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Texas State Securities Board

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208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

MIGUEL ROMANO, JR.
MEMBER

SOAH DOCKET NO. 312-19-4598

IN THE MATTER OF § IN THE STATE OFFICE
TMTE, INC., AKA CHASE METALS.COM, CHASE §
METALS, LLC, AND CHASE METALS, INC.; WALTER § OF
VERA; MICHAEL KENDALL AND ATHENA HUNTER § ADMINISTRATIVE HEARINGS

TMTE Inc., aka Metals.com, aka Chase Metals, LLC, aka Chase Metals, Inc.
433 N. Camden Drive, Suite 970, Beverly Hills, CA 90210,
c/o Corporate Agents, LLC, 1712 Pioneer Avenue, Ste. 100, Cheyenne, WY 82001,
c/o James Trusty, counsel, 1717 Pennsylvania Ave. N.W., Suite 650, Wash, D.C. 20006

Walter Vera
433 N. Camden Drive, Suite 970, Beverly Hills, CA 90210,
c/o Corporate Agents, LLC, 1712 Pioneer Avenue, Ste. 100, Cheyenne, WY 82001,
c/o James Trusty, counsel, 1717 Pennsylvania Ave. N.W., Suite 650, Wash, D.C. 20006

Michael Kendall
433 N. Camden Drive, Suite 970, Beverly Hills, CA 90210
c/o Corporate Agents, LLC, 1712 Pioneer Avenue, Ste. 100, Cheyenne, WY 82001, and
c/o James Trusty, counsel, 1717 Pennsylvania Ave. N.W., Suite 650, Wash, D.C. 20006

Athena Hunter
433 N. Camden Drive, Suite 970, Beverly Hills, CA 90210,
c/o Corporate Agents, LLC, 1712 Pioneer Avenue, Ste. 100, Cheyenne, WY 82001, and
c/o James Trusty, counsel, 1717 Pennsylvania Ave. N.W., Suite 650, Wash, D.C. 20006

NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will be held at the State Office of Administrative Hearing at 300 W. 15th Street, Austin, Texas 78701, before an Administrative Law Judge beginning on **MAY 28, 2019**, at **9:00 AM** for the purpose of determining whether to affirm, modify, or set aside Emergency Cease and Desist Order No. ENF-19-CDO-1777 (the "*Emergency Order*") TMTE, Inc., also known as Chase Metals, LLC, Chase Metals, Inc., and metals.com ("*Respondent Metals.com*"), Walter Vera, its Vice President of Sales ("*Respondent Vera*"), Michael Kendall, its Senior Portfolio Manager ("*Respondent Kendall*"), and Athena Hunter, a representative of the company ("*Respondent Hunter*").

This hearing will be held pursuant to The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-45 (West 2010 & Supp. 2018) (the "*Securities Act*"), the Rules and

Regulations of the State Securities Board, 7 Tex. Admin. Code §§ 101.1 to 139.27 (Supp. 2017) (Tex. State Sec. Bd.) (hereinafter referred to as the “*Board Rules*”), the Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001 to 2001.902 (West 2008 & Supp. 2017) (the “*Administrative Procedure Act*”) and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (Supp. 2017) (State Ofc. Of Admin. Hearings) (the “*SOAH Rules*”).

BACKGROUND

1. On May 1, 2019, the Securities Commissioner entered the Emergency Order pursuant to Section 23-2 of the Securities Act. The Emergency Order is attached hereto as Exhibit 1, and it is fully incorporated herein as if set forth fully herein.
2. The Emergency Order names Respondents Metals.com, Vera, Kendall and Hunter (collectively the “*Respondents*”).
3. The Emergency Order was entered after the Enforcement Division presented evidence sufficient for the Securities Commissioner to find that Respondent Metals.com is illegally acting as an unregistered investment adviser in Texas and that Respondents Vera, Kendall and Hunter are illegally acting as unregistered investment adviser representatives in Texas. The evidence was also sufficient to find that Respondents are engaging in fraud in connection with the rendering of investment advice in Texas.
4. The Emergency Order was also entered after the Enforcement Division presented evidence sufficient for the Securities Commissioner to find that Respondents threaten immediate and irreparable harm to the public.
5. The Emergency Order orders Respondents Metals to immediately cease and desist from acting as an investment adviser in Texas until it is registered or notice-filed with the Securities commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or it is acting pursuant to an exemption from the Securities Act. It also orders Respondents Vera, Kendall and Hunter to immediately cease and desist from acting as investment adviser representatives in Texas until they are registered or notice-filed with the Securities Commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or they are acting pursuant to an exemption under the Securities Act. It further orders Respondents to immediately cease and desist from engaging in any fraud in connection with the rendering of investment advice in Texas.
6. On May 6, 2019, Respondents, through counsel, requested an expedited hearing to challenge the Emergency Order.¹ A copy of the request for a hearing is attached hereto as Exhibit 2 and incorporated herein as if set forth fully herein.
7. On May 7, 2019, the Enforcement Division and Respondents agreed to set the hearing to commence on May 28, 2019, and the last through May 29, 2019. Documentation of the agreement to hold the hearing on these dates is attached as Exhibit 5 and incorporated herein as if set forth fully herein.

¹ The letter requesting a hearing also included a request to stay the Emergency Order. This hearing is not being set to determine whether to stay the Emergency Order, as the Securities Commissioner has already denied Respondents’ request for a stay. The Enforcement Division’s response to the request for a stay, and the Securities Commissioner’s decision, are attached, respectively, as Exhibits 3 and 4 and incorporated herein as if set forth fully herein.

8. The Enforcement Division is now filing this Notice of Hearing to provide notice and other information relating to a hearing to determine whether to affirm, modify or set aside the Emergency Order.

THE HEARING

9. A hearing to contest the Emergency Order will be held at the Austin Office of the State Office of Administrative Hearings at 300 W. 15th Street, 4th Floor, Austin, Texas 78701. It will commence at **9:00 AM on MAY 28, 2019**.

