

## **ALABAMA SECURITIES COMMISSION**

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### **Alabama Securities Commission Teams Up with Feds to Defend Seniors Lured to Trade Solid Investments for Empty Gold Mine**

**MONTGOMERY, ALABAMA (September 25, 2020)** – The Alabama Securities Commission (ASC) announced today that it is participating in a consolidated nationwide enforcement action to stop a fraudulent precious metals scheme that has solicited \$185 million from at least 1,600 seniors and other investors. The ASC joined the Commodity Futures Trading Commission and 29 other states in filing a complaint in the U.S. District Court for the Northern District of Texas alleging Metals.com and Barrick Capital Inc. defendants solicited \$185 million from seniors and other vulnerable investors nationwide by touting precious metals at grossly inflated prices that were not disclosed.

“The defendants had a reckless disregard for the truth by failing to disclose that virtually every investor lost the majority of their funds in the investments the firm was peddling,” said ASC Director Joseph P. Borg. “They capitalized on investor fear of market instability and economic uncertainty. Investors suffered substantial losses from retirement savings by relying on the false representations made by the defendants and their sales representatives.”

On September 22, 2020, The Honorable Judge David C. Godbey of the U.S. District Court for the District of Northern District of Texas entered a restraining order freezing the assets of the defendants and the relief defendant and permitting the CFTC and the states to inspect all relevant records. The court also appointed a receiver to take control of Metals.com, Barrick, and Tower Equity, as well as the assets of Asher and Batashvili.

“This historic joint effort between the CFTC and 30 state regulators is an important step toward rooting out fraud across the country,” said CFTC Chairman Heath P. Tarbert. “This case highlights just how geographically broad commodities fraud can be in our rapidly-evolving financial markets and how important it is for regulators at all levels of government to work together to pursue bad actors and protect market participants.”

The complaint names Los Angeles, California--based companies TMTE Inc., also known as Metals.com, Chase Metals Inc., Chase Metals LLC, Barrick Capital Inc., along with Simon Batashvili, Lucas Asher, and Tower Equity LLC. The defendants are accused of using cold calling and social media advertisements

- more -

designed to instill fear in elderly and retirement-aged investors. To build trust with investors, the defendants represented that they had similar political and religious ideologies. Then, investors were advised to liquidate their holdings at registered investment firms to fund investments in precious metals bullion and bullion coins through self-directed individual retirement accounts.

The defendants are also accused of failing to disclose the markup charge for their precious metals bullion products and that investors could lose the majority of their funds once a transaction was completed. The defendants charged investors prices for gold or silver bullion averaging from 100% to more than 300% of the melt value or spot price. In many cases, the market value of the precious metals sold to investors was substantially lower than the value of the securities and other retirement savings investors had liquidated to fund their purchase.

In Alabama, dozens of investors were defrauded in the execution of this national scheme. Many Alabama investors liquidated their existing retirement accounts, which contained securities, to obtain funds to purchase the metals. Investors were not made aware of the large mark ups, which resulted in significant losses to their retirement funds. The Alabama investors who did learn of the loss were told by the defendants that the coins were exclusive, had collector value, and therefore they had not taken a loss.

The complaint requests the Court order the defendants to cease sales activity, return money to investors, and stop defrauding investors and violating federal and state laws going forward.

Metals.com and its agents have attempted to evade previous regulatory actions from 12 states by, among other tactics, changing its business name. Today's coordinated state and federal action to put a stop to the company's efforts to continue to prey on elderly investors is the result of a multi-state collaboration by members of the North American Securities Administrators Association (NASAA), of which Alabama Securities Commission is a member, and the Commodity Futures Trading Commission's Office of Cooperative Enforcement.

The Alabama Securities Commission encourages investors to come forward if they suspect they have been targeted by similar precious metals investment schemes. Please contact the Alabama Securities Commission's Enforcement Division at 1-800-222-1253.

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For further information contact Dan Lord, Education and Public Affairs Manager, 334-353-4858.

