PREPARED STATEMENT

OF THE FEDERAL TRADE COMMISSION

on

EXPLORING THE PERILS OF THE PRECIOUS METALS MARKET

Before the

SPECIAL COMMITTEE ON AGING

UNITED STATES SENATE

Washington, D.C.

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I. Introduction

Chairman Nelson, Ranking Member Collins, and Members of the Committee, I am Dama Brown, Director of the Southwest Region of the Federal Trade Commission ("FTC" or "Commission"). I appreciate the opportunity to testify today about scams arising from the sale of precious metals investments.[1] Although precious metals can be legitimate and valuable investments, some fraudsters have used them to swindle money from consumers. These scams often prey on older Americans concerned about the security of their retirement savings, particularly during periods of economic uncertainty.

Following the economic downturn in 2008, the Commission observed a proliferation of schemes targeting financially-distressed consumers.[2] These schemes have included deceptive telemarketing operators posing as "brokers" and offering precious metals as purported high-profit, low-risk investments. By failing to disclose key information about the investments' terms and high costs, these brokers deceive consumers into believing that the investments provide a safe and secure vehicle for savings. Sadly, many Americans have lost their life savings to these unscrupulous operations.

Today's testimony will describe precious metals scams, the Commission's enforcement actions to stop them, and the agency's efforts to educate consumers on how to avoid them.

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[1] This written statement represents the views of the Commission. My oral presentation and responses to questions are my own, and do not necessarily represent the views of the Commission or any individual Commissioner.

[2] Since 2008, the Commission has brought more than 100 enforcement actions against defendants seeking to take advantage of economically vulnerable consumers. The FTC has worked closely with other federal and state agencies in coordinated sweeps, which have resulted in over 400 additional actions. *See, e.g.*, Press Release, *FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn* (July 1, 2009), *available at* http://ftc.gov/opa/2009/07/shortchange.shtm; Press Release, *FTC Cracks Down on Con Artists Who Target Jobless Americans* (Feb. 17, 2010), *available at* http://www.ftc.gov/opa/2010/02/bottondollar.shtm.

II. Precious Metals

Precious metals are naturally-occurring metals that carry a high economic value, often due to scarcity or global demand. These metals, including gold, silver, platinum, and palladium, can be sold as physical assets, in the form of bars, bullion, or coins, or as futures contracts or other speculative investments. Although precious metals prices are volatile, they have increased markedly over the last decade.[3] These gains occurred during a time of turbulence for more traditional investment products, including stocks, bonds, and real estate. Throughout this period, financial reports and media headlines frequently touted the significant gains in value that precious metals were experiencing contrasted against poor yields in other investments.

Fraudsters have used this backdrop to lure consumers into purchasing bogus precious metals investments. Beginning in 2010, the Commission observed an increase in investment-related frauds, including precious metals scams.[4] This increase was similar to one the Commission observed in the 1980-90s, another time when American consumers lost confidence in traditional investments and turned to alternative investment products like precious metals.[5]

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[3] For example, between 2003 and 2012, gold trading prices increased from approximately $340 per ounce to more than $1,650 per ounce, peaking at around $1,900 per ounce in September 2011. In 2013, gold prices declined sharply, closing the year around $1,200 per ounce. *See Kitco Historical Charts – Gold 2000*, *available at* http://www.kitco.com/scripts/hist_charts/yearly_graphs.plx.

[4] While precious metals frauds have never been one of the top complaints received by the Commission, we documented an increase in investment-related complaints and complaints involving precious metals between 2009 and 2012. *See 2013 Consumer Sentinel Network Report*, *available at* http://www.ftc.gov/enforcement/consumer-sentinel-network/reports.

[5] Following the 1970s recession, consumers were lured into alternative investments, including oil and gas leases, fine art, gemstones, and precious metals. The Commission responded with dozens of enforcement actions against companies offering bogus investments and returned tens of millions of dollars to injured consumers. *See* Prepared Statement of the Federal Trade Commission, "The Precious Coins and Bullion Disclosure Act," Before the Subcommittee on Commerce, Trade, and Consumer Protection of the House Committee on Energy and Commerce, 111th Cong., Sept. 23, 2010, *available at* http://democrats.energycommerce.house.gov/documents/20100923/ctcp/Greisman.Testimony.09.23.2010.pdf.

III. The Commission's Law Enforcement Actions

The Commission has recently filed three law enforcement actions involving precious metals investment schemes.[6] In addition to stopping the alleged scams, the Commission expects to return approximately $5 million to consumer victims. As alleged in the Commission's complaints in these matters, the defendants' conduct followed a similar pattern. Therefore, this testimony first describes some common features of these schemes, and then provides details from each of our individual actions.[7]

A. Common Features of Precious Metals Schemes

In its enforcement actions, the Commission alleged that the scams were initiated by unsolicited telemarketing calls to consumers from a purported precious metals broker. The telemarketers often claimed to have insider information or falsely implied that the consumers were receiving a special opportunity to invest in a program ordinarily only available to investors with multi-million dollar investment portfolios. Citing recent media reports concerning the economy or precious metals performance, the telemarketers worked to convince consumers that they were offering a safe and lucrative investment opportunity in precious metals.

