division of Securities has not received any exemption filings for the Silver Pool. Blaylock Dec. at ¶ 9. The Silver Pool is also not a registered security with the United States Securities and Exchange Commission. Blaylock Dec. at ¶ 11.

B. Defendants Made Misrepresentations to Prospective and Current Silver Pool Investors and Prospective Investors

1. Defendants Misrepresented to Investors and Prospective Investors that They Used Contributions to Purchase and Trade Silver for the Silver Pool

Defendants have been soliciting investors for the Silver Pool since at least 2008. Blaylock Dec. ¶ 23. Defendants told investors and prospective investors in the Silver Pool that they used money contributed to the Silver Pool to purchase physical silver. Hess Dec. ¶ 6; Henrickson Dec. Exhibit 2, 15:59-16:39. Defendants told investors and prospective investors that Defendants stored the silver they purchased for the Silver Pool at Brink's storage facilities either in Salt Lake City, Utah, or Los Angeles, California. Hess Dec. at ¶ 11; Henrickson Dec. Exhibit 2, 46:58-47:43. Defendants told investors and prospective investors in 2018 that they hold between \$77 million and \$80 million in physical silver for the Silver Pool at Brink's facilities in these two locations. Costanzo Dec. at ¶¶ 10, 17; Henrickson Dec. at Exhibit 2, 47:40-48:3.

However, neither Rust nor RRC have any metal holdings at Brink's. Housley Dec. at ¶ 2. Brink's is not currently storing and has never stored \$77 million worth of silver for either RRC

or Rust. Housley Dec. at ¶ 3. Seventy-seven million dollars' worth of silver would fill approximately eight tractor trailers. *Id.* This amount of silver is sufficiently large that Brink's would be aware if any customer were storing that amount, and Brink's is not aware of anyone storing that amount of silver. *Id.* In addition, Brink's charges fees to store precious metals. Housley Dec. at ¶ 4. The annual fee to store \$77 million worth of silver would exceed \$100,000 per year. *Id.* Neither RRC nor Rust have paid Brink's any annual fee, let alone annual fees approaching \$100,000. *Id.* Neither Rust nor RRC have ever had a contract with Brink's to move or store silver. Housley Dec. at ¶ 5.

Defendants told investors and prospective investors that they trade the silver Defendants hold for the Silver Pool by timing sales and purchases of physical silver so that they sell silver at a higher price and buy the same dollar amount of silver back for a lower price, thereby increasing the number of ounces Defendants hold for the Silver Pool. Henrickson Dec. Exhibit 2, 34:15-36:05. Defendants told investors and prospective investors that they execute all trades for the Silver Pool through a single account held by RRC at HSBC. Hess Dec. at ¶25; Costanzo Dec. at ¶¶ 10(e), 15, 16; Henrickson Dec. at ¶¶ 7-9 and Exhibit. 2, 37:16-41. However, neither Rust, RRC, nor R Legacy Entertainment currently has or formerly had a trading account with HSBC. Flanigan Dec. at ¶¶ 1-2.

2. Defendants Advertised False Investment Returns When Soliciting Investors and Prospective Investors

Defendants told some investors and prospective investors that by trading through HSBC in the manner they described, they consistently averaged twenty to twenty-five percent annual returns on the Silver Pool, and that in the last five years their worst returns had been forty percent per year. Hess Dec. at ¶ 23. Defendants told some other investors and prospective investors that they could expect annual returns on their Silver Pool investments in the range of

twenty to twenty-five percent and told others to expect annual returns in the range of thirty to forty percent. Costanzo Dec. at ¶ 10(d); Henrikson Dec. at ¶¶ 7-9 and Exhibit. 2, 44:13-16. Defendants bragged that during the last five years, there was a year in which they doubled the value of investors' shares in the Silver Pool. Hess Dec. at ¶ 21. Defendants also claimed that the highest annual return they generated was 112 percent. *Id.*; Henrikson Dec. at ¶¶ 7-9 and Exhibit. 2, 44:20-22. However, Defendants did not have an account nor ever conducted any trading at HSBC, as they represented to investors. Flanigan Dec. at ¶¶ 1-2. In addition, as described below, Defendants misappropriated the majority of funds contributed by Silver Pool investors.

C. Defendants Prepared and Distributed False Account Statements to Investors

Defendants prepared and distributed to Silver Pool investors false account statements that purported to show the specific trades Defendants' claimed to have executed on behalf of the Silver Pool. Blaylock Dec. at ¶ 26 and Ex. 14. These account statements show the amount of silver Defendants purportedly sold and then repurchased on behalf of the Silver Pool investor for whom the account statement was prepared. *Id.* Defendants have been preparing account statements in this format since at least 2009. *Id.* According to these account statements, Defendants always sold silver for the Silver Pool at a higher price than they subsequently bought it, portraying every single trade listed on these statements as profitable for Silver Pool investors. Strong Dec. ¶ 73.

D. Specific Examples of Defendants' Fraudulent Misrepresentations

Defendants' pattern of soliciting investors in the Silver Pool through fraudulent misrepresentations is illustrated by their solicitation of Howard Hess ("Hess") and David Costanzo ("Costanzo").

1. Silver Pool Investor Howard Hess

In June 2017, Hess accepted full-time employment with RRC as an IT specialist, where he provided IT services to RRC and R Legacy Entertainment, as well as other subsidiaries he understood to be owned and controlled by Rust. Hess Dec. at ¶ 2. When Hess negotiated full-time employment with RRC, Defendants offered him a \$35,000 investment in the Silver Pool as part of his compensation package. Hess Dec. at ¶ 6. At that time, Defendants told Hess that Defendants solicit funds from investors and use those funds to purchase and trade silver to generate trading profits for investors. *Id.* Defendants told Hess that they execute trades through HSBC. Hess Dec. at ¶ 8. Defendants said that they trade silver by selling silver and then using the proceeds from this sale to repurchase a larger amount of silver at a lower price. Hess Dec. at ¶ 10. By trading this way, Defendants claimed to increase the total number of ounces of silver held in the Silver Pool, which is how Defendants measured the profitability of the Silver Pool. *Id.* Defendants told Hess at this time that they store the silver they purchase for the Silver Pool in the name of RRC at secured depositories operated by Brink's in Salt Lake City and Los Angeles. Hess Dec. at ¶ 11.

Based on Rust's representations, Hess decided to invest \$96,000 of his own funds in the Silver Pool, in addition to the \$35,000 investment he received as part of his compensation. Hess Dec. at ¶ 12.

Hess received account statements from Defendants in December 2017 and again in June 2018 that purported to state the balance of his investment measured in dollars and ounces of silver, as well as the silver trades Defendants purportedly executed for the Silver Pool on his behalf. Hess Dec. at ¶ 16. For each trade listed on these statements, Defendants' sale and subsequent repurchase of silver increased the number of ounces of silver Hess held through his share in the Silver Pool. Hess Dec. at ¶ 18. Hess compared one of his statements with that of

another Silver Pool investor and noticed that the two statements did not list the same trades, as they should have had Defendants traded on behalf of the entire Silver Pool, as they represented to Hess. Hess Dec. at ¶ 20.

Defendants made several different representations to Hess regarding the historical returns earned by the Silver Pool. Hess Dec. at ¶ 21. On separate occasions between June 2017 and August 2018, Defendants told Hess the Silver Pool had never earned less than a twenty percent annual return, that the last couple of years were “really good,” and that one year the investment doubled. *Id.* On August 6, 2018, Defendants stated the worst return ever received was twelve percent; that in the last five years, his worst return had been forty percent; and that for 30 years, he had consistently seen an average of twenty to twenty-five percent returns. Hess Dec. at ¶ 23.

Defendants also told Hess that Rust takes physical possession of the silver purchased and uses Brink’s in Utah and Los Angeles to transport and store the silver. Hess Dec. at ¶ 24. Defendants also said that they execute trades on behalf of the entire Silver Pool through a single account held by RRC at HSBC. Hess Dec. at ¶ 25.

On August 14, 2018, Hess telephoned Rust and asked him to cash out his investment. Hess Dec. at ¶ 34. Rust told Hess that it would take about a week to get his money, but it took three weeks. Hess Dec. at ¶ 34-35. On September 4, 2018, Hess received a total of \$171,793.02 from RRC via electronic funds transfer, representing Hess’s principal investment and trading profits purportedly generated by Defendants. *Id.* ¶ 36. Had Hess known that Rust was not managing the Silver Pool as represented and that he was not actually generating substantial investment returns, he never would have invested in the Silver Pool. Hess Dec. at ¶ 38.

2. Silver Pool Investor David Costanzo

In August 2017, Costanzo invested in the Silver Pool after it was recommended to him by a family friend who had been invested in the Silver Pool since 2014. Costanzo Dec. at ¶¶ 5-8.

Costanzo met personally with Defendants in December 2017, shortly after receiving his first account statement from Defendants. Costanzo Dec. at ¶10. During the meeting, Defendants told Costanzo:

- Defendants used investment funds solely to purchase physical silver;
- Defendants hold physical silver in a pool on behalf of all investors and store this silver at a Brink's storage facility;
- Defendants had generated annual returns of 30 percent to 40 percent for the Silver Pool over the past few years, and, based on trading for 2017, believed that their returns for 2017 would likely fall within this range;
- Defendants executed trades on behalf of the Silver Pool through an account at HSBC; and,
- Defendants had never experienced a losing month; much less a losing year, trading silver.

Costanzo Dec. at ¶ 10. Based on these representations, Costanzo and his wife invested an additional \$2.9 million in the Silver Pool. Costanzo Dec. at ¶ 11. By June 1, 2018, Costanzo had invested a total of approximately \$3,050,000. Costanzo Dec. at ¶ 12. In the summer of 2018 Rust sent Costanzo a statement showing that Costanzo held a share in the Silver Pool equal to approximately 200,000 troy ounces of silver,. Costanzo Dec. at ¶ 13.

On August 29, 2018, Costanzo met again with Defendants. Costanzo Dec. at ¶ 14. An FBI undercover employee ("UCE 1") accompanied Costanzo to that meeting. Henrikson Dec. at ¶ 4. During that meeting, Defendants reiterated that they trade silver through an account at HSBC. Costanzo Dec. at ¶ 15. Defendants told Costanzo and UCE 1 that after making the trades "on paper" through HSBC, Rust works with silver distributors to have the additional silver

shipped to the Brink's storage facility. *Id.* Defendants told Costanzo that as of August 29, 2018, Defendants were holding almost \$80,000,000 in physical silver for the Silver Pool. Costanzo Dec. at ¶ 17.

Had Costanzo known at the time he invested in the Silver Pool that Defendants' representations about the trading, the holdings, and the investment returns were false, he would not have invested in the Silver Pool. Costanzo Dec. at ¶ 23.

E. Defendants Continue to Solicit New Investors in the Silver Pool

Defendants' fraudulent scheme is ongoing and Defendants continue to solicit new investors in the Silver Pool with the same or similar fraudulent misrepresentations described above. On September 6, 2018, an FBI undercover employee ("UCE 2") posing as a potential Silver Pool investor met with Defendants at RRC's coin shop. Henrikson Dec. at ¶ 7. During that meeting, Rust made the following misrepresentations about the Silver Pool to UCE 2:

- That all trades Defendants executed on behalf of the Silver Pool involved actual physical silver Defendants possessed and stored in Brink's storage facilities in Salt Lake City and Los Angeles, and that Defendants had approximately \$77 million in silver held in these storage facilities. Henrikson Dec. at Exhibit 2, 47:40-48:3, 49:28-36.
- That Defendants would use money contributed to the Silver Pool by new investors to purchase additional silver for the Silver Pool. Henrikson Dec. at Exhibit 2, 22:40-23:9.
- That Defendants had an account with HSBC through which Rust traded silver on behalf of the Silver Pool. Henrikson Dec. at Exhibit 2, 18:6-19:7, 39:16-24, 55:27-39.

- That Silver Pool investors could expect returns of approximately twenty to twenty-five percent from Defendants' trading, and Defendants had generated returns as high as 112 percent within the five years prior to September 6, 2018. Henrikson Dec. at Exhibit 2, 44:13-23; and
- That any request by an investor to liquidate his or her share in the Silver Pool would be funded by Defendants' sale of silver held by the Silver Pool. Henrikson Dec. at Exhibit 2, 27:42-29:2, 24:5-44.

F. Defendants Misappropriated Silver Pool Investor Funds

Defendants misappropriated funds invested in the Silver Pool and used this money to pay personal expenses, make transfers to Relief Defendants, and make payments to other investors in the Silver Pool in the manner of a Ponzi scheme. For example, between January 1, 2018 and August 31, 2018, Defendants received approximately \$42,997,801 from Silver Pool investors. Strong Dec. at ¶ 32. Out of this total, Defendants used approximately \$28,990,900, or sixty-seven percent of the money contributed by investors, to make Ponzi payments. Strong Dec. at ¶ 39.

Between January 1, 2018 and August 31, 2018, Defendants transferred approximately \$6,256,662 to Relief Defendants and other persons and entities connected to Rust. Strong Dec. at ¶ 40-41. Nearly all of these funds Defendants transferred to Relief Defendants—approximately ninety-nine percent—consisted of money contributed by Silver Pool investors and was paid out of the bank account Defendants used to receive investor funds, not the account used to pay the operating and other expenses of RRC's coin shop business. Strong Dec. at ¶ 41. Moreover, between January 1, 2018 and August 31, 2018, Defendants did not make any payments to Brink's for storage and/or transportation of silver. Strong Dec. at ¶60. During this

same time period, Defendants never transferred any funds to or from HSBC. Strong Dec. at ¶ 66.

Between January 1, 2018 and August 31, 2018, Defendant RRC did not have adequate operating cash flow to finance the \$29 million in Ponzi-like payments to Silver Pool investors. Strong Dec. at ¶ 52.

V. ARGUMENT

In order to obtain an *ex parte* statutory restraining order under 7 U.S.C. § 13a-1(a), Plaintiffs must make a *prima facie* showing that Defendants have violated the Act and Regulations. *Muller*, 570 F.2d at 1300; *CFTC v. Clothier*, 788 F. Supp. 490, 492-93 (D. Kan. 1992) (issuing an *ex parte* restraining order and stating that “[t]he traditional requirements for injunctive relief such as irreparable injury or inadequacy of other remedies are not required under § 13a-1, and the Commission need only show a likelihood of a violation”).

Similarly, to obtain a temporary restraining order, securities regulators must: (1) make a *prima facie* showing the Defendants have violated the securities laws; and (2) show a reasonable likelihood of future violations.” *SEC v. Calvo*, 378 F.3d 1211, 1216 (11th Cir. 2004).³ Past illegal conduct is highly suggestive of the likelihood of future violations. *Calvo*, 378 F.3d at 1216; *Commodity Futures Trading Comm’n v. Matrix Trading Grp.*, Case No. 00-8880-CIV, 2002 WL 31936799, at *12 (S.D. Fla. Oct 3, 2002).

As explained below, the evidence presented by Plaintiffs in support of this motion more than satisfies the *prima facie* showing needed to justify issuing a restraining order under 7 U.S.C. § 13a-1(a) and Utah Code Ann. § 61-1-20(2)(b)(i), (ii) and (iv).

³ The Utah legislature expressly provided that the Securities Act may be construed to coordinate with federal law. Utah Code Ann. § 61-1-27.

A. Defendants Committed Fraud in Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018) (Count I), and Sections 61-1-1(2) and 61-1-1(3) of the Securities Act (Counts II and III)

7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) make it unlawful for any person, in connection with a contract of sale of any commodity in interstate commerce, to intentionally or recklessly:

- (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
- (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or]
- (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

Under the Securities Act, it is unlawful for any person, in connection with the offer or sale of a security to “make any untrue statement of a material fact or to omit to state a material fact.” It is also unlawful to engage in any act, practice, or course of business which operates as a fraud or deceit on any person. Utah Code Ann. § 61-1-1(2) and (3).

Defendants have violated and continue to violate 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) as well as Utah Code Ann. § 61-1-1(2) and (3) because they misappropriated investor funds, made material misrepresentations and omissions to Silver Pool investors and prospective investors, and provided false account statements to Silver Pool Investors, all in connection with the purchase and sale of silver, a statutorily-defined commodity under Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012).

1. Defendants Misappropriated Silver Pool Investor Funds

Misappropriation constitutes “willful and blatant” fraud, *CFTC v. Noble Wealth Data Info. Servs.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000), and so violates Section 6(c)(1) and

Regulation 180.1(a)(1)–(3). *CFTC v. Leben*, No. 3:14-cv-866, 2016 WL 7354359, at *5 (D.S.C. Aug. 5, 2016). Here, as alleged in the complaint, and as detailed extensively in the Strong Declaration attached hereto, Defendants misappropriated the vast majority of funds they solicited and received from Silver Pool investors.

a. Defendants Use New Investor Money to Pay Earlier Investors

During the first eight months of 2018, RRC received \$42,997,801 from Silver Pool investors and used \$28,990,900 of that money, or sixty-seven percent, to make Ponzi payments to other Silver Pool investors. Strong Dec. at ¶¶ 38-39 and Exhibit 16. Defendants frequently used new investor funds to fund payments to other investors and fund transfers to Relief Defendants.

Three specific examples discussed by forensic account Ray Strong (“Strong”) in his declaration supporting this motion illustrate Defendants’ misappropriation. On May 1, 2018, Defendants had a balance of \$33,438 in the Zion’s Bank account ending in 7496 they used to receive the vast majority of investor contributions (the “7496 Account”). Strong Dec. at ¶¶ 32, 49. On that day, Defendants received \$571,400 from various Silver Pool investors and deposited this amount into the 7496 Account. Strong Dec. at ¶ 49. On this same day, Defendants paid \$446,620 to other unrelated investors and transferred \$34,171 to Relief Defendant R. Legacy Entertainment. *Id.* and Exhibit 21.; Blaylock Dec. at ¶ 8.