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

COMMODITY FUTURES TRADING  
COMMISSION, and

ALABAMA SECURITIES COMMISSION,  
STATE OF ALASKA, ARIZONA  
CORPORATION COMMISSION,  
CALIFORNIA COMMISSIONER OF  
BUSINESS OVERSIGHT, COLORADO  
SECURITIES COMMISSIONER, STATE  
OF DELAWARE, STATE OF FLORIDA,  
OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION, OFFICE OF  
THE GEORGIA SECRETARY OF STATE,  
STATE OF HAWAII, SECURITIES  
ENFORCEMENT BRANCH, IDAHO  
DEPARTMENT OF FINANCE, INDIANA  
SECURITIES COMMISSIONER, IOWA  
INSURANCE COMMISSIONER  
DOUGLAS M. OMMEN, OFFICE OF THE  
KANSAS SECURITIES COMMISSIONER,  
KENTUCKY DEPARTMENT OF  
FINANCIAL INSTITUTIONS, MAINE  
SECURITIES ADMINISTRATOR, STATE  
OF MARYLAND EX REL MARYLAND  
SECURITIES COMMISSIONER,  
ATTORNEY GENERAL DANA NESSEL  
ON BEHALF OF THE PEOPLE OF  
MICHIGAN, MISSISSIPPI SECRETARY  
OF STATE, NEBRASKA DEPARTMENT  
OF BANKING & FINANCE, OFFICE OF  
THE NEVADA SECRETARY OF STATE,  
NEW MEXICO SECURITIES DIVISION,  
THE PEOPLE OF THE STATE OF NEW  
YORK BY LETITIA JAMES, ATTORNEY  
GENERAL OF THE STATE OF NEW  
YORK, OKLAHOMA DEPARTMENT OF  
SECURITIES, SOUTH CAROLINA  
ATTORNEY GENERAL, SOUTH  
CAROLINA SECRETARY OF STATE,  
SOUTH DAKOTA DEPARTMENT OF  
LABOR & REGULATION, DIVISION OF

**CONSENT ORDER OF  
PRELIMINARY INJUNCTION AND  
OTHER EQUITABLE RELIEF  
AGAINST DEFENDANTS LUCAS  
THOMAS ERB a/k/a LUCAS ASHER  
a/k/a LUKE ASHER AND SIMON  
BATASHVILI**

Case No.: **3:20-CV-2910-L**

INSURANCE, COMMISSIONER OF THE  
TENNESSEE DEPARTMENT OF  
COMMERCE AND INSURANCE, STATE  
OF TEXAS, WASHINGTON STATE  
DEPARTMENT OF FINANCIAL  
INSTITUTIONS, WEST VIRGINIA  
SECURITIES COMMISSION, AND STATE  
OF WISCONSIN.

Plaintiffs,

v.

TMTE, INC. a/k/a METALS.COM, CHASE  
METALS, INC., CHASE METALS, LLC,  
BARRICK CAPITAL, INC., LUCAS  
THOMAS ERB a/k/a LUCAS ASHER a/k/a  
LUKE ASHER, and SIMON BATASHVILI,

Defendants;

and

TOWER EQUITY, LLC,

Relief Defendant.

I. On September 22, 2020, Plaintiffs Commodity Futures Trading Commission, Alabama Securities Commission, State of Alaska, Arizona Corporation Commission, California Commissioner of Business Oversight, Colorado Securities Commissioner, State of Delaware, State of Florida, Office of the Attorney General and State of Florida, Office of Financial Regulation, Office of the Georgia Secretary of State, State of Hawaii, Securities Enforcement Branch, Idaho Department of Finance, Indiana Securities Commissioner, Iowa Insurance Commissioner Douglas M. Ommen, Office of the Kansas Securities Commissioner, Kentucky Department of Financial Institutions, Maine Securities Administrator, State of Maryland Ex Rel the Maryland Securities Commissioner, Attorney General Dana Nessel on Behalf of the People



of Michigan, Mississippi Secretary of State, Nebraska Department of Banking & Finance, Office of the Nevada Secretary of State, New Mexico Securities Division, The People of the State of New York by Letitia James, Attorney General of the State of New York, Oklahoma Department of Securities, South Carolina Attorney General and South Carolina Secretary of State, South Dakota Department of Labor & Regulation, Division of Insurance, Commissioner of the Tennessee Department of Commerce and Insurance, State of Texas, Washington State Department of Financial Institutions, West Virginia Securities Commission, and State of Wisconsin filed a Complaint for Injunctive Relief, Civil Monetary Penalties, and Other Equitable Relief against Defendants TMTE, Inc., d/b/a Metals.com, Chase Metals, LLC, Chase Metals, Inc., (collectively “Metals”), Barrick Capital, Inc. (“Barrick”) and their principals, Lucas Thomas Erb *a/k/a* Lucas Asher *a/k/a* Luke Asher (“Asher”), and Simon Batashvili (“Batashvili”). (Docket Entry (“D.E.”) #2).

