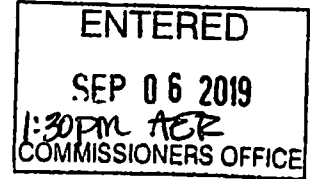


COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2019-AH-00055



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

TMTE, INC., AKA METALS.COM, AKA CHASE
METALS, INC., AKA CHASE METALS, LLC;
MARK BENNING; MATTHEW JOEL; SEAN REGAN;
ANTHONY BOWERS

RESPONDENTS

EMERGENCY CEASE AND DESIST ORDER

Comes now the Department of Financial Institutions (“DFI”), pursuant to Kentucky Revised Statute (“KRS”) 292.470, KRS 292.500, and 808 Kentucky Administrative Regulation (“KAR”) 10:225, and hereby enters this **Emergency Cease and Desist Order** against TMTE, Inc., aka Metals.com, aka Chase Metals, Inc., aka Chase Metals, LLC, Mark Benning, Matthew Joel, Sean Regan, and Anthony Bowers. In support thereof, DFI states as follows:

PARTIES

1. The Commissioner is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. TMTE, Inc. (“TMTE”) is a Wyoming corporation originally formed under the name Access Unlimited on April 30, 2008, with a principal address of 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210. TMTE has also transacted business under the names Metals.com, Chase Metals, Inc., and Chase Metals, LLC (hereinafter referred to collectively as “Metals.com”).

The registered agent for service of process for Metals.com is Corporate Agents, LLC, at 1712 Pioneer Avenue, Suite 100, Cheyenne, Wyoming 82001.

3. Mark Benning is a Senior Portfolio Manager with Metals.com. He can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Suite 100, Cheyenne, Wyoming 82001.

4. Matthew Joel is a representative of Metals.com. He can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Suite 100, Cheyenne, Wyoming 82001.

5. Sean Regan is a sales representative of Metals.com. He can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Suite 100, Cheyenne, Wyoming 82001.

6. Anthony Bowers is a sales representative of Metals.com. He can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Suite 100, Cheyenne, Wyoming 82001.

STATEMENT OF FACTS

7. On June 20, 2019, DFI received a referral from the Texas State Securities Board, which included an Emergency Cease and Desist Order it had entered against Metals.com and three individuals associated with Metals.com. The referral also contained information that eight Kentucky residents were clients of Metals.com.

8. On June 20, 2019, DFI initiated an investigation into Metals.com's activities involving Kentucky clients.

9. During the course of the investigation, DFI discovered that Metals.com solicited and/or advertised to Kentucky investors: (a) that the securities that the investors had been holding at the time were not safe investments; and (b) that the investors should sell their securities and invest in precious metals through self-directed individual retirement accounts ("IRAs") administered by New Direction IRA, Inc. ("New Direction"), a custodial third-party IRA provider for Metals.com customers. Metals.com sold to the customers the precious metals that funded the IRA accounts at New Direction.

10. Through its solicitations to Kentucky investors, Metals.com and its representatives failed to disclose both the method of valuation of the precious metals and the material fact that valuations vary greatly based upon the method utilized. The investors' accounts at New Direction were valued at the "melt value," which is the weight amount of the precious metal in each coin/bar multiplied by the spot price of the metal. The spot price is the current market price at which an asset is bought or sold for immediate payment and delivery. Statements created by Metals.com used the terms "ask value," "ask price," and "purchase price." The ask price is the price at which a dealer sells finished coins, such as American Gold Eagle and Australian Silver Kangaroo, and other precious metals to clients.

11. As part of its investigation, DFI reviewed the Shipping and Transaction Agreement ("Agreement"), which Metals.com displayed on its website for public viewing. According to the Agreement, the purchase price quoted to the customer, and the price the customer agrees to pay Metals.com, includes Metals.com's operating margin on the transaction. The Agreement further states that, in the precious metals industry, the difference between Metals.com's cost on the day of

purchase and the retail price quoted to the customer is known as “the spread.” In order for the customer to make a profit, the customer must be able to sell the precious metal in the future for a price high enough to cover the customer’s initial investment, including the spread. The Agreement advises that Metals.com’s spread on IRA precious metals transactions is higher because the transactions are more expensive to process and may require Metals.com to assume certain investment risks in connection with the transaction. The Agreement estimated the spread on Metals.com IRA precious metals transactions to be in the range of 1% to 19%.