On May 23, 2018, Defendants had a balance of \$16,230.06 in the 7496 Account. Strong Dec. at ¶ 50. On that day, Defendants received \$500,000 from a Silver Pool investor and deposited this amount into the 7496 Account. *Id.* On this same day, Defendants paid \$453,912 to other unrelated investors, an amount that was approximately 88 percent of the account balance in the 7496 Account after the investor deposit. Strong Dec. at ¶ 50 and Exhibit 22.

Similarly, on June 1, 2018, Defendants had a balance of \$333,528.96 in the 7496 Account. Strong Dec. at ¶ 51. On June 1, 2018, Defendants received \$1,141,000 from two Silver Pool investors and deposited it into the 7496 Account. *Id.* On the same day, Defendants paid \$624,000 to other unrelated investors and transferred \$142,100 to Relief Defendant R. Legacy Entertainment. *Id.*; Blaylock Dec. at ¶ 8.

These examples show that rather than use money contributed by investors to buy physical silver, as Defendants represented, Defendants used this money to make Ponzi payments to other investors to perpetuate their fraudulent scheme. Soliciting from investors for trading, then failing to trade the funds while using them for personal and business expenses, is misappropriation. *Commodity Futures Trading Comm'n v. Emerald Worldwide Holdings, Inc.*, No. CV-3-8339AHM, 2005 WL 1130588, at *7 (C.D. Cal. Apr. 19, 2005). *Commodity Futures Trading Comm'n v. Driver*, 877 F. Supp.2d 968, 978 (C.D. Cal. 2012) (Defendants traded only \$3.7 million of the \$14.3 million obtained from investors and therefore had misappropriated more than \$10 million to pay for personal and business expenses and to pay to earlier investors).

b. Defendants Diverted Investor Money to Relief Defendants

As part of their fraudulent scheme, Defendants transferred some of the money they misappropriated from investors to Relief Defendants. Relief Defendants Denise Rust, Joshua Rust, and Aleesha Franklin are all members of Rust's family. Relief Defendants R. Legacy Entertainment, R. Legacy Racing, and R. Legacy Investments are all companies owned by Rust that engage in activities entirely unrelated to the purchase and sale of silver and other precious metals.

Between January 1, 2018 and August 31, 2018, Defendants transferred a net amount of \$6,256,662 from the 7496 Account to Relief Defendants and other persons and entities

connected to Rust, over 99 percent of which consisted of funds contributed by Silver Pool investors. The following chart included by Strong in his supporting declaration, sets forth these transfers in detail:⁴

	Total	Receipts	Disbursements
R Legacy Entertainment	\$ (3,751,436)	\$ 321,064	\$ (4,072,500)
R Legacy Racing	(303,000)	250,000	(553,000)
R Legacy Investments	(654,921)	250,000	(904,921)
R Legacy Ranch	1,700	3,200	(1,500)
Legacy Music Alliance	(63,700)	-	(63,700)
Torque Entertainment	(198,550)	-	(198,550)
Rhythm and Pace	(91,432)	-	(91,432)
Writer's Den	(63,200)	94,500	(157,700)
Musician's Toolkit	(800,000)	-	(800,000)
Rust Coin and Gift	(66,815)	-	(66,815)
Gaylen Rust - Personal	(13,500)	-	(13,500)
Denise Rust - Personal	(130,308)	-	(130,308)
Aleesha Franklin	(121,500)	-	(121,500)
Total Related Party Transactions	(7,175,426)	918,764	(6,256,662)

Strong Dec. at ¶ 40. These transfers, amounting to over \$6 million, came from the 7496 Account, which Defendants used to receive funds from Silver Pool investors. Defendants rarely, if ever, used this account to pay the operating or other expenses of RRC's coin shop or other business activities. By receiving these transfers, Relief Defendants were unjustly enriched by the proceeds of Defendants' fraud and have no legitimate claim to these funds.

2. Defendants Made Fraudulent Misrepresentations and Omissions

To establish a claim of fraud under 7 U.S.C. §9(1) and 17 C.F.R. §180.1(a)(1)-(3) through fraudulent misrepresentations and omissions, Plaintiffs must prove 1) the making of a

⁴ Torque Entertainment, Rhythm and Pace, Writer's Den, and Musician's Toolkit are all dbas of Relief Defendant R. Legacy Entertainment, and so the amounts allocated to these entities are simply transfers to R. Legacy Entertainment. Blaylock Ex. at ¶ 8.

misrepresentation, misleading statement, or a deceptive omission; 2) materiality; and 3) scienter.⁵ *CFTC v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1325 (11th Cir. 2018). Unlike a private litigant, Plaintiffs need not prove reliance on the misrepresentations or omissions to establish fraud. *Id.*

a. *Misrepresentations or Omissions of Fact*

As alleged in the Complaint, and as supported by the declarations of two Silver Pool investors and one FBI undercover employee, Defendants made the following misrepresentations to investors and prospective investors in the Silver Pool:

- That they pool funds contributed by Silver Pool investors for the purpose of buying and trading physical silver. Hess Dec. at ¶ 6, Henrickson Dec. Exhibit 2, 46:58-47:43
- That they traded the silver they held for the Silver Pool by selling this silver immediately before market prices fell and then later buying silver at a lower price, thereby increasing the amount of silver held in the Silver Pool, as well as the value of each investor's share in that pool. *E.g.*, Henrickson Dec. Exhibit 2, 34:15-36:05
- That Defendants conduct Silver Pool trading through an account with HSBC. *E.g.*, Hess Dec. at ¶ 25
- That Defendants possessed approximately seventy-seven to eighty million dollars of silver on behalf of the Silver Pool and stored this silver at Brink's depositories

⁵ To prove its claims under the Securities Act, the State of Utah need not establish scienter. *State v. Wallace*, 2005 UT App 434, ¶ 13, 124 P.3d 259, *aff'd*, 2006 UT 86, 150 P.3d 540. Therefore, the discussion below of the evidence supporting the scienter element concerns only the prima facie case of Defendants' violations of 7 U.S.C. 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

in Salt Lake City, Utah and/or Los Angeles, California. *E.g.*, Costanzo Dec. at ¶¶ 10, 17.

Defendants also made numerous statements to investors and prospective investors regarding the rates of return Defendants generated through their silver trading, including:

- Defendants told Hess that they have never generated returns less than twenty percent, and that Defendants recently doubled the value of the Silver Pool in a single year. Hess Dec. at ¶ 21
- Defendants told Hess on August 6, 2018 that they consistently averaged twenty to twenty-five percent annual returns, and that in the past five years, the worst average annual return was forty percent. Hess Dec. at ¶ 23
- Defendants told Costanzo that they had generated annual returns of thirty percent to forty percent for the past few years. Costanzo Dec. at ¶ 10
- Defendants told UCE 2 on September 6, 2018 that investors in the Silver Pool could expect returns of approximately twenty to twenty-five percent and that Defendants had generated returns as high as 112 percent within the last five years. Henrickson Dec. at Exhibit 2, 27:42-29:2, 24:5-44

But, as evidenced by the Strong Declaration discussed above, Defendants used most of the funds contributed by investors to make Ponzi payments and transfers to Relief Defendants, and so could not have generated the extremely high annual returns that they advertised. In addition, Defendants told investors and prospective investors that they achieved these trading results by trading through HSBC, but Defendants never had a trading account at HSBC. Furthermore, the statements Defendants made to investors and prospective investors regarding investment returns were inconsistent and cannot have all been true for the same time period.

In addition to these affirmative misrepresentations, Defendants omitted to tell investors and prospective investors that millions of dollars of their money would be used to subsidize Rust's other businesses and payments to Rust's family.

Defendants also prepared and distributed account statements which misled investors about the true value of their investment. These account statements misrepresented to investors that Defendants actually executed the trades listed on the account statements on behalf of the Silver Pool. As set forth in paragraph 73 of the Strong Declaration, Strong analyzed a sampling of 41 account statements provided to ten Silver Pool investors dated between 2009 and 2018. Combined, these statements depict 292 trades involving physical silver that Defendants purportedly executed on behalf of the Silver Pool. Defendants' trading results are set forth in the following table:

	# of Investor Statements	# of Purported Trades	# of Trading Losses
Investors			
LF	8	63	0
RH	6	56	0
DC	6	52	0
HH	8	67	0
OK	1	1	0
BO	3	11	0
JO	2	10	0
MO	2	10	0
SF	3	12	0
BFT	2	10	0
Total	41	292	0

Strong Dec. at ¶ 73. According to these statements, Defendants never lost money on any one of these 292 trades. This highly improbably outcome reveals that Defendants intended these

account statements to mislead Silver Pool investors into believing that Defendants were successful traders.

b. Materiality

A statement of fact is material if a reasonable investor would consider it important in deciding whether to make an investment. Any fact that enables investors to assess the risk inherent in their investment and the likelihood of profit is material. Misrepresentations concerning profit and risk go to the heart of a customer's investment decision and are therefore material as a matter of law. *CFTC v. McDonnell*, No. 18-CV-361, 2018 WL 4090784, at *48 (E.D.N.Y. Aug. 28, 2018) (citations omitted). The historical rate of return presented to an investor is also an important factor in any investment decision and is therefore material. *See Hyer v. Malouf*, No. 2:07-CV-249, 2008 WL 4427941, at *9 (D. Utah, Sept. 25, 2008) ("A reasonable investor would surely consider the projected rate of return important in deciding whether to invest."). In additions, false account statements that depict false or misleading trading profits are material, *CFTC v. Driver*, 877 F. Supp. 2d 968, 978 (C.D. Cal. 2012), as are misrepresentations or omissions regarding misappropriation are material. *SEC v. Constantin*, 939 F. Supp. 2d 288, 307 (S.D.N.Y. 2013); *SEC v. Gallard*, No. 95-CIV-3099(HB), 1997 WL 767570, at *3 (S.D.N.Y. Dec. 10, 1997) ("As the Commission argues, there is no question a reasonable investor would consider important the fact that the 'security' at issue did not exist . . . and that the money paid for those securities would be misappropriated.").

In light of this standard, there is no question that the fraudulent misrepresentations and omissions Defendants made to Silver Pool investors described above are material. For example, Silver Pool investor Hess states that had he known that the Silver Pool was not actually generating substantial investment returns, such as the "consistent" return of 20 to 25 percent Rust described to him, he never would have invested with Rust. Hess Dec. at ¶ 38. Similarly, had

Costanzo known that Rust's representations about investment returns were false, he would not have invested. Costanzo Dec. at ¶ 23.

c. *Scienter*

Under 17 C.F.R. §180.1(a)(1)-(3), the CFTC and the State of Utah must show that Rust's conduct was intentional or reckless. *CFTC v. Kraft Foods Grp., Inc.*, 153 F. Supp. 3d 996, 1007 (N.D.Ill. 2015). This standard is met if a defendant "intended to defraud, manipulate, or deceive, or if [d]efendant's conduct represents an extreme departure from the standards of ordinary care." *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir. 2002). Plaintiffs can establish recklessness by showing that the conduct "departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing." *First Commodity Corp. of Boston v. CFTC*, 676 F.2d 1, 6-7 (1st Cir. 1982); *see also R.J. Fitzgerald*, 310 F.3d at 1328 (Holding that scienter is met when a defendant's conduct "involves highly unreasonable omissions or misrepresentations that ...present a danger of misleading [customers] which is either known to the Defendant or so obvious that Defendant must have been aware of it." (alterations in original) (citation omitted)).

Based on the facts set forth, there is sufficient evidence showing that Defendants acted intentionally or, at a minimum, recklessly. Defendants knew they were using money contributed by Silver Pool investors not to buy physical silver but instead to pay other Silver Pool investors and make transfers to Relief Defendants. Defendants knew that neither Rust nor RRC had an investment account with HSBC. Defendants knew that neither Rust nor RRC had a contract with Brink's or was storing silver at Brink's when they misrepresented the size of their physical silver holdings to investors and prospective investors. And Defendants knew when they advertised annual rates of return to investors and prospective investors that returns they touted were

inconsistent with what they told other investors and also inconsistent with Defendants' practice of misappropriating investor funds.

B. Derivative Liability

1. Rust Acted As a Controlling Person for RRC

Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), states that a controlling person of an entity is liable for the violations of that entity if the controlling person knowingly induced the violations, directly or indirectly, or did not act in good faith. Rust was RRC's owner, sole director, president, and registered agent. During the Relevant Period, Rust made all financial and strategic business decisions for RRC. During the Relevant Period, Rust directed, among other things, the opening of bank accounts and signing of documents on behalf of RRC. In addition, Rust was a signatory on each of RRC's bank accounts. Rust knowingly induced RRC's fraudulent acts by virtue of directing those fraudulent acts. Therefore, Rust is liable for the violations of 7 U.S.C. § 9(1), 17 C.F.R. § 180.1(a)(1)-(3) and Utah Code Ann. § 61-1-1(2) and (3) engaged in by RRC under 7 U.S.C. § 13c(b)

a. Rust Acted As an Agent for RRC

Rust engaged in the acts and omissions described above that violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) both in his individual capacity and as the owner, sole director, president, and registered agent of RRC. Consequently, RRC is liable for Rust's acts and omissions in violation of the Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012).

VI. RELIEF SOUGHT

A. The Court Has Jurisdiction and Authority To Grant the Relief Sought

Because Plaintiffs have made a prima facie showing above that Defendants have violated and continue to violate 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3), as well as Utah Code

Ann. § 61-1-1(2) and (3), the Court should issue the Proposed SRO that (1) freezes the assets of Defendants and Relief Defendants; (2) grants the CFTC and State of Utah immediate access to the books, records, and other documents of Defendants and Relief Defendants; and (3) appoints a temporary receiver. This relief is necessary to preserve the status quo, prevent Defendants and Relief Defendants from dissipating assets, and stop Defendants from destroying or preventing access to books and records that Plaintiffs need to determine the extent of Defendants' fraudulent scheme and identify all victims. Plaintiffs seek this relief pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012) as well as Utah Code Ann. § 61-1-20(2), and in accordance with Fed. R. Civ. P. 65.

7 U.S.C. § 13a-1(a) authorizes the CFTC to seek injunctive and other relief in a district court against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

7 U.S.C. § 13a-1(a) further authorizes the Commission to seek, and the Court to grant, a restraining order which provides for certain specific ex parte relief, namely, that—

(prohibits any person from destroying, altering, or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate).⁶

Mindful that notice “may result in the destruction of books and records and the dissipation of customer funds,” Congress authorized courts to issue such relief ex parte in order

⁶ 7 U.S.C. § 13a-1(b) provides that “[u]pon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.”

“to prevent possible removal or destruction of potential evidence or other impediments to legitimate law enforcement activities and to prohibit movement or disposal of funds, assets and other property which may be subject to lawful claims of customers.” H.R. Rep. No. 97-565, at 53-54, 93 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3902-03, 3942.

The freeze of Defendants’ and Relief Defendants’ funds, assets or other property in the Proposed SRO is relief that fits squarely within the Court’s authority under the plain language of 7 U.S.C. § 13a-1(a) as well as Utah Code Ann. § 61-1-20(2). An asset freeze is especially appropriate where, as here, the Commission seeks disgorgement and restitution. *CFTC v. Levy*, 541 F.3d 1102, 1114 (11th Cir. 2008) (holding in the context of an injunction pending satisfaction of judgment that “a district court may freeze a defendant’s assets to ensure the adequacy of a disgorgement remedy”); *CFTC v. Muller*, 570 F.2d 1296, 1301 (5th Cir. 1978) (similar in granting a preliminary injunction); *SEC v. Blackbird Capital Partners, LLC*, No. 2:16CV01199, 2016 WL 11071634 (D. Utah Nov. 28, 2016) (temporary restraining order and asset freeze justified by a strong showing that defendants had engaged in securities fraud and would continue to violate the securities laws absent an injunction.); *SEC v. Abdallah*, No. 1:14-cv-1155, 2014 WL 12597836, at *2 (N.D. Ohio May 30, 2014) (similar in the context of a temporary restraining order); *F.T.C. v. Health Formulas, LLC*, No. 2:14-CV-01649-RFB, 2015 WL 4623126, at *2 (D. Nev. Aug. 3, 2015) (“As it stated in its Temporary Restraining Order . . . the Court has found that the asset freeze is necessary to preserve the possibility of future relief.”). As another district court explained, “[m]oreover, an order imposing a temporary freeze of assets is often necessary simply to preserve the status quo while an investigation is conducted to clarify the sources of various funds.” *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 678 (S.D.N.Y. 1979) (context of a preliminary injunction); *see also CFTC v.*

Steele, No. 05-c-3130, 2005 WL 3723267, at *1 (N.D. Ill. May 26, 2005) (ex parte restraining order freezing assets necessary to preserve the status quo).