2. Contemporaneously with the filing of the Complaint, Plaintiffs moved the Court on an emergency, *ex parte* basis, for an order, pursuant to Section 6c(a) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 13a-1 (2018) and in accordance with Federal Rule of Civil Procedure 65, that: 1) freezes the assets of Defendants and Relief Defendant, (2) grants the CFTC and the States immediate access to the books, records, and other documents of Defendants and Relief Defendant and the authority to inspect and copy such records; (3) appoints a temporary receiver; and (4) grants Plaintiffs’ motion for expedited discovery in advance of a preliminary injunction hearing. (D.E. # 4-6; 11-12; 16).

3. On September 22, 2020, the Court granted Plaintiffs’ motion for emergency relief and entered a Statutory Restraining Order (“SRO”) (D.E. #16). The SRO: (1) prohibits Defendants from withdrawing, transferring, removing, dissipating, and disposing of assets; (2)

prohibits Defendants from destroying, altering, or disposing of books, records, and other documents; (3) appoints Kelly Crawford of Scheef & Stone, LLP as temporary receiver for Defendants and Relief Defendant and (4) grants expedited discovery in advance of a preliminary injunction hearing. The SRO also set a hearing on preliminary injunction relief on October 6, 2020 and directed that SRO remain in full force and effect until to October 6, 2020 at 5:00 pm.

4. On October 5, 2020, the Court continued the hearing on Plaintiffs' application for a preliminary injunction to October 27, 2020 and directed that SRO remain in full force and effect until to October 27, 2020 at 5 p.m. (D.E. #148).

5. On September 24, 2020, Plaintiffs properly served Defendant Batashvili. (D.E. #127) and on September 26, 2020, Plaintiffs properly served Asher (D.E. #126).

6. Defendants Asher and Batashvili, without admitting or denying the allegations in the Complaint, except for allegations relating to venue and the Court's jurisdiction over the parties and over the subject matter of this action, to which Asher and Batashvili admit, consent to the entry of this Order for Preliminary Injunction ("Order") as set forth herein.

7. Defendants Asher and Batashvili enter into this Order voluntarily, and no promise or threat has been made by the Plaintiffs, or any member, officer, agent, or representative of the Plaintiffs to induce Defendants Asher and Batashvili to consent to this Order.

8. In consideration of the foregoing, and based on the entire record in this case, the Court finds that there is good cause to believe that a preliminary injunction is proper in this case to preserve the *status quo*; prevent the withdrawal, transfer, removal, dissipation or disposal of assets; prevent the destruction, alteration, or disposal of books and records and other documents; protect members of the public from loss and damage, and enable the Plaintiffs to fulfill their statutory duties in this civil enforcement action.



9. The Court hereby grants the Motion on the terms and conditions to which Plaintiffs and Defendants Asher and Batashvili have stipulated, as set forth below.

### **I. DEFINITIONS**

For the purposes of this Order, the following definitions apply:

9. The terms “funds, assets, or other property” encompass any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all funds, wherever located, whether in the United States or outside the United States.

10. The term “document” and “electronically stored information” are synonymous in meaning and equal in scope to the usage of those terms in Fed. R. Civ. P. 34(a), and includes, but are not limited to, all writings, graphs, charts, photographs, sound recordings, images, and other data or other data compilations—stored in any medium from which information can be obtained or translated, if necessary, into reasonable usable form. The terms “document” and “electronically stored information” also refer to each and every such item in Defendants’ actual or constructive possession, including but not limited to: (i) all such items within the custody or control of any agents, employers, employees, or partners of the Defendants; and (ii) all items which Defendants have a legal or equitable right to obtain from another person. A draft or non-identical copy is a separate item within the meaning of the term. A document also includes the file and folder tabs associated with each original and copy.

## II. RELIEF GRANTED

### THE PARTIES AGREE AND IT IS HEREBY ORDERED that:

#### I. Jurisdiction and Venue

10. Defendants Asher and Batashvili have been properly served with the Complaint and Summons and have consented to the entry of this Order.

