

STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF: )  
TMTE, INC. D/B/A METALS.COM, )  
CHASE METALS, INC., )  
MICHAEL KENDALL, ) ADMINISTRATIVE ORDER NO.  
TIMOTHY PORRITT, ) CD-2019-0025  
RANDALL KOHL, and )  
ALEXANDER GIAIME, )  
Respondents. )  
)

**CEASE AND DESIST ORDER**

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, *Code of Alabama* (1975), the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the state of Alabama, has determined as follows:

**RESPONDENTS**

1. **TMTE, INC.** ("TMTE"), is a Wyoming corporation originally formed under the name Access Unlimited on April 30, 2008 with a principal address of 433 N. Camden Drive, Suite 970, Beverly Hills, California, 90210. **TMTE** has transacted business in the state of Alabama as **CHASE METALS, INC.**, and **METALS.COM**. Hereinafter, **TMTE, CHASE METALS, INC.**, and **METALS.COM** will be collectively referred to as **METALS.COM**. **METALS.COM** can be served with process through its registered agent, Corporate Agents, LLC, at 1712 Pioneer Avenue, Suite 100, Cheyenne, Wyoming, 82001.

2. **MICHAEL KENDALL (“KENDALL”)**, at all times relevant, has identified himself as an agent of **METALS.COM** with a business address of 433 N. Camden Drive, Suite 970, Beverly Hills, California, 90210.

3. **TIMOTHY PORRITT (“PORRITT”)**, at all times relevant, has identified himself as an agent of **METALS.COM** with a business address of 433 N. Camden Drive, Suite 970, Beverly Hills, California, 90210.

4. **RANDALL KOHL (“KOHL”)**, at all times relevant, has identified himself as an agent of **METALS.COM** with a business address of 433 N. Camden Drive, Suite 970, Beverly Hills, California, 90210.

5. **ALEXANDER GIAIME (“GIAIME”)**, at all times relevant, has identified himself as an agent of **METALS.COM** with a business address of 433 N. Camden Drive, Suite 970, Beverly Hills, California, 90210.

#### **OTHER RELATED PARTIES**

6. **SIMON BATASHVILI (“BATASHVILI”)**, at all times relevant, has identified himself as the Chief Executive Officer of **METALS.COM** with a business address of 433 N. Camden Drive, Suite 970, Beverly Hills, California, 90210.

#### **STATEMENT OF FACTS**

7. **METALS.COM** raised capital from investors nationally, including Alabama residents, by offering and selling Precious Metals IRAs.

8. On June 11, 2019, the Commission received information that agents of **METALS.COM** solicited at least twelve Alabama investors through unsolicited telephone calls. This tactic is referred to as “cold-calling.”

9. **METALS.COM** also solicited potential investors through Facebook, accessible

to Alabama investors at <https://www.facebook.com/metalscom/>.

10. **METALS.COM** solicited potential investors and through an internet website, accessible to Alabama investors at <https://www.metals.com>.

11. An Alabama investor initially learned about metals.com through a Facebook fan page for conservative media personality, Sean Hannity (“Hannity”). The investor stated that articles were posted that gave the impression Hannity believed that the stock market would decline and that conservatives should move their money to an investment in precious metals. Opening the article led the Alabama investor to **METALS.COM**.

12. The Alabama investor was then contacted via telephone by **KOHL** who identified himself as an agent of **METALS.COM**. **KOHL** advised the Alabama investor that he knew Sean Hannity personally. **KOHL** advised the Alabama investor that his securities holdings through his traditional individual retirement account (“IRA”) were not safe, and his money would be lost. **KOHL** stated that there was no risk in an investment in precious metals, and his money would be safe.

13. **METALS.COM**, through **KOHL**, advised the Alabama investor to sell his securities holdings and invest in precious metals through a self-directed IRA because an investment in precious metals, unlike securities, will not lose value based on stock market fluctuations.

14. A second Alabama investor received a cold-call from **PORRITT**, who identified himself as an agent of **METALS.COM**. **PORRITT** advised that the stock market was in decline and investments in precious metals were more secure.

15. The second Alabama investor was also contacted by **KENDALL**, who was described as an account specialist for **METALS.COM**. **KENDALL** also advised the Alabama

investor to sell his traditional securities holdings and invest in precious metals through a self-directed IRA.

16. **PORRITT** assisted the Alabama investor in his transfer of his securities holdings by participating on a phone call to the investor's traditional IRA firm. During the phone call **PORRITT** referred to himself as the investor's advisor and account representative.

17. A third Alabama investor was cold-called by **GIAIME**, who identified himself as a junior account executive of **METALS.COM**. **GIAIME** advised the Alabama investor that an investment in precious metals is an important investment alternative to a traditional IRA. **GIAIME** assisted the Alabama investor in transitioning funds from his traditional IRA to a self-directed IRA.

18. The dates of the investments of precious metals sold to Alabama investors through self-directed IRAs ranged from May 4, 2018 through March 27, 2019.