The Proposed SRO also requires Defendants and Relief Defendants to preserve certain records and allow Plaintiffs to inspect and copy such records.⁷ Preservation of the records will allow Plaintiffs to identify assets, to identify other victims of Defendants' fraud, and to identify the scope of Defendants' wrongdoing, as well as ensure that Defendants and Relief Defendants do not destroy evidence of their fraud. Plaintiffs also request authority to copy the records (with the records being returned to Defendants and Relief Defendants afterwards) as part of the order requiring preservation and allowing inspection of the records. Although 7 U.S.C. § 13a-1(a) does not expressly mention copying of records, "[t]he law has long recognized that the "authorization of an act also authorizes a necessary predicate act." *Luis v. United States*, 136 S. Ct. 1083, 1097 (2016) (Thomas, J., concurring in the judgment). A provision authorizing Plaintiffs to copy the records is a legitimate and practical means of implementing the Court's authority to issue an order that will ensure that important records related to Defendants' relevant conduct and customer funds are not destroyed and Plaintiffs' representatives have a real and meaningful opportunity to inspect, review, and carefully analyze all such records. Such relief is

⁷ Plaintiffs recognize the possibility that there could be potentially privileged information or documents commingled amongst other relevant, non-privileged materials in the possession of Defendants—particularly in ESI format, where files are typically stored in a digital format on computer hard drives in a non-contiguous manner. To account for this possibility, the Proposed SRO provides that Plaintiffs should undertake reasonable measures to prevent review of the Defendants' privileged communications and/or other nonbusiness, nonfinancial materials by Plaintiffs' attorneys and other staff who are part of the litigation team in this matter. It further provides that Defendants shall promptly contact Plaintiffs' counsel to assert any claims of privilege or other legal objections relating to the contents of any records that are subject to this Order and promptly cooperate with Plaintiffs' counsel to develop reasonable protocols to isolate and prevent disclosure of claimed privileged and/or other nonbusiness, nonfinancial materials to Plaintiffs' attorneys and other staff who are part of the litigation team in this matter. However, the Proposed SRO specifically states that none of the above-described provisions excuse the Defendants from full and immediate compliance with the SRO permitting Plaintiffs to inspect the books and records.

consistent with the strong policy enunciated by Congress, “to prevent any possible destruction of evidence and conversion of assets.” H.R. Rep. No. 97-565, at 53-54. This relief is particularly appropriate here given that Defendants are not registered with either the CFTC or Utah⁸ and therefore are under no regulatory obligation to maintain records that may be material to determining the full extent of the violative conduct. Numerous courts have previously authorized copying of records in similar ex parte circumstances. *See, e.g., CFTC v. Khara*, No. 15-cv-03497, 2015 WL 10849125, at *4 (S.D.N.Y. May 5, 2016); *CFTC v. RFF GP, LLC*, No. 4:13-cv-382, 2013 WL 4083748, at *4 (E.D. Tex. Jul. 9, 2013); *CFTC v. Vishnevetsky*, No. 1:12-cv-03234, 2012 WL 2930302, at *3 (N.D. Ill. May 1, 2012).⁹

Third, the Proposed SRO appoints a temporary receiver. 7 U.S.C. § 13a-1(a) specifically authorizes the CFTC to seek, and the Court to grant, a restraining order which provides for the ex parte appointment of a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate. The Tenth Circuit recognized the propriety of the appointment of a receiver under the Act in *Klein v. Cornelius*, 786 F.3d 1310, 1314 (10th Cir. 2015) (“Among other things the [Act] allows a court to prohibit by restraining order the transfer or disposal of assets to appoint a temporary receiver to administer such an order or ‘perform such other duties as the court may consider appropriate.’”)(citation omitted). *See also, SEC v. VesCor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) (“[T]he district court has broad powers and wide discretion to determine . . . relief in an equity receivership.”)

⁸ Defendants are not required to register with the CFTC to buy and sell physical silver, but they are required to obtain a license from and register the Silver Pool with the Utah Division of Securities pursuant to Sections 61-1-3 and 61-1-7 of the Securities Act, as alleged in Counts IV, V and VI of the Complaint.

⁹ The ex parte Proposed SRO also contains various provisions related to ensuring the effectiveness of the asset freeze and inspection and preservation of records, such as ones requiring Defendants to identify the location of, and necessary passwords to access, the records, one giving notice to financial institutions about the asset freeze, and one allowing a designated law enforcement official to assist Plaintiffs’ staff with service of process and maintain lawful order.

(second alteration in original) (quoting *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372–73 (5th Cir.1982)). The Securities Act also gives this Court authority to appoint a receiver for the defendant or the defendant's assets. Utah Code Ann. § 61-1-20(2)(b)(iv).

B. Plaintiffs Have Established that Ex Parte Relief Is Necessary and Appropriate Here

The Proposed SRO is necessary in this case in order to prevent Defendants and Relief Defendants from dissipating assets and destroying or preventing access to their books and records. As explained above, there is substantial evidence that Defendants have engaged in and continue to engage in a scheme to defraud investors in the Silver Pool and misappropriate funds from these investors. As described above and in the Strong Declaration, Defendants have collected over \$42 million from Silver Pool investors in the first eight months of this year alone and have used approximately \$28 million of this money to make Ponzi payments to Silver Pool investors and transferred another approximately \$6.2 million to Relief Defendants, where these funds appear to have been used to subsidize Rust's other personal businesses operated by Relief Defendants, including race horses and a music business.

The fact that Defendants have engaged in such large-scale misappropriation of investor money, as detailed in the Strong Declaration, is sufficient reason to freeze the assets of Defendants and Relief Defendants. In addition, Defendants continue to engage in their fraudulent scheme by soliciting prospective investors and continuing to misappropriate investor contributions. Absent immediate injunctive relief, and if Defendants or Relief Defendants were given notice of this motion and the requested relief, Defendants and Relief Defendants may further dissipate or shield fraudulently-obtained assets. In addition, Plaintiffs need to ensure that what assets remain are available to satisfy any such equitable remedies the Court may later award to the victims of Defendants' fraud. A statutory restraining order to temporarily freeze

assets is appropriate in such circumstances. *E.g., Muller*, 570 F.2d at 1301 (upholding asset freeze to ensure court's jurisdiction would not be defeated by defendant's disposition of assets if court ultimately ordered disgorgement of misappropriated funds).

This Court has recognized that the type of *ex parte* relief Plaintiffs seek here is necessary under these circumstances. In *SEC v. Blackbird Capital Partners, LLC*, No. 2:16CV01199, 2016 WL 11071634 (D. Utah Nov. 28, 2016), this Court issued a temporary restraining order and asset freeze *ex parte* where the plaintiff made a showing that defendants had engaged in securities fraud and would continue to violate the securities laws absent an injunction.

Preventing destruction of records is similarly critical in this case. As described above, there is evidence suggesting that Defendants have been engaging in their fraudulent scheme for almost ten years. Defendants are likely in possession of records that identify all investors in the Silver Pool, the amounts contributed by each investor and the dates of those contributions, as well as other records that establish the scope, duration, and operation of this fraudulent scheme. Relief Defendants may be in possession of records regarding the transfers of investor funds they received from Defendants, the sources of those funds, and other evidence showing that they have no legitimate claim to those funds. Given that these critical documents are all in the possession of Defendants and Relief Defendants, and that Defendants and Relief Defendants can easily destroy these documents and have a strong incentive to do so if they become aware of imminent enforcement action by Plaintiffs, Plaintiffs need an order preserving these records and making them accessible at the outset of his litigation, without notice to Defendants. Absent immediate access, Defendants would have an opportunity to frustrate Plaintiffs efforts to identify victims of the fraud, hold Defendants liable for the full extent of their wrongdoing, and provide redress to all victims of Defendants' fraud.

A temporary receiver is also necessary in this case, given the size and scope of Defendants' fraudulent scheme and their other business activities and the number of corporate entities owned by Rust that are involved in the fraud in some way. The appointment of a receiver is particularly appropriate in cases such as this where a corporation, through its management, has defrauded members of the investing public. *S.E.C. v. First Financial Grp. of Texas*, 645 F.2d 429, 438 (5th Cir. 1981). As set forth in the Blaylock Declaration, Rust owns a number of entities that have a wide variety of business operations and hold extensive assets. Blaylock Dec. at ¶¶ 8-9. As set forth in the Strong Declaration, Defendants pervasively commingled funds among the accounts of RRC, Relief Defendants, and other entities owned by Rust. Strong Dec. ¶ 35. Appointing a receiver will help ensure that all available investor funds, and any assets obtained using investor funds, can be used to provide redress to Silver Pool investors.

In addition, because there may not be enough funds available to fully compensate all the victims of Defendants' fraud, a receiver will facilitate the marshaling of assets and the claims process and ensure that all investors are treated equitably. Under the Proposed SRO, the receiver will be able to accomplish this goal by maintaining the status quo and preventing diversion and waste of assets to the detriment of Silver Pool investors. *See CFTC v. Morgan, Harris & Scott Ltd.*, 484 F. Supp. 669, 677 (S.D.N.Y. 1979) (appointing a receiver to prevent diversion or waste of defendants' assets).

C. The Court Should Order Expedited Discovery in Advance of the Preliminary Injunction Hearing

Plaintiffs also move for an order allowing the parties to conduct expedited discovery in advance of a hearing on Plaintiffs' Motion for Preliminary Injunction hearing. More specifically, Plaintiffs seek the ability to take depositions of parties and non-parties subject to

two calendar days' notice pursuant to Fed. R. Civ. P. 30(a) and 45, with notice given personally, by facsimile or by electronic mail, and, if necessary, the deposition may last more than seven hours. Such expedited discovery will allow the Plaintiffs to determine the full extent of Defendants' wrongdoing (including, but not limited to, the possible involvement of others), locate other Silver Pool investors, identify Defendants' and Relief Defendants' funds, assets and other property, and clarify the sources of funds, assets, and other property in advance of a hearing on Plaintiffs' Motion for Preliminary Injunction upon the expiration of the Proposed SRO.

Fed. R. Civ. P. 26(d) grants a trial court discretion to order expedited discovery where good cause is shown. *Sara Lee Corp. v. Sycamore Family Bakery Inc.*, No. 2:09CV523DAK, 2009 WL 1765294, at *1 (D. Utah June 22, 2009). Expedited discovery is warranted where, as in this case, the scope of Defendants' wrongful conduct must be uncovered so that irreparable injury can be avoided. *See Regal-Beloit Corp. v. Dreccoll*, 955 F. Supp. 849 (N.D. Ill. 1996). Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings. *Philadelphia Newspapers, Inc. v. Gannett Satellite Info. Network, Inc.*, No. 98-CV-2782, 1998 WL 404820, at *4 (E.D.Pa. July 15, 1998).

D. The Court Should Thereafter Issue an Order of Preliminary Injunction.

The CFTC may obtain a preliminary injunction under 7 U.S.C. § 13a-1(a), if it shows that a person violated and is likely to continue violating the CEA, the latter of which "may be inferred from past unlawful conduct." *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 142 (2d Cir. 1977). The CFTC need not show irreparable injury; rather, the CFTC must only demonstrate: 1) a violation of the Act; and 2) a reasonable likelihood of future violations *CFTC v. Oystacher*, No. 15-CV-9196, 2016 WL 3693429, at *6 (N.D. Ill. July 12, 2016).

Similarly, this Court is authorized to enter a preliminary injunction under the Securities Act. Utah Code Ann. § 61-1-20(2)(b).

Here, the evidence discussed above is sufficient to establish that Defendants have violated and are likely to continue to violate the Act, Regulations, and the Securities Act unless enjoined by the Court. Therefore, based on the evidence and arguments set forth in Plaintiffs' Motion for an Ex Parte Emergency Motion for Statutory Restraining Order, Plaintiffs request that the Court enter a preliminary injunction under 7 U.S.C. § 13a-1(a), that enjoins Defendants from further violating the Act, Regulations, and Securities Act, continues the equitable relief granted in the Proposed SRO, including the freeze on the assets of Defendants and Relief Defendants, and extends the appointment of the Temporary Receiver with the same powers as set forth in the Proposed SRO.

VII. CONCLUSION

Plaintiffs have made a prima facie showing that since at least 2008 and continuing to the present, Defendants have engaged, are engaging, or are about to engage in a fraudulent scheme in violation of both federal and state laws. New and current Silver Pool investors are funneling millions of dollars each month into Defendants' scheme based on Defendants' misrepresentations that investor money will be used to purchase silver and then successfully trade that silver in interstate commerce. The CFTC and the State of Utah hereby jointly request entry of the Proposed SRO, which will immediately stop this fraud and preserve the status quo pending a hearing regarding entry of a preliminary injunction.

Dated: November 13, 2018

Respectfully submitted,

**COMMODITY FUTURES TRADING
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**CERTIFICATION OF COMPLIANCE
WITH LOCAL RULES REGARDING LENGTH OF MOTION**

Pursuant to DUCivR 7-1(a)(3)(A), Plaintiffs hereby certify that this motion does not comply with either the twenty-five (25) page or the 6,500 word limit for motions brought pursuant to Fed. R. Civ. P. 65. Therefore, by way of a separate motion made pursuant to DUCivR 7-1(e), Plaintiffs have sought leave of Court to file this over length motion.

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EXHIBIT 5

DECLARATION OF MATT J. FLANIGAN

I, Matt J. Flanigan, declare under penalty of perjury, that:

1. I am Chief Operating Officer of Global Banking and Markets for the Americas region at HSBC Securities (USA), Inc. ("HSBC"), and submit this declaration upon information and belief at the request of the Commodities Future Trading Commission (the "CFTC").

2. After a search of the below-referenced banking and marking databases, HSBC did not identify any current or former trading accounts for the following individuals or entities: (i) Gaylen D. Rust; (ii) Rust Rare Coin, Inc.; and (iii) R Legacy Entertainment LLC (collectively, the "Entities").

3. HSBC performed a search of its ClientVision database, which is a client relationship management system, and did not identify any accounts with the Entities.

4. HSBC performed a search of its Staff Front End database, which is a system of record for HSBC customers, and did not identify any accounts with the Entities.

5. HSBC performed a search of the Pershing system, which is vendor clearing and custodial system, and did not identify any accounts with the Entities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 2, 2018


Matt J. Flanigan

EXHIBIT 6

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>U.S. COMMODITY FUTURES TRADING COMMISSION, and</p> <p>STATE OF UTAH, by its Attorney General, Sean D. Reyes,</p> <p>Plaintiffs,</p> <p>v.</p> <p>RUST RARE COIN INC., a Utah corporation, and GAYLEN DEAN RUST, an individual,</p> <p>Defendants;</p>	<p>DECLARATION OF SHANE HOUSLEY</p> <p>Case No.</p> <p>Judge:</p>
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I, Shane Housley, declare as follows:

1. I am the Salt Lake City local manager of Brink's Global Services U.S.A. Inc. ("Brink's")
I am over the age of 21 and reside in Utah . I have personal knowledge of the facts contained in this declaration, and if called to testify, I could and would competently testify to the same.
2. I, and other employees of Brink's, have conducted a search of the business records of Brink's. Neither Gaylen Rust ("Rust") nor Rust Rare Coin, Inc. ("RRC") have any metal holdings at Brink's. Neither Rust nor RRC have any contract with Brink's.
3. Brink's is not currently storing, and has not ever stored, \$77 million worth of silver for RRC or Rust. \$77 million worth of silver would fill approximately eight tractor trailers. If Brink's were storing this volume of silver, it would be apparent, and Brink's is not.
4. Brink's charges fees to store precious metals. The fee to store \$77 million worth of silver would be in excess of \$100,000 per year. I have reviewed Brink's records and confirm that neither RRC nor Rust have paid Brink's any annual fee, and certainly have not paid annual fees approaching \$100,000.
5. Neither Rust nor RRC have ever had a contract with Brink's to move or store silver.
6. In 2016, I contacted Josh Rust ("Josh") to try to establish a contract for Brink's to move and store silver for RRC.
7. Josh told me that he did not want a contract with Brink's and asked that the small amount of precious metals then stored at Brink's be released to RRC.

8. Prior to 2016, RRC had approximately \$1 million worth of silver stored at Brink's Salt Lake facility. Since 2016, RRC has not stored any silver at Brink's. This includes both the Salt Lake and Los Angeles locations.
9. RRC has dropped off and picked up precious metals for RRC customers at Brink's.
10. Over the past 5 years, RRC has transported 151,952 ounces (a value of about \$2 million based on the price of silver today) to or from Brink's. None of this silver is stored at Brink's in an account for RRC or Rust.
11. A-Mark Precious Metals Inc. ("A-Mark") is a large customer of Brink's and stores large amounts of precious metals at the Brink's storage facility in Las Vegas. From time to time, A-Mark will request that Brink's transport silver sold by A-Mark. Brink's performs this service routinely. If A-Mark, or any other customer, requests expedited service, Brink's can perform this service and usually deliver silver anywhere in the United States within 24 hours. If A-Mark, or any other customer, does not request expedited handling, Brink's will perform this service typically within 3 days. Approximately 90% of the silver transported by Brink's for A-Mark is delivered either the same day of the order or the next day.
12. It is difficult to conceive of any circumstances in which it would take Brink's 60 days to move any amount of silver.
13. A-Mark maintains a number of accounts with Brink's. One of A-Mark's accounts is denominated "Rust Rare Repo (A-Mark)". This is an account owned by A-Mark designated for its client (in this case RRC). This is used by A-Mark for collateral when

needed. This account is used to process transactions between A-Mark and RRC.

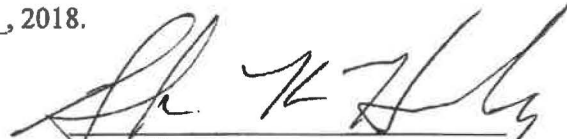
External auditors audit certain Brink's holdings on a regular basis. From August 2013 to September of 2107, an aggregate 151,952 ounces of silver was held by Brink's in this account. The total amount of this silver was less than \$2 million.

14. In each of those transactions, a customer took possession of the silver from Brink's. The silver was not held long-term by Brink's on RRC's behalf. Brink's has not held any silver in this account since September, 2017.

15. RRC has never had an audit performed at Brink's because it does not store silver at Brink's.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 1st day of OCTOBER, 2018.