10. At the hearing, the Enforcement Division will present in-person and telephonic testimony and other admissible evidence relating to the Emergency Order, including the sections titled Findings of Fact, Conclusions of Law and Order. Respondents will be afforded the right to present testimony and other admissible evidence relating to the Emergency Order, including the sections titled Findings of Fact, Conclusions of Law and Order.

11. The Enforcement Division will pray the Honorable Administrative Law Judge enter a Proposal of Decision that affirms the entirety of the Emergency Order, including the sections titled Findings of Fact, Conclusions of Law and Order. Respondents will be afforded the opportunity to pray the Honorable Administrative Law Judge enter a Proposal for Decision that modifies or sets aside the Emergency Order, including the sections titled Findings of Fact, Conclusions of Law and Order.

LEGAL NOTIFICATIONS

12. Legal authority and jurisdiction for this matter exist under Sections 23-2 and 24 of the Securities Act, Section 2003.021(b) of the Texas Government Code and Rule 155.51 of the SOAH Rules.

13. IF YOU FAIL TO ATTEND THE HEARING, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE.

14. PARTIES THAT ARE NOT REPRESENTED BY AN ATTORNEY MAY OBTAIN INFORMATION REGARDING CONTESTED CASE HEARINGS ON THE PUBLIC WEBSITE OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AT WWW.SOAH.TEXAS.GOV, OR IN PRINTED FORMAT UPON REQUEST TO SOAH.

15. Pursuant to Board Rule 105.13, the Enforcement Division is now respectfully requesting and will continue to respectfully request the State Office of Administrative Hearings order that all costs charged to the Securities Board by any court reporting service be assessed against Respondents.

CONTACT INFORMATION FOR COUNSEL FOR THE ENFORCEMENT DIVISION, THE SECURITIES COMMISSIONER REPRESENTATIVE AND DOCKETING OFFICE

16. The Enforcement Division is represented by Rachael Luna, Attorney, Enforcement Division, and Joseph Rotunda, Director, Enforcement Division. Ms. Luna's State Bar Card Number is 24075897, her work address is 208 E. 10th Street, 5th Floor Austin, Texas 78701,

her telephone number is 512-305-8392, her facsimile number is 512-355-0404 and her email address is rluna@ssb.texas.gov. Mr. Rotunda's State Bar Card Number is 24029808, his work address is 208 E. 10th Street, 5th Floor Austin, Texas 78701, his telephone number is 512-305-8392, his facsimile number is 512-355-0404 and his email address is jrotunda@ssb.texas.gov.

17. The Docketing Office of the State Office of Administrative Hearings is located at 300 W. 15th Street, Austin, Texas 78701, and it may be contacted by telephone at 512-745-3445 and by facsimile at 512-475-4994.

18. Pursuant to §105.8 of the Board Rules, all documents filed by any party, other than business records and transcripts, must be contemporaneously served upon Marlene Sparkman, General Counsel and Securities Commissioner's Representative. Ms. Sparkman's address is 208 E. 10th Street, 5th Floor Austin, Texas 78701, her telephone number is 512-305-8300, her facsimile number is 512-305- 8336, and her email address is msparkman@ssb.texas.gov.

Signed on this, the 8th day of May 2019.

By:


Joseph Rotunda
Counsel for the Enforcement Division
and Director of the Enforcement Division
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701
State Bar No. 24029808
T: 512-305-8392
F: 512-355-0404
E: jrotunda@ssb.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this, the 8th day of May 2019, true and correct copies of this Notice of Hearing, as well as the exhibits referenced herein, have been served to the following parties through the means set forth below:

VIA HAND DELIVERY to **Marlene Sparkman**, General Counsel for the State Securities Board and the Securities Commissioner's Representative at 208 E. 10th Street, 5th Floor, Austin, Texas 78701,

VIA OVERNIGHT MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to **TMTE Inc., aka Metals.com, aka Chase Metals, LLC, aka Chase Metals, Inc.**, to the addresses set forth on the first page of this Notice of Hearing,

VIA OVERNIGHT MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to **Walter Vera** to the addresses set forth on the first page of this Notice of Hearing,

VIA OVERNIGHT MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to **Michael Kendall** to the addresses set forth on the first page of this Notice of Hearing,

VIA OVERNIGHT MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to **Athena Hunter** to the addresses set forth on the first page of this Notice of Hearing, and

VIA ELECTRONIC MAIL, OVERNIGHT MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to **James Trusty, Member, Ifrah Law**, counsel for Respondents, sent by electronic mail to jtrusty@ifrahlaw.com and by overnight mail and certified mail, return receipt requested, to the address set forth on the first page of this Notice of Hearing.

By:



Joseph Rotunda
Counsel for the Enforcement Division
and Director of the Enforcement Division
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701
State Bar No. 24029808
T: 512-305-8392
F: 512-355-0404
E: jrotunda@ssb.texas.gov

TRAVIS J. ILES
SECURITIES COMMISSIONER

CLINTON EDGAR
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IN THE MATTER OF
TMTE, INC., AKA METALS.COM, CHASE METALS,
LLC, AND CHASE METALS, INC.; WALTER VERA;
MICHAEL KENDALL AND ATHENA HUNTER

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§
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Order No. ENF-19-CDO-1777

TMTE Inc., aka Metals.com, aka Chase Metals, LLC, aka Chase Metals, Inc.
433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, and
c/o Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001

Walter Vera
433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, and
c/o Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001

Michael Kendall
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c/o Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001

Athena Hunter
433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, and
c/o Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001

EMERGENCY CEASE AND DESIST ORDER

This is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas (hereinafter referred to as the "**Securities Commissioner**") of an EMERGENCY CEASE AND DESIST ORDER pursuant to Section 23-2 of The Securities Act, TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-45 (West 2010 & Supp. 2018) (hereinafter referred to as the "**Securities Act**").

The Enforcement Division of the Texas State Securities Board (the "**Enforcement Division**") has presented evidence sufficient for the Securities Commissioner to find that:

FINDINGS OF FACT

1. TMTE Inc., transacting business as Metals.com, Chase Metals, Inc. and Chase Metals, LLC (hereinafter referred to as "**Respondent Metals.com**"), can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through its registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001.

