STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE,	)	
	)	
Petitioner,	)	**OI: 2023-0044**
	)	
vs.	)	
	)	
RED ROCK SECURED LLC, SEAN KELLY, AND ANTHONY SPENCER,	)	
	)	
Respondents.	)	

PETITION FOR AN EX PARTE ORDER TO CEASE AND DESIST

The Securities Division of the Tennessee Department of Commerce and Insurance ("Division"), by and through undersigned counsel, pursuant to the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-1-101 through 48-1-201 *et seq.* ("Act") petitions the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") to issue an Order to Cease and Desist all unregistered securities activity to Red Rock Secured LLC ("Red Rock"), Sean L. Kelly f/k/a Shade L. Kelly-Johnson ("Kelly"), and Anthony "Tony" Spencer ("Spencer") (collectively "Respondents").

I. JURISDICTION

1. Tenn. Code Ann. § 48-1-116 establishes that the Commissioner may execute Orders as are necessary to carry out the Act when the Commissioner finds that the action is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

II. PARTIES

2. The Commissioner is responsible for the administration of the Act. The Division, pursuant to Tenn. Code Ann. § 48-1-115, is the lawful agent through which the Commissioner discharges this responsibility.

3. Red Rock is a Nevada limited liability company formed on January 12, 2010. On November 4, 2016, Red Rock registered with the California Secretary of State as a foreign limited liability company, with its principal office located at 898 N. Pacific Coast Highway, Suite 440, El Segundo, California.

4. Kelly resides in the Los Angeles, California area, is Red Rock's President and CEO, and is a signatory on Red Rock's bank accounts. Kelly held an 80% ownership share in Red Rock, oversaw day-to-day operations, supervised employees, and participated in hiring and firing decisions.

5. Spencer resides in the Los Angeles, California area, and, at points in time while employed by Red Rock, held the titles of Senior Account Executive and Director of Account Services.

III. FACTUAL ALLEGATIONS

6. On or about May 17, 2023, the Division received information concerning Red Rock. The information provided was an article concerning the activities of Red Rock in connection with a $62 million fraud scheme, as alleged in lawsuits filed in federal and state courts in California. Additionally, the Division discovered that there was at least one Tennessee resident who complained on an online website, Consumer Affairs, found at www.consumeraffairs.com. The Tennessee consumer complaint was found at https://www.consumeraffairs.com/finance/red-rock-secured.html#scroll_to_reviews=true, wherein the Tennessee resident left a review stating

that a significant portion of their 401k was lost due to exorbitant fees charged for the sale of the precious metals. Amber Patterson Aff ¶ 4.

7. On or about July 3, 2023, the Commissioner issued Order of Investigation 2023-0020, which was later amended to Order of Investigation 2023-0044 on February 21, 2024, regarding Red Rock. Amber Patterson Aff ¶ 5.

8. Red Rock is a precious metals retailer, meaning it sells various types of precious metals products (e.g., bars, rounds, and coins) directly to members of the public. Amber Patterson Aff ¶ 11.

9. According to the CFTC Consent Order the following facts were agreed to:

a. From at least November 2019 through at least June 2022, Red Rock purchased all of its precious metals products from a single wholesaler, Bayside Metal Exchange ("BME"). Amber Patterson Aff ¶ 12a.

b. For their customers using tax-deferred or other retirement funds to purchase precious metals, Red Rock followed a three-step process:

i. First, Red Rock representatives assisted their customers in establishing a self-directed investment retirement account ("SDIRA") and transferring existing retirement funds into the newly established SDIRA.

ii. Second, Red Rock purchased precious metals for its customers using those SDIRA funds.

iii. Third, Red Rock facilitated the transfer of the newly purchased metals to a depository or, in some cases, directly to the customer. Amber Patterson Aff ¶ 12b.

c. Red Rock told prospective customers numerous misrepresentations about the metals they were purchasing that included monetary value and how the assets appreciate in the long term. Amber Patterson Aff ¶ 12c.

d. Furthermore, the prices Red Rock paid BME to acquire coins that were not on the "CUSIP list" (Committee on Uniform Security Procedures) and therefore "not trackable" by the government, referred to as "non-CUSIP" products, including the Canadian Red-Tailed Hawk ("RTH") coin. The RTH coins were "private and non-trackable." RTH coins were directly tied to the spot prices of gold and silver. Internally, Red Rock referred to the prices it paid to BME as its "cost of goods sold." Red Rock based the prices it charged customers on Red Rock's "cost of goods sold." Amber Patterson Aff ¶ 12d.

e. Red Rock's markup on metals sold to customers was the difference between "its cost of goods sold" and the price Red Rock charged its customers for those same metals, which was 3%-5%. For "premium" products, including the RTH coins, Red Rock charged its customers markups of up to approximately 130% above its cost of goods sold. Red Rock did not inform its customers about the actual markups it charged. Amber Patterson Aff ¶ 12e.

f. Red Rock agreed via the consent order to pay restitution ($38,984,313.90) and disgorgement ("R&D"). The court appointed the National Futures Association as the monitor to receive payments on the R&D Obligations from the Respondents and make distributions. Lastly, the order bars Red Rock, Kelly, and Spencer from the securities industry. Amber Patterson Aff ¶ 12 f.