Shane Housley
Salt Lake City Local Manager
Brink's Global Services U.S.A. Inc.

EXHIBIT 7

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>COMMODITY FUTURES TRADING COMMISSION, and</p> <p>THE STATE OF UTAH DIVISION OF SECURITIES, through Attorney General, Sean D. Reyes,</p> <p>Plaintiffs,</p> <p>v.</p> <p>RUST RARE COIN INC., a Utah corporation, and GAYLEN DEAN RUST, an individual,</p> <p>Defendants;</p> <p>and</p>	<p>DECLARATION OF D. RAY STRONG, CPA, CFE, CIRA</p> <p>Case No. 2:18cv00892</p> <p>Judge: Bruce S. Jenkins</p>
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DENISE GUNDERSON RUST, an individual, JOSHUA DANIEL RUST, an individual, ALESSHA FRANKLIN, an individual, R LEGACY RACING INC, a Utah corporation, R LEGACY ENTERTAINMENT LLC, a Utah limited liability company, R LEGACY INVESTMENTS LLC, a Utah limited liability company.

Relief Defendants,

I, D. Ray Strong, declare as follows:

1. I am over the age of 21 and a resident of the State of Utah. I have personal knowledge of the matters and facts set forth herein, and if called to testify, I could and would competently testify to the same.

2. I am currently a managing director of Berkeley Research Group, LLC (“**BRG**”) located its Salt Lake City, Utah office.

3. BRG is an international expert services and consulting firm that provides independent expert testimony, investigations, data reconstruction and analytics, valuation, authoritative studies, transaction advisory, restructuring services, and regulatory and dispute consulting to Fortune 500 corporations, financial institutions, investors, major law firms, governmental agencies, and regulatory bodies throughout the world.

4. I am a certified public accountant, certified fraud examiner, and certified insolvency and restructuring advisor with over twenty-five years of experience providing investigative and forensic accounting services in local, regional, national, and international matters. I am also certified in financial forensics by the American Institute of Certified Public Accountants (“**AICPA**”).

5. I have provided investigative and forensic accounting services in both civil and criminal matters, including but not limited to, the investigation of fraud and mismanagement, financial data reconstruction, tracing of funds and assets, and data acquisition and analysis involving large databases and data sources. I have investigated numerous fraud and mismanagement related matters involving Ponzi and other investment schemes, financial statement fraud, asset misappropriation schemes, bank fraud, and bankruptcy fraud. Attached as **Exhibit 1** is a copy of my current Curriculum Vitae.

6. BRG was engaged by the Attorney General of the State of Utah (“AG”) to conduct an independent analysis of the cash transactions, operating activities, and information obtained to date pursuant to a collaborative investigation conducted by the AG, State of Utah Division of Securities (“UDOS”), and United States Commodity Futures Trading Commission (“CFTC”) in regards to an alleged investment scheme being perpetrated by Rust Rare Coin, Inc. (“RRC”) and its related principals.¹

7. I lead the BRG engagement with assistance from other BRG professionals including Matthew K. Babcock (“M.Babcock”), Jeffrey Shaw (“J.Shaw”), and Christina Tergevorkian (“C.Tergevorkian”). The BRG professionals involved in the engagement are referenced herein as the BRG Team (“BRG Team”).²

8. I utilized experienced BRG professionals for the engagement with expertise in conducting fraud examinations, data and financial reconstruction, and other forensic accounting services. Below is a brief description of each team member:

¹ BRG has not performed an audit of any financial statements or financial information in accordance with Generally Accepted Auditing Standards (“GAAS”) to determine whether any financial statements were prepared in accordance with Generally Accepted Accounting Principles (“GAAP”), nor have we performed a review or compilation of any financial statements in accordance with standards promulgated by the AICPA.

² The BRG Team also utilized other paraprofessionals and office support personnel during the engagement with proper supervision by the professional charged with the specific analysis or assignment.

- M.Babcock – Mr. Babcock is an associate director at BRG with over 20 years of experience providing forensic/investigative accounting, bankruptcy, and litigation support services. He is a certified public accountant, certified fraud examiner, certified insolvency and restructuring advisor and is certified in financial forensics by the AICPA;
- J.Shaw – Mr. Shaw is a senior managing consultant at BRG with over 16 years of experience in the fields of investigative accounting, bankruptcy, business restructuring, and litigation support services. He is a certified public accountant, certified fraud examiner, certified insolvency and restructuring advisor and is certified in financial forensics by the AICPA; and
- C.Tergevorkian – Ms. Tergevorkian is an associate at BRG specializing in forensic accounting services. She has received her Master in Accountancy from the University of Utah and is currently pursuing her certified public accountant designation.

9. The BRG Team analysis and this declaration was prepared based on documentation, data, and information provided to us to date. We reserve the right to supplement, update or otherwise modify this declaration at a later date based on additional documentation or information that may become available.

I.

DATA IDENTIFICATION & ACQUISITION

10. Upon engagement, J.Shaw and I initially met with the AG and UDOS to gain an understanding of the RRC investigation conducted to date, to determine available documentation, information, and analyses performed, and to establish a point person to make further inquiries.

11. At the initial meeting, some introductory information, documentation, and data was requested and we were informed that any additional inquiries and requests could be obtained from the primary UDOS investigator, Liz Blaylock (“L.Blaylock”).

12. During the course of the BRG Team engagement and analysis, Ms. Blaylock was instrumental in providing requested information to answer any questions the BRG Team had regarding the requested information, available data, and the UDOS investigation and/or analyses performed to date.

13. Pursuant to our requests, the BRG Team was provided and analyzed, but not limited to, the following documentation, data, and information:³

- Bank Documentation – Copies of bank account statements, cancelled checks, deposit slips, debit and credit memos, wire transfer advices, wire data, and account setup and signature documentation for four RRC and 19 related party bank accounts;⁴
- Bank Account Analyses Performed by UDOS – Detailed transaction analysis for the January, 1 2018 through August 31, 2018 time periods for all RRC and identified related party bank accounts, as well as, limited analyses performed for earlier periods on various bank accounts;
- Transcript from Recorded Conversation with Gaylen Rust – Transcripts from recorded conversations between Gaylen Rust (“**G.Rust**”) and Howard Hess (“**H.Hess**”), a former employee and investor in the RRC silver program;
- Declarations – Declarations from H.Hess,⁵ David Costanzo (“**D.Costanzo**”),⁶ Brink’s Global Services U.S.A., Inc. (“**Brink’s**”), and HSBC Securities (USA), Inc. (“**HSBC**”);
- Corporate Entity Searches and Documentation – Corporate entity searches and documentation for RRC, related parties/entities, and investors/probable investors;
- Certain Investor Statements and Documentation – Examples of investor statements received from RRC by certain investors including D.Costanzo, H.Hess, investor LF, investor RH, investor OK, investor BO, investor JO, investor MO, investor SF, and investor BFT;⁷

³ The list represents general categories of documentation, data, and information provided by L.Blalock and should not be construed as a comprehensive listing of information provided. The BRG Team understands these documents were obtained in conjunction with the investigation being conducted by the various state and federal agencies.

⁴ The RRC and related party accounts are further described below. BRG understands that the bank documentation was obtained directly from Zions Bank.

⁵ Declaration was executed on October 12, 2018.

⁶ Declaration was executed on October 5, 2018.

⁷ Initials have been used for privacy concerns of investors.

- UDOS List of Probable Investors – Excel spreadsheet of investors and probable investors identified by UDOS;
- Pawnshop and Secondhand Merchant Database (“PSEC”) Data – Excel spreadsheet of PSEC data obtained by UDOS;⁸ and
- UDOS Memos and Notes – Memos and notes related to the UDOS investigation to date, including a summary of key principals and investors, as well as, notes for the various bank accounts.

14. The BRG team also obtained independent background reports for key principals and conducted various internet searches to better understand the various parties involved in cash transactions.

15. The BRG Team understands that financial statements, data from RRC’s accounting or management systems, sale and purchase invoices, investor-related documentation (other than documentation provided by whistleblowers) are not currently available to UDOS and the AG.

II.

RRC SILVER POOL/TRADING PROGRAM

16. Pursuant to documentation and information obtained from L.Blalock and the AG, the BRG Team understands UDOS received whistleblower information from certain sources in late-2017 and early-2018. As a result, UDOS commenced an investigation beginning in mid-2018 and additional agencies have partnered in the investigation including the CFTC and Securities and Exchange Commission (“SEC”).

⁸ I understand the PSEC data represents required data submissions to the State of Utah from Pawnshop and Secondhand Merchants pursuant to the Pawnshop and Secondhand Merchandise Transaction Information Act U.C.A. §13-32a-101 for merchants who conduct pawn transactions or buy secondhand or used goods from the public.

17. The BRG Team understood from initial discussions that the AG, UDOS, and other agencies allege that RRC and G.Rust was offering an “exclusive” (by referral only) investment opportunity where RRC and G.Rust pooled invested funds and used those funds to trade silver through a trading account at HSBC. It was further reported that half of the investor’s funds, or sometimes more, were used to purchase physical silver and stored at Brink’s stored depositories in Utah and California (the “**Silver Pool/Trading Program**”).

18. The H.Hess declaration describes various representations made by G.Rust regarding H.Hess’s Silver Pool/Trading Program account, as well as, certain mechanics of the program, including, but not limited to, the following:⁹

- G.Rust represented he took physical possession of the silver purchased and used Brink’s in Utah and Los Angeles to transport and store the silver;
- G.Rust represented that he conducted silver trades for all investors through a single account held by RRC at HSBC;
- G.Rust represented the silver investment has never earned less than 20% return on an annual basis and the last couple of years were “really good,” indicating that one year the investment doubled;
- G.Rust represented the worst returns in the history of his trading silver was 12%; that in the last five years, his worst returns had been 40%; and that for 30 years, he’s consistently seen an average of 20% to 25% returns;
- G. Rust represented RRC had approximately 150 investors and about \$80 million under management;
- An account statement was provided to H.Hess by G.Rust for December 2017 and May 2018 reflecting the balance of the investment in dollars and ounces of silver, as well as purported silver trades executed on behalf of the silver investment;
- H.Hess became suspicious about the statements because they were not created or sent on any regular basis. They appeared to have been created individually in Excel at Rust’s convenience; and

⁹ See **Exhibit 2** for a copy of the H.Hess declaration.

- Each of the trades shown on the statements involved a sale of silver and a subsequent repurchase of a larger amount of silver, often on the same day, or sometimes one or two days after the sale. On every trade listed on the account statements, G.Rust appeared to have sold silver at a higher price per ounce and then repurchased a larger amount of silver at a lower price per ounce. On each trade listed on the account statements, G.Rust's repurchase of silver resulted in an increase in the number of ounces of silver H.Hess held in his share of the Silver Pool/Trading Program.

19. The transcript of a recorded meeting between H.Hess and G.Rust on August 6, 2018 describes conversations and representations made by G.Rust regarding the Silver Pool/Trading Program and details regarding H.Hess's account including, but not limited to, the following:¹⁰

- Yields on silver investment accounts have been 20% to 25% consistently the last five years;
- RRC utilized a silver trading account and information from HSBC;
- Brink's held silver for RRC investment accounts; and
- RRC had \$80 million under management.

20. The D.Costanzo declaration described representations by G.Rust regarding how the Silver Pool/Trading Program worked including, but not limited to, the following:¹¹

- Investment was low risk;
- Money invested in the Silver Pool/Trading Program would be used to purchase silver bullion;
- All purchased silver bullion is pooled and held in vaults at Brink's unless and until it is required to be delivered to a broker as part of a silver trade;
- Millions of ounces of silver are held in vaults at Brink's for investors;
- Returns of approximately 30% to 40% per year from the Silver Pool/Trading Program were achieved over the past few years, and trading for 2017 suggested returns would likely be with that range;

¹⁰ See **Exhibit 3** for a copy of the H.Hess/G.Rust conversation transcript.

¹¹ See **Exhibit 4** for a copy of the D.Costanzo declaration.

- Silver trades were performed through an HSBC account;
- G.Rust never experienced a losing month; much less a losing year trading silver; and
- G.Rust was holding almost \$80 million in silver at the end of August 2018.

IV.

CASH RECEIPTS AND DISBURSEMENT ANALYSIS

21. The development of a cash receipts and disbursement database is commonly utilized by forensic accountants as a method to evaluate and reconstruct the actual financial activities of companies or individuals allegedly involved or engaging in investment related schemes by tracing the actual inflows and outflows of cash activity.

22. One of the foremost reasons we perform a cash analysis is the ability to independently verify the actual cash receipt and disbursement activity with third-party documentation obtained from financial institutions and eventually compare this activity against a company's internal accounting records and business records.

23. Companies typically do not primarily operate using paper currency; instead, they establish bank accounts and conduct their transactional activities through these accounts utilizing deposits, checks, wire transfers, and bank credit and debit memos. These transactions are summarized by the financial institution and included on a statement that is typically prepared each month and sent to the account holder. This independent documentation provides a paper trail of activity that can be effectively followed and analyzed in determining the actual financial activities and flow of company funds.

A. Bank Accounts Identified

24. The BRG Team requested and obtained available bank documentation¹² and existing transaction data and cash analyses performed to date by the UDOS¹³ for the accounts identified by L.Blalock, including:

a. RRC Bank Accounts (“RRC Bank Accounts”)

- Zions Bank #3945 (“Coin Shop Account”)¹⁴
- Zions Bank #3556 (“Cafeteria Account”)¹⁵
- Zions Bank #3564 (“Metals Account”)¹⁶
- Zions Bank #7496 (“Investor Account”)¹⁷

b. Personal Bank Accounts Utilized for RRC Business¹⁸

- Zions Bank #6731 – Gaylen D. Rust Account
- Zions Bank #6756 – Gaylen D. Rust Account
- Zions Bank #9537 – Gaylen D. Rust Account
- Zions Bank #6749 – Denise G Rust Account¹⁹
- Zions Bank #7515 – Denise G Rust Account
- Zions Bank #6772 – Josh Rust/Gaylen D Rust²⁰
- Zions Bank #6764 – Josh Rust Account

¹² Bank documentation included account statements, deposit slips and copies of deposited check, checks, wire transfer advices or transaction data provided by the financial institution, debit and credit memos, and account setup documentation. Many of the identified accounts included bank documentation back to 2013.

¹³ L.Blalock provided her existing cash receipts and disbursement spreadsheets by bank account to BRG for independent analysis.

¹⁴ BRG analysis indicates cash activity in this account was primarily related to the coin shop bank/credit card receipts, PayPal receipts, and the majority of business related expenses (excluding purchasing of metals, coins, and other collectibles).

¹⁵ BRG analysis indicates cash activity primarily related to funding and payments involving an employee cafeteria benefit plan. Activity was minimal.

¹⁶ BRG analysis indicates cash activity in this account primarily was related to the purchase and sale of precious metals, coins, and collectibles. Transactions often referenced a sales order, work order, or purchase order number on the underlying check and involved transactions with coin and precious metals dealers/brokers and individuals.

¹⁷ BRG analysis indicates cash activity in this account was primarily related to receipts/contributions from and payments to parties identified as investors/probable investors. A further discussion about BRG’s classification of investor receipts and disbursements is included below.

¹⁸ BRG analysis indicates accounts were established in related party names but utilized to transfer, hold, and return funds to RRC.

¹⁹ Denise G Rust (“D.Rust”) is the spouse of G.Rust.

²⁰ Josh D Rust (“J.Rust”) is the son of G.Rust and D.Rust.

c. Other Related Party Bank Accounts (“Related Party Bank Accounts”)²¹

- Zions Bank #3598 – R Legacy Entertainment Account
- Zions Bank #0130 – R Legacy Entertainment Account
- Zions Bank #3572 – R Legacy Investment Account
- Zions Bank #3580 – R Legacy Racing Account
- Zions Bank #3614 – R Legacy Ranch Account
- Zions Bank #4133 – Legacy Music Alliance Account
- Zions Bank #3606 – YourLDSNeighborhood.com Account
- Zions Bank #2507 – Gaylen D Rust Personal Account²²
- Zions Bank #2515 – Curt Rust Personal Account²²
- Zions Bank #7100 – Lucile Johnson Personal Account²³

B. Consolidation of Transaction Data

25. Once the bank documentation and existing cash analyses were received from L.Blalock, the BRG team consolidated the data into a master cash database. Given the volume of bank accounts and transactions, the BRG team primarily focused its analysis and development of its cash receipts and disbursement database (“**BRG Cash Database**”) on the 2018 cash transactions from January 1, 2018 through August 31, 2018 (“**Analysis Period**”).²⁴

26. The cash activity from the bank accounts was consolidated and merged into the BRG Cash Database, evaluated and updated for consistency, and prepared for further analysis and transaction categorization.

²¹ Related parties were verified based on corporate entity documentation provided by L.Blalock and independent investigative/corporate database searches conducted by BRG.

²² BRG did not analyze available 2018 activity for the personal account of Curt Rust due to little or no identified RRC activity.

²³ BRG did not analyze available 2018 activity for the personal account of Lucile Johnson due to little or no identified RRC activity.

²⁴ BRG also reviewed and analyzed other activity from 2015 through 2017 to evaluate investor related activity, but primarily focused the development of the BRG Cash Database on the time period covered by the Analysis Period.

C. Analysis and Categorization of 2018 Transactions

27. The BRG Team performed a detailed analysis of over 4,500 transactions from the RRC Bank Accounts and reviewed and evaluated other cash activity in the various Related Party Accounts during the Analysis Period.