2. Walter Vera (hereinafter referred to as "**Respondent Vera**") is a Vice President of Sales for Respondent Metals.com. He can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Respondent Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001.
3. Michael Kendall (hereinafter referred to as "**Respondent Kendall**") is a Senior Portfolio Manager of Respondent Metals.com. He can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Respondent Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001.
4. Athena Hunter (hereinafter referred to as "**Respondent Hunter**") is a representative of Respondent Metals.com. She can be served with process at 433 N. Camden Drive, Suite 970, Beverly Hills, California 90210, or through Respondent Metals.com's registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Ste. 100, Cheyenne, Wyoming 82001.

**BACKGROUND INFORMATION
AND SUMMARY OF THIS EMERGENCY PROCEEDING**

5. Section 45 of the Securities Act generally requires registered dealers and investment advisers to submit reports of suspected financial exploitation whenever they have cause to believe parties are financially exploiting an account holder who is a vulnerable adult.
6. A registered firm submitted a report of suspected financial exploitation that alleged Respondent Metals.com contacted an 80-year-old, Dallas, Texas resident and it and Respondent Hunter advised and assisted the elderly person in liquidating her retirement accounts and transferring almost \$850,000.00 for the purpose of investing in Respondent Metals.com's precious metals investments.
7. The registered firm's report of suspected financial exploitation also explained the Texas resident did not understand the investment opportunity that was presented and was not advised Respondent Metals.com intended to transfer the majority of her assets held at the registered firm into Respondent Metals.com's precious metals investments.
8. After receiving the report of suspected financial exploitation, the Enforcement Division began investigating Respondent Metals.com and its employees and representatives who, for compensation, are engaging in the business of advising potential investors with respect to the value of securities or the advisability of investing in, purchasing or selling securities.
9. The Enforcement Division secured evidence that Respondent Metals.com and its representatives are engaging in an illegal and fraudulent scheme targeting elderly persons and other investors.

10. The Securities Commissioner is entering this Emergency Cease and Desist Order to stop Respondent Metals.com and its employees and representatives from threatening immediate and irreparable harm to the public.

THE ILLEGAL ADVISORY SCHEME

11. Respondent Metals.com is engaging in a scheme to solicit elderly persons through unsolicited telephone calls. The tactic is often referred to as “cold-calling.”
12. Respondent Metals.com is also soliciting potential investors through an internet website accessible by the public at <https://www.metals.com>.
13. After initiating contact with a potential investor, Respondents Metals.com, Vera Kendall and Hunter are requesting the potential investor provide information about their securities holdings purchased from dealers and/or managed by investment advisers.
14. Respondents Metals.com, Vera and Kendall are advising the potential investors that their securities holdings are not safe investments and maintaining ownership of their securities subjects them to significant risks.
15. Respondents Metals.com, Vera and Kendall are also advising the potential investors that their dealers and investment advisers are committing illegal acts against their clients or engaging in acts that result in the loss of funds.
16. Respondents Metals.com, Vera, Kendall and Hunter are further advising the potential investors to sell their securities and invest in precious metals through a self-directed individual retirement account.
17. Respondent Metals.com is telling the potential investors that investments in precious metals, as opposed to investments in securities, are reliable investments that will preserve value regardless of market fluctuations, and investments in precious metals will better hedge against inflation and the devaluation of the dollar.
18. Respondents Metals.com and Hunter are assisting potential investors by contacting their dealers and investment advisers and facilitating the liquidation of their retirement accounts and/or the transfer of their funds.
19. Most of these investors are elderly persons, as the majority of Respondent Metals.com’s clients are sixty-five to ninety (65-90) years old.

THE LEGAL DOCUMENTS AND THE WAIVERS

20. Respondents Metals.com and Vera are providing the legal documents potential investors must use to sell securities and/or invest in precious metals through a self-directed individual retirement account. Respondents Metals.com and Vera are completing the legal documents and potential investors simply need to sign the legal documents.

21. The legal documents require each potential investor to declare, under the penalty of perjury, that the potential investor either deals in precious metals due to his or her occupation, or as a result of his or her avocations as collector, speculator or investor, he or she has knowledge or skill peculiar to precious metals or the practices involved in the purchase of precious metals.
22. The legal documents require the potential investor to acknowledge and agree that he or she assumes the risk of all investment decisions regarding any and all precious metals the potential investor purchases from Respondent Metals.com, and any purchases from Respondent Metals.com are made subject to the potential investor's own prudence, judgment and ultimate decision.
23. The legal documents require potential investors to waive express and implied warranties, waive consequential damages and limit the liability of Respondent Metals.com.
24. The legal documents require potential investors to agree to hold Respondent Metals.com harmless for any damages arising out of its performance under the contracts.
25. The legal documents represent that potential investors should not invest more than 20% of their available investment funds in precious metals.

COMPENSATION PAID TO RESPONDENT METALS.COM

26. Respondents Metals.com and Vera are telling potential investors it does not charge a fee for the purchase of precious metals and potential investors need only pay the retail price of precious metals.
27. Potential investors are paying compensation to Respondent Metals.com when they accept its advice, transfer their funds from a dealer or investment adviser and use the money to invest in precious metals.
28. The compensation is purportedly equal to the difference between the price paid by potential investors and the wholesale price of precious metals.
29. The difference between the price paid by potential investors and the wholesale price of precious metals is referred to as a "spread."
30. The spread varies from potential investor to potential investor and generally ranges from two percent to thirty-three percent for transactions involving individual retirement accounts. However, the spread is subject to change and potential investors may ultimately be responsible for more than the general rate.

COMPENSATION PAID TO REPRESENTATIVES OF RESPONDENT METALS.COM

31. As described herein, Respondent Metals.com is advising potential investors to sell their securities and invest in precious metals.

32. Representatives of Respondent Metals.com are receiving compensation for advising potential investors to sell their securities and invest in precious metals.
33. Respondent Metals.com is paying commissions to these representatives and their salaries are based, at least in part, on the amount of sales and the profit margin of sales.
34. Respondent Metals.com representatives' compensation is also tied, from time to time, to sales activities, such as "sales contests."