10. On or about April 25, 2024, the California Department of Financial Protection and Innovation ("DFPI") finalized a Consent Order entered by Kelly and Red Rock on April 7, 2024. Specifically, Kelly and Red Rock consented to a Permanent Injunction and other statutory and equitable relief against the Respondents to settle the matters alleged in the complaint. Furthermore, Kelly and Red Rock consented to the entry of this order barring Kelly from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser. Amber Patterson Aff ¶ 13.

11. On March 24, 2024, the CFTC sent the Division a complete client list of Red Rock. From that list, the Division identified fourteen (14) Tennessee clients of Red Rock. Patterson Amber Aff ¶ 14.

a. Margaret Wade, Knoxville, TN

b. Kenneth Taromino, Lyles, TN

c. Christine Jessey, Spring Hill, TN

d. Elizabeth Reel, TN

e. John Munro, Clarksville, TN

f. Jeanie Shufelt, Franklin, TN

g. Jacob Trujillo, Hixson, TN

h. Eli Miller, Crossville, TN

i. John Armitage, Gallatin, TN

j. Ardis Ferguson, Mt Juliet, TN

k. Kevin Hensley, Athens, TN

l. Grace Benz, Memphis, TN

m. Tonya Deynzer, TN

n. David Johnson, Livingston, TN

12. Five investors returned the questionnaire concerning their investments. One investor is deceased, and the questionnaire was completed by their widow. Two of the investors provided statements regarding their investments in lieu of the questionnaire. The questionnaires or statements show the following:

a. On July 17, 2024, Ardis Ferguson ("Ferguson") returned a completed questionnaire and documentation, which indicated that he received an advertisement for the investment in his email. After inquiring, Ferguson was offered silver in the form of RTH 0.5oz. silver coins. Ferguson provided Red Rock with his annual income, risk tolerance, and investment experience. Ferguson rolled approximately $23,000 from his IRA with STRATA to invest based on Red Rock's advice. On the front end, the mark-ups were explained; however, they turned out not to be so clear. Ferguson indicated he spoke with Spencer, who tried to explain it away by saying the actual value was different from what was on the statements he received. Ferguson believes he has lost roughly $12,500 due to actual values and mark-ups. Amber Patterson Aff ¶ 15a.

b. On July 11, 2024, David Johnson (”Johnson") stated that he received an advertisement for the investment in his email. Johnson purchased $30,000 in Gold and $80,000 in Silver with Red Rock. He held an IRA account with STRATA that he used to invest. Johnson believed he had lost upwards of $80,000 due to actual values and mark-ups. Amber Patterson Aff ¶ 15b.

c. Betty Jean Shufelt ("Ms. Shufelt") completed the questionnaire for her deceased husband, George Shufelt II ("Shufelts") Ms. Shufelt stated that she believed they learned about Red Rock on social media. After a call with Kelly and Spencer, the Shufelts were advised to purchase $725,000 worth of RTH 0.5oz. silver coins. The Shufelts rolled money from their Roth and Traditional IRAs. Ms. Shufelt is anticipating a loss of $375,000 due to actual values and mark-ups. Amber Patterson Aff ¶ 15c.

d. Grace Benz ("Benz") stated that she received information in the mail and was contacted by phone as well. Benz provided Red Rock with her annual income, risk tolerance, and investment experience. Benz was told by Spencer and another Red Rock representative, Barry Leyla Valenzuela, that she didn't have to worry about losing money in her retirement account, that they would convert her money into physical gold & silver for a worry-free retirement. Benz indicated that $50,000 was rolled from her late husband's 401K. Benz's purchases were Silver RTH ½ oz box of 240; Silver RTH ½ oz tube of 20; Silver RTH ½ oz tube of 5; Silver RTH ½ oz tube of 5; and Silver RTH ½ oz tube of 10. Amber Patterson Aff ¶ 15d.