28. The BRG cash analysis included a detailed review of bank statements and analysis of the underlying transactions support including deposits, checks, wire transfers, and debit and credit memos for the RRC Bank Accounts. The bank documentation was analyzed to verify and capture payee/payor, date, amount, memo line information, as well as review other notations on the bank document to assist in determining the nature of the transaction. Additionally, internet searches and the review of corporate filings and entity searches were performed and analyzed to evaluate relationships between the various payee/payors and entities.

29. The BRG Team developed a list of transaction categories and made an independent determination as to the nature and categorization of each cash transaction based on (a) information and notations on the analyzed bank documentation, patterns of similar activity, internet searches, evaluation of pre-2018 historical activity, nature of the bank account being analyzed, type of payee/payor, transaction amounts, and (b) the BRG Team's education, training, experience, and expertise in other forensic accounting engagements.

30. Below are various factors and attributes considered and utilized by the BRG Team to evaluate the nature of the larger categories of transactions:

a. Sales/Probable Sales – Precious Metals, Coins, or Collectibles – Brokers/Dealers

Category includes transactions that appeared to be an actual or a very likely sale of precious metals, coins or collectibles to a broker/dealer. Factors and attributes used to categorize these transactions included;

- (1) Transactions were deposited into the Metals Account (the account primarily utilized by RRC to purchase and sell precious metals, coins, or collectibles);
- (2) Payor was a company or organization that was identified as a broker/dealer of precious metals, coins, or collectibles based on internet searches and additional research;
- (3) Deposited check or wire transfer noted a sale order number consistent with other similar RRC sale transactions;
- (4) Deposited check or wire transfer noted a work order number consistent with other similar RRC sale transactions;
- (5) Payor had other deposits with a noted sale or work order number on check or wire transfer; or
- (6) Check memo referenced a specific description of sale transaction.²⁵

b. Sales/Probable Sale – Precious Metals, Coins, and Collectibles – Individuals

Category includes transactions that appeared to be an actual or a very likely sale of precious metals, coins or collectibles to various individuals. Factors and attributes used to categorize these transactions included:

- (1) Transactions were deposited into the Metals Account (an account primarily utilized by RRC to purchase and sell precious metals, coins, or collectibles);
- (2) Deposited check or wire transfer noted a sale order number consistent with other similar RRC sale transactions;
- (3) Deposited check or wire transfer noted a work order number consistent with other similar RRC sale transactions;
- (4) Payor had other deposits with a noted sale or work order number on check or wire transfer; or
- (5) Check memo referenced a specific description of sale transaction.²⁶

²⁵ See **Exhibit 5** for examples of checks and wires regarding factors and attributes utilized.

²⁶ See **Exhibit 6** for examples of checks and wires regarding factors and attributes utilized.

c. Purchases/Probable Purchases – Precious Metals, Coins, and Collectibles – Brokers/Dealers

Category includes transactions that appeared to be a purchase of metals, coins or collectibles from a broker/dealer. Factors and attributes used to categorize these transactions included:

- (1) Transactions were paid from the Metals Account (primarily utilized by RRC to purchase and sell precious metals, coins, and collectibles);
- (2) Payee was a company that appeared to be a broker/dealer of precious metals, coins, or collectibles based on internet searches and other research;
- (3) Check or wire transfer noted a purchase order number consistent with other RRC purchase transactions;
- (4) Payee had other payments with a noted purchase of precious metals, coins, or collectibles; or
- (5) Check memo referenced description of specific purchase transaction.²⁷

d. Purchases/Probable Purchases - Precious Metals, Coins, and Collectibles – Individuals

Category includes transactions that appeared to be a purchase of metals, coins or collectibles from an individual. Factors and attributes used to categorize these transactions included:

- (1) Transactions were paid from the Metals Account (primarily utilized by RRC to purchase and sell precious metals, coins, and collectibles);
- (2) Check or wire transfer noted a purchase order number consistent with other RRC purchase transactions;
- (3) Payee had other payments with a noted purchase of precious metals, coins, or collectibles; or
- (4) Check memo referenced description of a specific purchase transaction.²⁸

²⁷ See Exhibit 7 for examples of checks and wires regarding factors and attributes utilized.

²⁸ See Exhibit 8 for examples of checks and wires regarding factors and attributes utilized.

e. Investor/Probable Investor - Investment Receipt/Contribution

Category includes transactions that appeared to be funds received from Investors/Probable Investors (“Investors”)²⁹ for the Silver Pool/Trading Program. Factors and attributes used to categorize these transactions included:

- (1) Information contained in the H.Hess declaration, D.Costanzo declaration, and recorded G.Rust conversation transcripts including representations regarding the Silver Pool/Trading Program;
- (2) Whistleblower(s) provided account statements consistent with an investment program and statements referencing “investment”;³⁰
- (3) Transactions were deposited into the Investor Account (primarily utilized by RRC for investor related activity);
- (4) Investor transactions were often large round dollar amounts;
- (5) Payor received periodic and/or monthly payments from the Investor Account consistent with an account withdrawal and/or investment return;
- (6) Deposits did not reference a sale order or work order number consistent with sale transactions in the Metals Account;
- (7) Deposited checks and wire transfers referenced notations such as “investment,” “silver investment,” “silver account,” “silver fund,” “silver program,” “Rust Coin investment,” “rollover account,” “IRA,” “Additional Investment,” or “Contribution”;
- (8) Check or wire transfer referenced a group or pooled investment account;³¹
- (9) Check or wire transfers were received directly from an investment firm, title company, or retirement account;
- (10) Funds were received from family trusts or groups of family members; or

²⁹ The term Investor/Probable Investor is used to describe funds received from or payments to identified investors or parties that are very likely investors in the Silver Pool/Trading Program based on the factors, attributes, and patterns of transaction activity and description of the program contained in the H.Hess and D.Costanzo declarations, as well as, a transcript of a conversation between H.Hess and G.Rust described herein.

³⁰ See Exhibits 9 for an example of an investor account statement.

³¹ A group or pooled investor account relates to a group of individual investors that pooled funds under a certain individual investor account. This specific investor account was noted on the check memo or wire transfer reference.

(11) Payor had other deposit activity in the Investor Account.³²

f. Investor/Probable Investor – Disbursements on Investment

Category includes transactions that appeared to be Investor withdrawals or periodic investment returns from the Silver Pool/Trading Program.

Factors and attributes used to categorize these transactions included:

- (1) Information contained in the H.Hess declaration, D.Costanzo declaration, and recorded G.Rust conversation transcripts including representations regarding the Silver Pool/Trading Program;
- (2) Whistleblower(s) provided account statements consistent with an investment program and statements referencing “investment”;
- (3) Transactions were paid from the Investor Account (primarily utilized by RRC for investor related activity);
- (4) Investor withdrawals were often large round dollar amounts;
- (5) Payments made consistent with payment of monthly returns, often with a memo denoting the specific month or number of ounces;
- (6) Certain withdrawals were paid directly to third-parties for the benefit of the Investor for items such as tax payments, loan payments, construction costs, credit card payments, and equipment purchases;
- (7) Certain payments were made directly to financial institutions to be deposited for the benefit of the Investor;
- (8) Payments did not reference a purchase order number consistent with purchase transactions in the Metals Account;
- (9) Check or wire transfer referenced a group or pooled investment account; or
- (10) Payee had other deposit or payment activity in the Investment Account.³³

³² See Exhibit 10 for examples of checks and wires regarding factors and attributes utilized.

³³ See Exhibit 11 for examples of checks and wires regarding factors and attributes utilized.

g. Related Party Transactions

Categories includes transactions between RRC and identified related parties. Factors and attributes used to categorize these transactions included:

- (1) RRC or related party bank statement referenced the account number for the transfer of fund;
- (2) RRC funds were traced in or out of the related party account;
- (3) Checks were directly payable to related party from RRC or payable to RRC from the related party account; and
- (4) Check memo referenced related party.

31. The BRG Team also assigned a major category grouping to each individual category to group the detailed transaction categories and prepare summarized reports. The major category groupings are as follows:

- Beginning Account Balances
- Receipts - Operating
- Disbursements – Operating
- Investing Activity
- Transactions Referenced as Cash
- Personal Accounts Used for Business
- Related Party Transactions
- Intercompany Bank Account Transfers
- Transactions Requiring Further Analysis

V.

SUMMARY OF CASH ANALYSIS

32. Below is summary of the cash analysis performed by the BRG Team summarized by RRC bank account for the Analysis Period:

	Total	Coin Shop Account Zions-3945	Cafeteria Account Zions-3556	Metals Account Zions-3564	Investor Account Zions-7496
Beginning Account Balance (Jan 2018)	\$ 645,075	\$ 58,889	\$ 19	\$ 258,195	\$ 327,972
Operating Activity					
Receipts - Operating	\$ 10,463,915	\$ 1,073,062	\$ -	\$ 9,342,557	\$ 48,296
Disbursements - Operating	(16,255,626)	(993,258)	(3,415)	(15,248,197)	(10,755)
Net Operating Cash Activity	\$ (5,791,711)	\$ 79,805	\$ (3,415)	\$ (5,905,641)	\$ 37,541
Other Activity					
Investing Activity - Receipts	\$ 42,997,801	\$ -	\$ -	\$ 80,000	\$ 42,917,801
Investing Activity - Disbursements	(28,990,900)	-	-	-	(28,990,900)
Transactions Referenced as Cash (Net)	(966,267)	-	-	200,433	(1,166,700)
Personal Accounts Used for Business (Net)	456,300	(43,000)	-	(185,041)	684,341
Related Party Transactions (Net)	(6,256,662)	-	3,064	(66,815)	(6,192,911)
Intercompany Transfers (Net)	-	(21,808)	351	7,012,291	(6,990,834)
Transactions Requiring Further Analysis (Net)	(1,431,890)	(5,060)	-	(1,187,792)	(239,038)
Total Other Activity	\$ 5,808,383	\$ (69,868)	\$ 3,415	\$ 5,853,076	\$ 21,759
Ending Account Balance (Aug 2018)	\$ 661,747	\$ 68,825	\$ 19	\$ 205,630	\$ 387,272

33. A demonstrative flow chart summarizing the above referenced cash activity is included as **Exhibit 12**. Additional schedules summarizing the underlying transaction categories by RCC bank account and by month are included as **Exhibit 13** and **Exhibit 14**. A schedule of detailed transactions organized by transaction category (redacting investor/probable investor names) is included as **Exhibit 15**.

34. The BRG Team categorized sales and purchases of precious metals, coins, and collectibles occurring in the Metals Account as RRC operating related activity based on the cash transactions and information provided and analyzed to date. Below is a summary of the metals sale and purchase transactions categorized as operating related activity:

	<u>Total</u>
Sales:	
Sales/Probable Sales - Metals, Coins, and Collectibles - Broker/Dealers	\$ 6,226,476
Sales/Probable Sales - Metals, Coins, and Collectibles - Individuals	3,160,241
	<u>\$ 9,386,717</u>
Purchases:	
Purchases/Probable Purchases - Metals, Coins, and Other Collectibles - Broker/Dealers	\$ (9,456,167)
Purchases/Probable Purchases - Metals, Coins, and Collectibles - Individuals	(5,716,937)
	<u>\$ (15,173,104)</u>
Net Transactions	<u>\$ (5,786,387)</u>

35. Since the cash activity in the RRC Bank Accounts³⁴ is commingled and certain detailed business records are not currently available, it's possible that funds transferred between the Investor Account and the Metals Account may include Investor related metal purchases and sale activity and may not necessarily be classified as RRC operating activity once the transactions can be further analyzed, identified, and segregated.³⁵

36. As a result, the BRG Team developed a range of possible Net Operating Cash Activity available to make payments to Investors. At one end of the range, the BRG Team treated all metals sale and purchase activity as operating cash activity resulting in a net cash deficit of (\$5,791,711). The other end of the range assumes all net transfers (\$6.8 million) from the Investor Account to the Metals Account are re-classified as Investing Activity, rather than operating cash activity, which increases the available operating cash activity to make Investor payments to \$1,018,612. However, even if all of these net transfers were re-classified to Investing Activity, the re-calculated RRC's Net Operating Cash Activity is substantially inadequate to make the \$29 million of Investor payments made during the Analysis Period.

³⁴ Further described in Section VII-D.

³⁵ The BRG Team believes these amounts could be determined if access to the underlying RRC accounting system and detailed business records become available.

37. The summary chart below calculates the range discussed above and illustrates the impact on Net Operating Cash Activity:

	BRG Totals Metals Sales & Purchases As Operating Activity	Totals With Re-categorized Investor Account Net Transfers
Receipts - Operating	\$ 10,463,915	\$ 8,617,957
Disbursements - Operating	(16,255,626)	(7,599,345)
Net Operating Cash Activity	\$ (5,791,711)	\$ 1,018,612

38. Below is a summary of the transactions categorized to Investing Activity during the Analysis Period:

	Total
Investor/Probable Investor - Receipt/Contributions	\$ 42,997,801
Investor/Probable Investor - Disbursements on Investment	(28,990,900)
Net Investing Activity	\$ 14,006,901

39. The above chart illustrates that approximately 67% of the funds raised from Investors were used to make payments to Investors. Schedules summarizing the Investor Receipts/Contributions and Investors Disbursements on Investment are included in **Exhibit 16** and **Exhibit 17**, respectively.³⁶

40. Below is a summary of transactions identified and categorized to Related Party Transactions during the Analysis Period:

³⁶ Investor names were not included on the schedules for privacy concerns. Investors are identified by a BRG investor ID and their respective initials.

	Total	Receipts	Disbursements
R Legacy Entertainment	\$ (3,751,436)	\$ 321,064	\$ (4,072,500)
R Legacy Racing	(303,000)	250,000	(553,000)
R Legacy Investments	(654,921)	250,000	(904,921)
R Legacy Ranch	1,700	3,200	(1,500)
Legacy Music Alliance	(63,700)	-	(63,700)
Torque Entertainment	(198,550)	-	(198,550)
Rhythm and Pace	(91,432)	-	(91,432)
Writer's Den	(63,200)	94,500	(157,700)
Musician's Toolkit	(800,000)	-	(800,000)
Rust Coin and Gift	(66,815)	-	(66,815)
Gaylen Rust - Personal	(13,500)	-	(13,500)
Denise Rust - Personal	(130,308)	-	(130,308)
Aleesha Franklin	(121,500)	-	(121,500)
Total Related Party Transactions	\$ (6,256,662)	\$ 918,764	\$ (7,175,426)

41. Virtually all (99%) of the Related Party Transactions referenced in the above chart were paid from the Investor Account.

VI.

CASH TRANSACTIONS CONSISTENT WITH

CHARACTERISTICS AND PATTERNS OF PONZI-LIKE ACTIVITY

42. While differing definitions for a Ponzi scheme are utilized by courts and practitioners, a Ponzi scheme is generally a fraudulent scheme in which investor payments are not financed from the operations of the underlying enterprise, but rather taken from funds of new investors.

43. Based on my training and experience, there are common characteristics and patterns that Ponzi schemes typically share,³⁷ including:

³⁷ The BRG Team has analyzed and investigated numerous sizable Ponzi-like matters. Additionally, many of these same characteristics and patterns are outlined in the AICPA Consulting Services Practice Aid 97-1, "Fraud Investigations in Litigation and Dispute Resolutions Services," page 75/100-31 (See Exhibit 18), Association of Certified Fraud Examiners 2018 Fraud Examiners Manual, pages 1.1346-1.1347 (See Exhibit 19), and "The Ponzi Book – A Legal Resource for Unraveling Ponzi Schemes," Kathy Bazonian Phelps and Hon. Steven Rhodes, Lexis Nexis, 2012, page 1-3 to 1-5; 1-17 and 1-18 (See Exhibit 20)

- Use of new investor money to pay earlier investor payments;
- Investor returns and payments are not financed through the success of the underlying business venture;
- Investor money is not used according to its intended purpose; and
- High investment returns or other inducements are offered or paid by the promoter to attract new investors.

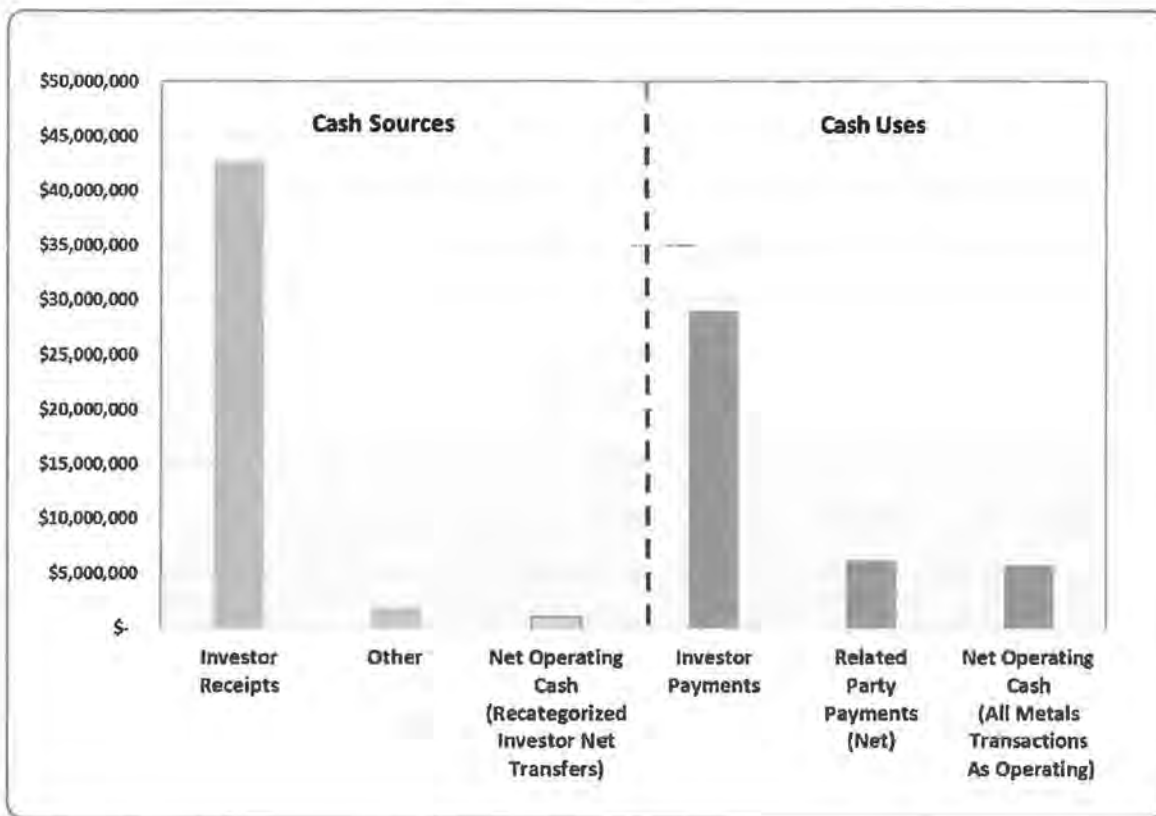
44. When the results of the BRG cash analysis are scrutinized, it becomes apparent from a financial perspective that the RRC cash transactions during the Analysis Period are consistent with many of the common characteristics and patterns of Ponzi-like activity.