THE PRE-LAWSUIT NOTICE SENT IN RESPONSE
TO A COMPLAINT FROM AN ELDERLY CLIENT OF RESPONDENT METALS.COM

35. Respondent Metals.com is sending demand letters to clients who publically complain about their purchase of precious metals from Respondent Metals.com.
36. For example, on or around April 17, 2019, Respondent Metals.com, acting through Rabeh M. A. Soofi, Managing Attorney at AXIS Legal Counsel, sent a letter referred to as a "Pre-Lawsuit Notice" and "Cease and Desist Demand" to a 75-year old retired schoolteacher who publically complained about rolling over her IRA to invest \$65,991.00 in precious metals from Respondent Metals.com.
37. The Pre-Lawsuit Notice accused the elderly person of breach of contract, harassment, defamation and tortious interference with the prospective business relationships of Respondent Metals.com. It provided notice that, if the elderly person did not satisfy Respondent Metals.com's demands, Respondent Metals would file a lawsuit for injunctive relief, damages for actual loss, punitive damages of three times the award of actual loss, and attorneys fees and costs.

REGISTRATION VIOLATIONS

38. Respondent Metals.com is acting as an investment adviser because Respondent Metals.com is a person who, for compensation, is engaging in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities.
39. Respondent Metals.com has not been registered or notice-filed as an investment adviser with the Securities Commissioner pursuant to Sections 12 and 12-1 of the Securities Act at any time material hereto.
40. Respondents Vera, Kendall and Hunter are acting as investment adviser representatives because they are persons who, for compensation, are employed, appointed, or authorized by Respondent Metals.com to solicit clients for Respondent Metals.com and they, on behalf of Respondent Metals.com, are providing investment advice to Respondent Metals.com's clients.

41. Respondents Vera, Kendall and Hunter have not been registered or notice-filed as investment adviser representatives with the Securities Commissioner pursuant to Section 12 and 12-1 or the Securities Act at any time material hereto.

GENERAL ALLEGATIONS OF FRAUD
IN CONNECTION WITH THE RENDERING OF INVESTMENT ADVICE

42. In connection with the rendering of investment advice, Respondents Metals.com, Vera, Kendall and Hunter are intentionally failing to disclose the following material facts relating to the management of Respondent Metals.com:
- A. The identity of the owners, principals and managers of Respondent Metals.com, and
 - B. The business repute, qualifications and experience of the owners, principals and managers of Respondent Metals.com.
43. In connection with the rendering of investment advice, Respondents Metals.com, Vera, Kendall and Hunter are intentionally failing to disclose the following material facts about their experience with financial services and products:
- A. Their experience in valuing securities and calculating market volatility,
 - B. Their experience in forecasting economic conditions, such as the likelihood of recessions and the possibility of inflation, as well as predicting the exchange rate of the dollar, and
 - C. Their experience in determining whether securities and other investments constitute suitable products.
44. In connection with the rendering of investment advice, Respondents Metals.com and Vera are claiming Respondent Metals.com does not charge fees for the purchase of precious metals and potential investors only pay the retail prices charged for the precious metals. This statement is a misrepresentation of a relevant fact because Respondent Metals.com is charging the fees described herein.
45. In connection with the rendering of investment advice, Respondent Metals.com is intentionally failing to disclose any information about complaints, including complaints relating to fraudulent, deceptive and illegal practices sent, submitted or otherwise levied by prior investors, and this information constitutes a material fact.
46. In connection with the rendering of investment advice, Respondent Metals.com is advising potential investors that investments in precious metals are safe and secure investments for potential investors. These are misrepresentations of relevant facts because Respondent Metals.com is admitting that investments in precious metals contain the following risks:

- A. The market for precious metals may fluctuate, and the value of gold may sharply and suddenly decrease based on movements of the global market, and
- B. Precious metals involve considerable risk and market prices are at times volatile and may be affected by economic conditions, political events and speculative activity.

THE USE OF LEGAL DOCUMENTS TO ENGAGE
IN FRAUD IN CONNECTION WITH THE RENDERING OF INVESTMENT ADVICE

- 47. In connection with the rendering of investment advice, Respondents Metals.com and Vera are representing through the aforementioned legal documents that Respondent Metals.com is not an investment advisor, Respondent Metals.com does not provide investment and advisory services and Respondent Metals.com's representatives are not authorized to provide investment and advisory services. These are misrepresentations of relevant facts because Respondent Metals.com is acting as an investment adviser, Respondent Metals.com is providing investment and advisory services and Respondent Metals.com is authorizing representatives to provide investment and advisory services.
- 48. In connection with the rendering of investment advice, Respondents Metals.com and Vera are advising potential investors that investments in precious metals are safe and secure investments and advising them to sell most or all of their securities and invest most or all of the proceeds in precious metals. This advice constitutes a misrepresentation of a relevant fact because they are requiring potential investors to execute legal documents that reflect potential investors should not invest more than twenty percent (20%) of their available investment funds in precious metals.
- 49. In connection with the rendering of investment advice, Respondents Metals.com and Vera are advising investors, including elderly persons, to invest in precious metals instead of securities and claiming investments in precious metals are suitable investments. These representations constitute misrepresentations of relevant facts because investments in precious metals may not be suitable for elderly investors and Respondent Metals.com is requiring these investors to execute legal documents that reflect precious metals should be considered a long-term investment and investors should be prepared to hold the precious metals for at least three to five years, and preferably five to ten years.
- 50. In connection with the rendering of investment advice, Respondents Metals.com and Vera are advising potential investors to invest in precious metals without regard to their age, occupation, experience or background, and this advice constitutes a misrepresentation of a relevant fact because they are also requiring potential investors to execute legal documents that require potential investors to declare, under the penalty of perjury, that the potential investor either deals in precious metals due to his or her occupation, or as a result of his or her avocations as collector, speculator or investor, he or she has knowledge or skill peculiar to precious metals or the practices involved in the purchase of precious metals.