e. John Munro ("Munro") sent an email in lieu of the questionnaire. This email stated that he had lost big in the stock market, so he wanted to try silver. Munro sent Red Rock over $100,000 for silver coins. Red Rock sent him 0.5-ounce silver coins. Munro further stated that a man from Texas sent him a document folder for tax purposes. If this document is correct, he only had $40,000 worth of coins. Munro kept calling Red Rock for a return, but they stalled. Munro went through the BBB and got a special lawyer. "I had to sign a document to tell no one, but the BBB only resolves issues with the person and the company gets a clean slate." Lastly, Munro stated, "Before you ask me more, I want proof. No legal action will come against me for telling you or giving evidence." Amber Patterson Aff ¶ 15e.

f. Margaret Wade ("Wade") stated that she received an advertisement in her email. Wade knows that she invested in silver coins, but is unsure of the amount she invested or lost as it was a long time ago, but she is sure that she lost a lot of money. Amber Patterson Aff ¶ 15f.

g. Eli and Diana Miller ("Millers") learned of Red Rock from a family member and a website. The Millers purchased $50,000 in silver under the advisement of Red Rock. At that time, they were told that silver was $22.40 per ounce. The Millers ended up with 1,342 Canadian Redtail Hawk 0.5oz. silver coins. The Millers learned that it was actually a little over $16.00 per ounce. After their mark-up price and fees, the Millers paid $37.17 per coin. The Millers contacted Red Rock and were told they were using the wrong formula to determine the value. The Millers purchased the coins outright and later had them shipped directly to their location. Amber Patterson Aff ¶ 15g.

h. Chris Jessey ("Jessey") learned of Red Rock from a friend. Jessey purchased $50,000 in silver. Jessey believed he would receive roughly the number of coins equal to that, minus small fees. He stated that he believes he only received $10,000 worth of coins, so he believes he has lost $40,000. When he called Red Rock to complain, he was told the value is in the possession of the coins. Jessey also stated that he was charged expensive fees to set up the IRA to hold the coins, which is billed every year to keep it from being taxable. Amber Patterson Aff ¶ 15h.

13. On or about April 23, 2024, the SEC's judgment became final. It was ordered that Red Rock, Sean Kelly, Anthony Spencer, and Jeffrey Ward were permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C.§ 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5]. They were also permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-6(1) and 80b-6(2)] by, while acting as an investment adviser and by the use of any means or instruments of interstate commerce, directly or indirectly: (a) employing any device, scheme, or artifices to defraud any client or prospective client; or (b) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Amber Patterson Aff ¶ 16.

IV. APPLICABLE LAW

14. Tenn. Code Ann. § 48-1-102 (3) states in pertinent part:

> (3) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in, or into this state. A partner, officer, director, or manager of a broker-dealer, or a person occupying similar status or performing similar functions, is an agent only if such person otherwise comes within this definition or receives compensation specifically related to purchases or sales of securities from, in, or into this state. "Agent" does not include such other persons not within the intent of this subdivision (3) as the commissioner may, by rule, exempt from this definition as not in the public interest and necessary for the protection of investors;

15. Tenn. Code Ann. § 48-1-102 (4) states in pertinent part:

> (4) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities. "Broker-dealer" does not include:
>
> (A) Issuers, except to the extent provided in § 48-1-110(f);

(B) An agent;
(C) An institutional investor;
(D) A person who has no place of business in this state and who is registered as a broker-dealer with the securities and exchange commission or the Financial Industry Regulatory Authority (FINRA) or any successor regulatory entity if:
(i) The person effects transactions in this state exclusively with or through:
(a) The issuers of the securities involved in the transactions;
(b) Other broker-dealers; or
(c) Institutional investors; or
(ii) During any period of twelve (12) consecutive months, the person does not effect more than fifteen (15) transactions in securities from, in, or into this state (other than to persons specified in subdivision (4)(D)(i)); or(E) Such other persons not within the intent of this subdivision (4) as the commissioner may by rule exempt from this definition as not in the public interest and necessary for the protection of investors.