19. All the Alabama investors who invested in **METALS.COM** were between the ages of sixty and eighty-two (60-82).

20. Agents of **METALS.COM**, including **KENDALL**, **PORRITT**, **KOHL**, and **GIAIME**, provided the legal documents Alabama residents must use to sell securities and/or invest in precious metals through a self-directed IRA already completed. All the Alabama investors need to do is sign the legal documents and return them to **METALS.COM**.

21. The legal documents require each investor to declare under penalty of perjury, that the potential investor either deals in precious metals due to the investor's "occupation, or as a result of Customer's avocations as a collector, speculator, or investor holds him or herself out as having knowledge or skill peculiar to such articles or the practices involved in the sale of such articles."

22. None of the Alabama investors are dealers in precious metals in any aforementioned capacity nor are they knowledgeable in the practices involved in the purchase or sale of precious metals.

23. The legal documents require that the potential investor “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)... Any purchases from metals are made subject to Customer’s own prudence, judgement, and ultimate decision.”

24. The legal documents require potential investors to waive express and implied warranties, waive consequential damages, and limit the liability of **METALS.COM**, and potential investors waive the right to a jury trial to settle any disputes, and must instead rely upon arbitration.

25. The legal documents require potential investors to agree to hold **METALS.COM** harmless for any damages arising out of its performance under the contracts.

26. The legal documents represent that “Precious Metals should be considered a long-term investment” of “at least three to five years... Customer should not invest more than twenty percent (20%) of Customer’s available investment funds in Precious Metals.”

27. Alabama investors were told there were no fees associated with the purchase of precious metals and that investors need only pay the retail price of precious metals.

28. Potential investors are paying compensation to **METALS.COM** when they accept its advice, transfer their funds from a dealer or investment advisor, and use the money to invest in precious metals.

29. Agents of **METALS.COM**, including **KENDALL, PORRITT, KOHL**, and

**GIAIME**, failed to disclose to Alabama investors that they received commission, and, according to the legal documents, the commission is “based, at least in part, on the amount and profit margin of the Precious Metals they sell.”

30. The compensation is purportedly equal to the difference between the price paid by potential investors and the wholesale price of precious metals. This monetary difference is referred to as a “spread.”

31. The spread varies from potential investor to potential investor. The “metals Spread on IRA Precious Metals transactions varies between two percent and thirty-three percent (2% - 33%).” This range is subject to change and potential investors may be responsible for more than the general rate.

32. Alabama investors were not informed of a spread, believing that they were paying the retail value for the precious metals they purchased.

33. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on June 21, 2019, disclosing no record of registration for **METALS.COM** as a broker dealer agent, investment advisor, or investment advisor representative in the State of Alabama.

34. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on June 21, 2019, disclosing no record of registration for **BATASHVILI** as a broker dealer agent, investment advisor, or investment advisor representative in the State of Alabama.

35. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on June 21, 2019, disclosing no record of registration for **KENDALL** as a broker dealer agent, investment advisor, or investment advisor representative in

the State of Alabama.

36. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on June 21, 2019, disclosing no record of registration for **PORRITT** as a broker dealer agent, investment advisor, or investment advisor representative in the State of Alabama.

37. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on June 21, 2019, disclosing no record of registration for **KOHL** as a broker dealer agent, investment advisor, or investment advisor representative in the State of Alabama.

38. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on July 3, 2019, disclosing no record of registration for **GIAIME** as a broker dealer agent, investment advisor, or investment advisor representative in the State of Alabama.

39. Agents of **METALS.COM**, including **KENDALL**, **PORRITT**, **KOHL**, and **GIAIME**, failed to disclose to Alabama investors that they are not licensed brokers of precious metals.

40. Agents of **METALS.COM**, including **KENDALL**, **PORRITT**, **KOHL**, and **GIAIME**, failed to disclose to Alabama investors that they are not registered investment advisors.

41. Agents of **METALS.COM**, including **KENDALL**, **PORRITT**, **KOHL**, and **GIAIME**, failed to disclose to Alabama investors their experience in valuing securities, forecasting economic conditions, calculating market volatility, or determining the suitability of securities and other investments.

42. Agents of **METALS.COM**, including **KENDALL, PORRITT, KOHL, and GIAIME**, failed to disclose to Alabama investors any information regarding complaints, including complaints related to fraudulent, deceptive, or illegal practices sent, submitted, or otherwise levied by prior investors.

43. **KENDALL, PORRITT, KOHL, and GIAIME**, failed to disclose to Alabama investors the identity of BATASHVILI as the owner, principal or manager of **METALS.COM**, and as a result his business reput.

44. BATASHVILI and/or **CHASE METALS, INC** have been named as a defendant in at least three lawsuits: Daniel Always vs Chase Metals LLC et al, filed on August 31, 2018, in the jurisdiction of Los Angeles County District Courts, International Bullion Exchange LLC vs Lucas Erb et al, filed on March 13, 2014, in the jurisdiction of Los Angeles County District Courts, and Stephen Matteo v. Chase Metals Service Corporation et al, filed on 2/19/2019 in the United Stated District Court Central District of California.