51. In connection with the rendering of investment advice, Respondents Metals.com and Vera are requiring potential investors to execute legal documents that require potential investors to assume the risk of all investment decisions, to waive express and implied warranties, to waive consequential damages, to limit the liability of Respondent Metals.com, and to agree to hold Respondent Metals.com harmless for any damages arising out of its performance under the contracts. These representations constitute misrepresentations of relevant facts because Section 33.L of the Securities Act provides a condition, stipulation, or provision binding a purchaser of services rendered by an investment adviser or investment adviser representative to waive compliance with a provision of the Securities Act or a rule or requirement under the Securities Act, including provisions relating to civil liability of the rendering of unregistered investment advisory services, is void.

CONCLUSIONS OF LAW

1. Respondent Metals.com is acting as an investment adviser as that term is defined in Section 4.N of the Securities Act.
2. Respondent Metals.com is violating Sections 12 and/or 12-1 of the Securities Act by rendering services as an investment adviser in Texas without being registered or notice-filed as an investment adviser.
3. Respondents Vera, Kendall and Hunter are acting as investment adviser representatives as that term is defined in Section 4.P of the Securities Act.
4. Respondents Vera, Kendall and Hunter are violating Section 12 and/or 12-1 of the Securities Act by rendering services as investment adviser representatives in Texas without being registered or notice-filed as investment adviser representatives.
5. Respondents Metals.com, Vera, Kendall and Hunter are engaging in fraud in connection with the rendering of investment advice.
6. Respondents Metals.com, Vera, Kendall and Hunter are engaging in conduct, acts and practices that threaten immediate and irreparable harm.
7. The foregoing violations constitute bases for the issuance of an Emergency Cease and Desist Order pursuant to Section 23-2 of the Securities Act.

ORDER

1. It is therefore ORDERED that Respondent Metals.com immediately CEASE AND DESIST from acting as an investment adviser in Texas until it is registered or notice-filed with the Securities Commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or it is acting pursuant to an exemption under the Securities Act.
2. It is further ORDERED that Respondents Vera, Kendall and Hunter immediately CEASE AND DESIST from acting as investment adviser representatives in Texas until they are registered or notice-filed with the Securities Commissioner pursuant to

Sections 12 and/or 12-1 of the Securities Act or they are acting pursuant to an exemption under the Securities Act.

3. It is further ORDERED that Respondents Metals.com, Vera, Kendall and Hunter immediately CEASE AND DESIST from engaging in any fraud in connection with the rendering of investment advice in Texas.

NOTICE

Pursuant to Section 23-2 of the Securities Act, you may request a hearing before the 31st day after the date you were served with this Order. The request for a hearing must be in writing, directed to the Securities Commissioner, and state the grounds for the request to set aside or modify the Order. Failure to request a hearing will result in the Order becoming final and non-appealable.

You are advised under Section 29.D of the Securities Act that any knowing violation of an order issued by the Securities Commissioner under the authority of Section 23-2 of the Securities Act is a criminal offense punishable by a fine of not more than \$10,000, or imprisonment in the penitentiary for two to ten years, or by both such fine and imprisonment.

SIGNED AND ENTERED by the Securities Commissioner this 1st day of May, 2019.



TRAVIS J. ILES
Securities Commissioner

May 6, 2019

Travis J. Iles, Securities Commissioner
Texas State Securities Board
208 E. 10th Street
5th Floor
Austin, TX 78701-2407

Re: Cease & Desist Letter

Dear Commissioner Iles:

On behalf of TMTE Inc. (“Metals.com”), Walter Vera, Michael Kendall, and Athena Hunter, I write to respectfully request that the emergency cease-and-desist order (“Order”) entered on May 1, 2019 be stayed pursuant to Section 23-2(F) of the Texas Securities Act (the “Securities Act”). Additionally, I write to respectfully request that an expedited hearing regarding the Order be granted, pursuant to Section 23-2(C) of the Securities Act. Although we reserve the right to more fully set forth the grounds that the Order be set aside, this initial submission outlines why Metals.com is not covered by the Securities Act, which renders a stay of the Order appropriate.

Additionally, we are in receipt of a subpoena directed to Metals.com. The subpoena is incredibly broad and is neither limited in geographic scope to Texas, nor limited in time. At this time, as discussed in greater detail herein, it is Metals.com’s position that it does not provide investment advice, nor does it sell securities. Until we have the opportunity to review the exhibits underpinning the Order—which we understand will be provided in response to this hearing request—to obtain a better understanding of the Order’s allegations, we are unable to comply with the May 8 return date on the recently received subpoena. We will be able to discuss the subpoena in more detail upon further review of the exhibits.

Metals.com is not an IRA custodian, nor is it a financial adviser of any kind. Rather, Metals.com is a retailer of metal products—such as gold and silver—and ships both directly to consumers, along with also coordinating delivery to consumers in conjunction with IRA accounts opened by custodians elsewhere. As the Metals.com contract provides, delivery of all metals purchased takes place within 28 days of Metals.com verifying that it has received the funds for a purchase. Any communications between Metals.com and its customers do not constitute investment advice, and in any event, the precious metals sold by Metals.com do not constitute “securities” for purposes of the Securities Act. No portion of the Order acknowledges that Metals.com’s business is the sale of precious metals, and the Order likewise does not explain either how the sale of precious metals constitutes “investment advice,” or how precious metals constitute securities.

I. Metals.com Does Not Provide Investment Advice

Metals.com employees are not required to register as investment advisers because, in the first instance, they offer no investment advice. In the alternative, even if these employees offer advice, any incidental advice as to the opportunity to invest in metals can be labeled only as impersonal.

Here, Metals.com's company materials make clear that its employees are to offer no investment advice to consumers. For example, the company's Shipping and Transaction Agreement (the "Agreement," which is referenced in the Order), which every Metals.com customer must review and sign, states that the Metals.com is "not an investment adviser, consultancy, licensed brokerage, or banking institution." The agreement further states that

Customer acknowledges and agrees that Customer assumes the risk of all investment decisions regarding any and all Precious Metals the Customer purchases from metals and metals makes no guarantee or representation regarding Customer's ability to profit (or avoid loss) from any purchase or any representation regarding any tax implications of any purchase and the decision to purchase or sell Precious Metals.