A. Use of New Investor Money to Pay Earlier Investor Payments

45. Ponzi-like schemes utilize new funding from investors in which some or all of the new proceeds are used to pay the returns and/or principal investments of the existing investors that could not be paid through the actual operations of the business.

46. Whether all metal sales and purchases are included in Net Operating Cash Activity (resulting in a Net Operating Cash Activity deficit of \$5.8 million) or whether the net transfers of \$6.8 million from the RRC Investor Account are re-categorized and treated as Investing Activity (resulting in positive Net Operating Activity of \$1 million) the combined Net Operating Cash Activity from the RRC Bank Accounts is woefully inadequate to support the \$29 million of Investor payments made by RRC during the Analysis Period. As a result, the only source of RRC funds large enough to cover the Investor payments is from new investor funding.

47. Below is a chart illustrating, on an enterprise level, that RRC did not have sufficient cash sources, other than from new Investor funding, to make the \$29 million in Investor payments:



Specific Ponzi-Like Examples

48. In addition to looking at the total enterprise activity or macro view described above, below are several examples or snapshots that further demonstrate new investor money was used by RRC to make earlier investor payments.

Example #1 (May 1, 2018)

49. On May 1, 2018, the beginning cash balance in the Investment Account was \$33,438.³⁸ On the same day, \$571,400 was deposited into the account from various Investors, \$446,620 was paid to other unrelated Investors, \$34,171 was paid to Related Parties (including R Legacy Entertainment, Torque Entertainment, and Rhythm and Pace), and \$45 was paid to Zions

³⁸ BRG has analyzed the beginning balance of May 1, 2018 and the balance consists entirely of Investor funds.

Bank for bank fees. Approximately 74% of the account balance (after Investor deposits) was used to pay other Investors. See **Exhibit 21** for a demonstrative chart and schedule of account activity for this example.

Example #2 (May 23, 2018)

50. On May 23, 2018, the beginning cash balance in the Investment Account was \$16,230.06. On the same day, \$500,000 was deposited into the account from an Investor and \$453,912 was paid to other unrelated Investors. Approximately 88% of the account balance (after the Investor deposit) was used to pay other Investors. See **Exhibit 22** for a demonstrative chart and schedule of account activity for this example.

Example #3 (June 1, 2018)

51. On June 1, 2018, the beginning cash balance in the Investor Account was \$333,528.96.³⁹ On the same day, \$1,141,000 was deposited into the account from two Investors, \$624,620 was paid to other unrelated Investors, \$142,100 was paid to Related Parties (including R Legacy Entertainment, R Legacy Investments, Rhythm and Pace, and Writer's Den), and \$15.00 was paid to Zions Bank for bank fees. Approximately 42% of the account balance (after the Investor deposits) was used to pay other Investors. See **Exhibit 23** for a demonstrative chart and schedule of account activity for this example.

B. Investor Returns and Payments are not Financed Through the Success of the Underlying Business Venture

52. As addressed above, RRC did not have adequate operating cash flow to finance the \$29 million in Investor payments. Even if, on a conservative basis, all cash receipts (except Investor funding, RRC intercompany accounts transfers,⁴⁰ and the transfers from the personal

³⁹ BRG has analyzed the beginning balance of June 1, 2018 and the balance consists entirely of Investor funds.

⁴⁰ RRC intercompany account transfer amounts net to \$0.

accounts used by G.Rust, D.Rust, and J.Rust for RRC business purposes)⁴¹ were treated as operating cash sources, RRC would still be significantly lacking in its ability to make the Investor payments. To make these payments, the RRC enterprise was dependent on outside investor money. Below is a chart illustrating this assumption:

	<u>Total</u>
Cash Sources	
Receipts - Operating	\$ 10,463,915
Receipts - Cash	402,933
Receipts - Related Party Receipts	918,764
Transactions Requiring Further Analysis	1,259,946
	<u>13,045,558</u>
Investor Payments	(28,990,900)
Net Deficit	<u>\$ (15,945,342)</u>

C. Investor Money is Not Used According to its Intended Purpose

53. RRC's significant use of new investor funding to make \$29 million of Investor payments and substantial payments of approximately \$6.2 million (net) to Related Parties from the Investor Account are indications that new investor funds were not used according to their intended purpose. Approximately 82% of the Investor funds were used for these two large categories of disbursements.

D. High Investment Returns or Other Inducements

54. The declarations from H.Hess and D.Costanzo both address representations from G.Rust regarding high investment returns for the Silver Pool/Trading Program. H.Hess included representations from G.Rust of consistent average annual returns of 20% to 25%.⁴² D.Costanzo

⁴¹ The personal accounts used by G.Rust, D.Rust, and J.Rust were primarily used to transfer funds between RRC and these personal accounts. There was a net inflow from this circular activity of \$456,300, which primarily consisted of the January 1, 2018 balances in the accounts.

⁴² See Exhibit 2; Page 5-6.

included representations from G.Rust of achieved annual returns of approximately 30% to 40 per year from the Silver Pool/Trading Program over the past few years.⁴³

55. These unrealistic representations of consistent annual returns between 20% to 40% are consistent with the characteristics of a Ponzi-like scheme and represent another red flag.⁴⁴

VII.

OTHER BRG ANALYSES

A. Brink's Cash Analysis

56. The BRG Team understands G.Rust made certain representations that RRC took physical possession of silver purchased for investors and used Brink's in Utah and Los Angeles to transport and store the silver.

57. Below is a brief description of the representations referenced and included in the H.Hess and D.Costanzo declarations:

- H.Hess indicated G.Rust represented in the August 6, 2018 recorded conversation that RRC took physical possession of the silver purchased and used Brink's in Utah and Los Angeles to transport and store silver.⁴⁵
- D.Costanzo indicated G.Rust represented all purchased silver bullion is pooled and held in vaults at Brink's storage facility unless or until it is required to be delivered to a broker for a silver trade.⁴⁶

58. The BRG Team also reviewed a declaration from Brink's indicating the following: (a) neither G.Rust nor RRC have ever had a contract with Brink's to move or store

⁴³ See **Exhibit 4**; Page 3.

⁴⁴ Association of Certified Fraud Examiner 2018 Fraud Examiners Manual (Pages 1.1346-1.1347) describe various Ponzi scheme red flags including: (1) sounds too good to be true, (2) promises of low risk or high rewards, (3) history of consistent returns, (4) high-pressure sales tactics, (5) pressure to reinvest, (6) complex trading strategies, (7) lack of transparency or access, and (8) lack of segregation of duties.

⁴⁵ Representations were also included in the transcript reviewed of the August 6, 2018 recorded conversation between H.Hess and R.Rust. See **Exhibit 3**; Pages 5, 7, and 11.

⁴⁶ See **Exhibit 4**; Page 3.

silver, (b) Brink's is not currently storing silver and never stored \$77 million worth of silver for RRC or G.Rust, (c) Brink's charges fees to store precious metals and fees to store \$77 million of silver would be in excess of \$100,000 per year, and (d) neither RRC or G.Rust paid Brink's any annual fee for the storage of silver.⁴⁷

59. Assuming the representations made by G.Rust regarding Brink's were true and accurate, we would expect to find significant payments for the storage and transportation fees.

60. The BRG Team did not find any evidence that RRC made payments to Brink's for storage and/or transportation fees pursuant to our detailed analysis of the RRC cash activity during the Analysis Period.

61. Additionally, the BRG Team analyzed cash transactions over \$5,000 from the Related Party Bank Accounts identified below:

- Zions Bank #3598 – R Legacy Entertainment
- Zions Bank #0130 – R Legacy Entertainment
- Zions Bank #3572 – R Legacy Investments
- Zions Bank #3580 – R Legacy Racing
- Zions Bank #3614 – R Legacy Ranch
- Zions Bank #4133 – Legacy Music Alliance
- Zions Bank #3606 – YourLDSNeighborhood.com
- Zions Bank #2507 – Gaylen D Rust – Personal Account

62. As a result of our analysis of the above referenced Related Party Bank Accounts, we did not find any amounts paid to Brink's for storage and/or transportation fees.

B. HSBC Cash Analysis

63. The BRG Team understands G.Rust made certain representations that he followed trades executed by HSBC, executed his trades based upon HSBC's moves, silver trades for Investors were made through a single account at HSBC, and after making trades "on paper"

⁴⁷ The Brink's declaration was executed on October 1, 2018 by Shane Housley, the Brink's Salt Lake City Local Manager. See **Exhibit 24**.

through HSBC, would work with silver distributors to have the additional silver shipped to the Brink's storage facility.

64. Below is a brief description of the representations referenced and included in the H.Hess and D.Costanzo declarations regarding HSBC:

- H.Hess indicated G.Rust represented in the August 6, 2018 recorded conversation that silver trades for all investors were made through a single account held by RRC at HSBC. G.Rust represented in a separate conversation that he follows trades of HSBC and executes trades based upon HSBC's moves. G. Rust explained that in a down turn, he executed his own sell transactions after the second consecutive sell transaction by HSBC and, once an up-swing begins, he executed his own buy transactions after HSBC's second consecutive buy transaction.⁴⁸
- D.Costanzo indicated G.Rust represented trades were performed through an HSBC account, after making trades "on paper" through HSBC, Rust worked with silver distributors to have the additional silver shipped to a Brink's storage facility, and all investor funds are pooled and traded together under a single HSBC account.⁴⁹

65. The BRG Team reviewed a declaration from HSBC indicating that HSBC did not identify any current or former trading accounts for G.Rust, RRC, or R Legacy Entertainment LLC.⁵⁰

66. The BRG Team did not find any evidence that RRC transferred funds to or received funds from an HSBC account pursuant to our detailed analysis of the RRC cash activity during the Analysis Period.

⁴⁸ Representations were also included in the transcript reviewed of the August 6, 2018 recorded conversation between H.Hess and R.Rust. See **Exhibit 3**; Pages 6, 11-12.

⁴⁹ See **Exhibit 4**; Pages 3-4.

⁵⁰ The HSBC declaration was executed on October 2, 2018 by the Matt J. Flanigan, the Chief Operating Office of Global Banking and Markets for the Americas region. See **Exhibit 25**.

67. Additionally, the BRG Team analyzed cash transactions over \$5,000 from the Related Party Bank Accounts and did not find any transfers to or received funds from an HSBC account during the Analysis Period.

68. We would expect to find substantial RRC transfers to and from an HSBC account if Investor funds were pooled and traded in an HSBC account.

C. 50% Trading of Silver Owned by Investor

69. The BRG Team understands G.Rust represented to D.Costanzo that investment funds were solely used to purchase silver and at any given time only 50% of the silver owned by an investor was traded.⁵¹

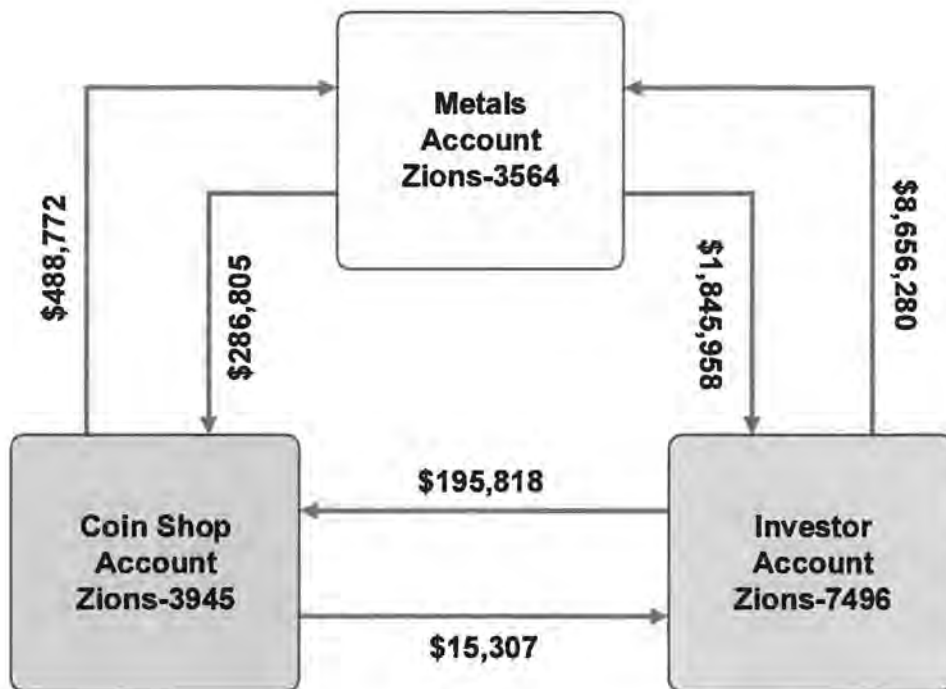
70. This representation implies that at least 50% of the investor funds were used to purchase silver under the Silver Pool/Trading Program. Our analysis of the RRC cash activity identified \$8.6 million⁵² was transferred from the Investor Account to the Metals Account. This represents approximately 20% of the \$43 million in Investor funds deposited into the Investor Account during the Analysis Period.

D. Commingling of Funds in Metals Account

71. The BRG Team analyzed transfers between the RRC Bank Accounts and identified numerous transfers between the Coin Shop Account, Metals Account, and the Investor Account indicating a commingling of funds during the Analysis Period. Below is a summary chart illustrating the activity:

⁵¹ See Exhibit 4; Page 3.

⁵² \$1.8 million was transferred from the RRC Metals Account to the RRC Investor Account during the Analysis Period. Net Transfers to/from the RRC Investor Account and the RRC Metals Account are \$6.8 million.



72. Additionally, we did not identify any cash transactions for the purchase of precious metals, coins, or collectible inventory related to the \$1.1 million in credit cards sales and PayPal receipts in the Coin Shop Account. This suggests the coin shop inventory was purchased through the Metals Account, which also included commingled funds from the Investor Account.

E. No Silver Trading Losses Incurred on Provided RRC Investor Statements

73. The BRG Team analyzed a sampling of 41 account statements provided for 10 investors. The time periods ranged from 2009 through 2018. The analyzed investor statements included 292 purported silver trades by G.Rust and RRC. These statements did not reflect a single losing transaction, which is another red flag and fraud indicator. Below is a summary chart by investor:⁵³

⁵³ See **Exhibit 26** for detail schedules.

	# of Investor Statements	# of Purported Trades	# of Trading Losses
Investors			
LF	8	63	0
RH	6	56	0
DC	6	52	0
HH	8	67	0
OK	1	1	0
BO	3	11	0
JO	2	10	0
MO	2	10	0
SF	3	12	0
BFT	2	10	0
Total	41	292	0

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Dated this 9th day of November, 2018.