11. The Court is authorized to enter a preliminary injunction and ancillary equitable relief against Defendants Asher and Batashvili pursuant to 7 U.S.C. §§ 13a-1, 13a-2 and the laws of the States.

12. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress), as well as 28 U.S.C. § 1367(a) (supplemental jurisdiction over claims under the laws of the States).

13. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress).

14. 7 U.S.C. § 13a-1(a) (2018), authorizes the CFTC to seek injunctive and other relief against any person whenever it appears to the CFTC that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the CEA or any rule, regulation, or order thereunder.

15. 7 U.S.C. § 13a-2(1) (2018), authorizes the States to bring a suit in the district courts of the United States to seek injunctive and other relief against any person whenever it



appears to the Attorney General and/or Securities Administrator of a State, or such other official that a State may designate, that the interests of the residents of the State have been, are being, or may be threatened or adversely affected because of violations of the CEA or CFTC Regulations.

16. Venue lies properly in this District pursuant to 7 U.S.C. § 13a-1(e) (2018), because Defendants transacted business in this District, and certain of the acts and practices in violation of the CEA, the CFTC Regulations, and State laws occurred, are occurring, or are about to occur within this District, among other places. Venue also lies properly in this District pursuant to 17 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this District.

17. The Parties waive the entry of findings of fact and conclusions of law for purposes of this Order pursuant to Rule 52 of the Federal Rules of Civil Procedure, and the Court accepts that waiver.

## **II. Prohibitions from Violating the CEA, CFTC Regulations and the Laws of the States**

18. Defendants Asher and Batashvili and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successors thereof, who receive actual notice of this Order by personal service or otherwise, are preliminarily restrained and enjoined from directly or indirectly violating 7 U.S.C. § 9(1) and 17 C.F.R. § 1801.1(a)(1)-(3).

19. Defendants Asher and Batashvili and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successors thereof, who receive actual notice of this Order by personal service or otherwise, are preliminarily restrained and enjoined from directly or indirectly violating:

- a. § 8-6-3(b) and (c), Code of Alabama (1975)

- b. § 8-6-17(b)(2), Code of Alabama (1975)
- c. § 8-6-17(a)(2), Code of Alabama (1975)
- d. § 13A-6-195, Code of Alabama (1975)
- e. Alaska Stat. § 45.50.471
- f. Cal. Corp. Code, § 25230
- g. Cal. Corp. Code § 25235
- h. Cal. Corp. Code, § 29536
- i. §§ 11-53-107(1)(a)-(c), C.R.S.
- j. §§ 11-51-501(1)(a), (b) and (c), C.R.S.
- k. Fla. Stat. § 501.204
- l. Fla. Stat. § 517.275
- m. Ga. Code Ann. § 10-5-32
- n. Ga. Code Ann § 10-5-33
- o. Ga. Code Ann. § 10-5-51
- p. Ga. Code Ann. § 10-5A-2
- q. Ga. Code Ann. § 10-5A-6
- r. KRS 292.330(8)
- s. KRS 292.320(1)
- t. Md. Code, Corps. & Assn's § 11-401(b)(1)
- u. Md. Corps. & Assn's § 11-402(b)(1)
- v. Md. Code, Corps. & Assn's § 11-301(2)-(3);
- w. Md. Code, Corps. & Assn's § 11-302(a)(2)-(3), (c), and COMAR 02.02.05.03;
- x. S.C. Code Ann. § 35-1-403 to 35-1-404
- y. S.C. Code Ann. § 35-1-501(1)-(3) and § 35-1-502(a)
- z. S.C. Code Ann. § 39-73-20

- aa. S.C. Code Ann. § 39-73-60 (1)-(4)
- bb. Tex. Rev. Civ. Stat. Ann. art. 581-12
- cc. Tex. Rev. Civ. Stat. Ann. art. 581-32

20. Pending further order of the Court, Defendants Asher and Batashvili and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, directly or indirectly, are restrained and enjoined from:

- a. Trading on or subject to the rules of any registered entity (as that term is defined by 7 U.S.C. § 1a(40) (2018));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3), for accounts held in the name of any Defendant or Relief Defendant or for accounts in which any Defendant or Relief Defendant has a direct or indirect interest;
- c. Having any commodity interests traded on any Defendants’ or Relief Defendant’s behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
- f. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in CFTC Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);
- g. Acting as a principal (as that term is defined in CFTC Regulation 3.1(a), 17 C.F.R. § 3.1(a)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with



the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9); and

- h. Acting as a broker-dealer or investment adviser or associating with a licensed broker-dealer or investment adviser, in violation of the laws of the States.
- i. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling securities or equities.