Agreement ¶ 3(g). Finally, the Agreement states that Metals.com has no fiduciary relationship with the customer and *again* that Metals.com does not provide investment advice. Agreement ¶ 5(a) & (d).

In the alternative, if any of the interactions between Metals.com's employees and customers could be deemed investment advice as to the opportunity to invest in metals, any such advice must be deemed impersonal and as such, falls outside the Securities Act's registration requirement.

Federal law defines "impersonal investment advice" as "investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts." 17 C.F.R. §§ 275.204-3(g)(1), 275.203A-3(a)(3)(ii). The Texas Legislature based portions of the Securities Act on the federal securities statutes and Texas courts rely on federal decisions to interpret the corresponding sections of the Securities Act. *See, e.g.*, Committee on Securities and Investment Banking of the Section on Banking and Business Law of the State Bar of Texas, Comment –1977 Amendment, following Tex. Rev. Civ. Stat. Ann. art. 581-33, § 1.

The United States Supreme Court's decision in *Lowe v. Securities & Exchange Commission*, 472 U.S. 181 (1985), is instructive. In *Lowe*, the Court concluded that Congress did not mean to cover generalized advice not "attuned to any specific portfolio *or to any client's particular needs.*" *Id.* at 208 (emphasis added). The *Lowe* Court found that "publishers of

impersonal advice were not investment advisers under the Investment Advisers Act of 1940 (IAA), which defined investment adviser to include persons who advised others indirectly[.]” *Id.* (citing 15 U.S.C. § 80b-2(a)(2)).

In addition, the Court noted that the congressional intent behind the IAA was “to regulate only the business of dispensing personalized advice and not to regulate impersonalized publishing activities.” *Id.*; *see also id.* at 195 (The Court reviewed the history behind the Investment Advisers Act of 1940. The Court quoted from the testimony of a witness before a Senate Subcommittee. The witness testified that the investment advisers business “. . . is a personal-service profession and depends for its success upon a close personal and confidential relationship between the investment-counsel firm and its client We must establish with each client a relationship of trust and confidence designed to last over a period of time . . .”). The Court, therefore, held that impersonal publishers were not included in the definition of “investment adviser” for purposes of the IAA. *Id.*

II. The Precious Metals Sold By Metals.com Are Not “Securities”

The precious metals sold by Metals.com are not “securities” within the purview of the Securities Act.

In relevant part, Section 4 of the Securities Act defines “security” as follows:

any limited partner interest in a limited partnership, share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not.

Notably, the definition of “security” does not include precious metals such as the gold and silver sold by Metals.com. Nor does it, in fact, include any physical property, with the possible exception of interests in oil, gas, or mining leases. The Securities Act does contain a catch-all encompassing “any other instrument commonly known as a security,” but that catchall likewise does not encompass precious metals. ” Thus, there is no indication that physical precious metals are “commonly known as a security.”

Multiple federal appellate decisions interpreting similar definitions of the term “security” likewise have found that contracts for actual delivery of precious metals do not constitute “securities. For example, the Ninth Circuit has on multiple occasions held that contracts for purchase and delivery of physical gold or silver do not meet the definition of “security” under federal securities laws.¹ In *S.E.C. v. Belmont Reid & Co., Inc.*, the Ninth Circuit rejected the SEC’s argument that contracts for purchase and delivery of gold coins amounted to “securities,” stating that if it found that a contract to purchase gold was a security, such analysis would be “read[il]ly applicab[le] to any sale-of-goods contract in which the buyer pays in advance of delivery and the ability of the seller to perform is dependent, in part, on both his managerial skill and some good fortune.” 794 F.2d 1388, 1391 (9th Cir. 1986). In finding the transaction at issue to not be a securities transaction, it differentiated a purchase of gold coins from “buying a share in a company mining gold,” which would be a securities transaction. *See id.* The Ninth Circuit made a similar finding in the context of a contract for purchase of silver bars for delivery within 30 days. *Noa v. Key Futures, Inc.*, 638 F.2d 77, 79-80 (9th Cir. 1980).

Similarly, when considering whether certain consumer goods constituted a “security,” the Seventh Circuit observed that “people may choose between transacting in securities and transacting in assets, and the law follows the form,” and that “[s]tock or bonds in a company that invests the proceeds in land, or gold, or art, are still regulated as securities rather than as land, or gold, or art.” *S.E.C. v. Nat’l Presto Indus., Inc.*, 486 F.3d 305, 310 (7th Cir. 2007) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681 (1985)). By drawing the distinction between *stocks or bond* in a company that invests in gold (or other items) and *gold itself*, the Seventh Circuit, like the Ninth Circuit, set forth the unremarkable proposition that

¹ Federal securities laws provide slightly different definitions of “security” in multiple statutes, but the definition found in the “Domestic Securities” subchapter similarly defines “security” to include “note, stock, treasury stock, security future, security-based swap, 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, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a ‘security’, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.” 15 U.S.C. § 77b(a)(1).



while the former is regulated as a “security,” the latter—i.e. precious metals themselves—are not. *Id.*²

Thus, although it does not appear to have been litigated under Texas law, given that neither Section 4 of the Securities Act nor some other definition of “security” such as the federal definition (*see* note 1, *supra*) encompasses precious metals, there is no basis for the Securities Commission to regulate Metals.com’s sale of those materials.

In conclusion, for the reasons set forth herein, Walter Vera, Michael Kendall, and Athena Hunter, and Metals.com respectfully request a stay of enforcement of the Order, and an expedited hearing related to the Order.

Sincerely,

/s/ James Trusty
James Trusty

² A California state appeals court more recently reached a similar conclusion regarding purchases of physical metals, in the context of California’s state securities laws. *Kelly v. Monex Deposit Co.*, No. G046569, 2013 WL 4496285, at *3 (Cal. Ct. App. Aug. 21, 2013) (unreported) (“Kelly traded by buying and selling the metals themselves. These physical objects do not qualify as a ‘security’ as the term is defined in Corporations Code section 25019.”)