45. On May 1, 2019, the Texas Securities Board issued an Emergency Cease and Desist Order against **METALS.COM**.

46. On July 1, 2019, **METALS.COM** entered into an Order with the Texas Securities Board in which they acknowledge that at least one agent of **METALS.COM** acted as an investment advisor without the benefit of registration. **METALS.COM** also agreed to offer rescission to the Texas investors.

47. On July 12, 2019, **METALS.COM** entered into an Order with the Colorado Securities Board in which they acknowledge that respondent, "Metals" acted as an investment advisor to Colorado investors without the benefit of registration. **METALS.COM** has agreed to offer rescission to the Colorado investors.

## CONCLUSIONS OF LAW

49. Pursuant to Section 8-6-2(18), *Code of Alabama* (1975), the definition of "investment advisor" includes any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment advisor" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation.

50. Pursuant to Section 8-6-3(b), *Code of Alabama* (1975), it is unlawful for a person to transact business in this state as an investment advisor unless such person is registered under the Act. Respondent **METALS.COM** is acting as an investment advisor while not registered under the Act in violation of Section 8-6-3(b).

51. Pursuant to Section 8-6-2(19), *Code of Alabama* (1975), the definition of an investment advisor representative is

(19) Any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment advisor, except clerical or ministerial personnel, who:

- a. Makes any recommendation or otherwise renders advice regarding securities,
- b. Manages accounts or portfolios of clients,
- c. Determines which recommendation or advice regarding securities should be given,
- d. Solicits, offers, or negotiates for the sale of or sells investment advisory services, unless the solicitation, offering, or selling activities are solely incidental to his or her profession and such person is a dealer or salesman

registered under Section 8-6-3 and the person would not be an investment advisor representative except for the performance of activities described in subdivision (18)d. of this section, or  
e. Supervises employees who perform any of the foregoing.

52. Pursuant to Section 8-6-3(b), *Code of Alabama* (1975), it is unlawful for any person to transact business in the State of Alabama as an investment advisor representative unless such person is registered under the Act. Respondent **KENDALL** is acting as an investment advisor representative while not registered under the Act in violation of Section 8-6-3(b).

53. Pursuant to Section 8-6-3, *Code of Alabama* (1975), it is unlawful for any person to transact business in the State of Alabama as an investment advisor representative unless such person is registered under the Act. Respondent **PORRITT** is acting as an investment advisor representative while not registered under the Act in violation of Section 8-6-3(b).

54. Pursuant to Section 8-6-3, *Code of Alabama* (1975), it is unlawful for any person to transact business in the State of Alabama as an investment advisor representative unless such person is registered under the Act. Respondent **KOHL** is acting as an investment advisor representative while not registered under the Act in violation of Section 8-6-3(b).

55. Pursuant to Section 8-6-3, *Code of Alabama* (1975), it is unlawful for any person to transact business in the State of Alabama as an investment advisor representative unless such person is registered under the Act. Respondent **GIAIME** is acting as an investment advisor representative while not registered under the Act in violation of Section 8-6-3(b).

56. Pursuant to Section 8-6-3(j)(7), *Code of Alabama* (1975), the Commission may suspend, revoke, censor, or bar any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment

with a dealer or investment advisor, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Commission finds that the order is in the public interest and that the registrant or, in the case of a dealer or investment advisor, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment advisor, has engaged in dishonest or unethical business practices. Respondent **METALS.COM** and its investment advisor representatives **KENDALL, PORRITT, KOHL**, and **GIAIME** failed to inform their investment advisory clients of the fees they were to receive and did receive for advising their clients to sell their securities and invest in precious metals in violation of the Act.

57. Pursuant to Section 8-6-17(b), *Code of Alabama* (1975), it is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise, to engage in dishonesty or unethical practices as the Commission may define by rule. **METALS.COM** acted as an investment advisor, and its investment advisor representatives **KENDALL, PORRITT, KOHL**, and **GIAIME** engaged in dishonest and unethical behavior by failing to disclose to their investment advisory clients in writing they were receiving compensation while advising their clients to sell securities and purchase precious metals.

58. This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

59. This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act.

60. Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the **RESPONDENTS** to make a timely request for hearing, or default of the **RESPONDENTS**, it is the intention of the Commission to impose sanctions upon the **RESPONDENTS**. Such sanctions may include, *inter alia*, an administrative assessment imposed on **RESPONDENTS**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENTS**, and a permanent order to bar **RESPONDENTS** from participation in any securities related industry in the state of Alabama.

**ACCORDINGLY, IT IS HEREBY ORDERED** that **RESPONDENTS, METALS.COM, KENDALL, PORRITT, KOHL, and GIAIME**, immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the state of Alabama.

Entered at Montgomery, Alabama, this 8th day of August, 2019.

ALABAMA SECURITIES COMMISSION  
445 Dexter Avenue, Suite 12000  
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(334) 242-2984

BY:

JOSEPH P. BORG  
Director