**III. Asset Freeze Order Prohibiting the Withdrawal, Transfer, Removal, Dissipation, and Disposal of Assets**

21. The SRO (D.E. #16) shall remain in full force and effect.

22. The injunctive provisions of this Order shall be binding upon Defendants Asher and Batashvili, and upon any person acting in the capacity of agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successors thereof, of Defendants Asher and Batashvili, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with Defendants Asher and Batashvili.

23. Defendants Asher and Batashvili and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, are immediately restrained and enjoined, except as otherwise ordered by this Court, from directly or indirectly withdrawing, transferring, removing, dissipating, or otherwise disposing of any of their funds, assets, or other property, wherever located, including the Defendants Asher and Batashvili's funds, assets, or other property held outside the United States, in accordance with the Court's SRO and this Order.

24. At the request of the Receiver, Defendants Asher and Batashvili and any other person who has possession, custody, or control of any of Defendants Asher's and Batashvili's assets shall transfer possession of all funds, assets or other property subject to this Order to the Receiver in accordance with SRO and this Order.

25. The funds, assets, or other property affected by this Order shall include both existing funds, assets, or other property, and funds, assets, or other property acquired after the effective date of this Order, except as described in Sections VIII and IX of this Order.

**IV. Maintenance of and Access to All Records That Relate to the Business Activities and Business and Personal Finances**

26. Defendants Asher and Batashvili are restrained from directly or indirectly destroying, altering, or disposing of, in any manner, any records that relate or refer to the business activities or business or personal finances of any Defendant or Relief Defendant in accordance with the Court's SRO and this Order.

27. Representatives of the Plaintiffs shall, with 24 hours' notice, be allowed access to inspect the records that relate or refer to business activities and business and personal finances of Defendants Asher and Batashvili, including, but not limited to, both hard-copy documents and electronically stored information, wherever they may be situated and whether they are in the possession of the Defendants Asher and Batashvili or others. To ensure preservation and facilitate meaningful inspection and review of records, the Defendants Asher and Batashvili shall allow representatives of the Plaintiffs to make copies of said documents and electronically stored information, and if on-site copying of documents and electronically stored information is not practicable, representatives may make such copies off-site. After any such off-site copying, Plaintiffs shall promptly return the original documents and devices upon which electronic information is stored.



21. To further facilitate meaningful inspection and review, Defendants Asher and Batashvili shall promptly provide Plaintiffs with:

- a. the location of all records relating or referring to the business activities and business and personal finances of the Defendants Asher and Batashvili;
- b. all identification numbers and other identifying information for websites, cloud storage services, email and smartphone accounts, and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or futures commission merchant) owned, controlled or operated by the Defendants Asher and Batashvili, or to which the Defendants Asher and Batashvili have access; and
- c. all passwords to, and the location, make and model of, all computers and/or mobile electronic devices owned and/or used by the Defendants Asher and Batashvili in connection with their business activities and business and personal finances,

22. When inspecting records that are subject to this Order, including those contained on computer(s) and/or other electronic device(s), Plaintiffs should undertake reasonable measures to prevent review of Defendants Asher and Batashvili privileged communications by Plaintiffs' attorneys and other staff who are part of the litigation team in this matter. Moreover, the Defendants Asher and Batashvili (or their counsel) shall promptly contact Plaintiffs' counsel to assert any claims of privilege or other legal objection relating to the contents of any records that are subject to this Order and promptly cooperate with Plaintiffs' counsel to develop reasonable protocols to isolate and prevent disclosure of claimed privileged materials to Plaintiffs' attorneys and other staff who are part of the litigation team in this matter. However, nothing herein shall excuse Defendants Asher and Batashvili from full and immediate



compliance with this Court's Order permitting Plaintiffs to inspect the books and records which relate to the Defendants Asher's and Batashvili's business activities and their business and personal finances.

23. Nothing herein shall preclude Plaintiffs from providing materials obtained from Defendants Asher and Batashvili to any other government agency pursuant to a lawful access request by such agency.