16. Tenn. Code Ann. § 48-1-102 (13) states, in pertinent part:

(13) "Investment adviser" means 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, buying, or selling securities, or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or who holds oneself out as providing investment advice to others for compensation. "Investment adviser" does not include:
(A) A bank (unless it is acting as an investment adviser for a registered investment company), savings institution, or trust company;
(B) A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of such lawyer's, accountant's, engineer's, or teacher's profession;
(C) A broker-dealer whose performance of investment advisory services is solely incidental to the conduct of such person's business as a broker-dealer and who receives no special compensation for such services;
(D) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
(E) A person who has no place of business in this state if:
i. The person's only clients in this state are other investment advisers, broker-dealers, or institutional investors; or
ii. During any period of twelve (12) consecutive months, the person does not direct business communications into this state in any manner to more than five (5) clients (other than those specified in subdivision (13)(E)(i)), whether or not such person or any of the

persons to whom the communications are directed are then present in this state; or

(F) Such other persons not within the intent of this subdivision (13) as the commissioner may by rule exempt from this definition as not in the public interest and necessary for the protection of investors;

17. Tenn. Code Ann. § 48-1-102 (14) states, in pertinent part:

(A) "Investment adviser representative" means any partner, officer, or director of (or person occupying a similar status or performing similar functions) an investment adviser, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser and does any of the following:

i. Makes any recommendation or otherwise renders advice regarding securities;
ii. Manages accounts or portfolios of clients;
iii. Determines which recommendation or advice regarding securities should be given;
iv. Solicits, offers, or negotiates for sale of or sells investment advisory services;
v. Supervises employees who perform any such actions; or
vi. Provides investment advice or holds oneself out as providing investment advice;

18. Tenn. Code Ann. § 48-1-102 (20) (A) and (B) state in pertinent part:

(A) Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(B) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;

19. Tenn. Code Ann. § 48-1-102 (21) (A) states in pertinent part:

(21)(A) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement investment or any fractional or pooled interest in a life insurance policy or life settlement investment, 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, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; 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;

20. Tenn. Code Ann. § 48-1-104 states, in pertinent part:

(a) It is unlawful for any person to sell any security in this state unless:

(1) It is registered under this part;
(2) The security or transaction is exempted under § 48-1-103; or
(3) The security is a covered security.

(b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation, or in an amount not to exceed twenty thousand dollars ($20,000) per violation if an individual who is a designated adult is a victim.

…
(e)
(2)
(A) Notice to the affected parties (which shall be prior notice unless the commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors)

21. Tenn. Code Ann. § 48-1-109(a) provides that:

(a) It is unlawful for any person to transact business from, in, or into this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part, except that:
   (1) A bank shall be exempt from registration as a broker-dealer to the extent its activities are excepted under either the definition of "broker" in § 3(a)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(4)(B)), or the definition of "dealer" in § 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(5)(C));
   (2) A person who limits such person's activity as a broker-dealer to acting solely as a broker-dealer with regard to charitable gift annuities, as that term is defined by § 56-52-102, shall be exempt from registration as a broker-dealer;
   (3) A person who limits such person's activity as an agent to acting solely as an agent on behalf of a person who is eligible for the exemption from broker-dealer registration in subdivision (a)(2) shall be exempt from registration as an agent.

22. Tenn. Code Ann. § 48-1-109(c) provides that:

(c) It is unlawful for any person to transact business from, in, or into this state as an investment adviser or investment adviser representative unless:

(1) The person is registered as an investment adviser or investment adviser representative under this part;

(2) The person is required to register as an investment adviser pursuant to § 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3); provided, however, that an initial notice filing, consisting of any documents filed with the securities and exchange commission, a consent to service of process, and a nonrefundable fee of one hundred dollars ($100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filings, ten (10) days prior to the person acting as an investment adviser; and a renewal notice filing containing such information as the commissioner by rule requires and a nonrefundable fee of one hundred dollars ($100) shall be filed with the commissioner or the commissioner's designee, with payment of any reasonable costs charged by the designee for processing such filing for each successive year in which such person acts as such investment adviser; every notice filing of an investment adviser expires annually, unless timely renewed, on December 31 of each year; or

(3) The person's only clients in this state are insurance companies.

23. Tenn. Code Ann. § 48-1-109(e) provides that:

The commissioner may, after notice and an opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars ($10,000) per violation, or in an amount not to exceed twenty thousand dollars ($20,000) per violation if an individual who is a designated adult is a victim.

24. Tenn. Code Ann. § 48-1-116(a) and (e)(2)(A) state in pertinent part:

(a) The commissioner may from time to time make, promulgate, amend, and rescind such rules, forms, and orders as are necessary to carry out this part, including rules, forms, and orders governing registration statements, applications, reports, and filing fees, and defining any terms, whether or not used in this part, insofar as the definitions are not inconsistent with this part. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes

25. Tenn. Code Ann. §48-1-121 provides that:

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

(1) Employ any device, scheme, or artifice to defraud;
(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to:

(1) Employ any device, scheme, or artifice to defraud the other person;
(2) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
(3) Take or have custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

26. King v. Pope, 91 S.W.3d 314, 322 (Tenn. 2002) states, "The appropriate test for defining an 'investment contract' under Tennessee law is the Hawaii Market test " There are four (4) elements of proof required: "(1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise." King v. Pope at 321 (quoting State by Comm'r of Sec. v. Hawaii Mkt. Ctr., Inc., 485 P.2d 105, 109 (Haw. 1971)).