 D. Ray Strong, CPA, CFE, CIRA

EXHIBIT 8

[Redacted] 05-98 293
 OGDEN, UT 84404 *April 16, 2018* Date 97-10/1243 7
 Pay to the Order of *Rust Rare Coin* \$500,000⁰⁰/₁₀₀
Five Hundred Thousand Dollars Dollars
 BANK of UTAH
 BANKING • TRUST • INVESTMENTS • HOME LOANS
 DEN LOMOND BRANCH (801) 398-4436
To Deposit [Redacted]
 [Redacted]

PAY TO THE ORDER OF ZIONS FIRST
 NATIONAL BANK UT 124000054 FOR
 DEPOSIT ONLY RRC AFFILIATE ACCOUNT
 [Redacted] 7496

Date:04/19/18 Seq #:76024792 Account:[Redacted] Serial #:293 Amount:\$500,000.00 Dep Seq #:76024791

97-164
1240 204

155

SALT LAKE CITY, UT 84109-2132

DATE October 2, 2017

PAY TO THE ORDER OF Rust Coin \$ 100,000.00

One hundred thousand & no/100 DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
www.chase.com

MEMO Rust Coin Investment

PAY TO THE ORDER OF ZIONS FIRST
NATIONAL BANK UT 124000054 FOR
DEPOSIT ONLY RRC AFFILIATE ACCOUNT
7496

Date: 10/03/17 Seq #: 76052979 Account: [REDACTED] Serial #: 155 Amount: \$100,000.00 Dep Seq #: 76052977

10-07 197
 [Redacted] Date 4/22/14
 LAYTON, UT 84041 97-95/1243
04

Pay to the Order of: Rust Co.W \$ 99,500
Ninety nine thousand five hundred and 00/100 Dollars

FIRST NATIONAL BANK
 LAYTON HILLS OFFICE
 801-728-3013
 1601 North Hillfield Road
 Layton, Utah 84041
 www.fnbank.com

For: Additional Investment

INTOLITH'S CUSTOM CREATIONS™

PAY TO THE ORDER OF ZIONS FIRST NATIONAL BANK UT 124000054 FOR DEPOSIT ONLY RUST RARE COIN INC
 3564

Date:04/23/14 Seq #:76090631 Account: [Redacted] Serial #:197 Amount:\$99,500.00 Dep Seq #:76090630

2484
24-7598/3290

LAKE OSWEGO, OR 97035

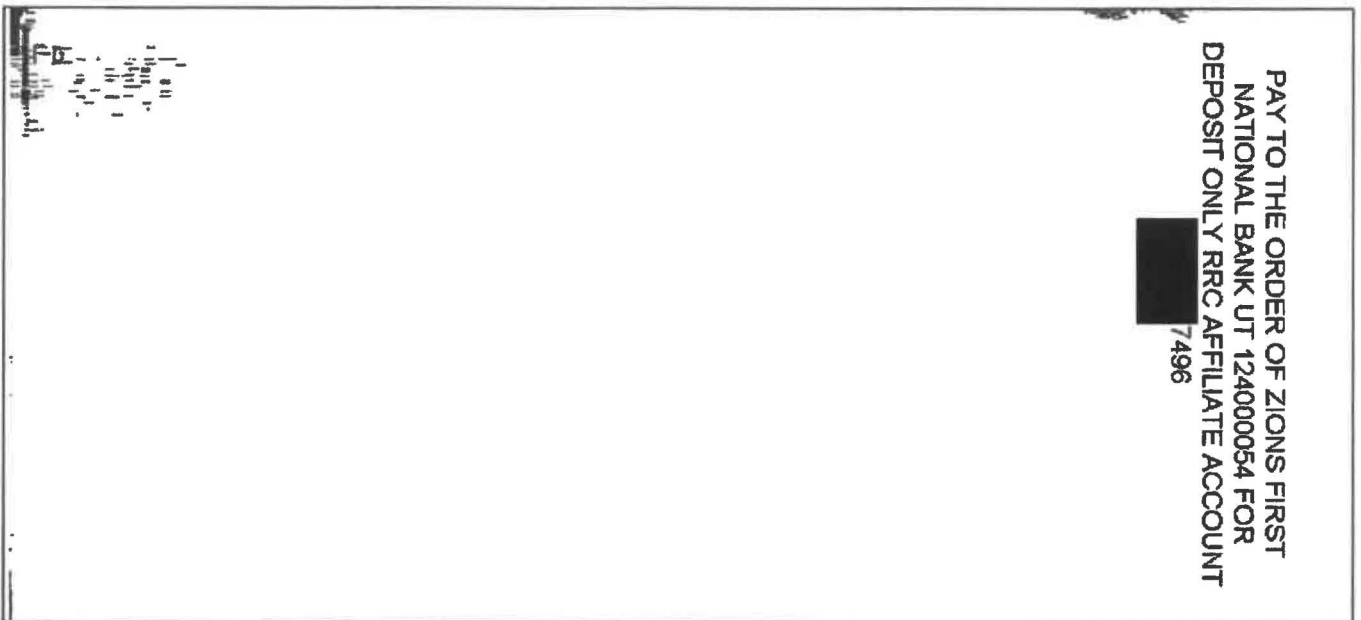
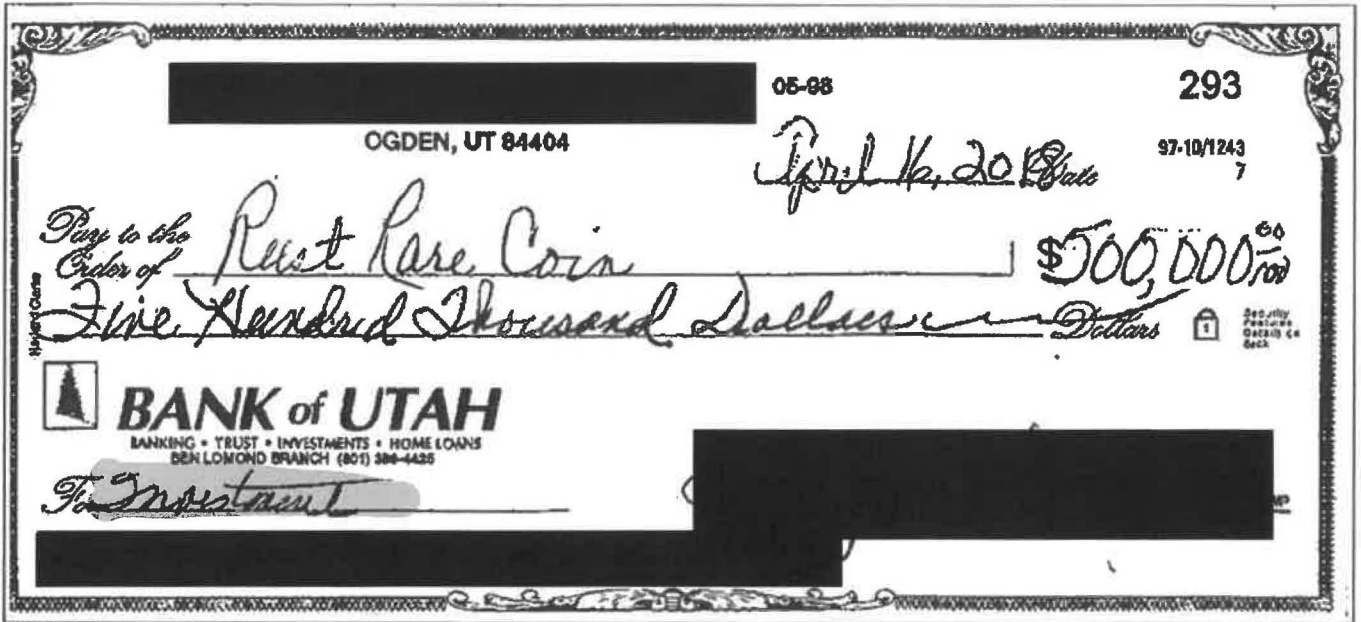
PAY TO THE ORDER OF Rust Lake Coin 4/25 2018 \$ 62,000.-
Sixty-two thousand & no/100 DOLLARS

ONPOINT COMMUNITY CU
P.O. BOX 3950
PORTLAND, OR 97208-6750

FOR IRA transfer

PAY TO THE ORDER OF ZIONS FIRST
 NATIONAL BANK UT 124000054 FOR
 DEPOSIT ONLY RRC AFFILIATE ACCOUNT
 7496

Date: 04/30/18 Seq #: 76063335 Account: [REDACTED] Serial #: 2484 Amount: \$62,000.00 Dep Seq #: 76063333




Date:04/19/18 Seq #:76024792 Account: Serial #:293 Amount:\$500,000.00 Dep Seq #:76024791

Advanced Search

Reference Number: 20180424- 00006491

<p>Source FED</p> <p>Send Date 24APR2018</p> <p>Value Date 24APR2018</p> <p>Status Sent</p> <p>Rate</p> <p>Contract</p> <p>Consumer X-Border</p>	<p>Transaction Type FTR</p> <p>Owning Bank 001</p> <p>Repetitive Code</p> <p>Outgoing Network ID</p> <p>Incoming Network ID 042411B7032R01625604241659FT03</p>
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Debit Information	Credit Information
<p>Account: A/ 121000248</p> <p>WELLS FARGO BANK, NA</p> <p>SAN FRANCISCO, CA</p> <p>Amount: 165,000.00 USD</p> <p>Recon Ref:</p> <p>Sending Bank Reference 2018042400144122</p> <p>Originator Reference: [REDACTED] 7579</p> <p>Originator: [REDACTED]</p> <p>[REDACTED]</p> <p>AFTON, WY 83110-9790</p> <p>Bank to Bank Information:</p>	<p>Credit: [REDACTED] 7496</p> <p>RUST RARE COIN INC</p> <p>DENISE G RUST,GAYLEN D RUST,JOSH RU</p> <p>242 E BROADWAY</p> <p>SALT LAKE CITY UT 84111-2419 84111 </p> <p>Advising Instructions:</p> <p>Amount: 165,000.00 USD</p> <p>Recon Ref:</p> <p>Channel: LTR</p> <p>Originator to Beneficiary Information:</p> <p>INVESTMENT FOR F [REDACTED] D [REDACTED]</p>

Previous
Collapse
Audit
Next

[Redacted] 2604
31-297/1240 2812
8453376876
 Bountiful, UT 84010 Date: Jan 29, 2018
 Pay to the Order of Rust Coin \$ 330,000.00
Three Hundred Thirty thousand & no/100 Dollars Photo- Safe Deposit® Details on back
 WELLS FARGO Wells Fargo Bank, N.A. Utah wellsfargo.com
 For Silver Investment [Redacted]
 [Redacted]

PAY TO THE ORDER OF ZIONS FIRST
 NATIONAL BANK UT 124000054 FOR
 DEPOSIT ONLY RRC AFFILIATE ACCOUNT
 [Redacted] 7496

Date: 01/29/18 Seq #: 76112058 Account: [Redacted] Serial #: - Amount: \$330,000.00 Dep Seq #: 76112057

[Redacted] 1002
MOUNTAIN GREEN, UT 84050 DATE 4/17/2018 63-8174/631
PAY TO THE ORDER OF Rust Rare Coin \$ 240,000.00
Two hundred Forty thousand and 00/100 DOLLARS
RAYMOND JAMES BANK, N.A.
1-800-718-2265
Silver Investment
MEMO [Redacted]

PAY TO THE ORDER OF ZIONS FIRST NATIONAL BANK UT 124000054 FOR DEPOSIT ONLY RRC AFFILIATE ACCOUNT
[Redacted]

Date:04/18/18 Seq #:76026963 Account [Redacted] Serial #:1002 Amount:\$240,000.00 Dep Seq #:76026961

██████████ 06-11 1183

SALT LAKE CITY, UT 84116

DATE 6/7/18 31-5/1240 545

PAY TO THE ORDER OF RUST RARE CO. INC \$ 500,000.00

FIVE HUNDRED THOUSAND ⁰⁰/₁₀₀ DOLLARS DOLLARS

ZIONS BANK®

We haven't forgotten who keeps us in business
1-800-789-BANK(2265)
zionsbank.com

FOR S. I. V. INVESTMENTS ██████████

██████████

Hadad Code

PAY TO THE ORDER OF ZIONS FIRST
NATIONAL BANK UT 12400054 FOR
DEPOSIT ONLY RRC AFFILIATE ACCOUNT
7496

Date:06/07/18 Seq #:76040107 Account:██████████ Serial #:1183 Amount:\$500,000.00 Dep Seq #:76040106

[Redacted] 1040
 SALT LAKE CITY, UT 84108-2860 31-207/1240 2812
 7168863583

Date 2/2/2018

Pay to the Order of Rust Rare Coin Inc \$ 600,000.00 ^{00/100} 00 ¹⁰⁰ 00

Six hundred thousand and 00/100 — Dollars

WELLS FARGO Wells Fargo Bank, N.A. Utah wellsfargo.com


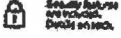


For Silver account [Redacted]


[Redacted]

PAY TO THE ORDER OF ZIONS FIRST NATIONAL BANK UT 124000054 FOR DEPOSIT ONLY RRC AFFILIATE ACCOUNT

[Redacted] 7496

Date:02/02/18 Seq #:76043515 Account:[Redacted] Serial #:- Amount:\$600,000.00 Dep Seq #:76043514


 WAYAN, ID 83285 4483
99-109/1023
6/6 2018
 PAY TO THE ORDER OF Rust COIN \$ 100,000.00
One Hundred Thousand & 00/100 DOLLARS
 WELLS FARGO BANK WYOMING, N.A. 
 FOR SILVER ACCT. 


PAY TO THE ORDER OF ZIONS FIRST
 NATIONAL BANK UT 124000054 FOR
 DEPOSIT ONLY RRC AFFILIATE ACCOUNT
 7496

Date:06/06/18 Seq #:76028865 Account:  Serial #:4483 Amount:\$100,000.00 Dep Seq #:76028864

9-32
720 124 1926

PARKER, CO 80134 DATE 6/9/15

Ruff Rare Coin \$64,040⁰⁰

PAY TO THE ORDER OF
Sixty four thousand and forty dollars DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com






MEMO *Silver Fund*


Security Features
Embossed on Back

PAY TO THE ORDER OF ZIONS FIRST
NATIONAL BANK UT 124000054 FOR
DEPOSIT ONLY RRC AFFILIATE ACCOUNT

7496


Date:06/09/15 Seq #:76091529 Account: Serial #:1926 Amount:\$64,040.00 Dep Seq #:76091527



1761
94-7074/32f2 1709
 Freedom, WY 83120 26 June 2018
Date
 Pay to the Order of REST LUN \$100,000.00
CENTHUNDREDTWO THOUSAND + 00/100 Dollars  Photo
 Wells Fargo Bank, N.A.
 Nevada
 wells Fargo.com 
 For ROLL OVER ACCT. 

PAY TO THE ORDER OF ZIONS FIRST
 NATIONAL BANK UT 124000054 FOR
 DEPOSIT ONLY RRC AFFILIATE ACCOUNT
 7496


Date:06/28/18 Seq #:76042146 Account  Serial #- Amount:\$100,000.00 Dep Seq #:76042144

E [REDACTED] C [REDACTED] M [REDACTED] C [REDACTED] 97-154
1240 251 111
REVOCABLE TRUST
[REDACTED]
 DRAPER, UT 84020-5705 DATE FEB. 14, 2018

PAY TO THE ORDER OF RUST RARE COIN \$ 50,000.-
FIFTY THOUSAND AND 00/100 DOLLARS  Security Features
Detailed on Back

CHASE 
 JPMorgan Chase Bank, N.A.
 www.Chase.com

MEMO SILVER INVESTMENT [Signature]
 ⑆ 124001545⑆ [REDACTED] PM [REDACTED]

 **INDICATE HERE**
 PAY TO THE ORDER OF ZIONS FIRST
 NATIONAL BANK UT 124000054 FOR
 DEPOSIT ONLY RRC AFFILIATE ACCOUNT
 [REDACTED] 7496
 PLEASE DEPOSIT ALL CHECKS OR MONEY ORDERS
 DATE: _____
 DEPOSITED IN _____
 AT THE DISTRICT OFFICE IN _____

This check is not valid unless it is cashed at a Zions Bank branch or a Zions Bank ATM. If cashed at a Zions Bank branch, the cash will be deposited into the account of the payee. If cashed at a Zions Bank ATM, the cash will be deposited into the account of the payee. If cashed at a Zions Bank branch or ATM, the cash will be deposited into the account of the payee. If cashed at a Zions Bank branch or ATM, the cash will be deposited into the account of the payee.