TRAVIS J. ILES
SECURITIES COMMISSIONER



CLINTON EDGAR
DEPUTY SECURITIES COMMISSIONER

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IN RE EMERGENCY CEASE AND DESIST ORDER NO. ENF-19-CDO-1777

IN THE MATTER OF	§	BEFORE THE SECURITIES
TMTE, INC., AKA METALS.COM, CHASE METALS,	§	COMMISSIONER OF THE
LLC, AND CHASE METALS, INC.; WALTER VERA,	§	
MICHAEL KENDALL AND ATHENA HUNTER	§	STATE OF TEXAS

ENFORCEMENT DIVISION'S MOTION AGAINST THE GRANTING OF A STAY FROM AN EMERGENCY CEASE AND DESIST ORDER

COMES NOW, the Enforcement Division of the State Securities Board (the "*Enforcement Division*"), and files this, its *Enforcement Division's Motion Against the Granting Of A Stay From an Emergency Cease and Desist Order*, praying that the Securities Commissioner of the State of Texas (the "*Securities Commissioner*") deny a request for a stay of Emergency Cease and Desist Order No. ENF-19-CDO-1777 (the "*Emergency Order*"), and in support hereof shows as follows:

BACKGROUND

1. On May 1, 2019, the Securities Commissioner entered the Emergency Order pursuant to Section 23-2 of the Securities Act.¹
2. The Emergency Order names TMTE, Inc., also known as Chase Metals, LLC, Chase Metals, Inc., and Metals.com (hereinafter "*Respondent Metals.com*"), Walter Vera, its Vice President of Sales ("*Respondent Vera*"), Michael Kendall, its Senior Portfolio Manager ("*Respondent Kendall*"), and Athena Hunter, a representative of the company ("*Respondent Hunter*").
3. The Emergency Order was entered after the Enforcement Division presented evidence sufficient for the Securities Commissioner to find that Respondent Metals.com is illegally acting as an unregistered investment adviser in Texas and that Respondent Vera, Respondent Kendall and Respondent Hunter are illegally acting as unregistered investment adviser representatives in Texas. The evidence was also sufficient to find that Respondent Metals.com, Respondent Vera, Respondent Kendall and Respondent Hunter (collectively the "*Respondents*") are engaging in fraud in connection with the rendering of investment advice in Texas.

¹ TEX. REV. CIV. STAT. ANN. Arts. 581-1 to 581-45 (West 2010 & Supp. 2018) (the "*Securities Act*").

4. The Emergency Order was also entered after the Enforcement Division presented evidence sufficient for the Securities Commissioner to find that Respondents threaten immediate and irreparable harm to the public.
5. The Emergency Order orders Respondents Metals to immediately cease and desist from acting as an investment adviser in Texas until it is registered or notice-filed with the Securities Commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or it is acting pursuant to an exemption from the Securities Act. It also orders Respondents Vera, Kendall and Hunter to immediately cease and desist from acting as investment adviser representatives in Texas until they are registered or notice-filed with the Securities Commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or they are acting pursuant to an exemption under the Securities Act. It further orders Respondents to immediately cease and desist from engaging in any fraud in connection with the rendering of investment advice in Texas.
6. On May 6, 2019, Respondents, through counsel, requested a stay of the Emergency Order and an expedited hearing to challenge the Emergency Order. The Enforcement Division received the request for a stay and the request for an expedited hearing on the same day.
7. The Enforcement Division, for the reasons set forth herein, is now moving the Securities Commissioner to deny the request for a stay of the Emergency Order.

**RESPONDENTS HAVE FAILED TO PLEAD ANY FACTS DEMONSTRATING THE
NEED FOR A STAY OF THE EMERGENCY ORDER PRIOR TO AN EXPEDITED EVIDENTIARY HEARING**

8. Respondents, through counsel, are proffering two arguments in favor of a stay of the Emergency Order. First, Respondents are arguing Respondent Metals.com is not providing investment advice because it uses a contract² that claims it does not provide investment advice and that any advice provided by its representatives constitutes impersonal investment advice. Second, Respondents are arguing that Respondents are not offering or selling securities. The Emergency Order never found that Respondents were offering or selling securities, and as such the second argument is irrelevant and should be treated as moot. The first argument is the only argument applicable to this proceeding.
9. Although Respondents are arguing they do not render investment advice, this argument gives rise to an evidentiary issue that does not serve as a basis for granting a stay of the Emergency Order prior to an evidentiary hearing at the State Office of Administrative Hearings. Respondents have simply failed to demonstrate any facts that justify the need for a stay of the action before the presentation of evidence supporting or refuting its argument.
10. Although not applicable in the present case, the grant of a stay of an emergency cease and desist order prior to an evidentiary hearing on the merits of the emergency cease and desist

² The Emergency Order was entered after the presentation of evidence sufficient to find that Respondents Metals.com and Vera were using the contract to engage in fraud in connection with the rendering of investment advice in Texas.

order may be appropriate in certain situations. These situations can arise when parties are able to demonstrate the need to take prompt action that does not threaten public harm. These situations, although rare, may necessitate immediate action, and a stay may be the only relief that ensures the ability to take such immediate action.

11. For example, a stay of an emergency cease and desist order may be appropriate when an investment adviser needs to sell securities owned by a client so the client can use the proceeds to pay for medical treatment, living expenses and other obligations. A stay of an emergency cease and desist order may also be appropriate when an investment adviser needs to exit holdings rapidly decreasing in value, thereby avoiding losses for the client. A stay of the provisions of an emergency cease and desist order relating to registration violations may even be appropriate to permit a dealer to offer some type of rescission to victims of an illegal securities scheme.
12. Respondents have not described any of the aforementioned circumstances or presented any evidence that justifies the need to immediately act as investment advisers or investment adviser representatives in Texas. Instead, Respondents are essentially representing, through counsel, that they disagree with the entry of the Emergency Order. Although their argument may support the setting of an evidentiary hearing at the State Office of Administrative Hearings, the same arguments simply fail to provide any basis for the granting of a stay of the Emergency Order.