27. The Division is authorized to bring this action based on a finding by the Commissioner that the action is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Tenn. Code

Ann. § 48-1-116(b). In addition, the Commissioner may forgo prior notice of this Order to Cease and Desist upon a finding that prior notice is not in the public interest and would be detrimental to the protection of investors. Tenn. Code Ann. § 48-1-116(e)(2)(A).

V. CAUSES OF ACTION

A. The Respondents are engaging in investment adviser services while not registered as investment advisers or investment adviser representatives.

28. The Respondents are offering investment adviser services in Tennessee, and the Respondents are not registered with the Division as an investment adviser or investment adviser representatives as required under the Act.

29. The Respondents' actions of encouraging fourteen (14) Tennessee residents to use their tax-deferred or other retirement funds to purchase precious metals from it was behaving as an investment adviser as defined in Tenn. Code Ann. § 48-1-102(14).

30. The Respondents' actions of providing investment adviser services in Tennessee in violation of the Act create an imperative risk of harm to consumers who would rely on the Respondents as fiduciaries in providing financial advice. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-109(c) provides grounds under Tenn. Code Ann. § 48-1-116(a) and (e)(2)(A) for the immediate entry of an Order to Cease and Desist all securities activity.

B. The Respondents are engaging in activity as broker-dealers and agents by effectuating the sale of unregistered securities in Tennessee.

31. The Respondents facilitated the sale of securities in the State of Tennessee, thereby acting as broker-dealers. The Respondents' acts in effectuating the sale of securities in the State of Tennessee, when they encouraged Tennesseans with tax-deferred or other retirement funds to purchase precious metals, thereby acting as broker-dealers and agents in Tennessee. The Respondents' acts in effectuating the sale of the securities in the funds in the retirement accounts

facilitated consumers' investments in Red Rock. Such securities sold were investment contracts as defined in Tenn. Code Ann. § 48-1-102(20)(A).

32. Red Rock's metals products were sold in the form of investment contracts, which are securities. These products were not registered in Tennessee, nor did they meet the requirements for an exemption from the security registration requirement. The Respondents' acts of effecting and attempting to effect the sale of such securities constitutes acting as broker-dealers and agents in Tennessee in violation of Tenn. Code Ann. §§ 48-1-104(a) and 48-1-109(a).

C. The Respondents made untrue or misleading statements of material fact or omissions of material fact in the sale of their securities products.

33. The Respondents made untrue and misleading statements of material fact when the Respondents provided prospective customers with numerous misrepresentations about the metals they were investing in, including their monetary value and how the assets appreciate over the long term. Additionally, the prices Red Rock paid BME to acquire the RTH coins were directly linked to the spot prices of gold and silver. Internally, Red Rock referred to these prices as its "cost of goods sold." Red Rock set its prices based on this "cost of goods sold." The mark-up on the metals was the difference between "its cost of goods sold" and the price charged, which ranged from 3% to 5%. For "premium" products, including the RTH coins, Red Rock charged mark-ups of up to approximately 130% above its cost of goods sold. Red Rock did not disclose the actual mark-ups it charged to its customers. The Respondent's actions of misrepresenting the value of the coins they sold to prospective customers were the making of material misrepresentations of fact in violation of Tenn. Code Ann. §48-1-121(a) and (b).

34. The Respondents' unlawful conduct in violation of Tenn. Code Ann. § 48-1-104(a) provides grounds under Tenn. Code Ann. § 48-1-116(a) and (e)(2)(A) for the immediate entry of an Order to Cease and Desist from engaging in any activity requiring registration by the Division

without first obtaining registration for such activity.

VI. PRAYER FOR RELIEF

THE DIVISION HEREBY REQUESTS the entry of an Order requiring, pursuant to the Act, that:

1. The Respondents shall **COMPLY** with the provisions of the Act and all rules promulgated pursuant to the Act.

2. The Respondents shall **CEASE AND DESIST** from any further unregistered conduct as an investment adviser, investment adviser representative, broker-dealer, or agent from or in the State of Tennessee.

3. All persons or entities in any way assisting, aiding, or helping the Respondents in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.

4. In addition, the Division requests such other, further, general, or different relief to which the Division may be entitled.

Respectfully Submitted,

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