Date:02/14/18 Seq #:76040085 Account [REDACTED] Serial #:111 Amount:\$50,000.00 Dep Seq #:76040084

1034

W [REDACTED] P [REDACTED]
PROFIT SHARING PLAN

DATE Feb 5, 2017 31-5/1240

PAY TO THE ORDER OF Rest Rate Coins \$ 45,006.30

Forty five thousand and no dollars and thirty cents DOLLARS

ZIONS BANK
WE HAVEN'T FORGOTTEN WHO KEEPS US IN BUSINESS®
1-800-789-BANK(2323)
301328-0000

FOR trading account William

⑈00001034⑈ [REDACTED] [REDACTED]

PAY TO THE ORDER OF ZIONS FIRST
NATIONAL BANK UT 124000054 FOR
DEPOSIT ONLY RRC AFFILIATE ACCOUNT
99997496

Date:02/07/17 Seq #:76131852 Account [REDACTED] Serial #:1034 Amount:\$45,006.30 Dep Seq #:76131851

Advanced Search

Reference Number: 20171212- 00005454

Source FED	Transaction Type FTR
Send Date 12DEC2017	Owning Bank 001
Value Date 12DEC2017	Repetitive Code
Status Sent	Outgoing Network ID
Rate	Incoming Network ID 1212L4B74L2C00014112121557FT01
Contract	
Consumer X-Border	

Debit Information	Credit Information
Account: ██████████	Credit: ██████████ 7496
AMERICA FIRST FEDERAL CREDIT UNION	RUST RARE COIN INC
RIVERDALE, UT	DENISE G RUST,GAYLEN D RUST,JOSH RU
Amount: 60,000.00 USD	242 E BROADWAY
Recon Ref:	SALT LAKE CITY UT 84111-2419 84111
Sending Bank Reference 20173460041700	Advising Instructions:
Ordering Bank: / 205120	Amount: 60,000.00 USD
BRANCH WIRE GL	Recon Ref:
ACCOUNTING DEPT	Channel: LTR
MANAGEMENT CENTER	Originator to Beneficiary Information:
Originator Reference: 1796413109374757	ATTENTION MIKE HANSEN AT ZIONS BANK
Originator: / 48719439	801 844 8438 THESE FUNDS ARE FOR G
R ██████████ P ██████████	AYLEN RUST TO INVEST IN MY SILVER A
██████████	CCOUNT AT THE SPECIAL OFFER OF \$14
██████████	
ID 83287	
Bank to Bank Information:	



EXHIBIT 9

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Rust Rare Coin, Inc.
242 East 300 South
Salt Lake City, UT 84111
801-383-4014
Since 1988

ZIONS FIRST NATIONAL BANK
BOUNTIFUL, UT 84010
31-S1240

19146

2/26/2018

PAY TO THE ORDER OF **K F** \$ **16,550.00

Sixteen Thousand Five Hundred Fifty and 00/100 DOLLARS

K F
Erds, UT 84074

MEMO Feb2018 / 1000oz @ 16.55

VALID VALID
VALID V
VALID VALID
VALID

49 618

03/01/2018 09:48 GOMEZ72 742886473047 KayBank NA >024200077 < DEP

Date:03/01/18 Seq #:76170000 Account: 496 Serial #:19146 Amount:\$16,550.00 Dep Seq #:-

SECURITY FEATURES LISTED ON BACK. INDICATE NO TAMPERING OR COPYING

Rust Rare Coin, Inc.
242 East 300 South
Salt Lake City, UT 84111
801-363-4014
Since 1988

ZIONS FIRST NATIONAL BANK
BOUNTIFUL, UT 84010
31-571240

20254

8/7/2018

PAY TO THE ORDER OF R S [REDACTED] A [REDACTED] \$ ***30,940.00**

THIRTY THOUSAND NINE HUNDRED FORTY AND XX/100*****

DOLLARS

PROTECTED SECURITY HALL

MEMO 200002 @ 15.47

[Signature]

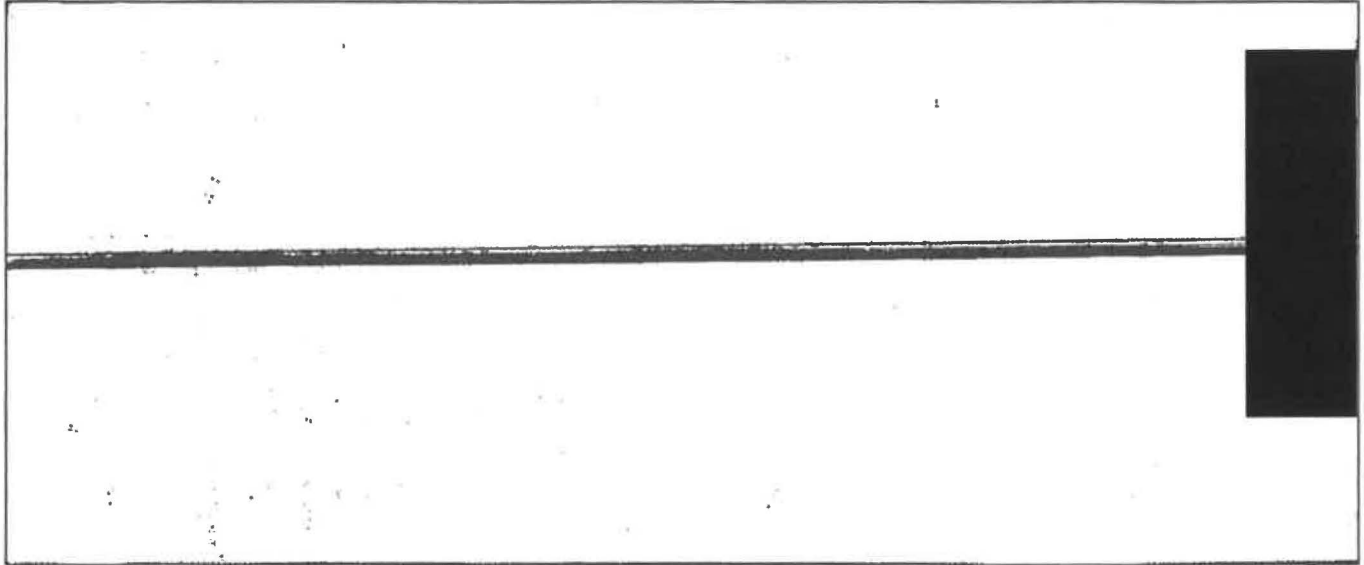
749 61

© 2014 INQUIRY INC. P. 05 1-800-555-1234

Details on Back

E1

Scan with CheckLap™ Secure Check



Date:08/14/18 Seq #:76170352 Account [REDACTED] 7496 Serial #:20254 Amount:\$30,940.00 Dep Seq #:-

EXHIBIT 10

Rust Rare Coin, Inc.
 242 East 300 South
 Salt Lake City, UT 84111
 801-363-4014
 Since 1966

ZIONS FIRST NATIONAL BANK
 BOUNTIFUL, UT 84010
 31-51240

19412

4/9/2018

PAY TO THE ORDER OF **N B C** \$ 35,000.00

Thirty-Five Thousand and 00/100 DOLLARS

N B C

MEMO 2017 taxes

749 6*

VALID V
 VALID V
 VALID V
 VALID V

Inside CheckLock™ Secure Check

4947697179

for deposit only

Date:04/10/18 Seq #:76188473 Account: 496 Serial #:19412 Amount:\$35,000.00 Dep Seq #-

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Rust Rare Coin, Inc.
242 East 300 South
Salt Lake City, UT 84111
801-363-4014
Since 1966

ZIONS FIRST NATIONAL BANK
BOUNTIFUL, UT 84010
31-5/1240

20114
7/17/2018

PAY TO THE ORDER OF M [REDACTED] \$ ****8,502.47**

EIGHT THOUSAND FIVE HUNDRED TWO AND 47/100***** DOLLARS

PROTECTED AGAINST FRAUD

Brigham City, UT 84302

MEMO obo D [REDACTED] / New Roof

769 64

Innovative CheckLock™ Security Check

BOX ELDER COUNTY FEDERAL CREDIT UNION
08/16/2018 16:27:53
B-00 T-38
743073

L-10101
1/19/15 LINE

[REDACTED]

Date:08/16/18 Seq #:76192144 Account [REDACTED] 7496 Serial #:20114 Amount:\$8,502.47 Dep Seq #:-

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Rust Rare Coin, Inc.
242 East 300 South
Salt Lake City, UT 84111
801-363-4014
Since 1988

ZIONS FIRST NATIONAL BANK
BOUNTIFUL, UT 84010
31-5/1240

19057

2/7/2018

PAY TO THE ORDER OF **[REDACTED]** \$ ****15,000.00**

Fifteen Thousand and 00/100..... DOLLARS

PROTECTED AGAINST FRAUD

[REDACTED]
Riverton, WY: 82501

MEMO **purchase / volvo loader / H [REDACTED] M. D. [REDACTED]**

[Signature]

749 6*

Inside CheckLock™ Secure Check™ Details on Back

EXCISE HERE
X
PAY TO THE ORDER OF
MONTGOMERY CLAYTON BANK
FOR DEPOSIT ONLY

DO NOT WRITE IN THESE SPACES

2/12/2018-15:25:53

LIVE

VOID INDICATION
Security Weave - Barrier
(Lined and non-lined checks)
VOID if this message
is not read
ORIGINAL DOCUMENT
VOID if this message
is not read

Security Weave - Barrier
(Lined and non-lined checks)
VOID if this message
is not read
ORIGINAL DOCUMENT
VOID if this message
is not read

Date:02/12/18 Seq #:76289010 Account [REDACTED] 496 Serial #:19057 Amount:\$15,000.00 Dep Seq #:-

CASH ONLY IF ALL CHECKSAFE™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Rust Rare Coin, Inc.
242 East 300 South
Salt Lake City, UT 84111
801-363-4014
Since 1966

ZIONS FIRST NATIONAL BANK
BOUNTIFUL, UT 84010
31-51240

19449

4/16/2018

PAY TO THE ORDER OF C S

\$ **2,000.00

Two Thousand and 00/100 DOLLARS

A PROTECTED AGAINST FRAUD

Syracuse, UT 84075

MEMO: Apr2018 / draw 3of4 / wedding funds

VALID VALID
VALID VALID
VALID VALID

49 50

... AFCU >324377516< _4118314159465937_20180419

AFCU 118314159465937 >324377516< 047 0000041 BR047-t04 20180419

Date:04/19/18 Seq #:76154695 Account: 7496 Serial #:19449 Amount:\$2,000.00 Dep Seq #:-

EXHIBIT 11

DECLARATION OF LIZ BLAYLOCK
PURSUANT TO 28 U.S.C. §1746

I, LIZ BLAYLOCK, hereby make the following declaration based upon my personal knowledge.

Background

1. I am over the age of 21 and am legally fit and qualified to testify in a court of law.
2. I have been employed as a securities investigator for the Utah Department of Commerce, Division of Securities (“Division”) since September 2016. From 2008 to 2016, I worked with the Utah Department of Commerce, Division of Consumer Protection. I have a Bachelor of Science degree in Political Science from the University of Utah. I have over eight years of investigative experience.
3. My duties with the Division include investigating potential violations of the *Utah Uniform Securities Act* (the “Act”) and related criminal codes. I routinely review and analyze bank records, trace the flow of investor funds, conduct investigative searches in public and other databases, conduct and participate in investigative interviews and make determinations about the solvency of businesses.

Current Investigation

4. Following a complaint made to the Division, I was assigned to investigate Rust Rare Coin Inc. (“RRC”) and related entities and individuals in connection with allegations that RRC and its principal, Gaylen Dean Rust (“Rust”), solicited, accepted and pooled millions of dollars from investors for an investment where he would use their

money to purchase silver, some of which Rust promised he would trade for them (“the Silver Pool”).

5. In connection with that assignment, I reviewed documents, communications, bank statements and other records collected during the Division’s investigation. I also interviewed witnesses, conducted research, and performed financial analysis on RRC’s and its operators’ bank accounts.

6. In connection with the complaint, which also implicated the sale or purchase of a commodity in interstate commerce, the Division made a referral to the Commodity Futures Trading Commission (“CFTC”), which directed me to the relevant sections of the Commodity Exchange Act, 7 U.S. C. §1 *et seq.* (2012), the CFTC’s Regulations, 17 C.F.R. §1 *et seq.* (2018) and the public databases of its self-regulatory organization, the National Futures Association (“NFA”).

Review and Analysis of Public Records

7. I reviewed public records from the Utah Division of Corporations and Commercial Code (“Division of Corporations”) and found that RRC is a Utah corporation established in October 1983 doing business as Rust Coin and Rust Rare Coin & Bullion, with a principal place of business at 242 East 300 South, Salt Lake City, Utah 84111. *See Exhibit 1.* In entity filing documents from October 1983 to present, Rust is listed as an incorporator, manager and registered agent of RRC. RRC operates as a coin and precious metal dealer.

8. I completed a registered principal search on the Division of Corporations database. The following entities are affiliated with Rust:

Rust Rare Coin, Inc.	DBA Rust Coin DBA Rust Rare Coin & Bullion *Unregistered Name " <i>Rust Rare Coin Investment</i> "
R Legacy Entertainment, LLC	DBA Sputnik DBA Torque Media DBA Sage And Thistle Events DBA Change Thomas Music DBA Sound Check DBA Huge Sound DBA Hugesound Music Unlimited DBA Huge Studios DBA Hugesound Post Production DBA Hugesound Music Worldwide DBA Hugesound Music International DBA R Music Store DBA Big Door Entertainment DBA Big Door Booking DBA Musician's Toolkit DBA The Brick Room DBA Sounds of Zion Music
R Legacy Investments, LLC	
R Legacy Racing, Inc.	
Legacy Music Alliance, Inc.	
Twilight Music And Downloads, LLC	
Yourldsneighborhood.com, LLC	
Rhythm and Pace, LLC	
Gaylen Rust & Denise Rust	DBA Big Door DBA Big Door Productions DBA Positive Music And Gifts

9. Rust manages approximately eight family-operated businesses including, but not limited to, R. Legacy Entertainment LLC, a music studio; R. Legacy Racing Inc., a horse racing company; Legacy Music Alliance Inc., a non-profit organization and R Legacy Investments LLC, a company used to hold Rust's personal real estate interests.

10. Section §61-1-7 of the Act requires that any security sold in Utah must be registered, exempt from registration, or a federal-covered security for which a notice filing has been made. I have searched the Division records and RRC has never been licensed nor made any securities registrations or exemption filings with the Division made for the Silver Pool or other investment offering. *See Exhibit 2.*

11. Federal law also requires that securities be registered or exempt from registration.

12. I searched the records of the United States Securities and Exchange Commission and the Division and determined that the Silver Pool investment offered and sold by Rust and RRC are not registered securities.

13. I checked the broker-dealer registry managed by the Financial Industry Regulatory Authority (FINRA) and Rust, Denise Rust, and Joshua Rust have never been licensed to offer and sell securities in the State of Utah.

14. I searched the Background Affiliation Status Information Center (BASIC) database, which is managed by the NFA and determined that neither RRC or Rust has ever been registered with the CFTC in any capacity.

15. As part of my investigation I searched the UCC filings with the Utah Department of Commerce and found several UCC-1 filings securing a single investor's investment in RRC. *See Exhibit 3.*

The Rust Family

16. Rust is a Utah resident who resides in Layton, Utah. Rust manages approximately eight family-operated businesses. *See Exhibit 4.* Section §61-1-3 of the Act requires a person who sells securities in or from Utah to be licensed under the Act. I have searched the Division records and Rust is not, and has never been, licensed with the Division of Securities. *See Exhibit 5.*

17. Denise Gunderson Rust ("D. Rust") is the spouse of Rust, and a Utah resident who also resides in Layton, Utah. In RRC corporation documents filed with the Division of Corporations from 2008 to present, D. Rust is listed as the secretary. D. Rust is not, and has never been, licensed with the Division of Securities. *See Exhibit 6.*

18. Joshua Daniel Rust, ("J. Rust") is a Utah resident who resides in Draper, Utah. J. Rust is the son of Rust and D. Rust. J. Rust is not listed as an officer in RRC's corporate documents. From 2004 to present, J. Rust has managed the day-to-day operations of the RRC coin shop. J. Rust is listed as the manager on the businesses bank accounts in the name of RRC. In filings with the Utah Division of Consumer Protection, J. Rust holds himself out as the manager of RRC. *See Exhibit 7.* J. Rust is not, and has never been, licensed with the Division of Securities. *See Exhibit 8.*

Summary of Bank Records Reviewed

19. As part of my investigation, I found that Rust is the signatory on at least fifteen (15) bank accounts at Zions Bank. *See Exhibit 9*. D. Rust and J. Rust are listed as signatories on eleven (11) of these accounts. Two specific Zions Bank accounts ending in 7496 and 3564 regularly received investor deposits. Rust, D. Rust and J. Rust are all signatories on Zions Bank accounts 7496 and 3564.

20. In addition to the Zions accounts, I have subpoenaed and received records for five (5) additional accounts at U.S. Bank, four (4) accounts at Bank of America and two (2) accounts at Mountain America Credit Union. *See Exhibit 10*. At least four (4) of these bank accounts are RRC business accounts.

21. Based on my review of the bank records listed above, I identified at least 200 individuals residing in 20 states that contributed money to Rust and RRC in connection with the Silver Pool investment. These individuals included Utah residents that sent money to Rust and RRC while the latter were conducting business in Utah. Based on these bank records, I determined that from January 1, 2018 to August 31, 2018, RRC accepted an estimated \$42 million from investors.

22. The wire and check deposits included in these bank records frequently contained information that identified the purpose of the transaction. For example, a wire deposit from investor R.P. states: "These funds are for Gaylen Rust to invest in my silver account at the special offer of \$14." *See Exhibit 11*. Other deposits reference "Purpose: Investment", "Silver Investment", "Trading Account", "Rollover Account" and "Silver

Account.” *See Exhibit 12.* Based on this information, I was able to identify investors in the Silver Pool investment opportunity Rust and RRC were offering.

Investor Interviews

23. In the course of my investigation into Rust and RRC, described in paragraphs 4 through 6 above, I came in contact or learned of a number of individuals who had invested in the investment opportunity offered by Rust and RRC. These included individuals I had not identified as investors based on the bank records listed above. Based on these interviews and documents provided to me by persons I interviewed, I determined that Rust and RRC began receiving money from investors at least as early as 2008.

24. I interviewed a number of these individuals. These individuals reported to me that they did not receive a private placement memorandum (PPM), Executive Summary or other offering disclosures that provided details regarding the investment opportunity offered by Rust and RRC. In addition, I reviewed investment documentation provided to some investors and prospective investors. I have found that the documentation that Rust and RRC provided to these investors and prospective investors does not resemble the documentation typically provided for investment contracts.

25. Individuals I interviewed told me that Rust and D. Rust used telephones, the internet, email and US Mail to communicate with investors, including for the purpose of sending investors account statements. I received and reviewed copies of investor correspondence and investment documentation that these investors received by these

methods of communication. *See Exhibit 13.*

26. Some individuals I interviewed provided me with account statements that investors received from Rust. The earliest account statements I received dated back to 2009. The account statements I received that were dated sometime between 2009 and 2018 contained similar information. These account statements contain the opening and closing balance of an individual investor's share for each month, measured in ounces of silver. These account statements also listed the trades Rust and RRC purported to execute for the investor for that month. This trade information included the date of each trade, the number of ounces of silver involved in each trade, and the price at which Rust and RRC sold and bought silver as part of that trade. These account statements, however, do not contain information I typically observe in such documents, such as the business address of Rust and/or RRC, the starting balance of the investment, the total size of the entire investment pool, a phone number or other contact information, and commissions or tax withholdings. *See Exhibit 14.*

I declare under criminal penalty of the United States that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 9th day of November, 2018.



Liz Blaylock
Utah Division of Securities Investigator

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Zions Bank Named in Class Action Lawsuit Over Alleged Role in 'Silver Pool' Ponzi Scheme](#)