According to the Commission's complaints, the sales pitches used by these telemarketers contained numerous claims that the offered precious metals—which were purportedly in the form of bars, bullion, or coins—were certain to rise in price. They distinguished the telemarketers' precious metals investments from futures, options, or other "risky transactions,"

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[6] *FTC v. American Precious Metals, LLC*, Civ. No. 0-11-cv-61072-WJZ (S.D. Fla. Nov. 19, 2012) (stipulated final judgment); *FTC v. Premier Precious Metals, Inc.*, Civ. No. 12-cv-60504-RNS (S.D. Fla. Feb. 25, 2014) (stipulated final judgment); and *FTC v Sterling Precious Metals, LLC*, Civ. No. 12-cv-80597-KAM (S.D. Fla. Feb. 25, 2014) (stipulated final judgment).

[7] The evidence gathered to support the Commission's complaint allegations in each matter included declarations from injured consumers, the defendants' telemarketing scripts, and post-sale audio recordings made by the defendants.

and explained that because the investment was backed by physical metal, the investment was safe and consumers would not lose money.[8] Telemarketers used the actual market performance of precious metals in their sale presentations: When prices rose, they urged consumers to invest quickly before prices rose further. When prices were low, they asserted that "now is the time to buy"—before prices increased. They also used aggressive sales techniques, often calling consumers for weeks, to pressure them into investing.

As alleged by the Commission, in reality, the telemarketers offered a highly leveraged, high-risk investment. With these leveraged investments, consumers paid only a portion of the purchase price and financed the remainder. The telemarketers failed to disclose this crucial information, simply claiming instead that consumers needed to pay only a percentage of the purchase price—generally 20-25 percent. They assured consumers that the balance of the purchase price would be paid from increases in equity that they claimed would be realized as precious metals prices soared. However, the Commission alleged that the telemarketers failed to disclose that their firms would charge interest, ranging from 7 to 14 percent per annum, on the 75-80 percent of the purchase price that was financed. Likewise, the telemarketers failed to clearly disclose their commission and fees, which included a 15 percent commission on the full purchase price (including the amount that was leveraged), a $200 account opening fee, monthly storage or maintenance fees, and mark ups. In addition, they failed to explain that the transaction was subject to equity calls or forced liquidation upon a price decrease.

The Commission also alleged that, once consumers agreed to invest in precious metals, the telemarketers sent them a contract to execute and directed them to return it with a check,

[8] For example, in the *American Precious Metals* case, *supra* Note 6, consumers reported that the defendants assured them that metals prices were "poised to skyrocket" and would cause consumers' investments to quickly double or triple in value. Telemarketers also described the investment as a "safe haven." The consumers' testimony was corroborated by the defendants' own telemarketing scripts.

money order, or wire transfer authorization to fund the investment. The contracts contained fine print disclosures concerning the costs of the investment, along with statements attempting to disclaim any representations about its profitability or risk. The telemarketers pressured consumers to sign and return the contracts quickly with their payments, claiming that by doing so consumers could begin realizing significant profits. After consumers returned the contract and funded the investment, the telemarketers directed them to a “compliance officer” who reviewed the order in an audio-taped telephone call. These audio recordings, which were obtained by the Commission during litigation, often revealed that many consumers were confused by what they purchased.

The Commission alleged that the vast majority of consumers who invested in these sorts of offers were unlikely to realize any gains for at least three reasons. First, the investments carried significant hidden costs, including interest, commissions, and other fees. Second, after the initial sale, telemarketers aggressively pressured consumers to continue investing in precious metals. Many consumers reported that they received daily calls from their “broker” advising them to sell one metal and invest in another or to expand their holdings of a particular metal. Each of these transactions generated additional fees for the telemarketer, while eroding the consumer’s equity and making it more difficult for the consumer to earn a profit. Third, because of the leveraging, consumers faced the possibility of losing their investments as a result of even a modest drop in prices. Specifically, if a consumer’s equity in the investment fell below a certain threshold, usually 10 or 12 percent, the firm purportedly “liquidated” the consumer’s investment. This meant that the consumer’s metals were sold at a low price and the proceeds were applied to the leverage balance. The remainder, if any, was sent to the consumer. Consumers were left shocked and confused when their accounts were liquidated and their life savings evaporated.

Many consumers, who were never fully advised about the leveraging of their accounts, were unable to understand how their investments were lost.