12. Metals.com is not registered as a broker-dealer or investment adviser in Kentucky. Nor is there any record of Metals.com filing for an exemption from registration with DFI.

Kentucky Investor M.N.

13. On June 20, 2019, DFI contacted “M.N.,” a Kentucky investor, by phone. M.N. stated that she had contacted Metals.com after seeing a posting on Rush Limbaugh’s Facebook page. Through this conversation, Metals.com advised her of the process to roll over her current IRAs, which were funded by stocks, into a self-directed IRA invested in precious metals. Metals.com sent M.N. the paperwork to sign so that her account at Fidelity could be closed and the assets sent to New Direction. Metals.com facilitated the sale of securities from Fidelity to New Direction and paid all fees associated with the sale.

14. During the phone interview with DFI, M.N. stated that Metals.com failed to disclose how the precious metals investments were valued and how the valuations could differ significantly.

15. On January 31, 2018, Metals.com valued M.N.’s account at the ask price of \$8,435.00, while New Direction valued the account at the melt value of \$3,013.50, representing a potential spread of 179% based on the melt value compared to the Metals.com ask price.

Kentucky Investors M.L and L.L.

16. On June 21, 2019, DFI contacted "M.L.," a Kentucky investor, by phone. According to M.L., Sean Regan, a sales representative of Metals.com, first contacted M.L. by email in August 2017. In the email, Regan referenced an earlier telephone conversation with "L.L.," the wife of M.L., but L.L., in fact, had never previously spoken with Regan. Regan stated in the email that a "solution for many conservative investors who want to avoid leverage and have a fully allocated account is a no-fee, no tax self-directed IRA." The email contained two attachments, one of which stated that Metals.com offers precious metals custodian services with "their partners." Neither M.L. nor L.L. responded to the August 2017 email.

17. On or about February 12, 2018, L.L. was online at a Christian group website and filled out a "request for more information" form regarding investing in precious metals. Mark Benning, a Senior Portfolio Manager with Metals.com, called L.L. and led her to believe he was affiliated with the Christian group website. Benning sent a brochure to L.L. in response to her request. Benning called back on February 19, 2018, and spoke to L.L. about investing in precious metals. At that point, Benning told L.L. that he was with New Direction and that Metals.com and New Direction had merged. Benning also advised L.L. that their accounts in the stock markets were not safe, and that Benning was a military veteran and he was trying to protect other veterans.

18. On February 19, 2018, Benning sent a "New Direction IRA Trust Application" to M.L. and L.L. through PandaDoc to facilitate: the sale of assets in M.L.'s investment account; the closure of that account; and, the transfer of the funds to a New Direction IRA account. According to M.L., they were unable to fill in the dollar amount of the transfer in the electronic document so they contacted Benning by telephone. M.L. instructed Benning to transfer only \$7,000 to facilitate the purchase of the metals. In response, however, Benning advised that there was a \$10,000

minimum for the purchase, and that the remainder of the monies from the asset transfer would be held in an account from which M.L. and L.L. could withdraw funds if needed. M.L. ultimately agreed to transfer \$15,000, but instructed Benning to invest only \$5,000 in gold and silver. Benning, on behalf of Metals.com, facilitated the sale of M.L.'s investments from the investment account to New Direction and paid all fees associated with the sale. Benning, however, failed to follow M.L.'s specific directive regarding the limited investment of the proceeds from the transfer and, instead, invested the entire \$15,000 transfer amount in Metals.com designated purchases.

19. Metals.com did not disclose to M.L. or L.L. how the value of the precious metals would be calculated or that the values could differ significantly. On March 2, 2018, Metals.com valued M.L.'s account at the ask price of \$15,098.34, while New Direction valued the account at the melt value of \$5,764.04, representing a potential spread of more than 161%.

Kentucky Investor C.R.

20. On June 20, 2019, DFI contacted "C.R.," a Kentucky investor, by phone. C.R. had contacted Metals.com after seeing a posting on a political website. C.R. inquired about rolling over his existing stock-funded IRAs into a self-directed IRA invested in precious metals. Metals.com advised C.R. of the process and procedures to complete the transaction and sent him the paperwork to sign so that his account could be closed and the assets transferred to New Direction. C.R. completed and returned the paperwork to Metals.com, which facilitated the sale of securities from C.R.'s prior IRA account to New Direction, and paid all fees associated with the sale.