RESPONDENTS WERE FOUND TO ILLEGALLY AND FRAUDULENTLY THREATEN IMMEDIATE AND IRREPARABLE PUBLIC HARM, AND ANY DECISION THAT MAY PERMIT THEM TO CONTINUE ACTING IN TEXAS SHOULD BE BASED ON ALL RELEVANT EVIDENCE

13. Respondents stand accused of engaging in an illegal and fraudulent advisory scheme in Texas, and they stand accused of threatening immediate and irreparable public harm. The Emergency Order alleges that the scheme targets senior citizens, and that most clients are 65 to 90 years old. This is a grave situation.
14. Although the Enforcement Division has presented evidence supporting the Emergency Order, and Respondents are afforded the right to contest its entry. Sections 23-2.C and 23-2.E of the Securities Act permit them to request a hearing to challenge the Emergency Order. The parties have the right to demand the hearings be set and commence without delay. Section 23-2.D of the Securities Act codifies this right, providing that, unless otherwise agreed, the hearing must be held not later than the 10th day after the date the Securities Commissioner receives the request for the hearing.
15. Respondents have now requested an expedited hearing for relief from the Emergency Order. This hearing will be held at the State Office of Administrative Hearings, and it will be governed by the Rules of Practice and Procedure of the State Office of Administrative Hearings.³ The

³ 1 Tex. Admin. Code Chapter 155 (Supp. 2018) (State Ofc. Of Admin. Hearings) (the "SOAH Rules").

hearing will be conducted in accordance with Texas Rules of Evidence as applied in a nonjury civil case in district court.⁴

16. The applicability of the Texas Rules of Evidence at a hearing at the State Office of Administrative Hearings ensures Respondents, as well as the Enforcement Division, are able to call witnesses and offer relevant evidence. The Administrative Law Judge presiding over the contested case will therefore be able to consider the complete body of admissible evidence necessary to determine whether to affirm, modify, or set aside the Emergency Order. Accordingly, the hearing therefore ensures that facts applied to law, and not the mere arguments of counsel, serve as the basis for any decisions that may impact the health and welfare of the public.
17. Although this matter is being set for an expedited hearing at the State Office of Administrative Hearings, Respondents are also requesting a stay from the Emergency Order. They are seeking this relief in a manner that does not permit the elicitation of testimony and the presentment of admissible evidence and that does not afford the parties the opportunity to challenge testimony or evidence presented by opponents. Any decision rendered regarding a stay, based on the facts of this case, will necessarily be based on incomplete and unverified information.
18. The gravity of the allegations against the Respondents simply demand that any decisions be made after consideration of all necessary information. A hearing at the State Office of Administrative Hearings, as opposed to this proceeding, ensures that such decisions will be made only after consideration of all necessary evidence.

WHEREFORE, PREMISES CONSIDERED, the Enforcement Division prays the Securities Commissioner deny a stay of the Emergency Order.

BY: 
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⁴ SOAH Rule § 155.429(a).

CERTIFICATE OF SERVICE

I hereby certify that on this, the 7th day of May 2019, true and correct copies of this ENFORCEMENT DIVISION'S MOTION AGAINST THE GRANTING OF A STAY FROM AN EMERGENCY CEASE AND DESIST ORDER have been served to the following parties through the means set forth below:

VIA HAND DELIVERY to **Travis Iles**, Securities Commissioner, at 208 E. 10th Street, 5th Floor, Austin, Texas 78701, and

VIA ELECTRONIC MAIL, OVERNIGHT MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to **James Trusty, Member, Ifrah Law**, and **Andrew Silver, Member, Ifrah Law** counsel for Respondents, sent by electronic mail to jtrusty@ifrahlaw.com and asilver@ifrahlaw.com and by overnight mail and certified mail, return receipt requested, to 1717 Pennsylvania Ave. N.W., Suite 650, Washington, D.C. 20006.

By:



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May 7, 2019

Mr. James Trusty, Esq.
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RE: Emergency Cease and Desist Order
In the Matter of TMTE, Inc., et al.
Order No. ENF-19-CDO-1777

Dear Mr. Trusty:

Please allow this correspondence to serve as confirmation of receipt of your correspondence dated May 6, 2019, concerning the above-referenced matter. You have requested the emergency cease and desist order be stayed pursuant to Section 23-2(F) of The Securities Act and also requested a hearing on an expedited basis pursuant to Section 23-2(C) of The Securities Act.

I have considered your request for a stay. I have also considered information submitted by the Staff of the Enforcement Division on May 7, 2019, in a document styled *Enforcement Division's Motion Against the Granting of a Stay from an Emergency Cease and Desist Order*. Based upon this review, I will not grant a stay of Order No. ENF-19-CDO-1777.

With respect to your request for an expedited hearing, it is unclear if the request is for a hearing to occur in a generally expedited manner or expedited specifically in conformance with the 10 day hearing requirement set forth in Section 23-2(D) of The Securities Act. Any clarification you can provide Staff of the Enforcement Division in this regard is appreciated.

Thank you for your time and consideration.

Regards,

A handwritten signature in blue ink, appearing to read "T. J. Iles".

Travis J. Iles
Securities Commissioner

CC: Rachael Luna, Attorney & Joe Rotunda, Director of Enforcement

From: [Andrew Silver](#)
To: [Joe Rotunda](#); [Rachael Luna](#); [James Trusty](#)
Cc: [Jeremy Heintz](#); [Jeff Ifrah](#)
Subject: RE: Metals.com Hearing Dates
Date: Tuesday, May 7, 2019 4:05:47 PM

Thank you for your email, Joe.

We are writing to confirm the May 28-29 dates, subject, of course, to the potential flexibility discussed below and by telephone.

Additionally, as discussed this morning, we would like to take the opportunity to meet with you while you are in DC on May 20. Please let us know when you are available. We would be happy to either host at our offices or find another suitable location.

Best,
Andrew



Andrew Silver

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