B. The Commission's Enforcement Actions

The Commission's complaints against precious metals scams have alleged that the defendants violated the FTC Act and the Telemarketing Sales Rule[9] by falsely promising high profits with no or minimal risk and by failing to disclose hefty costs and other terms, such as forced liquidation, which rendered the investments highly risky and largely unprofitable. In light of the ongoing, irreparable injury inflicted upon consumers, the Commission sought temporary restraining orders to immediately stop the law violations, to freeze the defendants' assets, and to appoint a receiver over the corporations.

In *American Precious Metals, LLC,* the FTC presented evidence that the defendants caused more than $24 million in consumer injury.[10] The court-appointed receiver in the case promptly closed existing investment accounts and oversaw the return of approximately $1.8 million to 380 customers. After being confronted with the Commission's evidence, the company and its owners stipulated to entry of a permanent injunction with a $24 million judgment, representing the full amount of consumer injury. The order requires the defendants to surrender all of their financial accounts, specific personal property, and investment properties to satisfy the judgment. The final order also permanently bans the two primary principals—both of whom were previously sued by the U.S. Commodity Futures Trading Commission for making

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[9] 15 U.S.C. § 45(a) and 16 C.F.R. Part 310.3 *et seq*., respectively.

[10] Press releases and key pleadings concerning this action are available at http://www.ftc.gov/enforcement/cases-proceedings/102-3212/american-precious-metals-llc-et-al.

similar misrepresentations about the profitability and risk of futures—from selling any investment opportunity.

In *Premier Precious Metals, Inc.*, the Commission obtained temporary relief to stop the harm, and the court-appointed receiver quickly closed existing investment accounts and returned $286,990 to 44 customers. The defendants recently settled the case, agreeing to a permanent ban prohibiting them from selling investment opportunities in the future.[11] The final order also includes a monetary judgment of $3.6 million, representing the full amount of injury sustained by the companies' 113 customers. As part of the judgment, these defendants surrendered an estimated $3 million in assets.[12]

Likewise, in *Sterling Precious Metals, LLC*, the Commission obtained a stipulated permanent injunction with conduct prohibitions and monetary relief. The final order bans the defendants from selling precious metals, enjoins them from misrepresenting material facts about any product or service offered for sale, and requires them to record all of their telemarketing activities for seven years. The final order also includes a monetary judgment of more than $4.7 million (partially-suspended due to inability to pay) requiring the defendants to surrender personal property, including a 2013 Bentley Continental and 2012 Land Rover.[13]

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[11] The individual defendant and owner of the Premier Precious Metals companies had previously worked at American Precious Metals, LLC.

[12] Press releases and key pleadings concerning this action are available at http://www.ftc.gov/enforcement/cases-proceedings/122-3009/premier-precious-metals-inc-et-al.

[13] The press releases and key pleadings concerning this action are available at http://www.ftc.gov/enforcement/cases-proceedings/1223027/sterling-precious-metals-llc-et-al.

IV. Consumer Education

The Commission has produced several educational brochures to help consumers avoid scams and understand the key information they need to know before investing in precious metals, coins, or other investments.[14] For example, the *Investing in Gold*[15] brochure advises consumers to purchase gold investments only from licensed commodity brokers and reminds them that gold prices can fluctuate.

The Commission's *Investing in Bullion and Bullion Coins*[16] and *Investing in Collectible Coins*[17] materials explain the differences between bullion, bullion coins, and historic coins. While the value of bullion and bullion coins is determined by their precious metals content, the value of historic coins depends upon their historical or aesthetic value to collectors, as well as their rarity or condition. Accordingly, the precious metals value of a historic coin may be greater or less than its value as a collectible.

The FTC provides further practical investment advice in *Investing Online*,[18] *Investment Risks*,[19] and *Investment and Biz Opp Seminars*[20] publications. Among the useful tips, these publications caution consumers to be skeptical about "success stories" and to carefully research both the offered investment and the firm offering the investment.

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[14] The Commission's investment-related materials can be found at http://www.consumer.ftc.gov/topics/investments-grants.

[15] *Available at* http://www.consumer.ftc.gov/articles/0134-investing-gold.

[16] *Available at* http://www.consumer.ftc.gov/articles/0135-investing-bullion-and-bullion-coins.

[17] *Available at* http://www.consumer.ftc.gov/articles/0136-investing-collectible-coins.

[18] *Available at* http://www.consumer.ftc.gov/articles/0021-investing-online.

[19] *Available at* http://www.consumer.ftc.gov/articles/0238-investment-risks.

[20] *Available at* http://www.consumer.ftc.gov/articles/0239-investment-biz-opp-seminars.

V. Conclusion

Thank you for providing the Commission this opportunity to appear before the Committee to discuss the important consumer protection issues arising from precious metals investment scams. The Commission remains committed to protecting consumers from deceptive or unfair practices and appreciates the Committee's interest in this subject.