21. Metals.com did not disclose to C.R. how precious metals were valued and how the valuations could differ significantly. On August 6, 2018, Metals.com valued C.R.'s account at the

ask price of \$131,322.36, while New Direction valued the account at the melt value of \$47,817, representing a potential spread of more than 174%.

Kentucky Investors B.C. and M.C.

22. On July 1, 2019, DFI contacted “B.C.,” husband of Kentucky investor “M.C.” Metals.com had previously contacted B.C. and M.C. and advised them to get out of the stock market because “it was going to crash and they would lose all their money.” Matthew Joel, a representative of Metals.com, further advised them to invest in precious metals. M.C. invested as Joel had advised. Metals.com advised M.C. of the process and procedures to complete the transaction and sent her the paperwork to sign so that her account at Edward Jones could be closed and the assets transferred to New Direction. M.C. completed and returned the paperwork to Metals.com, which facilitated the sale of securities from Edward Jones to New Direction, and paid all fees associated with the sale.

23. Metals.com did not disclose to B.C. or M.C. how precious metals were valued and how the valuations could differ significantly. On September 20, 2018, Metals.com valued B.C.’s account at the ask price of \$345,629.28, while New Direction valued the account at the melt value of \$109,557.36, representing a potential spread of more than 215%. Subsequently, on June 11, 2019, Metals.com’s valuation reached \$357,348.40, while New Directions’ valuation, based on the melt value, was \$225,734. Later, on June 27, 2019, the Metals.com valuation of the account increased to \$371,191.76, while New Direction valued the account at \$233,600.08.

24. B.C. spoke to Anthony Bowers, a representative of Metals.com, on several occasions. On each occasion, Bowers continued to solicit B.C. to invest his retirement funds with Metals.com and pointed at the “increase” in the value of M.C.’s accounts as motivation for B.C.

to invest. B.C. had also been told by Matthew Joel, of Metals.com, that BC had been investing in gold and silver bars, not coins.

Kentucky Investor R.B

25. On July 2, 2019, DFI contacted "R.B.," a Kentucky investor, by phone. According to R.B., Metals.com had previously contacted R.B. by phone and advised her to get out of the stock market because it was going to crash, and further recommended that she invest in precious metals. R.B. invested as Metals.com had advised.

26. Metals.com did not disclose to R.B. how precious metals were valued and how the valuations could differ significantly. On August 14, 2018, Metals.com valued R.B.'s account at the ask price of \$72,315.25, while New Direction valued the account at the melt value of \$28,006.08, representing a potential spread of more than 158%.

STATUTORY AUTHORITY

27. KRS 292.310(2) defines "Broker-dealer" as "any person engaged in the business of effecting transactions in securities for the account of others or for his own account."

28. KRS 292.310(11) defines "Investment adviser" as "any person who, for compensation, directly or indirectly, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities."

29. KRS 292.310(19) defines "Security", in relevant part, as,

"any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided

interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security."

30. Pursuant to KRS 292.320(1), it "is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

31. KRS 292.330(1) makes it "unlawful for any person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration under subsection (2) of this section."

32. KRS 292.330(8) makes it "unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration under subsection (9) of this section."

33. Pursuant to KRS 292.470, "[w]hensoever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

1. Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public."

34. KRS 292.500(14), authorizes the commissioner to “impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Violations of KRS 292.330(1)

35. Based on the facts set forth above, Metals.com, and its agents or representatives, in direct contravention of KRS 292.330(1), transacted business as a broker-dealer by facilitating the sale of securities between various entities and New Direction, despite failing to be registered as a broker-dealer under KRS Chapter 292.

36. By reason of the foregoing, Respondents violated KRS 292.330(1) and, unless enjoined, will continue to violate the law.

37. The emergency nature of this Order is required because the delay in issuing a final cease and desist order to address this conduct would cause harm to the public.

Violations of KRS 292.330(8)

38. Based on the facts set forth above, Metals.com, and its agents or representatives, in direct contravention of KRS 292.330(8), transacted business as an investment adviser by advising clients to roll their stock-funded IRAs into self-directed IRAs invested in precious metals, despite failing to be registered as an investment adviser under KRS Chapter 292.

39. By reason of the foregoing, Respondents violated KRS 292.330(8) and, unless enjoined, will continue to violate the law.

40. The emergency nature of this Order is required because the delay in issuing a final cease and desist order to address this conduct would cause harm to the public.