**V. Appointment of Receiver**

28. Kelly Crawford, previously appointed by the Court as Temporary Receiver pursuant to the SRO, is appointed Receiver with the full powers of an equity receiver for Defendants and Relief Defendant and their affiliates or subsidiaries owned or controlled by Defendants or Relief Defendant (hereinafter referred to as the "Receivership Defendants"), and of all records, and all funds, properties, premises, accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants.

29. The Receiver shall be the agent of this Court in acting as Receiver under this Order.

30. The directions, authorizations, duties, and powers of the Temporary Receiver under the SRO are granted in full to the Receiver, Kelly Crawford, and incorporated in full herein as part of the Order.

**VI. Cooperation with the Receiver**

31. Defendants Asher and Batashvili and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the

Receiver deems necessary to exercising the authority as provided in this Order; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order, and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver.

## **VII. Turning Over Property to the Receiver**

32. Upon service of this Order, and to the extent the Defendants Asher and Batashvili have not done so pursuant to the SRO, Defendants Asher and Batashvili, and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver, including but not limited to:

- a. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated, of the Receivership Defendants;
- b. Possession and custody of records of the Receivership Defendants in connection with their business activities and business and personal finances, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other records of the Receivership Defendants;
- c. Possession and custody of all funds and other assets belonging to members of the public now held by the Receivership Defendants;
- d. All keys, computer or cloud computing passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or records of the Receivership Defendants, including but not limited to, access to the Receivership Defendants' business premises, means of communication, accounts, computer systems, mobile electronic devices or

other property; and

- e. Information identifying the accounts, employees, properties or other assets or obligations of the Receivership Defendants.

#### **VIII. Reasonable and Necessary Living Expenses**

33. In accordance with Paragraph 44 of the SRO, Plaintiffs are authorized to take an asset deposition of Asher and Batashvili to determine the status of Defendants Asher's and Batashvili's financial condition, including but not limited to their funds, assets, and other tangible or real property, their compliance with the SRO to date, and their reasonable and necessary living expenses. The Receiver is authorized to attend and participate in these asset depositions in accordance with Paragraph 31(j) of the SRO.

34. Within five business days of the conclusion of the asset depositions, the parties will negotiate in good faith for a carve-out for reasonable and necessary living expenses—on a monthly basis—to be generated solely from any prospective earnings, bonuses, and/or other after-acquired income from newfound employment as described in Section IX, *infra*.

35. The Court will entertain an application for reasonable and necessary living expenses upon proper written submission by Defendants Asher and Batashvili. A proper submission requires that Defendants Asher and Batashvili file such application under oath with the Court and set forth in detail, fully substantiated by all relevant financial documentation, the amount of funds necessary to pay reasonable and necessary living expenses, a description of the expenses for which those funds are to be applied, a description of the assets sought to be used to pay such expenses, and a description of the derivation of such assets. Plaintiffs and/or the Receiver may object or otherwise respond to such application.



**IX. Restricted Business Activities and Employment**

36. Defendants Asher and Batashvili wish to seek gainful employment to cover their reasonable and necessary living expenses.

37. Only specific prospective earnings, bonuses, and/or other after-acquired income, salary, wages, commissions, dividends, draws, or other forms of compensation or passive income from any newfound employment or activity (“New Income”) will be excluded from the restraints imposed by the Order for the limited purpose of covering Defendants Asher’s and Batashvili’s agreed-to reasonable living expenses pursuant to the process described in Section VIII, *supra*, and subject to the restrictions in this Section.

38. Defendants Asher and Batashvili agree that they will not engage in any activity related to securities, commodities, or derivatives, including but not limited to soliciting, receiving, or accepting any funds from any person or entity for the purpose of purchasing, selling, or otherwise investing in precious metals, securities, commodities, derivatives, virtual currency, binary options, or foreign currency or receive any income, salary, wages, commissions, dividends, draws, or other forms of compensation or passive income from any person or entity engaged in said activities.

39. Within two days of securing any New Income, Defendants Asher and Batashvili shall provide the name and address of the employer, person, or entity, as well the name of a contact person and telephone number from its personnel office to Plaintiffs and the Receiver.

40. Within ten days of this Order, Defendants Asher and Batashvili shall each open a single new bank account in his name to deposit any New Income, and to withdraw such funds for reasonable and necessary living expenses as ordered by the Court. The Receiver shall be a co-owner and have unfettered access to these new accounts. Within twenty-four (24) hours of

opening such a new bank account, Defendants Asher and Batashvili shall provide complete information to the Receiver about the account, including the name of the bank, address, telephone number, and account number.

41. Any and all other bank accounts in the name of any Defendant or Relief Defendant shall remain subject to terms of the Order that prohibit Defendants or Relief Defendant from transferring, removing, dissipating, or otherwise disposing of any asset.

42. All dispositions of funds from the new bank account authorized by this Order, until further order of the Court, shall also be subject to monitoring by the Receiver. The Receiver is authorized to obtain copies of any and all bank statements.

**X. Persons Bound by This Order**

43. This Order is binding on any person who receives actual notice of this Order by personal service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of Defendants or Relief Defendant, or is in active concert or participation with the Defendants or Relief Defendant.

**XI. Stay on Actions Against the Receivership Defendants**

44. Except by leave of the Court, during the pendency of the receivership ordered herein, Defendants Asher and Batashvili, and all other persons and entities are stayed from taking any action (other than the present action by Plaintiffs) to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- a. Petitioning, or assisting in the filing of a petition that would cause the Receivership Defendants to be placed in bankruptcy;
- b. Commencing, prosecuting, litigating or enforcing any suit or proceeding



- against any of the Receivership Defendants, or any of their subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;
- c. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of any of the Receivership Defendants, or any of their subsidiaries or affiliates;
  - d. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Receivership Defendants, or any of their subsidiaries or affiliates, or any property claimed by any of them, or attempting to foreclose, forfeit, alter or terminate any of the Receivership Defendants' interests in property, including without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;
  - e. Using self-help or executing or issuing, or causing the execution or issuance of, any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Receivership Defendants, or any of their subsidiaries or affiliates, or the Receiver, or any agent of the Receiver; and
  - f. Doing any act or thing whatsoever to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or to harass or interfere with the duties of the Receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the Receivership Defendants, or their subsidiaries or affiliates.



45. Provided, however, that nothing in this section shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

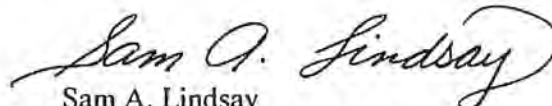
**XII. Bond Not Required of Plaintiffs or the Receiver**

46. As Plaintiffs CFTC and the States have made a proper showing under 7 U.S.C. §13a-1(b) and they are not required to post any bond in connection with this Order. The Receiver similarly is not required to post bond.


**XIII. Force and Effect**

47. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

**IT SO ORDERED**, at Dallas, Texas, on this 14th day of October, 2020, at 4:00 p.m.

  
Sam A. Lindsay  
United States District Judge

CONSENTED TO AND APPROVED BY DEFENDANTS:

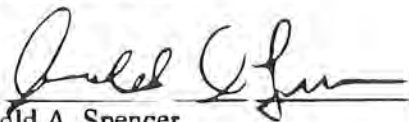
  
\_\_\_\_\_  
Lucas Asher

Dated: 10/12/20

\_\_\_\_\_  
Simon Batashvili

Dated: \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Arnold A. Spencer  
Counsel to Defendants Asher and Batashvili

Dated: 10/12/2020

45. Provided, however, that nothing in this section shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

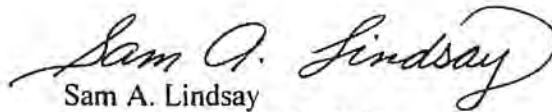
**XII. Bond Not Required of Plaintiffs or the Receiver**

46. As Plaintiffs CFTC and the States have made a proper showing under 7 U.S.C. §13a-1(b) and they are not required to post any bond in connection with this Order. The Receiver similarly is not required to post bond.

**XIII. Force and Effect**

47. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

**IT SO ORDERED**, at Dallas, Texas, on this 14th day of October, 2020, at 4:00 p.m.

  
Sam A. Lindsay  
United States District Judge

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Lucas Thomas Asher




\_\_\_\_\_  
Simon Batashvili

Dated: \_\_\_\_\_

Dated: 10.10.20

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Dated: October 8, 2020

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