Violations of KRS 292.320(1)

41. Pursuant to KRS 292.320(1), “[i]t is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (a) To employ any device, scheme, or artifice to defraud;
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

42. Based on the facts set forth above, Metals.com, and its agents or representatives, perpetrated misrepresentations, and/or omissions of material fact, which would constitute fraud or deceit upon a person under KRS 292.320(1), through activity including, but not limited to:

- (a) Employing scare tactics to entice customers to abandon their IRAs consisting of stocks and to invest, instead, in IRAs based on precious metals;
- (b) Omitting the material fact that accounts were valued by New Direction, the custodian of the IRAs, at the melt value which was far less than Metals.com’s valuation based on the ask price; and
- (c) Engaging in practices that misled customers regarding the spread that investors might pay for the IRAs based on precious metals. Metals.com’s estimated spread for the IRAs was between 1% and 19%, while the potential spread averaged 148% more than the melt value.

43. By reason of the foregoing, the Respondents violated KRS 292.320(1) and, unless enjoined, will continue to violate the law.

44. The emergency nature of this Order is required because the delay in issuing a final cease and desist order to address this conduct would cause harm to the public.

ORDER

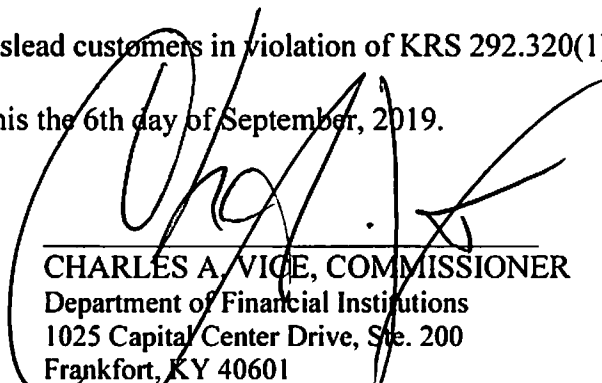
AND NOW, THEREFORE, IT IS HEREBY **ORDERED**, for the reasons set forth above, and pursuant to KRS 292.470, that Respondents, TMTE, INC., AKA METALS.COM, AKA CHASE METALS, INC., AKA CHASE METALS, LLC; and Mark Benning, Matthew Joel, Sean Regan and Anthony Bowers shall immediately **CEASE AND DESIST** from:

1. Unlawfully transacting business in this state as a broker-dealer without being registered in Kentucky, in violation of KRS 292.330(1);

2. Unlawfully transacting business in this state as an investment adviser without being registered in Kentucky, in violation of KRS 292.330(8);

3. Making untrue statements of material fact, omitting material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaging in practices that mislead customers in violation of KRS 292.320(1).

IT IS SO ORDERED on this the 6th day of September, 2019.



CHARLES A. VICE, COMMISSIONER
Department of Financial Institutions
1025 Capital Center Drive, Ste. 200
Frankfort, KY 40601

NOTICE TO RESPONDENTS

You are hereby notified that you are entitled to request an emergency hearing. If requested, an administrative hearing shall be held within 10 (ten) days pursuant to the provisions of KRS Chapter 13B.125. Please submit any request for hearing, in writing, to Gary A. Stephens, Staff Attorney, Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601.

Certificate of Service

I, Allison Reed, hereby certify that a copy of the foregoing Emergency Cease and Desist Order was sent on this the 1st day of September, 2019, by certified mail, return receipt requested, to the following:

TMTE, Inc.
Corporate Agents, LLC
1712 Pioneer Avenue, Suite 100
Cheyenne, Wyoming 82001.

Mark Benning
Corporate Agents, LLC
1712 Pioneer Avenue, Suite 100
Cheyenne, Wyoming 82001.

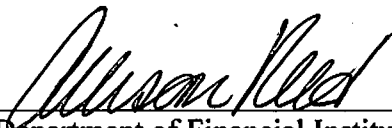
Matthew Joel
Corporate Agents, LLC
1712 Pioneer Avenue, Suite 100
Cheyenne, Wyoming 82001.

Sean Regan
Corporate Agents, LLC
1712 Pioneer Avenue, Suite 100
Cheyenne, Wyoming 82001.

Anthony Bowers
Corporate Agents, LLC
1712 Pioneer Avenue, Suite 100
Cheyenne, Wyoming 82001.

Hand delivered to:

Gary A. Stephens, Staff Attorney
Department of Financial Institutions
1025 Capitol Center Drive, Suite 200
Frankfort, KY 40601



Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor