

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,



Courtney.A. Smith (Jun 12, 2026 12:05:35 CDT)

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**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE, AT NASHVILLE**

IN THE MATTER OF:

**RED ROCK SECURED LLC,
SEAN KELLY, AND ANTHONY
SPENCER**

OI:2023-0044

AFFIDAVIT OF AMBER PATTERSON

**STATE OF TENNESSEE
COUNTY OF DAVIDSON**

1. I am over eighteen (18) years of age, competent to provide testimony, and a citizen of Tennessee, with personal knowledge of the matters stated herein.

2. The statements contained herein are true, accurate, and correct to the best of my knowledge, information, and belief.

3. I am currently employed by the Financial Services Investigation Unit ("FSIU") of the Securities Division of the Tennessee Department of Commerce and Insurance ("Division") as a Lead Financial Services Investigator. I have been in this position for 10 years.

4. On or about May 17, 2023, the Division received information concerning Red Rock Secured LLC ("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, where the Tennessee resident left a review stating that a significant portion of their 401 (k) was lost due to exorbitant fees charged for the sale of precious metals. See Exhibit A

5. On or about July 3, 2023, the Commissioner issued Order of Investigation 2023-0020, which was later amended by Order of Investigation 2023-0044 on February 21, 2024, regarding Red Rock. See Exhibit B.

6. On or about June 12, 2023 I was assigned to investigate the activities of Red Rock.

7. My investigation as of the date of this affidavit includes the following:

a. I performed preliminary research by reviewing:

- i. Articles detailing the allegations of fraud,
- ii. Securities and Exchange Commission complaint, and
- iii. The Commodity Futures Trading Commission, et al. (“CFTC”) consent order of permanent injunction, civil monetary penalty, and other statutory and equitable relief against all defendants. See Exhibit C.

8. 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. Exhibit D.

9. Sean L. Kelly f/k/a Shade L. Kelly-Johnson (“Kelly”) resides in the Los Angeles, California area, is Red Rock’s President and CEO, and 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. *Id.*

10. Anthony “Tony” Spencer (“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. *Id.*

11. 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. *Id.*

12. 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”). *Id.*
- 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. *Id.*
- 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. *Id.*
- 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.” *Id.*

- 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.
- 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 Defendants and make distributions. Lastly, the order bars Red Rock, Kelly, and Spencer from acting as an issuer, broker-dealer, agent, investment adviser and/or investment adviser representative. *Id.*

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. Exhibit N.

14. It is clearly outlined in the CFTC and SEC Orders that Red Rock, Kelly, and Spencer; (1) used or employed, or attempted to use or employ, manipulative devices, schemes, or artifices to defraud; (2) made, or attempted to make, any untrue or misleading statements of material fact or omissions of material fact; and/or (3) engaged, or attempted to engage, in acts, practices, or courses of business, which operated or would have operated as a fraud or deceit upon their customers.

15. 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 defendants 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. *Id.*

16. On March 24, 2024, the CFTC sent me a complete client list so that I could identify accounts belonging to Tennessee residents. From that list, I identified fourteen (14) Tennessee clients of Red Rock. See Exhibit E.

- a. Margaret Wade, Knoxville, TN
- b. Kenneth Taromino, Lyles, TN
- c. Christine Jessey, Spring Hill, TN
- d. Elizabeth Reel, Leoma, 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, Maryville, TN
- n. David Johnson, Livingston, TN

17. 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 Rocks' 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. Exhibit F.
- 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. Exhibit G.

- 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. Exhibit H.
- 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. Exhibit I.
- 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." Exhibit J.

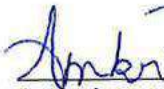
- f. Margaret Wade ("Wade") stated that she received an advertisement in her email. Wade knows she invested in silver coins, but is unsure of the amount she invested or lost, as it was a long time ago. She is sure she lost a lot of money. Exhibit K.
- g. Eli and Diana Miller ("Millers") learned of Red 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. Exhibit L.
- 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. Exhibit M.

18. According to statements made by a majority of Tennessee investors, they were instructed by Red Rock to liquidate their current IRA and move funds to a SIDRA in order to purchase coins.

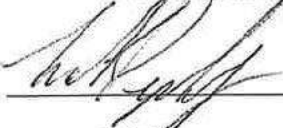
19. In considering the activity promoting fraudulent investments, it is evident that Red Rock, Kelly, and Spencer are a clear and present danger to Tennessee residents.

FURTHER AFFIANT SAITH NOT


Investigator



Sworn to and subscribed before me on this day of ^{10th} June, 2026.



Notary Public

My commission expires 4/2028

Red Rock Secured

★ 4.9 (139) · (888) 571-0986

Get Started →

D David of Livingston, TN ✓ Verified Reviewer

Resolution response: Sept. 20, 2022

My original review was extremely poor for many reasons but the main reason was lack of information sharing. I was contacted and all issues were resolved. I spent time with the contact and mostly it was my misunderstanding of purchases and prices which led to some erroneous conceptions of this precious metal IRA purchase. He was very detailed and expansive about how metals are purchased and sold which was very new to me. I would work again with this company having a new perspective on the realities of this type of investment.

Original review: July 30, 2022

I purchased what I thought was about \$110,000 in gold and silver coins. The invoices shows the inventory of coins that were placed at the repository. The value of the coins on the invoice claimed a total of \$109,705. After the coins arrived the value was approximately \$30,000. At the current rate they are about the same value and gold and silver have not fluctuated such a ridiculous amount since they were purchased 2 years ago. The only explanation can be that Red Rock Secured took nearly \$80,000 in fees. Their invoice, now that I really review it is false. This company is a total scam and has cost me a significant portion of my 401K. I have all the documentation of this transaction and will verify all the claims I have.



Sept. 2, 2022

✓ Red Rock Secured response

Good morning, David

My apologies for this misunderstanding. When purchasing precious metals, there is a difference between their melt value and retail value. I'm going to have one of our Senior Account Executives reach out to you and go over a portfolio review of your assets. I assure you that Red Rock did not take fees in the amount of \$80,000. If there is anything more I can do to help, please definitely reach out: ashley@redrocksecured.com or 213.523.2518. Again, sorry for the misunderstanding, but I look forward to settle your concerns.

Precious metals dealer ran \$62 million fraud, federal and state regulators say

(May 17, 2023) - A Nevada company and two executives targeted retirees in a \$62 million investment scam that sold precious metals at inflated prices, according to two lawsuits filed by federal and state regulators in California federal court.

Commodity Futures Trading Commission et al. v. Red Rock Secured LLC et al., No. 23-cv-3680, *complaint filed* (C.D. Cal. May 15, 2023).

Securities and Exchange Commission v. Red Rock Secured LLC et al., No. 23-cv-3682, *complaint filed* (C.D. Cal. May 15, 2023).

Red Rock Secured LLC, CEO Shade-Johnson Kelly, known as Sean Kelly, and former senior account executive Anthony Spencer reaped more than \$30 million in markups, most of which were concealed from victims, the regulators say in complaints filed May 15 in the U.S. District Court for the Central District of California.

The Securities and Exchange Commission's complaint names a fourth defendant, Jeffrey Ward, another former Red Rock account executive. The Commodity Futures Trading Commission filed suit jointly with the California Department of Financial Protection and Innovation and the Hawaii Department of Commerce and Consumer Affairs.

Both complaints allege that the defendants targeted investors 60 and older with scare tactics intended to drive them away from stocks and other traditional investments. According to the SEC, about \$50 million came from assets in retirement accounts. The defendants persuaded victims to sell those assets and fund self-directed IRAs through which Red Rock would purchase precious metals, the two lawsuits say.

At the urging of Red Rock's sales agents, most customers purchased Canadian Red-Tailed Hawk coins minted by the Royal Canadian Mint. Red Rock controlled the coins' price through an agreement with a distributor that had an exclusive sales arrangement with the mint, according to the suits.

Red Rock secretly marked up the coins' prices by as much as 130%, despite telling customers that markups would generally be between 1% and 5% and would not exceed 29%, according to the agencies.

The company also said it had a relationship that allowed investors access to cheaper coins from the Canadian mint through "bonuses" and "discounts," but no such relationship existed, the complaints say. The mint and the distributor are not parties to either suit.

To keep the scheme going, Spencer periodically provided investors with bogus reports purporting to use data from the Canadian mint to calculate the coins' "current retail value," according to the CFTC's suit. In fact, the coins' value was determined solely by Kelly, who reaped 80% of the company's profits and controlled its day-to-day affairs, the two suits say.

The SEC's complaint alleges that Ward helped prepare misleading marketing materials and led the department that facilitated the transfer of retirement assets into self-directed IRAs. The complaint includes allegations that the defendants violated antifraud provisions of the Investment Advisers Act of 1940, [15 U.S.C.A. §§ 80b-6\(1\) and 80b-6\(2\)](#), and the Securities Exchange Act of 1934, [15 U.S.C.A. § 78j \(b\)](#).

The CFTC and states' suit alleges that Red Rock, Kelly and Spencer violated the Commodity Exchange Act's antifraud provision, [7 U.S.C.A. § 9\(1\)](#), and California's prohibitions on commodities fraud, [Cal. Corp. Code § 29536](#), and investment adviser fraud, [Cal. Corp. Code § 25235](#), and that they provided unlicensed investment advice in violation of [Cal. Corp. Code § 25230](#).

They allegedly also violated Hawaii's statutes prohibiting misleading statements in securities sales, [Haw. Rev. Stat. 485A-501\(a\)\(2\)](#), and financial exploitation of the elderly, [Haw. Rev. Stat. 485A-603.5](#).

CFTC attorney James A. Garcia will lead its lawsuit. Attorneys representing the state agencies include Commissioner Clothilde V. Hewlett of the California Department of Financial Protection and Innovation. Keola Fong of the securities enforcement branch of Hawaii's Department of Commerce and Consumer Affairs will represent it.

SEC Attorney Jack Kaufman will lead its litigation.

By Conor O'Brien, Esq.

End of Document

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**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE, AT NASHVILLE**

IN THE MATTER OF:

Red Rock Secured, LLC

Shade-Johnson Kelly

Anthony C. Spencer

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OI 2023-0020

ORDER OF INVESTIGATION

The Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") pursuant to § 48-1-118(a) of the Tennessee Securities Act of 1980 and Tenn. Code Ann. §§ 48-1-101 to 1-201 ("Act"), has the authority to make public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provisions of the Act or any rule, regulation, or order promulgated under the Act. The Assistant Commissioner for the Tennessee Securities Division ("Division"), as lawful agent of the Commissioner, is charged with the administration of the Act.

Red Rock Secured, LLC ("Red Rock") is an entity with a last known address of 400 N. Continental Blvd., Suite 200, El Segundo, CA 90245. Red Rock is currently not registered with the Securities Division in Tennessee.

Shade-Johnson Kelly ("Kelly") is an individual with a last known address of [REDACTED]. Kelly is currently not registered with the Securities Division in Tennessee.

Anthony C. Spencer ("Spencer") is an individual with a last known address of [REDACTED]. Spencer is currently not registered with the Securities Division in Tennessee.

The Division has in its possession certain information which, if true, indicates that the afore mentioned entity and individuals may have violated Tenn. Code Ann. § 48-1-104, Tenn. Code Ann. § 48-1-109, Tenn. Code Ann. § 48-1-121, and possibly others.

Accordingly, it is hereby **ORDERED** that, pursuant to **Tenn. Code Ann. § 48-1-118(a)** of the Act, an investigation be commenced into the activities of the above referenced entity, individuals and other such persons or entities affiliated with them *and that it be deemed a private investigation*. Such inquiry shall extend, but not be limited, to the examination and duplication of any accounts, records, files, documents, and transactions pertaining to the business of the above named entity and/or individuals, as well as to the questioning under oath of any persons that may have information related to the alleged violations.

ENTERED the 7 day of July, 2023.


Elizabeth Bowling (Jul 7, 2023 10:10 CDT)

Elizabeth Bowling
Assistant Commissioner, Securities Division
Department of Commerce and Insurance

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE, AT NASHVILLE**

IN THE MATTER OF:

Red Rock Secured, LLC

Shade-Johnson Kelly

Anthony C. Spencer

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OI 2023-0044

AMENDED ORDER OF INVESTIGATION

The Commissioner of the Tennessee Department of Commerce and Insurance (“Commissioner”) pursuant to § 48-1-118(a) of the Tennessee Securities Act of 1980 and Tenn. Code Ann. §§ 48-1-101 to 1-201 (“Act”), has the authority to make public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provisions of the Act or any rule, regulation, or order promulgated under the Act. The Assistant Commissioner for the Tennessee Securities Division (“Division”), as lawful agent of the Commissioner, is charged with the administration of the Act.

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ENTERED the 21 day of February, 2024.


Elizabeth Bowling (Feb 21, 2024 07:28 CST)

Elizabeth Bowling
Assistant Commissioner, Securities Division
Department of Commerce and Insurance



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Securities and Exchange Commission v. Red Rock Secured, LLC et al., No. 2:23-cv-03682 (C.D. Cal. filed May 15, 2023)

Litigation Release No. 25727 / May 15, 2023

SEC Charges Red Rock Secured, Three Executives in Fraud Scheme Targeting Retirement Accounts

The Securities and Exchange Commission today announced charges against El Segundo, California-based Red Rock Secured LLC, its CEO, Sean Kelly, and two of its former Senior Account Executives, Anthony Spencer and Jeffrey Ward, in connection with a fraudulent scheme that involved convincing hundreds of investors to sell securities in their retirement accounts to buy gold and silver coins at prices that included markups far greater than the defendants had promised.

[► SEC Complaint](#)

According to the SEC's complaint, since at least 2017, the defendants repeatedly solicited investors through false and misleading statements, telling them to "protect" their retirement savings by selling securities held in their federal employee Thrift Savings Plan accounts, 401(k) plans, and Individual Retirement Accounts to invest in gold or silver coins at only a 1 to 5 percent markup. In reality, Red Rock charged as much as 130 percent in markups, which allowed them to pocket more than \$30 million of the more than \$50 million they received from investors.

The SEC's complaint, which was filed in U.S. District Court for the Central District of California, charges Red Rock, Kelly, Spencer, and Ward with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and also charges Kelly, Ward, and Spencer with aiding and abetting Red Rock's violations and Kelly as a control person within the meaning of Section 20(a) of the Securities Exchange Act of 1934. The SEC is seeking permanent injunctions, disgorgement of allegedly ill-gotten gains, plus interest, and civil penalties, as well as an officer-and-director bar as to Kelly.

The SEC's investigation was conducted by Michael Ellis and Elzbieta Wraga of the SEC's New York Regional Office and was supervised by Hane L. Kim of the Retail Strategy Task Force and Tejal D. Shah of the New York Regional Office. Alex Lefferts of the Enforcement Division's Office of Investigative and Market Analytics assisted with the investigation. The litigation will be led by Jack Kaufman. This action arises from an investigation generated by the Division of Enforcement's Thrift Savings Plan Initiative, which focuses on potentially improper practices targeting government employee retirement accounts. The SEC appreciates the assistance of the Federal Retirement Thrift Investment Board, Commodity Futures Trading Commission, and state regulators that are members of the North American Securities Administrators Association.

The SEC's Office of Investor Education and Advocacy and the Division of Enforcement Retail Strategy Task Force today issued an [Investor Alert](#) to provide tips to Thrift Savings Plan investors on how to avoid fraud.

Modified: May 15, 2023



U.S. Securities and Exchange Commission

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Red Rock Secured, LLC, Sean Kelly, Anthony Spencer, Jeffrey Ward

U.S. SECURITIES AND EXCHANGE COMMISSION

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RESOURCES

- [Complaint](#)



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PRESS RELEASE

SEC Charges Red Rock Secured, Three Executives in Fraud Scheme Targeting Retirement Accounts

FOR IMMEDIATE RELEASE | 2023-93

Washington D.C., May 15, 2023 — The Securities and Exchange Commission today announced charges against El Segundo, California-based Red Rock Secured LLC, its CEO, Sean Kelly, and two of its former Senior Account Executives, Anthony Spencer and Jeffrey Ward, in connection with a fraudulent scheme that involved convincing hundreds of investors to sell securities in their retirement accounts to buy gold and silver coins at prices that included markups far greater than the defendants had promised.

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"As our complaint alleges, the defendants used fear and lies to defraud investors out of millions of dollars from their hard-earned retirement savings," said Antonia M. Apps, Director of the SEC's New York Regional Office. "We will investigate and charge similar schemes that target investor retirement accounts."

The SEC's complaint, which was filed in U.S. District Court for the Central District of California, charges Red Rock, Kelly, Spencer, and Ward with violating the antifraud provisions of the federal securities laws. The SEC is seeking permanent injunctions, disgorgement of allegedly ill-gotten gains, plus interest, and civil penalties, as well as an officer and director bar as to Kelly.

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###

Last Reviewed or Updated: May 15, 2023

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- [SEC Complaint](#)

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Attorneys for Plaintiff
Securities and Exchange Commission

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

RED ROCK SECURED, LLC, SEAN
KELLY, ANTHONY SPENCER,
AND JEFFREY WARD,

Defendants.

Case No. 2:23-cv-3682

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Securities and Exchange Commission (“Commission” or “SEC”), for
2 its Complaint against Defendants Red Rock Secured, LLC (“Red Rock”), Sean Kelly
3 (“Kelly”), Anthony Spencer (“Spencer”), and Jeffrey Ward (“Ward”) (collectively,
4 “Defendants”), hereby alleges as follows:

5 JURISDICTION AND VENUE

6 1. The SEC brings this action pursuant to Sections 21(d) and 21(e) of the
7 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§78u(d) and 78u(e)],
8 and Section 209(d) of the Investment Advisers Act of 1940 (“Advisers Act”) [15
9 U.S.C. § 80b-9(d)].

10 2. This Court has jurisdiction over this action pursuant to Section 27 of the
11 Exchange Act [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C.
12 § 80b-14], and 28 U.S.C. § 1331.

13 3. Venue is proper in this Court pursuant to Section 27 of the Exchange Act
14 [15 U.S.C. § 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. Acts,
15 practices and courses of business constituting violations alleged herein have occurred
16 within the jurisdiction of the United States District Court for the Central District of
17 California and elsewhere.

18 4. Defendants directly and indirectly made use of the means and
19 instrumentalities of interstate commerce and of the mails in connection with the acts,
20 practices, and courses of business alleged herein, and will continue to do so unless
21 enjoined.

22 SUMMARY

23 5. From January 2017 through at least June 2022 (the “Relevant Period”),
24 Red Rock, its Chief Executive Officer, Sean Kelly, and two of its Senior Account
25 Executives, Anthony Spencer and Jeffrey Ward, while acting as unregistered
26 investment advisers, persuaded hundreds of retirement account investors to sell their
27 existing securities, transfer the proceeds into self-directed individual retirement
28 accounts (“SDIRAs”) that Red Rock helped clients establish, and invest the proceeds

1 in gold or silver coins. They did so by making false and misleading statements,
2 including regarding the markups that Red Rock charged on the price of coins, the
3 purported value of “premium” coins, and the performance of the stock market.

4 6. Defendants targeted investors who held securities in retirement accounts,
5 including in the federal government employee Thrift Savings Plan (“TSP”), 401(k)
6 accounts, and individual retirement accounts (“IRAs”). Defendants solicited
7 investors through numerous marketing materials, email campaigns, and telephone
8 calls in which they made dire statements, some of which were false and misleading,
9 warning that the investors’ existing securities holdings faced imminent and serious
10 risk of losses. Defendants told investors that they could protect their assets from the
11 losses posed by stock-market risk through diversification by converting their
12 securities into gold and silver—and, in particular, coins sold by Red Rock—which
13 Defendants misleadingly promoted as tangible assets that would always have value
14 and typically increase in value.

15 7. Red Rock employees, including frequently its top sales executives,
16 Spencer and Ward, regularly advised prospective clients to sell securities and use the
17 proceeds to purchase metal by stating that Red Rock charged one to five percent
18 above its cost for “common bullion” assets. They did not disclose, however, that the
19 “premium” coins that Red Rock advised investors to purchase had a much higher
20 markup: typically 120 to 130 percent above Red Rock’s cost to acquire the coins.
21 Moreover, a transaction agreement that Red Rock provided to clients contained
22 misleading language that indicated Red Rock charged a maximum of 29 percent
23 above its cost for “premium metals.”

24 8. In advising prospective clients and clients to purchase “premium” coins,
25 Red Rock employees, including Spencer and Ward, also falsely and misleadingly
26 stated that such coins had a market value that was substantially higher than the asset
27 value reported by SDIRA custodians and that the market value was determined by
28 purported demand factors. In fact, the purported market value of the “premium”

1 coins was not driven by external demand but instead, was solely determined by the
2 Defendants.

3 9. Thus, directly contrary to Defendants' representations, Defendants'
4 fraudulent scheme was designed to lure investors away from relatively liquid
5 retirement account investments with well-defined and clearly-reported market values,
6 to invest instead in Red Rock "premium" coins—the value of which, as reported by
7 the SDIRA custodians, was well below the purchase prices clients paid to Red Rock.

8 10. During the Relevant Period, Red Rock sold "premium" coins to at least
9 700 clients, for a total of more than \$50 million. To fund the purchase of those coins,
10 the 700 clients sold securities in their TSPs, IRAs, and other retirement accounts;
11 transferred more than \$50 million in sale proceeds to SDIRAs with Red Rock's
12 assistance; and purchased the coins from Red Rock through their SDIRAs at Red
13 Rock's repeated urging and with its advice. Though Red Rock advised prospective
14 clients and clients to sell securities and buy Red Rock coins in order to "protect" their
15 retirement savings and "enjoy a worry free retirement," Red Rock in fact pocketed
16 more than \$30 million of the funds investors paid for the "premium" coins. This
17 upfront markup, or profit above Red Rock's cost to acquire the coins, immediately
18 put clients in a hole and significantly depleted the very retirement assets that Red
19 Rock had advised clients to "protect."

20 11. The SEC brings this lawsuit to protect the investing public and to hold
21 Defendants accountable for their misconduct.

22 **DEFENDANTS**

23 12. Red Rock Secured, LLC is a Nevada limited liability company with its
24 principal place of business in El Segundo, California.

25 13. Sean Kelly, age 46, resides in Porter Ranch, California. He has been the
26 Chief Executive Officer of Red Rock since January 2017. Kelly owns 80% of Red
27 Rock's Class A voting shares and controls the company's operations and decision-
28 making. In addition to receiving a salary, Kelly received compensation in the form of

1 distributions from the profits Red Rock made from selling metal to clients.

2 14. Anthony Spencer, age 52, resides in Los Angeles, California. He was a
3 Senior Sales Executive with Red Rock from in or around July 2018 to August 2022.
4 Spencer also held the title of Director of Account Services during that time. In
5 addition to receiving a 3.5% share of Red Rock's profits, Spencer received
6 compensation in the form of commissions.

7 15. Jeffrey Ward, age 44, resides in Playa Vista, California. He was a
8 Senior Sales Executive with Red Rock from in or around January 2017 to September
9 2022. Ward also held the title of Director of IRA Services during that time. In
10 addition to receiving a 3.5% share of Red Rock's profits, Ward received
11 compensation in the form of commissions.

12 **FACTS**

13 **A. Defendants Targeted Investors with Retirement Accounts Holding** 14 **Securities.**

15 15. During the Relevant Period, Red Rock, at Kelly's direction, as well as
16 frequently with the help of Spencer and Ward, solicited business through numerous
17 email campaigns, digital newsletters and advertisements targeting investors who held
18 securities in retirement accounts such as 401(k)s, IRAs and TSPs.

19 16. Red Rock sent emails soliciting business to millions of individuals per
20 month, including to those who had subscribed to stock and mutual fund-related
21 newsletters. Red Rock also advertised in particular media sources, including a media
22 source that provided retirement and TSP-related information to active and retired
23 federal employees and military service members. Red Rock even created guidebooks
24 that discussed TSPs, IRAs, and other securities accounts, which Red Rock provided
25 to prospective clients holding securities accounts.

26 17. Red Rock thus targeted investors holding retirement accounts. As stated
27 in an August 7, 2020 email from a Red Rock employee to a potential provider of
28 advertising space, the company's target demographic was "Right Wing

1 Conservative[,] 59+ years of age[,] male & female[,] Interest in
2 retirement/investments[,] Owns a 401(k)/IRA[,]” and “anyone who works for the
3 government and own [sic] a Thrift Savings Plan)[.]”

4 18. As stated in an internal Red Rock training document for junior
5 salespeople, created during the Relevant Period, soliciting investors to sell assets
6 from retirement accounts was “Red Rock’s bread and butter. The main thing we do.”

7 19. And in marketing materials that Red Rock distributed to prospective
8 clients during the Relevant Period, Red Rock stated that using money already in a
9 securities account was “a better way” to buy metal and diversify one’s investments
10 than using funds from non-securities savings.

11 20. The majority of Red Rock’s clients during the Relevant Period did in
12 fact use assets transferred from retirement accounts to a SDIRA to purchase metal
13 from Red Rock, as Red Rock advised them to do.

14 21. During the Relevant Period, Kelly supervised Red Rock employees who
15 communicated with clients or prospective clients on a regular basis, including by
16 training employees on what they should say about the company and on transaction
17 confirmation calls. From in or around 2017 to 2019, Kelly also supervised Red
18 Rock’s sales floor. Further, he had authority over what Red Rock salespeople should
19 say to prospective clients and clients.

20 22. Kelly’s instructions for salespeople repeatedly emphasized Red Rock’s
21 guidance to investors about selling securities from retirement accounts. For example,
22 on July 13, 2021, Kelly sent an email to Red Rock’s salespeople with the subject
23 “How to talk about us...” Kelly told the salespeople that he had been listening to
24 recordings of their calls with prospective clients and clients, and he provided
25 instructions for what they should say on such calls.

26 23. For example, when prospective clients asked what Red Rock does or
27 why they should do business with Red Rock, Kelly instructed the salespeople to
28 respond: “At Red Rock Secured we know that you want to be worry free. In order to

1 do that, you need to protect your retirement savings. The problem is you can wake up
2 and half your retirement could be gone which makes you feel powerless[,]” and “for
3 over a decade [we] have worked with our clients to protect their retirement savings by
4 investing in gold and silver.” Kelly also instructed the salespeople to tell prospective
5 clients that by converting their investments into gold and silver they “can stop
6 worrying about not having enough money and instead know that no matter what
7 happens with the market you are safe and can afford the retirement you earned.”

8 24. Red Rock employees followed Kelly’s instructions, including by
9 regularly adding the following language that he provided to their emails with
10 prospective clients and clients: “Most people are worried about losing money in their
11 retirement accounts. At Red Rock Secured we convert that money into physical gold
12 & silver so they can enjoy a worry-free retirement.”

13 25. Kelly participated in weekly marketing meetings, signed off on
14 marketing spending, and recommended where Red Rock should advertise. Kelly also
15 had Red Rock hire copywriters to create the Red Rock guidebooks. Kelly further
16 decided that Red Rock would send guidebooks and other marketing materials to
17 prospective clients that contained his signature or that were sent under his name.

18 26. Spencer and Ward contributed information to the drafting of Red Rock
19 guidebooks and sent the guidebooks to prospective clients. When a prospective client
20 responded to Red Rock’s guidebooks and other marketing materials expressing
21 potential interest in purchasing metal, Red Rock salespeople set up a call between the
22 prospective client and a senior sales executive, such as Spencer or Ward, who would
23 inquire as to the nature and amount of the prospective client’s existing retirement-
24 account assets and advise them to convert a portion of those assets into metal.

25 27. Red Rock salespeople referred prospective clients who expressed
26 interest in transferring retirement account assets to a SDIRA to Red Rock’s IRA
27 Services department, of which Ward was the director for several years during the
28 Relevant Period. Ward and others in Red Rock’s IRA Services department assisted

1 clients with setting up a new SDIRA at a third-party custodian with which Red Rock
2 had a relationship, and with transferring the clients' securities sales proceeds out of
3 their existing retirement account. For example, Red Rock employees provided clients
4 with the paperwork required to transfer assets out of their securities accounts and
5 participated in three-way telephone calls with the TSP, IRA, or 401(k) custodians
6 regarding the funds transfers.

7 **B. Defendants Used Often False or Misleading Scare Tactics to Advise**
8 **Investors to Sell Securities.**

9 28. While marketing to retirement-account holders, Red Rock used scare
10 tactics—warning of imminent and serious stock market and economic downturns—to
11 advise prospective clients to take immediate action to move retirement-account assets
12 out of securities and into metal. Red Rock's scare tactics included false and
13 misleading statements made in guidebooks, emails, on its website, and in phone calls.

14 *1. The TSP Guidebook*

15 29. One example of such marketing was a guidebook that Red Rock
16 provided to prospective clients entitled "The #1 TSP Playbook—Little Known IRA
17 Loopholes for Protecting Your TSP" (the "TSP Playbook").

18 30. The TSP Playbook is written in the first person and states "My name is
19 Jeff Ward and I'll be your guide . . ." It then states "Our leadership team, which
20 includes myself, Sean [Kelly] and Tony [Spencer] have worked tirelessly on this
21 project." The "Introduction" section ends with Kelly's signature above his name and
22 title: "Sean Kelly CEO – Red Rock Secured." The end of the TSP Playbook is
23 signed "Jeff Ward and the entire RRS [Red Rock Secured] team." Ward and Spencer
24 contributed information to the drafting of the TSP Playbook and both sent it to
25 prospective clients.

26 31. The TSP Playbook Introduction begins by questioning "the
27 government's ability to manage funds" and further states the TSP Playbook's goal as
28 showing prospective clients "a possible path for you so that you don't end up living a

1 minimal existence after a life of [government] service”; and “so that you can instead
2 secure your future no matter how many years that might be...so that you can enjoy
3 the retirement years in comfort and style without the fear of poverty.” The TSP
4 Playbook further warns, “[A]nother market down turn is coming. It’s inevitable, like
5 the tide . . . your TSP’s total value is tied to whatever market you’re in.”

6 32. The TSP Playbook contained multiple false and misleading statements
7 concerning the investment options available to TSP investors. In its overall message,
8 and in specific false and misleading statements and material omissions, the TSP
9 Playbook created a false and misleading impression that all TSP investments are tied
10 to the “stock market” and, thus, rise and fall with the “stock market.”

11 33. The TSP Playbook falsely and misleadingly states that with the
12 investment options available within the TSP, “you are, in a sense, putting all of your
13 eggs into one basket. Sure, there are six funds to choose from . . . but they’re all
14 stock market funds.” It further states that the TSP is “entirely tied into a single
15 market, or a single type of market, at least. And that market is the stock market.”

16 34. The TSP Playbook omits, however, that certain investment options
17 available in the TSP were not a “stock market fund.” For example, according to the
18 government’s TSP “Fund Information” booklet,¹ the TSP “G Fund” invests only in
19 “nonmarketable U.S. Treasury securities specially issued to the TSP.”

20 35. In addition, the TSP Playbook describes the TSP “L Fund” as
21 “invest[ed] in all of the other [TSP] funds” and as taking “into account how many
22 years you have left until retirement and how much risk you want to take,” but omits
23 the material information that the L Fund regularly “rebalances” the mix of the five
24 TSP funds and reduces over time the TSP account holder’s exposure to the TSP’s
25 stock funds (the C, S, and I Funds) as the account holder nears his or her “target” date
26 (retirement). Thus, for example, the L Fund’s “target date” allocation as of January
27

28 ¹ Available online at www.TSP.gov/publications.

1 1, 2023 was: 70% in the G Fund, a total of 24% allocated among the three TSP stock
2 funds, and 6% in the F Fund, which invests in an index portfolio that tracks a
3 diversified bond index, not a stock index.

4 36. The TSP Playbook also omits other material information regarding the
5 TSP G Fund. The TSP Playbook states only that the G Fund is “another fund that’s
6 attached to bonds. Treasury bond securities in this case. This fund sets out to keep
7 pace with inflation, which is one of the biggest eaters of your returns Obviously,
8 the risks with this fund are also associated with changes in the inflation rate.”

9 37. However, the TSP Playbook misleadingly omits that: (i) the “G Fund is
10 invested in short-term U.S. Treasury securities specially issued to the TSP. Payment
11 of principal and interest is guaranteed by the U.S. government”; (ii) the “[TSP]
12 Board’s investment in the G Fund is redeemable on any business day with no risk to
13 principal”; (iii) the “value of the G Fund securities does not fluctuate; only the
14 interest rate changes”; and (iv) “[o]ver long periods of time, the G Fund has
15 historically outperformed inflation”

16 38. As another example of the TSP Playbook’s misleading statements on the
17 risks of the TSP, the TSP Playbook posits the potential downside if “20% of [an
18 investor’s] TSP is invested in” a single company that goes out of business. This is
19 materially false and misleading because, such concentration in an investor’s TSP
20 would be impossible as none of the investment options, as reflected on the TSP
21 website, contain such high concentrations of any single corporate-issuer stock.

22 39. The TSP Playbook further misleadingly suggests—in describing a
23 hypothetical postal worker who suffers significant intraday TSP losses at age 60,
24 causing he and his wife to delay their retirement—that TSP investors, including those
25 at or near retirement age, have no other option but to invest solely in “the stock
26 market.” This hypothetical is misleading because it fails to include other retirement
27 account investment options (including the TSP G Fund and L Fund) designed to
28 protect investors against stock market downturns.

1 40. After creating the misleading impression for TSP investors that the TSP
2 investments will necessarily decline with the stock market or the performance of a
3 single company that goes out of business, the TSP Playbook then advises that the
4 value of metal typically moves in the opposite direction of stock investments. It
5 states, “if you’ve moved out of your TSP into a self-directed IRA, you can not only
6 avoid the pain of market crashes, you can profit by them.”

7 41. The TSP Playbook omits, however, the material fact that moving
8 retirement account assets into a SDIRA to purchase “premium” coins from Red Rock
9 would typically result in the client losing more than half of the transferred retirement
10 account assets to a hefty markup from which Defendants, not the client, profited.

11 42. Moreover, the TSP Playbook omits the material fact that the total
12 expense ratio for each TSP investment fund was less than .1% per year during the
13 Relevant Period; an amount that was significantly lower than the sizeable markup
14 charged by Red Rock.

15 43. The TSP Playbook also falsely states that Kelly, Spencer, and Ward had
16 “spent countless hours pouring [sic] over pages of Thrift Savings plan rules and
17 regulations so as to make your options clear and easy to understand,” when they had
18 not.

19 2. *Marketing Emails*

20 44. Red Rock’s misleading scare tactics concerning stock market
21 performance was also reflected in its marketing emails. For example, a marketing
22 email repeatedly sent in Kelly’s name between at least August 2018 and May 2019
23 warned that a specific well-known investment firm “just went public saying **we’re**
24 **headed for ‘the biggest market selloff in months’**” (emphasis in original).

25 45. That statement was misleading. Red Rock sent most of those emails to
26 its prospective clients months (not “just”) after the referenced investment firm had
27 made its stock market prediction, and much had changed in the stock market during
28 the intervening months. For example, during the approximately 10-month period in

1 which Red Rock sent the marketing email in Kelly's name, the price of the S&P 500
2 index switched courses multiple times. Red Rock and Kelly, however, failed to
3 assess how the market was currently performing or to otherwise ensure that the
4 investment firm's months-old prediction was still accurate.

5 46. The same marketing email also warned TSP investors that if the major
6 selloff occurred, "then your six standard fund options will get clobbered and you will
7 lose significant money." That statement was misleading because it omitted the fact
8 that, as discussed above, one of the six TSP fund options that Red Rock and Kelly
9 were referring to was the TSP G Fund, which holds only specially issued U.S.
10 Treasury bonds whose value "does not fluctuate; only the interest rate changes."

11 3. *Red Rock's Website*

12 47. During the Relevant Period, Red Rock also published "Real-time Gold
13 Price and Silver Price Charts" on its website that misleadingly indicated to
14 prospective clients and clients that gold and silver historically have always
15 outperformed the S&P 500 and Dow Jones stock indices, when they have not.
16 During the Relevant Period, Kelly told Red Rock employees to refer prospective
17 clients to those price charts, and employees did so, including by providing links to the
18 charts in emails.

19 48. The vertical axis on the right-hand side of Red Rock's price charts
20 purported to show return percentages ranging from -250% to 1000%. However,
21 while the line graphs for gold and silver tracked returns from at least as far back as
22 1991 forward, the line graphs for the stock index tracked returns only from 2009
23 forward. Because the start date differed as between the metal data and the stock
24 index data, Red Rock's price charts misrepresented the relative performance of metal
25 versus the stock index. A truthful comparison—in which both the metal data and the
26 stock index data was compared over the same holding period of 1991 to 2022—
27 would have shown that the stock indices performed better over the long term than
28 either gold or silver.

1 4. *Phone Calls*

2 49. In phone calls, Red Rock employees made similar misleading statements
3 to prospective clients that metal had outperformed stock indices. In a July 14, 2021
4 telephone call, for example, Ward told a prospective client who asked about the price
5 of gold and silver that “[o]ver the last 20 years it’s outbeaten the S&P and Nasdaq . . .
6 printing of money could stop and that’s when the stock market will probably start
7 going down.”

8 50. Ward’s statement was false and misleading because, over the 20 years
9 prior to his statement, the Nasdaq Composite stock index outperformed gold and
10 silver. It was also misleading because he selectively chose a 20-year holding period,
11 and omitted the fact that over other holding periods, such as 10 or 30 years prior to
12 his statement, the S&P 500 index significantly outperformed both gold and silver.

13 **C. Defendants’ Investment Advice was Specific and Regularly Provided**
14 **to Prospective Clients and Clients.**

15 51. In telling prospective clients and clients that their existing securities
16 investments were at imminent risk, Defendants specifically and repeatedly advised
17 that the way to “protect” against such risk was to convert 10 to 30% of those
18 investments into metal purchased from Red Rock.

19 52. For example, in a July 2021 telephone call, Ward advised two
20 prospective clients to move securities investments into precious metal, stating, “You
21 diversify You’re fully vested in the market. Any dip in that market you’re
22 susceptible to You should never have your eggs in one basket and at the moment
23 you do . . . a portion in metals, 20, 30 percent, that’s where you’re winning at that
24 point.”

25 53. Similarly, in a January 2021 telephone call, Spencer stated that the stock
26 market would crash if the country were shut down again due to the pandemic and that
27 if tax cuts were rolled back, the “stock market will drop at least 35 percent.” Spencer
28 stated that “it’s important to make sure not all of your eggs are in the same basket.”

1 He continued, “What we typically recommend is a position in metal between 20 to 30
2 percent of your overall portfolio . . . That 20 to 30 percent has proven throughout
3 history to provide insurance on the other 70 to 80 percent that stays in the market or
4 stays in one way or another connected to the dollar.”

5 54. From at least March to June 2021, Red Rock repeatedly advised and
6 solicited prospective clients through an email attributed to Kelly with the title “TSPs
7 Don’t Have to Be Limiting . . . Diversify and Protect Your Wealth With New, TAX-
8 FREE Options.” In that email, Red Rock and Kelly advised:

9 There’s no mistaking the need to diversify your TSP with the
10 ever decreasing value of the dollar, the uncertainty of the stock
11 market, increased taxes and the fallout of the pandemic, the
12 need to protect your investments and savings could not be more
13 obvious. This is why 1,000s of TSP account holders are turning
14 to time-proven valuable precious metals like Gold and Silver to
15 protect their money. And why you should consider rolling over
16 portions or parts of your TSP funds into a special form of
17 retirement account known as the ‘self-directed’ IRA.

16 55. On a Red Rock web page entitled “TSP Investment Advice,” Red Rock
17 further stated, “Rather than rely on diversification methods that prove to be volatile,
18 choose the better option by investing in gold, silver, platinum, and palladium.”

19 56. Red Rock’s transaction agreement included a “Diversification” section
20 in which the company recommended that metal “constitute no more than 10% - 30%
21 of a well-diversified portfolio.”

22 57. Spencer and Ward also advised prospective clients of purported
23 advantages of investing in metal as compared to metals-based exchange-traded funds,
24 which are securities. For example, Spencer described purported tax benefits of
25 investing in coins as compared to capital gains taxes that would be assessed on
26 exchange-traded fund investments. Ward advised prospective clients that holding a
27 tangible asset such as metal was better than holding an exchange-traded fund, which
28 he called a “paper” asset.

1 58. And after clients had purchased metal from Red Rock, Spencer also
2 advised clients again on selling securities, advising them to take distributions from
3 their securities accounts rather than from the SDIRAs that held their metal, citing
4 such factors as the uncertainty of the stock market or the value of the U.S. dollar.

5 **D. Defendants Made False and Misleading Statements About Red**
6 **Rock's Charges.**

7 59. Red Rock employees, including Spencer and Ward, regularly and
8 misleadingly told prospective clients that the company charges between one and five
9 percent above its cost for “common bullion” assets, including before the clients had
10 sold securities in their retirement account to purchase metal from Red Rock. While
11 this statement may have been true for certain Red Rock assets, it was materially false
12 regarding Red Rock’s “premium” metal. In fact, Red Rock typically charged an
13 exponentially higher markup (more than 100 percent) above its cost for “premium”
14 coins.

15 60. Spencer and Ward knowingly or recklessly made such statements to
16 prospective clients repeatedly, only to convince them later—after they had sold
17 securities and transferred funds from their retirement accounts—to purchase Red
18 Rock’s “premium” coins. Spencer and Ward engaged in this bait and switch despite
19 knowing that they and Red Rock sold far more “premium” coins than “common
20 bullion,” and that they personally stood to receive higher commissions—eight percent
21 or more of the client’s purchase amount—by selling “premium” coins.

22 61. During the Relevant Period, more than 90% of the SDIRA funds that
23 clients used to purchase metal from Red Rock were used to purchase “premium”
24 coins, not “common bullion.”

25 62. Contrary to their statements to prospective clients, Spencer and Ward
26 knew, at the least, that Red Rock’s markup on its “premium” coins was a minimum
27 of 29 percent. Moreover, the fact that Spencer and Ward received commissions of
28 eight percent or more for selling premium coins further demonstrates that they knew

1 or recklessly disregarded that Red Rock was charging clients more than the one to
2 five percent markup that they falsely and misleadingly stated to prospective clients.

3 63. As an example, in an email dated August 6, 2020, Ward told a
4 prospective client, “Red Rock makes money from the purchase of precious metals.
5 We charge 1-5% above our cost on all our common bullion assets.” Thereafter, in an
6 August 25, 2020 telephone call with that same prospective client, Spencer stated,
7 “[W]e’re not a retail shop, we’re an investment firm. So we have a direct relationship
8 with the mints. We buy our metal in volume and we buy our metal in wholesale and
9 we pass the savings along to you. We charge anywhere from 1 to 5 percent above our
10 cost on common bullion assets and there are no ongoing, re-occurring management,
11 service or maintenance fees whatsoever.”

12 64. However, during that same August 25 telephone call, Spencer knew that
13 he was finalizing the prospective client’s purchase of “premium” coins, not “common
14 bullion.” Moreover, Spencer’s statements were false because, as he knew or was
15 reckless in not knowing, Red Rock did not have a direct relationship with any mint
16 and did not pass along savings to clients.

17 65. Soon after prospective clients sold securities to buy metal, Red Rock
18 provided them with a transaction agreement that, similarly, misleadingly indicated
19 that they would pay a maximum of 29 percent above what Red Rock paid for the
20 “premium” metal and that clients could pay as low as four or five percent above what
21 Red Rock paid for “premium” metal. Though Red Rock, with Kelly’s approval,
22 revised the transaction agreement several times over the years, each version it
23 provided to clients through at least June 2022 contained confusing and misleading
24 language concerning Red Rock’s charges.

25 66. Thus, for example, several versions of Red Rock’s transaction agreement
26 misleadingly stated, “The difference between the Purchase Price Client pays for
27 Products under a Purchase Order and the price that Red Rock actually pays for the
28 Products purchased by Client under such Purchase Order is known as the ‘spread’

1 and it is stated as a percentage of the Purchase Price paid by the client.” These
2 versions of the transaction agreement went on to quantify the “spread,” including by
3 stating that “[t]he spread on Red Rock’s premium, semi-numismatic, and numismatic
4 coins typically ranges between 4% and 29%,” or “[t]he spread on Red Rock’s
5 premium, semi-numismatic, and numismatic coins typically ranges between 5% for
6 CUSIP assets and 29% for Premium/non-CUSIP assets; however, on the rare
7 occasion, this spread may exceed these amounts.”

8 67. Such statements thus falsely indicated that the difference between the
9 price the client paid for “premium” coins and the price that Red Rock had paid for the
10 “premium” coins was between 4 and 29 percent when, in fact, that difference was
11 almost always above 100 percent, and typically 120 percent or more.

12 68. Moreover, each transaction agreement misleadingly indicated that Red
13 Rock clients could pay as low as a 4 or 5 percent markup for “premium” coins when,
14 in fact, the minimum markup Red Rock charged for its premium coins was 60
15 percent, which was only available for a coin that it very rarely sold.

16 69. Red Rock and Kelly thus intended, or recklessly disregarded, that each
17 version of the transaction agreement obfuscate the plain fact that Red Rock almost
18 always charged a markup of over 100 percent, and typically over 120 percent, on its
19 “premium” coins.

20 **E. Defendants Made False and Misleading Statements About the Value**
21 **of “Premium” Coins.**

22 70. Kelly set the markup for all of the types of metal that Red Rock sold,
23 and he also set the commission rates that employees would earn. This included Kelly
24 agreeing to pay his top salesperson, Spencer, an added 2% commission on top of the
25 standard commission employees stood to earn from the sale of “premium” coins.

26 71. Red Rock’s sales executives, including Spencer and Ward, primarily
27 recommended that clients purchase a “premium” coin known as the one-half ounce
28 silver Canadian Red-Tailed Hawk coin (“silver Red Tailed Hawk coin”), minted by

1 the Royal Canadian Mint.

2 72. Of the dozens of types of metals that Red Rock could sell, the silver
3 Red-Tailed Hawk coin had both Red Rock's highest markup (130%) and the highest
4 sales commission rate (8%). The markup and commission rate gave Red Rock and its
5 employees a strong incentive to sell the silver Red-Tailed Hawk coin, which they did
6 in vast numbers. Over \$40 million of the more than \$50 million that clients used
7 from SDIRAs to purchase "premium" coins from Red Rock was used to purchase
8 silver Red Tailed Hawk coins.

9 73. A California-based metals distributor (the "Metals Distributor") had an
10 exclusive arrangement to purchase silver Red-Tailed Hawk coins from the authorized
11 distributor for the Royal Canadian Mint. At Kelly's direction, Red Rock, in turn, had
12 an exclusive arrangement with the Metals Distributor to purchase its silver Red-
13 Tailed Hawk coins.

14 74. As a result, because Red Rock was the only company selling silver Red-
15 Tailed Hawk coins to individual investors, Red Rock controlled the retail market
16 price.

17 75. Moreover, there was essentially no secondary market for silver Red-
18 Tailed Hawk coins, and Red Rock took steps to avoid the creation of any such
19 market, to avoid others underselling Red Rock and revealing the actual, lower market
20 value of those coins.

21 76. Thus, for example, on one occasion, on October 28, 2020, when a
22 prospective client found the silver Red-Tailed Hawk coin available for sale from
23 another company, the prospective client asked Spencer, "So, are virtually all half-
24 ounce Red Tailed Hawk coins currently owned by Red Rock or Red Rock clients? If
25 that is so, would not the price of that coin above its bullion weight at any given time
26 essentially be set by Red Rock?" Spencer replied, falsely, "The value is set by the
27 mint" The prospective client then responded that he could not find the coin on
28 the Royal Canadian Mint's website, but had found it for sale at another Canadian

1 company at less than half the cost.

2 77. Spencer forwarded his email exchange with the prospective client to
3 Kelly, and Kelly in turn forwarded it to the CEO of the Metals Distributor and to Red
4 Rock's head of accounting. Kelly wrote, "Guys, this is KILLING our deals. See
5 below..... complete bullshit [sic]. Is there a way we can have the candian [sic] mint
6 reach out to [the Canadian company] and tell them they are selling OUR exclusive
7 coin. [sic]"

8 78. On or around October 29, 2020, Kelly told Red Rock's head of
9 accounting that he wanted him to find a way to get the silver Red Tailed Hawk coins
10 off of the Canadian company's website. Kelly instructed Red Rock's head of
11 accounting to buy all of those coins, which totaled approximately 720 coins, which
12 the head of accounting did.

13 79. Red Rock sold more than 1.3 million silver Red Tailed Hawk coins
14 during the Relevant Period. The fact that Kelly quickly moved to ensure that a tiny
15 fraction of the number of silver Red Tailed Hawk coins sold by Red Rock would no
16 longer appear on the Canadian company's website, shows the extent to which he and
17 Red Rock knew, and made certain, that they, and not the market, set the price of
18 silver Red Tailed Hawk coins.

19 80. Consequently, by entering into the exclusive arrangement with the
20 Metals Distributor, and taking steps to ensure that there would be no secondary
21 market for the silver Red Tailed Hawk coins, Red Rock maintained control over the
22 market price of those coins. Kelly and Red Rock employees, including Spencer,
23 knew that the purported value of such coins was solely being assigned by Red Rock
24 and its employees, and not by any external retail or market demand factors.

25 81. Red Rock's practice, as approved by Kelly, was to misleadingly
26 provide—including to clients who asked how much the coins they had purchased
27 were worth—a "retail" value that was not based on the value the client could receive
28 in the market if they sold their coins, but instead was based on what the client would

1 pay if they were to buy the coins from Red Rock again on the particular day on which
2 Red Rock provided the purported “retail” value.

3 82. Red Rock employees, including Spencer and Ward, regularly and
4 misleadingly told prospective clients and clients that its “premium” coins, including
5 the silver Red Tailed Hawk coins, had a retail or market value that was substantially
6 higher than the asset value reported by SDIRA custodians, and higher than the
7 amount the client paid Red Rock to purchase the metal.

8 83. In phone calls and written communications, Red Rock employees,
9 including Spencer and Ward, stated that SDIRA custodians underreported the true
10 value of the coins because they only reported the “melt,” “spot,” or “assessed” value,
11 which was only one component of the asset’s value. They misleadingly stated that
12 factors such as “market demand,” “investor demand,” “supply and demand” or
13 “scarcity” added to the value of the assets. Red Rock employees, including Spencer
14 and Ward, told investors to call them for the “retail” value of their “premium” coins.

15 84. A Red Rock client call script that Red Rock salespeople used during the
16 Relevant Period falsely and misleadingly stated:

17 [T]he melt value is approximately one half of your purchase
18 value on Non-CUSIP assets. The other half is based upon Non-
19 CUSIP investment values such as the value of comparable
20 assets found through the applicable mint: market demand,
21 investor demand, and supply and demand. As such, the ‘melt
22 value’ is not indicative of your asset’s true retail/market value.

23 85. When telling investors what the purported “retail” value of their
24 investments was, Spencer and Ward told investors that the value reported by SDIRA
25 custodians was only the “assessed” value, not the “retail” value. Spencer and Ward
26 also advised that the lower “assessed” value was beneficial to the client or
27 prospective client because they would only pay taxes on the “assessed” value and not
28 on the purportedly higher “retail” or “market” value of their investments.

86. The call script and Spencer’s and Ward’s statements—which asserted

1 that “market demand,” “investor demand,” “supply and demand,” “scarcity” or other
2 such factors determined the “retail” or “market” value of “premium” coins—were
3 false and misleading because it was Defendants, and not external market factors, that
4 assigned the purportedly higher “retail” or “market” value of the investments.

5 87. Spencer also falsely and/or misleadingly ascribed specific percentages
6 and dollar amounts to each of several purported demand factors, without having any
7 quantifiable or documented basis for doing so.

8 88. For example, on July 30, 2021, Spencer falsely told a client that his
9 coins had a “current retail value” of \$156,728.89—almost 140% more than Red Rock
10 had paid to acquire the coins just two weeks prior. Spencer stated, “[h]ere is a
11 breakdown of the data as provided by the Mint” and listed the following values that
12 added up to the purported “current retail value” of \$156,728.89: “Investor Demand:
13 (27%) 42,316.80[;] Supply and Demand: (26%) 40,749.51[;] Market Demand: (25%)
14 39,182.22 [;] Spot: (22%) 34,480.36.”

15 89. Spencer knew or recklessly disregarded that the data that he provided to
16 the client was not provided by any mint, because he did not obtain it from any mint.
17 Moreover, Spencer knew or recklessly disregarded that the percentages and values he
18 listed for the purported “Investor Demand,” “Supply and Demand” and “Market
19 Demand” were not based on any quantifiable or external data point and instead were
20 solely assigned by him and Red Rock.

21 90. Similarly, Ward repeatedly reported “retail value” amounts to clients
22 that were well above the amount reported by SDIRA custodians and the amount paid
23 by Red Rock to obtain the coins that it sold to the clients. In doing so, Ward told
24 investors in emails that SDIRA custodians reported “melt” value which “is
25 significantly less than the retail value of the product as it fails to factor in variables
26 associated with retail pricing. These variables include pricing for comparable
27 products found on the applicable nation’s mint website, scarcity, and supply and
28 demand.” As Ward knew or recklessly disregarded, the purported variables

1 associated with retail pricing were not based on any quantifiable or external data
2 point and instead were solely assigned by him and Red Rock.

3 **F. Spencer Made Additional False and Misleading Statements.**

4 91. In emails and telephone calls with clients and prospective clients,
5 Spencer made a litany of additional material false and misleading statements
6 regarding Red Rock's charges and his personal credentials. Spencer often made these
7 statements in conjunction with dire statements that he made about the performance of
8 stock indices or the stock market more generally, and before convincing prospective
9 clients to sell securities to buy "premium" coins from Red Rock.

10 92. For example, in the same telephone call in which he advised the
11 prospective client discussed above in paragraph 53 to move 20 to 30 percent of their
12 investment portfolio into metal, and cited a potential stock market decline of at least
13 35 percent, Spencer made false and misleading statements that included that he had a
14 PhD in Economics, International Markets, and that he had worked with clients for
15 over 25 years.

16 93. Spencer also falsely stated that Red Rock charged a one to five percent
17 fee, and that the prospective client would pay a fee of 1.83% or \$1,830 exactly if he
18 transferred \$100,000 from his 401(k) account to purchase coins from Red Rock, with
19 the 1.83% fee being offset by 5% in metal that Spencer claimed Red Rock would give
20 the client.

21 94. Contrary to Spencer's statements, that client, who thereafter paid Red
22 Rock \$100,000 (on or around January 18, 2021) to purchase "premium" coins,
23 unwittingly paid a markup or fee of approximately \$66,000, while Red Rock used
24 only approximately \$44,000 of the investor's \$100,000 to acquire the coins.

25 95. In a May 4, 2021 email, Spencer falsely told another prospective client
26 that Red Rock would charge him only a one-time, 1.83% fee, and that he would
27 receive upwards of 15% in "bonus" metal. On or about July 7, 2021, after receiving
28 this information from Spencer, the client used \$150,000 that he had transferred to a

SDIRA to purchase from Red Rock 4,000 silver Red-Tailed Hawk coins. In reality, as Spencer knew or recklessly disregarded, but unbeknownst to the investor, Red Rock did not charge the investor a 1.83% fee; instead, Red Rock charged the investor a 130% markup, spending only \$65,400 to acquire the coins for the investor, and taking the remaining \$84,600 as a profit. As Spencer knew or recklessly disregarded, he had no basis for stating that Red Rock charged a 1.83% one-time fee, or that Red Rock provided clients with upwards of 15% in “bonus” metal.

96. Spencer often told clients and prospective clients that they would pay a fee of exactly 1.83% to buy metal from Red Rock. As Spencer knew or recklessly disregarded, such statements were false and misleading because he had no basis for stating that clients paid a 1.83% fee.

97. Spencer knew that he personally received a commission of as much as 10% of the client’s purchase amount and, thus, knew or recklessly disregarded that Red Rock had to be charging clients, at the least, a fee greater than the commission that it paid to him; otherwise, Red Rock would lose money on each such transaction.

98. Spencer also knowingly or recklessly told clients and prospective clients falsely that Red Rock had a direct or exclusive relationship with mints—through which it passed savings along to the client—and that clients paid “discounted” prices. In fact, while Red Rock had an agreement with the Metals Distributor regarding silver Red Tailed Hawk coins, it had no direct or exclusive relationship with any mint, and it did not pass along savings or discounts to clients from a direct and exclusive arrangement with a mint. Spencer had no basis for making those false claims.

99. Spencer told clients and prospective clients that Red Rock offered promotions whereby it provided clients with “bonus” metal of as much as 10 to 15 percent of the total metal purchased by a client. Such statements were false and misleading because any purported “bonus metal” provided by Red Rock was nowhere near 10 to 15 percent, and Spencer had no basis for stating that Red Rock provided

1 “bonus” metal in those amounts.

2 100. Spencer told clients and prospective clients that he held a PhD in
3 Economics and International Markets. Also, when transferring telephone calls with
4 clients or prospective clients to Spencer, Red Rock employees referred to Spencer as
5 “Dr. Tony Spencer” and stated that he had a PhD in Economics. The statements
6 about Spencer having a PhD in Economics and International Markets were false and
7 misleading because he did not hold a PhD in those subjects.

8 101. Spencer told clients and prospective clients that he had over 25-years of
9 experience working with clients. Such statements were false and misleading because
10 as Spencer knew, he had, at most, 11-years of experience.

11 102. Spencer told clients and prospective clients that he had converted his
12 TSP account into a precious metals IRA. Such statements were false and misleading
13 because as Spencer knew, he had not converted his TSP account into a precious
14 metals IRA.

15 103. Spencer knew, or recklessly disregarded, that the statements he made to
16 clients and prospective clients, as detailed above, were false and misleading.

17 **FIRST CLAIM FOR RELIEF**

18 **Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5**
19 **(Against All Defendants)**

20 104. The SEC alleges and incorporates by reference paragraphs 1 through 103
21 above.

22 105. As more fully described in paragraphs 1 through 103 above, Defendants,
23 in connection with the purchase and sale of securities, by the use of the means and
24 instrumentalities of interstate commerce and by the use of the mails, directly and
25 indirectly: used and employed devices, schemes and artifices to defraud; made
26 untrue statements of material fact and omitted to state material facts necessary in
27 order to make the statements made, in light of the circumstances under which they
28 were made, not misleading; and engaged in acts, practices and courses of business

1 which operated or would have operated as a fraud and deceit upon purchasers and
2 sellers and prospective purchasers and sellers of securities.

3 106. By reason of the foregoing, Defendants violated Section 10(b) of the
4 Exchange Act [15 U.S.C. §78j (b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

5 **SECOND CLAIM FOR RELIEF**

6 **Violations of Advisers Act Sections 206(1) and 206(2)**

7 **(Against All Defendants)**

8 107. As more fully described in paragraphs 1 through 103 above, at all times
9 alleged in this complaint, Defendants, while acting as investment advisers, by use of
10 the mails, and the means and instrumentalities of interstate commerce, directly or
11 indirectly, knowingly, willfully or recklessly: (i) employed devices, schemes or
12 artifices to defraud its clients or prospective clients; and (ii) engaged in transactions,
13 practices and courses of business which have operated as a fraud or deceit upon its
14 clients or prospective clients.

15 108. By reason of the foregoing, Defendants violated Sections 206(1) and
16 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

17 **THIRD CLAIM FOR RELIEF**

18 **Aiding & Abetting Violations of Section 10(b) of the Exchange Act,**

19 **And Exchange Act Rule 10b-5**

20 **(Against Defendants Kelly, Spencer and Ward)**

21 109. The SEC alleges and incorporates by reference paragraphs 1 through 103
22 above.

23 110. Red Rock, in connection with the purchase and sale of securities, by the
24 use of the means and instrumentalities of interstate commerce and by the use of the
25 mails, directly and indirectly: used and employed devices, schemes and artifices to
26 defraud; made untrue statements of material fact and omitted to state material facts
27 necessary in order to make the statements made, in light of the circumstances under
28 which they were made, not misleading; and engaged in acts, practices and courses of

1 business which operated or would have operated as a fraud and deceit upon
2 purchasers and sellers and prospective purchasers and sellers of securities. Red Rock
3 knew, or was reckless in not knowing, of the facts and circumstances described in
4 paragraphs 1 through 103 above.

5 111. Defendants Kelly, Spencer and Ward knowingly or recklessly provided
6 substantial assistance to Red Rock in its violation of Sections 10(b) of the Exchange
7 Act and Rule 10b-5 thereunder. Kelly provided substantial assistance in the
8 violations by, among other things, establishing the business model that incentivized
9 Red Rock and its salespeople to steer investors to “premium” coins with misleading
10 claims of “retail” value, creating the transaction agreement that contained misleading
11 information about Red Rock’s charges, establishing the hefty markups that Red Rock
12 charged for “premium” coins that far exceeded the markups disclosed to investors,
13 and deciding that Red Rock would disseminate scare tactic marketing materials that
14 encouraged the sale of securities and purchase of metal from Red Rock and included
15 false and misleading statements. Spencer and Ward provided substantial assistance in
16 the violations by, among other things making false and misleading statements to
17 clients and prospective clients regarding Red Rock’s charges and various other
18 aspects of its business, and by contributing to and sending the misleading TSP
19 Playbook to prospective clients, as detailed above. Kelly, Spencer and Ward knew or
20 recklessly disregarded that Red Rock was committing violations, and they had a role
21 in furthering them.

22 112. By engaging in the conduct described above, Kelly, Spencer and Ward
23 aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j
24 (b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

25 **FOURTH CLAIM FOR RELIEF**

26 **Aiding & Abetting Violations of Advisers Act Sections 206(1) and 206(2)**

27 **(against Defendants Kelly, Spencer and Ward)**

28 113. The SEC realleges and incorporates by reference paragraphs 1 through

1 103 above.

2 114. As more fully described in paragraphs 1 through 103 above, at all times
3 alleged in this complaint, defendant Red Rock, while acting as an investment adviser,
4 by use of the mails, and the means and instrumentalities of interstate commerce,
5 directly or indirectly, knowingly, willfully or recklessly: (i) employed devices,
6 schemes or artifices to defraud its clients or prospective clients; and (ii) engaged in
7 transactions, practices and courses of business which have operated as a fraud or
8 deceit upon its clients or prospective clients. By reason of the foregoing, Red Rock
9 has violated Sections 206(1) and 206(2) of the Advisers Act. [15 U.S.C. §§ 80b-6(1)
10 and 80b-6(2)].

11 115. Kelly, Spencer and Ward knowingly or recklessly provided substantial
12 assistance to Red Rock in its violation of Sections 206(1) and 206(2) of the Advisers
13 Act.

14 116. By engaging in the conduct described above, Kelly, Spencer and Ward
15 aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. [15
16 U.S.C. §§ 80b-6(1) and 80b-6(2)].

17 **FIFTH CLAIM FOR RELIEF**

18 **Control Person Liability for Violations of Section 10(b) of the Exchange Act and**
19 **Exchange Act Rule 10b-5**
20 **(against Defendant Kelly)**

21 117. The SEC realleges and incorporates by reference paragraphs 1 through
22 103 above.

23 118. Red Rock, in connection with the purchase and sale of securities, by the
24 use of the means and instrumentalities of interstate commerce and by the use of the
25 mails, directly and indirectly: used and employed devices, schemes and artifices to
26 defraud; made untrue statements of material fact and omitted to state material facts
27 necessary in order to make the statements made, in light of the circumstances under
28 which they were made, not misleading; and engaged in acts, practices and courses of

1 business which operated or would have operated as a fraud and deceit upon
2 purchasers and sellers and prospective purchasers and sellers of securities. Red Rock
3 knew, or was reckless in not knowing, of the facts and circumstances described in
4 paragraphs 1 through 103 above.

5 119. When Red Rock violated Section 10(b) of the Exchange Act and Rule
6 10b-5, Kelly directly or indirectly controlled Red Rock. Kelly was therefore a
7 “controlling person” within the meaning of Section 20(a) of the Exchange Act [15
8 U.S.C. § 78t(a)] with regard to Red Rock.

9 120. As alleged above, Kelly was a culpable participant in, and directly or
10 indirectly induced the acts constituting Red Rock’s violations of the Exchange Act,
11 and did not act in good faith.

12 121. By reason of the foregoing, Kelly is jointly and severally liable with and
13 to the same extent as Red Rock for its violations of Section 10(b) of the Exchange
14 Act and Rule 10b-5 and, unless enjoined, will again act as a “controlling person” in
15 connection with such violations.

16 RELIEF REQUESTED

17 WHEREFORE, the Commission respectfully requests that this Court:

18 I.

19 Permanently enjoin defendants, their officers, agents, servants, employees,
20 attorneys and those persons in active concert or participation with defendants who
21 receive actual notice of the order of this Court, by personal service or otherwise, and
22 each of them from, directly or indirectly, engaging in the transactions, acts, practices
23 or courses of business described above, or in conduct of similar purport and object, in
24 violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j] and Rule 10b-5 [17
25 CFR § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Advisers Act
26 [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

27 II.

28 Order defendants to disgorge the ill-gotten gains received because of the

violations alleged in this Complaint, including prejudgment interest, pursuant to Section 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(5), and 78u(d)(7)].

III.

Order defendants to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

IV.

Order that Kelly be permanently prohibited from serving as an officer or director of a public company, pursuant to Section 21(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d)(2).

JURY DEMAND

The Commission hereby requests a trial by jury.

Dated: May 15, 2023

/s/ Stephen Kam

Stephen Kam

Attorney for Plaintiff

Securities and Exchange Commission

Jack Kaufman

Michael Ellis

Pro Hac Vice Applications Pending

Of Counsel:

Antonia M. Apps

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Hane L. Kim

SECURITIES AND EXCHANGE COMMISSION

JS6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COMMODITY FUTURES TRADING
COMMISSION, et al.,

Plaintiffs,

vs.

RED ROCK SECURED, LLC, et al.,

Defendants.

Case No. 2:23-cv-03680-RGK-PVC

**CONSENT ORDER OF
PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY,
AND OTHER STATUTORY AND
EQUITABLE RELIEF AGAINST
ALL DEFENDANTS**

Trial Date: May 14, 2024

I. INTRODUCTION

Plaintiffs Commodity Futures Trading Commission (“CFTC”), California Department of Financial Protection & Innovation (“DFPI”), and State of Hawaii, Department of Commerce and Consumer Affairs, Securities Enforcement Branch (“SEB”) (DFPI and SEB collectively the “States” or the “State Plaintiffs”) filed a Complaint on May 15, 2023 [ECF No. 1] and an Amended Complaint on August 31, 2023 [ECF No. 45] (collectively, “Complaint”) against Defendants Red Rock Secured, LLC (“Red Rock”), Sean L. Kelly (“Kelly”), and Anthony Spencer (“Spencer”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26 and the CFTC’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1–190 (2023), as well as violations of state laws.

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II. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Defendants without a trial on the merits or any further judicial proceedings, Defendants specifically acknowledge the following:

1. Consent to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Statutory and Equitable Relief Against All Defendants (“Consent Order”);

2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC, the States, or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;

3. Acknowledge service of the Summons and Complaint;

4. Admit to the jurisdiction of this Court over them and the subject matter of this action pursuant to Sections 6c and 6d of the Act, 7 U.S.C. §§ 13a-1, 13a-2;

5. Admit to the jurisdiction of the CFTC and the States over the conduct and transactions at issue in this action pursuant to the Act and the state law violations alleged in the Complaint;

6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);

7. Waive

a) Any and all claims that Defendants may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this action;

b) Any and all claims that Defendants may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L.

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- 1 c) No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as
2 amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C
3 and 15 U.S.C.), relating to, or arising from, this action;
4 d) Any claim of double jeopardy based upon the institution of this
5 action or the entry in this action of any order imposing a civil
6 monetary penalty or any other relief, including this Consent Order;
7 and
8 e) Any and all rights of appeal from this Consent Order;

9 8. Agree that the CFTC is the prevailing party in this action for purposes of
10 the waiver of any and all rights under the Equal Access to Justice Act specified in
11 subpart (a) of paragraph 7;

12 9. Consent to the continued jurisdiction of this Court over them for the
13 purpose of implementing and carrying out the terms and conditions of this Consent
14 Order, and for any other purpose relevant to this action, even if Defendants now or in
15 the future reside outside the jurisdiction of this Court;

16 10. Agree that they will not oppose enforcement of this Consent Order by
17 alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil
18 Procedure and waive any objection based thereon;

19 11. Agree that neither Defendants nor any of their agents or employees
20 under their authority or control shall take any action or make any public statement
21 denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact
22 or Conclusions of Law in this Consent Order, or creating or tending to create the
23 impression that the Complaint and/or this Consent Order is without a factual basis;
24 provided, however, that nothing in this provision shall affect Defendants'
25 (a) testimonial obligations; or (b) right to take legal or factual positions in other
26 proceedings to which the CFTC and the States are not a party. Defendants shall
27 comply with this agreement, and shall undertake all steps necessary to ensure that all
28

1 of their agents or employees under their authority or control understand and comply
2 with this agreement;

3 12. Consent to the entry of this Consent Order without admitting or denying
4 the allegations of the Complaint or any findings or conclusions in this Consent Order,
5 except as to jurisdiction and venue, which they admit;

6 13. Consent to the use of the findings and conclusions in this Consent Order
7 in this proceeding and in any other proceeding brought by the CFTC or to which the
8 CFTC is a party or claimant, and agree that they shall be taken as true and correct and
9 be given preclusive effect therein, without further proof;

10 14. Consent to the use of the findings and conclusions in this Consent Order
11 in this proceeding and in any other civil or administrative proceeding brought by the
12 States or to which the States are a party or claimant, and agree that they shall be taken
13 as true and correct and be given preclusive effect therein, without further proof;

14 15. Do not consent, however, to the use of this Consent Order, or the
15 findings and conclusions herein, as the sole basis for any other proceeding brought by
16 the CFTC or the States or to which the CFTC or the States is a party, other than a:
17 statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or
18 proceeding to enforce the terms of this Consent Order;

19 16. Do not consent to the use of this Consent Order, or the Findings of Fact
20 or Conclusions of Law herein, by any other party in any other proceeding; and

21 17. Agree that no provision of this Consent Order shall in any way limit or
22 impair the ability of any other person or entity to seek any legal or equitable remedy
23 against Defendants in any other proceeding.

24 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

25 18. The Court, being fully advised in the premises, finds that there is good
26 cause for the entry of this Consent Order and that there is no just reason for delay.
27 The Court therefore directs the entry of the following Findings of Fact, Conclusions
28

1 of Law, permanent injunction, and equitable relief pursuant to Sections 6c and 6d of
2 the Act, 7 U.S.C. §§ 13a-1, 13a-2, as set forth herein.

3 THE COURT HEREBY FINDS:

4 A. Findings of Fact

5 1. The Parties to this Consent Order

6 19. Plaintiff CFTC is an independent federal regulatory agency that is
7 charged by Congress with administering and enforcing the Act and the Regulations.

8 20. The State Plaintiffs are the state regulatory agencies charged with
9 administering and enforcing the commodities and securities laws and regulations of
10 their states. The State Plaintiffs join the claims asserted by the CFTC and have
11 asserted state-specific claims, within their jurisdiction.

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

16 22. Defendant Sean L. Kelly f/k/a Shade L. Kelly-Johnson resides in the Los
17 Angeles, California area, is Red Rock's President and CEO, and is a signatory on Red
18 Rock's bank accounts. Kelly held an 80% ownership share in Red Rock, oversaw
19 day-to-day operations, supervised employees, and participated in hiring and firing
20 decisions.

21 23. Defendant Anthony "Tony" Spencer resides in the Los Angeles,
22 California area, and, at points in time while employed by Red Rock, held the titles of
23 Senior Account Executive and Director of Account Services.

24 2. Red Rock's Precious Metals Business

25 24. Red Rock is a precious metals retailer, meaning it sells various types of
26 precious metals products (e.g., bars, rounds, and coins) directly to members of the
27 public.

1 25. Typically, in the metal coins industry coins are produced by a mint
2 which sells them to precious metals distributors. The distributors, in turn, sell the
3 coins to precious metals wholesalers. The precious metals wholesalers then sell the
4 coins to precious metals retailers, such as Red Rock. Each of these transactions
5 includes a mark-up charged by the seller.

6 26. From at least November 2019 through at least June 2022 (“Relevant
7 Period”), Red Rock purchased all of its precious metals products from a single
8 wholesaler, Bayside Metal Exchange (“BME”). [Identified in the Complaint as
9 “Wholesaler 1”]

10 27. For customers using tax-deferred or other retirement funds to purchase
11 precious metals, Red Rock followed a three-step process: First, Red Rock
12 representatives assisted their customers in establishing a self-directed investment
13 retirement account (“SDIRA”) and transferring existing retirement funds into the
14 newly-established SDIRA. Second, Red Rock purchased precious metals for its
15 customers using those SDIRA funds. Third, Red Rock facilitated the transfer of the
16 newly-purchased metals to a depository or, in some cases, directly to the customer.

17 28. Red Rock’s website explained Red Rock’s mission as follows: “Most
18 people are worried about losing money in their retirement accounts. At Red Rock
19 Secured we convert that money into physical gold & silver so they can enjoy a worry-
20 free retirement.” Promotional materials Red Rock provided to prospective
21 customers—often styled as “Guides” or “Playbooks”—touted precious metals IRAs as a
22 means to “protect your retirement” or “preserve or potentially even grow your
23 retirement wealth.”

24 29. Kelly directed Red Rock sales personnel to emphasize these points in
25 speaking with customers:

- 26 a) “At Red Rock Secured we know you want to be worry free. In
27 order to do that, you need to protect your retirement savings. The
28

1 problem is you can wake up and half your retirement could be gone
2 which makes you feel powerless."

3 b) "We believe that you deserve to be confident that everything you
4 have worked for will still be there tomorrow. We understand, in the
5 last recession we saw too many Americans lose too much which is
6 why we for over a decade have worked with our clients to protect
7 their retirement savings by investing in gold and silver."

8 30. "Trust" was also a common theme that Defendants promoted on Red
9 Rock's website, in its promotional materials provided to prospective customers, and
10 in its training materials for sales staff. Such statements included:

11 a) "Red Rock is dedicated to protecting your retirement – a company
12 built on trust, expertise, and performance."

13 b) "All our client relationships are built on trust - this is an integral
14 part of how we do business and informs all of our actions. We trust
15 one another as we build trust with our clients."

16 31. As part of its sales pitch, Red Rock told prospective customers that
17 certain categories of precious metals products are on the "CUSIP list" (Committee on
18 Uniform Security Procedures) and thus are "trackable" by the government, while
19 other "non-CUSIP" products, including the Canadian Red-Tailed Hawk ("RTH")
20 coins, are "private and non-trackable." Red Rock told prospective customers that the
21 CUSIP list allows "financial institutions and government entities to track and identify
22 financial products."

23 32. Red Rock also told prospective customers that "[b]y tagging, tracking,
24 and identifying precious metals assets, CUSIP enables financial institutions and the
25 government to *monitor* precious metals holdings and, of course, the investors who
26 hold them" (emphasis in original). As such, according to Red Rock, "CUSIP metals
27 are often referred to as 'public' gold or silver."
28

1 33. Red Rock told prospective customers that “Non-CUSIP metals act in
2 nearly the opposite fashion—providing the highest levels of security and authenticity
3 while maintaining anonymity.” As such, “Non-CUSIP metals are often called
4 ‘private’ and/or ‘premium’ metals.”

5 **3. Red Rock’s Products**

6 34. Red Rock generally categorized its precious metals products as either
7 “common bullion” products or “premium” products. The “common bullion” category
8 included comparatively less-expensive, lower-commission products such as metal
9 bars and rounds. In contrast, the “premium” category included comparatively more-
10 expensive, higher-commission products such as the RTH coins.

11 35. Promotional material Red Rock provided to prospective customers
12 further categorized its precious metal offerings or “assets” as “common bullion,”
13 “monetized bullion,” or “monetized bullion (limited quantity)” (collectively,
14 “Precious Metals”).

15 36. Red Rock’s promotional material provided to prospective customers,
16 including documents entitled “Precious Metals Categories & Options” and “Red
17 Rock Secured Product Selection – Protect Your Retirement” steered them toward its
18 monetized bullion (limited quantity) products.

19 37. Red Rock told prospective customers that “[b]ars and rounds are the
20 most common form of bullion. Common in that investors who are new to precious
21 metals investing tend to gravitate to bars and rounds based on inexperience and lack
22 of knowledge concerning other available options.”

23 38. Red Rock told prospective customers that bars and rounds offer “no
24 monetary value other than the value of the metal based on weight.” According to Red
25 Rock, “[t]his can affect the long-term profit and growth of the asset and its eventual
26 resaleability since it does not provide the functionality of a currency piece as
27 Monetized Bullion does.”
28

1 39. Red Rock told prospective customers that common bullion assets are on
2 the CUSIP list and thus trackable by the government.

3 40. Red Rock told prospective customers that “monetized bullion” refers to
4 coins produced from gold, silver, or other precious metals “that have been or are used
5 as a medium of exchange.”

6 41. Red Rock told prospective customers that monetized bullion provides
7 monetary value beyond the weight of the metal itself: “Because Monetized Bullion
8 provides monetary value and functionality as a currency piece, whereas common
9 bullion assets like bars and rounds do not, long-term growth and profitability can
10 prove much greater as investors seek to acquire assets that enable them to cover all
11 their bases—as an investment as well as a potential crisis instrument should they need
12 to use their metal as an alternative to the dollar.”

13 42. Red Rock told prospective customers that monetized bullion assets, like
14 common bullion assets, are on the CUSIP list and thus trackable by the government.

15 43. Red Rock told prospective customers that “monetized bullion (limited
16 quantity)” assets are similar to monetized bullion assets in that they are produced by
17 government mints, they may be used as media of exchange, and they function “as an
18 investment and a potential crisis instrument.”

19 44. Red Rock told prospective customers that “[w]hile there are many
20 similarities between” standard monetized bullion and monetized bullion (limited
21 quantity), a “key differentiator that contributes to how the assets appreciate in value
22 in the long term is mintage population.” Standard monetized bullion assets “are
23 produced in significantly higher quantities,” as compared to monetized bullion
24 (limited quantity) assets.

25 45. Red Rock told prospective customers that “[w]hereas Standard
26 Monetized Bullion can increase in price based on just two factors—intrinsic value
27 and monetary value—the additional variable of limited supply size can cause
28

1 Monetized Bullion (Limited Quantity) to move in value faster.”

2 46. Red Rock told prospective customers that, in contrast to common bullion
3 and standard monetized bullion assets, monetized bullion (limited quantity) assets are
4 *not* on the CUSIP list and thus *not* trackable by the government.

5 47. Red Rock told prospective customers that monetized bullion (limited
6 quantity) was preferable to common bullion and standard monetized bullion: “More
7 often than not, Monetized Bullion (Limited Quantity) is the preferred option when
8 building a precious metals portfolio for long-term profit, growth, and security.” And,
9 “[t]hese assets are for savvy investors who want to protect their portfolios with
10 precious metals through maximizing the value of their investment.”

11 48. Red Rock classified and promoted the RTH coins as monetized bullion
12 (limited quantity).

13 49. Spencer and other sales personnel of Red Rock provided Red Rock’s
14 “Precious Metals Categories & Options” document to clients.

15 50. Red Rock’s “Precious Metals Categories & Options” document was
16 available on its website.

17 4. Red Rock’s Pricing

18 51. In its Transaction Agreements with customers for the purchase and sale
19 of precious metals, Red Rock told customers that common bullion products “are
20 priced for the most part in accordance with the value of the precious metal they
21 contain.” In contrast, premium products, including the RTH coins, “are priced at a
22 premium above the value of the precious metals they contain.” And: “This premium
23 is based on various factors, including, but not limited to, speculative interest,
24 collector and investor demand, available supply, industry promotions, perceived
25 value and economic conditions.”

26 52. In its promotional literature provided to prospective customers, Red
27 Rock further explained how its products were priced: “[A]ll orders are based off of
28

1 current market prices, also referred to as spot price. Spot price is a common industry
2 wide standard used to determine the value of one ounce of gold or silver. Different
3 assets have different premiums above spot price."

4 53. In the precious metals industry, the "spot price" refers to the price per
5 ounce of metal available for immediate delivery on any one of a number of exchanges
6 around the world where precious metals, including silver and gold, are traded each
7 day.

8 54. "Melt value" (or "melt") refers to the price of a given quantity of metal
9 based on the "spot" (or per ounce) price. For example, if the spot price of silver is
10 \$16.00 per ounce, the melt value of a half-ounce silver coin would be \$8.00.

11 55. The prices Red Rock paid BME to acquire the RTH coins were directly
12 tied to the spot prices of gold and silver.

13 56. Internally, Red Rock referred to the prices it paid to BME as its "cost of
14 goods sold."

15 57. Red Rock based the prices it charged customers on Red Rock's "cost of
16 goods sold."

17 58. Red Rock's mark-up on metals sold to customers was the difference
18 between "its cost of goods sold" and the price Red Rock charged its customers for
19 those same metals.

20 59. Kelly determined what mark-ups Red Rock charged for the assets it sold
21 to customers.

22 60. For "common bullion" products, Red Rock charged its customers mark-
23 ups of between approximately 3% to 5% above its cost of goods sold.

24 61. For "premium" products, including the RTH coins, Red Rock charged its
25 customers mark-ups of up to approximately 130% above its cost of goods sold.

26 62. Red Rock did not tell its customers about the actual mark-ups it charged.
27
28

5. The Canadian Red-Tailed Hawk Coin

63. In late 2019, BME agreed to sell two coins—the half-ounce silver RTH coin and the one-tenth ounce gold RTH coin—to Red Rock exclusively.

64. Both the initial silver and gold RTH coins—and later a quarter-ounce gold RTH coin—were produced by the Royal Canadian Mint (“RCM”).

65. The RCM sold the RTH coins to one of its U.S. distributors, A-Mark Precious Metals, Inc., which, in turn, sold the RTH coins to BME exclusively.

66. BME then then sold the RTH coins to Red Rock exclusively.

67. BME advised Red Rock that there was no mintage limit on the RTH coins.

68. BME advised Kelly that the RCM would produce as many RTH coins as Red Rock could sell.

69. Despite the absence of a mintage limit, Red Rock classified and promoted the silver and gold RTH coins as “monetized bullion (limited quantity).”

70. BME sold Red Rock half-ounce silver RTH coins for “\$2.95/coin over melt.” As BME explained to Kelly: “If the silver spot [price] is \$18.00/oz, your cost is $\$9.00 + \$2.95 = \$11.95$ ” per coin.

71. BME sold Red Rock one-tenth-ounce gold RTH coins for “15% over melt.” As BME explained to Kelly: “If the gold spot [price] is \$1500/oz, your cost is $\$150.00 \times 1.15 = \172.50 per coin.”

72. Red Rock’s mark-up on the silver RTH coins purchased by customers averaged 129.97%.

73. Red Rock’s mark-up on the one-tenth and one-quarter ounce gold RTH coin averaged 111.32% and 91.89%, respectively.

74. Defendants incentivized Red Rock sales staff to sell its “premium” products, particularly the RTH coins. While sales of common bullion products typically entitled Red Rock’s sales staff to a commission of 1% of the total purchase,

1 the RTH coin sales carried an 8% commission.

2 75. Beginning in January 2020, Spencer, who was one of Red Rock's top
3 salespersons, was offered up to 10% sales commissions on his sales of the RTH
4 coins.

5 76. The RTH coins were Red Rock's best-selling products.

6 77. Between November 2019 and June 2022, the half-ounce silver RTH coin
7 accounted for 84.2% of Red Rock's total sales.

8 78. Between November 2019 and June 2022, the one-tenth ounce and one-
9 quarter ounce gold RTH coins accounted for 7.76% of Red Rock's total sales.

10 79. Between November 2019 and June 2022, the silver and gold RTH coins
11 accounted for 91.96% of Red Rock's total sales.

12 80. Between November 2019 and June 2022, Red Rock sold 1,925,062
13 million half-ounce silver RTH coins.

14 81. Between November 2019 and June 2022, Red Rock sold 9,575 one-
15 tenth ounce gold RTH coins and 1,774 one-quarter ounce gold RTH coins.

16 82. Between November 2019 and June 2022, customers paid Red Rock
17 \$63,661,800.34 to purchase half-ounce silver RTH coins.

18 83. Between November 2019 and June 2022, customers paid Red Rock
19 \$5,863,078.65 to purchase one-tenth and one-quarter ounce gold RTH coins.

20 84. Between November 2019 and June 2022, Red Rock paid BME
21 \$27,682,391.56 to purchase half-ounce silver RTH coins.

22 85. Between November 2019 and June 2022, Red Rock paid BME
23 \$2,858,173.53 to purchase one-tenth and one-quarter ounce gold RTH coins.

24 86. Red Rock's total profit on sales of the half-ounce silver RTH coins was
25 \$35,979,408.78.

26 87. Red Rock's total profit on sales of the one-tenth and one-quarter ounce
27 gold RTH coins was \$3,004,905.12.

28

1 88. Between November 2019 and June 2022, customers paid Red Rock a
2 total of \$69,524,878.99 for RTH coins.

3 89. Between November 2019 and June 2022, Red Rock paid BME a total of
4 \$30,540,565.09 for RTH coins.

5 90. Between November 2019 and June 2022, Red Rock's total profit on
6 sales of all RTH coins was \$38,984,313.90.

7 6. Defendants Representations and Omissions About Red
8 Rock's Mark-Ups

9 a. Red Rock's Transaction Agreements

10 91. Red Rock required its customers to sign a Transaction Agreement in
11 order to purchase precious metals from Red Rock.

12 92. Consistent with a Red Rock sales confirmation script, Red Rock sales
13 staff routinely told customers to refer to their Transaction Agreement to answer any
14 questions the customers might have.

15 93. During the Relevant Period, none of the Transaction Agreements signed
16 by Red Rock's customers disclosed Red Rock's actual mark-ups on the products it
17 sold.

18 94. In fact, for almost the entire Relevant Period, the Transaction
19 Agreements did not even include the term "mark-up."

20 95. The following language appeared in the Red Rock Transaction
21 Agreement, under the heading "Bid/Ask Spread": "The difference between the
22 Purchase Price Client pays for Products under a Purchase Order and the price that
23 Red Rock actually pays for the Products purchased by Client under such Purchase
24 Order is known as the "spread" and it is stated as a percentage of the Purchase Price
25 paid by the Client."

26 96. One version of this "Bid/Ask Spread" provision informed customers that
27 the "spread" on Red Rock's "premium ... coins typically ranges, between 4% and
28

1 29%."

2 97. A second version of this "Bid/Ask Spread" provision noted a typical
3 range of "5% for CUSIP assets and 29% for Premium/non-CUSIP assets."

4 98. Red Rock characterized the RTH coins as both "premium" and "non-
5 CUSIP."

6 99. In December 2021, Red Rock revised its Transaction Agreement to
7 include an explicit reference to "mark-up." The "Bid/Ask Spread and Mark-Up"
8 section in this revised Transaction Agreement included language similar to the
9 opening sentence of the "Bid/Ask Spread" language quoted in SUF No. 71 above:
10 "'Mark-up' is the difference between the Purchase Price Clients pay for Products and
11 the price that Red Rock pays for such Products. The mark-up can range anywhere
12 from 5% to 120% depending on the type of coin and the fair market value at the
13 time."

14 100. None of the Transaction Agreements in use during the Relevant Period
15 specified the actual mark-ups Red Rock charged on any particular product sold by
16 Red Rock, including the approximately 100% to 130% mark-ups on the RTH coins.

17 b. Representations and Omissions by Red Rock Sales
18 Staff

19 101. Red Rock sales staff told customers that Red Rock charged 1% to 5%
20 "above our costs" on "common bullion assets."

21 102. Red Rock sales staff were instructed to reference the 1% to 5% mark-up
22 associated with Red Rock's common bullion products when customers or prospective
23 customers questioned Red Rock's charges or fees.

24 103. Spencer also told at least one customer that: "Red Rock charges 1-5%
25 above its cost from the mint."

26 104. On 8/25/2020, Joseph Abrahamson, a resident of Florida, paid Red Rock
27 \$149,705.00 for 3,245 half-ounce silver and 60 one-tenth ounce gold RTH coins.

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1 105. Red Rock paid BME \$66,109.50 for the silver and gold RTH coins sold
2 to Abrahamson.

3 106. Red Rock's mark-ups on the RTH coins Abrahamson purchased were
4 approximately 129% for the silver coins and approximately 115% for the gold coins.

5 107. During an 8/25/2020 telephone call confirming Abrahamson's purchase,
6 Spencer told Abrahamson: "We charge anywhere from 1 to 5 percent above our cost
7 on common bullion assets."

8 108. Abrahamson understood Spencer to mean that Red Rock would charge a
9 fee of 1 to 5 percent above cost on Abrahamson's purchase of RTH coins.

10 109. Paying a fee of one to five percent above cost on his purchase was
11 important to Abrahamson.

12 110. No one from Red Rock told Abrahamson that he, in fact, paid more than
13 twice the cost of the RTH coins he purchased.

14 111. If someone from Red Rock had told Abrahamson that he was, in fact,
15 paying more than twice the cost of the RTH coins he purchased, Abrahamson would
16 not have gone through with the purchase.

17 112. On 5/25/2021, Francis Losecco, a resident of New York, paid Red Rock
18 \$199,680.00 for 5,045 half-ounce silver RTH coins.

19 113. Red Rock paid BME \$87,177.60 for the silver RTH coins sold to
20 Losecco.

21 114. Red Rock's mark-up on the silver RTH coins Losecco purchased was
22 approximately 129%.

23 115. During a 5/25/2021 telephone call confirming Losecco's purchase,
24 Spencer told Losecco: "Because we charge anywhere from one to five percent above
25 our cost, okay, on common bullion assets. Your fee, based on the amount that you
26 moved, was 1.5 percent."

27 116. Being charged a fee of 1.5 percent was significant to Losecco in his
28

1 decision to purchase RTH coins.

2 117. On 11/15/2021, Lloyd Lawrence, resident of Texas, paid Red Rock
3 \$499,690.00 for 13,755 half-ounce silver RTH coins.

4 118. Red Rock paid BME \$217,879.20 for the silver RTH coins sold to
5 Lawrence.

6 119. Red Rock's mark-up on the silver RTH coins Lawrence purchased was
7 approximately 129%.

8 120. During a 10/29/2021 telephone call with Lawrence, Spencer told
9 Lawrence: "We charge anywhere from 1 to 5 percent above our cost on common
10 bullion assets, and that fee structure is adjusted accordingly, based on the investment
11 amount."

12 121. During that same call, Spencer told Lawrence his fee to purchase the
13 RTH coins would be 1 percent.

14 122. During a 11/15/2021 telephone call with Lawrence, Spencer confirmed
15 that Lawrence would pay a fee of 1 percent (\$5,000).

16 123. Paying a lower price was important to Lawrence in deciding to purchase
17 metal from Red Rock.

18 124. On 7/7/2021, William Hoover, a resident of Georgia, paid Red Rock
19 \$149,624.20 for 4,000 half-ounce silver RTH coins.

20 125. Red Rock paid BME \$65,400 for the silver RTH coins sold to Hoover.

21 126. Red Rock's mark-up on the silver RTH coins Hoover purchased was
22 approximately 129%.

23 127. On 5/4/2021, Spencer told Hoover: "As I indicated yesterday, your fee,
24 which is a one time fee, is 1.83%. If you're moving 100k, for example, your fee is
25 1,830 dollars. Red Rock charges 1-5% above its cost from the mint. That range is
26 adjusted accordingly based on the investment amount."

27 128. Spencer knew that Red Rock charged 29%, not 1-5%, on the front end of
28

1 transactions for “premium” products, including the RTH coins.

2 7. Defendants’ Representations About Red Rock’s
3 Relationship with the Mints, the RCM’s Role in Pricing
4 the RTH Silver Coin, and “Limited Mintage” of the Silver
5 RTH Coin

6 a. Representations About Red Rock’s Relationship with
7 the Mints

8 129. On 7/16/2021 Spencer told customer Robert Bradley that: “As we
9 discussed previously, Red Rock Secured is not a retail company/coin shop. I would
10 venture to guess that the other companies you've contacted fall more on the retail side
11 of the spectrum. Retail companies do not have a direct relationship with the mints, the
12 metal they provide to you must be secured through a metals distributor, and as a
13 result you end up paying much higher premiums for the same metal you could
14 acquire from Red Rock Secured for substantially less. The benefit to you in working
15 with Red Rock is we are an investment firm, we have a direct relationship with the
16 mints, and therefore we are able acquire the metal we provide to you at wholesale
17 prices.”

18 130. During an 8/4/2020 telephone call with Abrahamson, Red Rock account
19 executive Edward Coupland told Abrahamson: “Because we're a Tier One company
20 we do work with the mints directly, so we are able to [sic] wholesale prices and pass
21 on the savings to you, which is why we can get you good pricing.”

22 131. During that same call, Spencer told Abrahamson: “We have a direct
23 relationship, as a result, with the mints. So we buy our metal at wholesale, pass the
24 savings on to you. We don't go through anyone, in other words, to buy the metal,
25 whereas retail shops typically through a middle guy. So you’re paying three, four,
26 five times more than you should be at that point.”

27 132. During an 8/25/2020 telephone call confirming Abrahamson’s purchase,
28

1 Spencer told Abrahamson: "So, we have a direct relationship with the mints. We buy
2 our metal in volume and we buy our metal in wholesale and we pass the savings on to
3 you. We charge anywhere from 1 to 5 percent above our cost on common bullion
4 assets."

5 133. During a 4/14/2021 telephone call, Spencer told Losecco: "We're not a
6 retail shop in any way. American Hartford Gold Group, Lear, Rosland, Advantage,
7 Goldco, and the like, tend to fall on the retail side of the spectrum, which means that
8 they have to go through a metals distributor to secure their metal. So you, as an
9 investor, as a consumer, you end up paying five to ten times more for the same metal
10 that you could secure from us. And the reason is that because we're an investment
11 firm we have a direct relationship with the mints. We buy our metal at wholesale,
12 pass the savings on to you."

13 134. Spencer telling Losecco "because we're an investment firm, we have a
14 direct relationship with the mints. We buy our metal at wholesale, pass the savings on
15 to you" was important to Losecco in deciding to purchase metal from Red Rock.

16 135. During his 10/29/2021 telephone call with Lawrence, Spencer stated:
17 "So with us, however, there's no middleman. We have a direct relationship with the
18 mints, so we're not going through a metals distributor. When you're going through a
19 retail shop that works with a metals distributor you're paying the retail shop's markup,
20 you're paying the metals distributor's markup, and you're paying the Mint's markup."

21 136. On 11/27/2020, Timothy Rowe asked Spencer about the value of the
22 half-ounce silver RTH coins: "I am not understanding how 111 1/2 oz Canadian red
23 tailed hawks are worth \$4,000 dollars. At about \$27 an ounce that would come to
24 55.5 ounces x 27=\$1498.5. Can you explain? Because I can buy the same thing from
25 [a Red Rock competitor] for 26.7 and [sic] ounce. Please let me know what
26 happened here?"

27 137. On 11/28/2020, Spencer responded to Rowe: "As we discussed, your
28

1 assets are not on the CUSIP list and therefore are completely private with no tracking
2 or serial number attached to them. They are also monetized, which means you can
3 use them as legal tender if necessary. You can liquidate these assets privately, which
4 is one of the main reason [sic] they are continuing to appreciate in value very quickly.
5 The version that [the Red Rock competitor] provides is a one ounce coin produced in
6 2015. Anything 1 oz or larger is on the CUSIP list and is not a private asset. [The
7 Red Rock competitor] does not have access to the 1/2 oz Canadian Red Tailed Hawk,
8 as they are a retail company, whereas Red Rock Secured has an exclusive relationship
9 with the Royal Canadian Mint. As a result, your assets are worth considerably more
10 when you liquidate/sell them."

11 138. In a 2/3/2021 telephone call with customer Stephanie Shein, Red Rock's
12 Director of Sales, Bayani Ison stated: "The way that we make money is that we have
13 a markup on the coins, so we, essentially, just make money one time and one time
14 only."

15 139. In a 3/12/2021 telephone call with prospective customer Beverly Lantz,
16 Ison stated: "Well, right now, because of the higher demand, gold is really expensive
17 on the premiums because we're -- you know, we see that -- this directly because
18 we're a direct wholesaler to the U.S. Mint, the Canadian Mint, Perth and Swiss
19 Mints." Ison continued: "And so what -- the way with that we save our clients
20 money is that, you know, there's no middleman. We buy directly from them and then
21 pass the savings to you, so there's no additional markup, you know, like a -- for
22 someone in between that we'd have to buy it from."

23 b. Representations About the RCM's Role in Pricing the
24 Silver RTH Coin

25 140. In a 10/28/2020 email message, a prospective customer, Tim McNeil,
26 asked Spencer: "So, are virtually all half-ounce Red Tailed Hawk coins currently
27 owned by Red Rock or Red Rock clients? If that is so, would not the price of that
28

1 coin above its bullion weight at any given time essentially be set by Red Rock?"

2 141. Spencer responded to McNeil stating: "The value is set by the mint,
3 which has listed the coin for 49.99 CAD per unit. Therefore, re-saleability and ROI
4 are exceptionally, comparatively, much stronger than the common 1 oz. assets for the
5 reasons we've discussed."

6 142. The RCM categorizes the RTH coins as "bullion" coins.

7 143. The RCM does not list prices for its "bullion coins" because the RCM
8 does not sell them directly to the public.

9 144. Kelly set the value (i.e., the price) of the RTH coins.

10 c. Representations about Limited Mintage of the Silver
11 RTH Coin

12 145. Bullion coins, including the RTH coins, were not limited mintage coins.

13 146. Red Rock was aware that the RTH coins were not limited mintage coins.

14 147. On 6/25/2020, customer Lynn Vanasse wrote to Spencer: "I am alarmed
15 at the cost of the coins you suggested for my purchase. I have tried to find this exact
16 coin and cannot find it for purchase elsewhere. It is my understanding that it is not a
17 low mintage/scarce coin like some of the other 1/2oz coins I have looked at. Please
18 don't take my sense of alarm personally - the bottom line is that I need some
19 assurance - pricing confirmation that the price you are asking me to pay for these
20 coins is a fair market value."

21 148. On 6/26/2020, Spencer responded to Vanasse: "You [sic] coins were
22 \$27.09 when you bought them. They are now trading at \$27.35 per coin. In addition
23 to not being on the CUSIP list, the other main reason these coins are priced the way
24 they are is they are part of a limited mintage population - 30k coins will be produced
25 for 2020."

26 149. Just two weeks earlier, on 6/9/2020, Spencer confirmed purchases of
27 32,705 silver RTH coins by customers James and Dolores Kolody, residents of
28

1 Pennsylvania, for a total price of \$885,414.60.

2 150. On the same day Spencer told Vanasse that only 30,000 silver RTH
3 coins would be produced for 2020, BME advised Red Rock that: (i) there was no
4 mintage limit on the RTH coins; and (ii) 446,360 silver RTH coins had been minted
5 between November 2019 and June 26, 2020.

6 151. In September 2021, Kelly asked Fogel to ask the RCM to change the
7 mintage description for the RTH coins on the RCM's website.

8 152. Referring Fogel to links for the RTH coins on the RCM website, Kelly
9 stated: "They all say -Production Limit: NONE or worse Bullion would indicate they
10 are not limited mintage!" Kelly continued: "If we could have them update the pages
11 with the truth that would be optimal!"

12 153. Following up on that message, Kelly told Fogel: "It's really important to
13 us for several reasons." Kelly continued: "Primarily it is misrepresenting that these
14 coins are not limited mintage and even more still could be minted."

15 8. Representations About Red Rock's Discounts and
16 Bonuses Offered to Customers

17 154. Typically, Red Rock charged customers full price for assets the
18 customers purchased and did not provide discounts.

19 155. This price was known internally at Red Rock as the "retail ask" price.

20 156. Red Rock account executives, including Spencer, had continuous, real-
21 time access at their desks to Red Rock's retail ask prices, as well as the spot prices of
22 silver and gold.

23 157. Trade tickets prepared by Red Rock account executives for each sale
24 showed the spot price(s) of metal at the time of purchase (in the upper-right corner)
25 as well as the price(s) Red Rock charged the customer.

26 158. Some of the trade tickets also showed the "melt value" of the products
27 purchased by the customer.
28

1 159. For example, a 12/23/2020 trade ticket showed the spot ask price of
2 silver as \$25.68 per ounce and Red Rock's retail ask price for a half-ounce silver
3 RTH coins as \$36.31 (or \$72.62 per ounce).

4 160. Red Rock offered a limited number of discounts or bonuses when
5 customer purchases reached certain thresholds.

6 161. On 5/4/2021, Spencer told Hoover: "As I indicated yesterday, your fee,
7 which is a one time fee, is 1.83%. If you're moving 100k, for example, your fee is
8 1,830 dollars. Red Rock charges 1-5% above its cost from the mint. That range is
9 adjusted accordingly based on the investment amount. There are no fees when you
10 sell the metal back to Red Rock. You also receive the 15% bonus at 125k, 12-month
11 Price Protection Plan, and No Fees for Life on the account with Strata."

12 162. Red Rock did not offer a 15% discount or bonus on precious metals
13 purchased by customers.

14 163. Spencer promised Abrahamson "a 10 percent metals promotion, which
15 would have been 10 percent of the [\$]150[,000], so an additional [\$]15,000 in
16 metals."

17 164. Receiving 10 percent in additional metals was significant to Abrahamson
18 in deciding to purchase metal from Red Rock.

19 165. When confirming Abrahamson's purchase, Spencer told Abrahamson:
20 "So, in addition to the 12-month price protection plan and the 10 percent in additional
21 metal, you also have no fees for life on the account." Spencer continued: "Your
22 subtotal -- as I mentioned, they took the \$295 out, is \$149,705. However, what you're
23 controlling in metal value is \$165[,000], okay?"

24 166. The invoice Red Rock sent to Abrahamson does not reference any
25 discount, bonus or additional metal.

26 167. Prior to Losecco's purchase, Spencer told him: "So whatever the
27 amount is you're moving, you get up to 10 percent in more metal that we place in the
28

1 account for you. Okay?" Losecco responded: "Yeah, that sounds good."

2 168. Receiving up to 10 percent in additional metal was important to Losecco
3 in deciding to purchase metal from Red Rock.

4 169. The invoice Red Rock sent to Losecco does not reference any discount,
5 bonus or additional metal.

6 170. On 6/24/2020, Vanasse, a resident of Minnesota, paid Red Rock
7 \$20,122.69 for 745 half-ounce silver RTH coins.

8 171. Red Rock paid BME \$8,776.10 for the silver and gold RTH coins sold to
9 Vanasse.

10 172. Confirming Vanasse's purchase, Spencer told Vanasse that all of the
11 silver RTH coins she bought were "provided at a discounted price."

12 173. Red Rock's mark-up on the silver RTH coins Vanasse purchased was
13 approximately 129%.

14 174. The coins Red Rock sold to Vanasse were not provided at a discounted
15 price. Vanasse paid the full retail ask price: Red Rock's cost of goods sold
16 $(\$8,776.10) + \text{Red Rock's mark-up } (129.2897\%) = \$20,122.69$.

17 175. The invoice Red Rock sent to Vanasse did not reference any discount,
18 bonus or additional metal.

19 9. Other Representations by Spencer

20 176. Spencer told customers he had a PhD in Economics. For example,
21 Spencer told one customer he had a "PhD in Economics International Markets."
22 Spencer admitted this statement was inaccurate. Spencer testified that he holds a
23 PhD in sociology with an emphasis in economics.

24 177. Spencer's purported PhD in Economics was significant to customer
25 Losecco in deciding whether to purchase metal or coins from Red Rock.

26 178. Spencer's purported PhD in Economics was significant to customer
27 Lawrence in deciding whether to purchase metal or coins from Red Rock.
28

1 179. Spencer holds a PhD in sociology, not economics.

2 180. Spencer told customers he had been helping customers with “building”
3 and “managing” their metals portfolios for over 20 years.

4 181. Spencer’s purported “over 25 years” of experience in the metals industry
5 was important to Losecco in deciding to purchase metal from Red Rock.

6 182. Spencer’s purported “over 20 years” of experience in the metals industry
7 was important to Lawrence in deciding to purchase metal from Red Rock.

8 183. In fact, Spencer had 11 years of experience working in the metals
9 industry.

10 184. Spencer told customers Red Rock was an “investment firm,” not a “retail
11 shop.”

12 185. Red Rock is, in fact, a precious metals “retail shop.”

13 10. Defendants’ Representations About the “Retail/Market
14 Value” of Customers’ RTH Coins

15 186. Account statements provided to customers from their SDIRA custodians
16 showed account values below the prices customers originally paid to Red Rock.

17 187. Beginning in at least February 2021, Red Rock’s Transaction Agreement
18 advised customers that: “The ‘melt value,’ which represents the value of metal in its
19 raw and unrefined state prior to it being converted into a finished tangible asset, is not
20 indicative of your asset’s true retail/market value. For example, ‘melt value’ usually
21 represents approximately ½ of your purchase value on Non-CUSIP assets.

22 Conversely, the retail/market value of your assets is typically twice the melt value of
23 Non-CUSIP assets due to the following factors that add additional value to your
24 metals: market demand, investor demand, and supply and demand.”

25 188. When confirming customer purchases over the phone, Red Rock
26 representatives read from a script reiterating to customers that the “melt value” of the
27 RTH coins represented only half of the RTH coins’ “true retail/market” value:

28

1 "Please note the retail value of your product is different than its melt value. For
2 example, the 'melt value' represents the value of metal in its raw and unrefined state
3 prior to it being converted into a finished tangible asset. Therefore, the melt value is
4 approximately one half of your purchase value on Non-CUSIP assets. The other half
5 is based upon Non-CUSIP investment values such as the value of comparable assets
6 found through the applicable mint: market demand, investor demand, and supply and
7 demand. As such, the 'melt value' is not indicative of your asset's true retail/market
8 value."

9 189. Spencer sent customers updates about the purported "current retail
10 value" of their metals.

11 190. On 8/20/2021, Spencer sent customer Robert Boudreau a "data
12 overview" purporting to show the "current retail value" of his silver RTH coins.

13 191. Spencer told Boudreau: "As discussed, the following is your overview,
14 including all four factors provided by the Royal Canadian Mint by percentage and
15 corresponding dollar amount." Spencer continued: "[T]his is baseline data provided
16 by the Royal Canadian Mint, not including the additional bonus metal you received."

17 192. According to Spencer, the \$100,014.58 "current retail value" of
18 Boudreau's silver RTH coins broke down as follows:

19 "INVESTOR DEMAND = 28% (28,004.08)

20 SUPPLY AND DEMAND = 26% (26,003.79)

21 MARKET DEMAND = 26% (26,003.79)

22 SPOT = 20% (20,002.92)"

23 193. Contrary to the representations in Red Rock's Transaction Agreement
24 and confirmation script that melt value accounted for approximately one half of
25 purchase value, Spencer told Boudreau that the spot or melt value accounted for less
26 than one quarter of the "current retail value" of Boudreau's RTH coins.

27 194. On 9/23/2021, Boudreau, a resident of Rhode Island, asked Spencer
28

1 about the disparity between the value of his RTH coins as reported by his SDIRA
2 custodian (\$32,000) and the amount of money he paid to Red Rock (\$100,000):

- 3 a) Boudreau: "Mornin, looking at equity, the balance is only showing
4 32 k As a balance with 0 pending. Looking to see where the rest
5 is?"
- 6 b) Spencer: "Bob, as we've discussed, that is the assessed value, not
7 the retail value. Equity and all other custodians can only report the
8 assessed value because they do not buy or sell metal. What I have
9 been sending you weekly is the retail value."
- 10 c) Boudreau: "I did not buy 32 k assets worth of silver I purchased
11 100 k, worth of silver and feel very cheated at this point in time!
12 Make it right!"
- 13 d) Spencer: "Bob, what you're seeing is the melt value, what the
14 metal is before it's been taken out of the ground. Equity and all
15 custodians, under the 1997 Tax Payers Relief Act, can only report
16 melt because custodians do not buy or sell metal. We've covered
17 this several times before, which is why I have been sending you the
18 weekly review so you have an accurate accounting of the value of
19 the account."

20 195. In a 12/18/2020 "current retail value" update for customer Edward Lobo,
21 a resident of Massachusetts, who purchased RTH coins, Spencer stated: "The current
22 retail value is 27,214.29. The data that helps to inform the value of the investment –
23 75% of which -- is provided by the mint."

24 196. The RCM does not provide information concerning the retail value of
25 the bullion coins it produces to any entities and never provided such information to
26 Red Rock.

27 197. "Melt value" or "Intrinsic value" refers to the market value of a precious
28

1 metal coin or bar calculated by multiplying the particular coin's or bar's pure
2 precious metal weight by the market value of its precious metal content.

3 198. "Bullion" refers to precious metal coins or bars consisting primarily of
4 gold, silver, platinum, or palladium that are commonly found in the precious metals
5 marketplace, typically have no material market value above their melt value, and
6 typically are of an unlimited or unfixed mintage.

7 199. The coins Red Rock sold to its customers as "premium," including the
8 RTH coins, were all bullion coins with unlimited or near unlimited mintages and
9 availability, the values of which were determined almost exclusively by their melt
10 value. These coins have no material value above that melt value in the precious
11 metals marketplace.

12 200. The prices that Red Rock charged its customers for "premium" coins,
13 including the RTH coins, significantly exceeded Red Rock's cost to purchase them
14 and vastly exceeded competitive industry pricing.

15 201. Because Red Rock charged inordinately high prices over their cost of
16 purchasing the "premium" coins (including the RTH coins), and above the coins'
17 melt value, the market resale value of its customers' coins immediately after purchase
18 was far below the prices customers paid for them.

19 202. Kelly and Spencer were made aware of silver RTH coins being resold at
20 prices substantially below the prices charged by Red Rock.

21 203. In September 2020, Kelly and Spencer heard that some silver RTH coins
22 were offered for sale by a Canadian website unconnected to Red Rock.

23 204. In response, Kelly wrote to Red Rock's wholesaler: "Eugene, this is
24 freaking me out. What is this?"

25 205. In October 2020, a prospective customer alerted Spencer that Red Rock
26 was charging "more than double what they are selling for in Canada."

27 206. In response, Kelly forwarded the email to Red Rock's controller and the
28

1 wholesaler stating: "Guys, this is KILLING our deals. See below..... complete
2 bullshit [sic]. Is there a way we can have the candian [sic] mint reach out to them and
3 tell them they are selling OUR exclusive coin."

4 11. Kelly Acted as a Controlling Person of Red Rock

5 207. During the Relevant Period, Kelly owned an 80% share of Red Rock and
6 served as Red Rock's CEO. The other two owners only provided capital to Red
7 Rock. Neither of them worked for Red Rock or played any role in Red Rock's day-
8 to-day operations.

9 208. Kelly was one of two signatories on Red Rock's bank accounts. The
10 other signatory was Red Rock's Vice President of Finance who was hired by and
11 reports to Kelly.

12 209. Kelly had discretion to take distributions from Red Rock and Red Rock
13 paid some of his personal expenses directly.

14 210. Kelly was involved in hiring Red Rock staff.

15 211. Kelly hired Spencer at Red Rock.

16 212. Kelly recruited Bayani Ison to join Red Rock as a senior account
17 executive who later served as Red Rock's sales manager then director of sales.

18 213. In most cases, Kelly led weekly Monday sales meetings with Red
19 Rock's sales staff; if he was unavailable, Ison or Red Rock's president, Dave Clemen,
20 would step in for Kelly.

21 214. Kelly determined the mark-ups Red Rock charged for its "premium"
22 coins, including the RTH coins, as well as the commissions Red Rock paid its sales
23 staff.

24 215. On at least some occasions, Kelly reviewed the recorded calls between
25 Red Rock sales staff and customers and provided written guidance about what sales
26 staff could or should tell prospective customers.

27 216. Kelly testified that, "at the end of the day," he was "responsible for
28

1 everything" at Red Rock.

2 12. Kelly's and Spencer's Compensation from Red Rock

3 217. Kelly's compensation from Red Rock was approximately \$2.85 million.

4 218. Spencer's compensation from Red Rock was approximately \$2.25
5 million.

6 13. Facts Relating to Claims Brought by the State of
7 California

8 219. The laws of the state of California govern the registration of Investment
9 Advisers ("IAs"), Cal. Corp. Code § 25230.

10 220. The laws of the State of California also prohibit: (1) fraud in connection
11 with investment advisory services, Cal. Corp. Code § 25235; and (2) fraud in
12 connection with the offer, purchase, or sale of commodities and commodity contracts,
13 Cal. Corp. Code § 29536.

14 221. During the Relevant Period, Defendants engaged in an aggressive
15 advertising campaign over various channels including phone solicitations, Red
16 Rock's website, direct marketing emails, and advertisements in third party emails and
17 newsletters. Defendants used scare tactics to convince prospective customers to
18 transfer funds, including funds from liquidating securities, in their tax-deferred
19 retirement accounts, including IRAs, 401(k) plans, and the U.S. Government Thrift
20 Savings Plans ("TSP") (collectively, "Qualified Retirement Savings") to purchase
21 precious metals, including the RTH coins, to purportedly preserve and protect
22 customers' retirement funds.

23 a. Investment Advice

24 222. During the Relevant Period, Red Rock, directly or by and through its
25 sales representatives or other agents, including Kelly and Spencer, from California,
26 engaged in the business of providing investment advice to customers and prospective
27 customers nationwide for compensation from the liquidation of customers' Qualified
28

1 Retirement Savings, some of which held securities. As part of the scheme to defraud,
2 Red Rock, directly or by and through its sales representatives or other agents, assisted
3 at least 592 customers in transferring Qualified Retirement Savings into SDIRAs.

4 223. For example, directly or by and through its sales representatives or other
5 agents, Red Rock assisted customers with electronic SDIRA application and transfer
6 forms. In some cases, Red Rock's representatives or other agents facilitated phone
7 calls between customers and the entity holding the customer's Qualified Retirement
8 Savings, which included securities, to arrange the liquidation of the customer's
9 Qualified Retirement Savings and the transfer of their Qualified Retirement Savings
10 into a SDIRA.

11 224. Red Rock, directly or by and through Red Rock's sales representatives
12 or other agents, steered customers to purchase the RTH coins through their SDIRAs.
13 Kelly selected the mark-ups on the RTH coins sold to customers.

14 225. During the Relevant Period, Red Rock, directly or by and through its
15 sales representatives or other agents, for compensation in the form of mark-ups on
16 precious metals sales, commissions, and distributions, engaged in the business of
17 providing investment advice directly and by or through publications, writings, or
18 sales calls including:

19 a) Red Rock, directly or by and through Red Rock's sales
20 representatives or other agents, held Red Rock out as an
21 investment adviser. For example, on sales calls and in written
22 correspondence, Spencer told prospective customers that Red
23 Rock was not a retail shop, it was an investment firm and the
24 company's marketing guides state that it "has been in the
25 investment and financial services industry since 2009";

26 b) With Kelly's approval, Red Rock paid third parties and Red
27 Rock staff to prepare marketing materials. These marketing
28

1 materials compared the securities market to the precious metals
2 market. Kelly consented to the use of these materials and
3 provided these materials to Red Rock's staff who provided
4 these materials to prospective and existing customers;

5 c) Spencer and Red Rock, directly or by and through Red Rock's
6 sales representatives and other agents, touted the advantages of
7 investing in precious metals as an alternative to stocks, bonds,
8 and the U.S. Dollar. For example, in the late summer or early
9 fall of 2020, Spencer told California Customer 1 that he needed
10 gold and silver in his IRA to protect against market drops or
11 inflation;

12 d) Red Rock, directly or by and through its marketing materials,
13 sales representatives, or other agents, advised about market
14 trends, specifically that the stock market would fall or lose
15 value;

16 e) Red Rock, directly or by and through its sales representatives or
17 other agents, sent emails highlighting articles that would induce
18 fear in the customers about their preexisting Qualified
19 Retirement Savings;

20 f) Red Rock posted charts on its website directly comparing the
21 growth rate of the Dow Jones, S&P 500, and the U.S. dollar to
22 the growth rate of gold and silver. Kelly advised sales staff to
23 refer prospective clients to these charts;

24 g) Red Rock, directly or by and through its sales representatives or
25 other agents, including Spencer, advised and directed customers
26 to sell securities held in Qualified Retirement Savings and
27
28

1 transfer the proceeds to SDIRAs in order to purchase RTH
2 coins from Defendants;

3 h) Spencer advised prospective clients to “be careful what you
4 wish for because, if you want to see gold go to the moon and
5 silver go to the moon -- granted it’s now part of your portfolio -
6 - that means the rest of what you have [in the stock market] has
7 to become worth nothing”;

8 i) Red Rock, directly or by and through its sales representatives or
9 other agents, including Spencer, provided asset allocation
10 advice, recommending that clients have 10% to 30% of their
11 retirement savings in precious metals to diversify; and

12 j) By way of example, Defendants, directly or by and through Red
13 Rock’s sales representatives or other agents, provided
14 investment advice to the following customers and prospective
15 customers:

16 (i) In the late summer and early fall of 2020, Red Rock
17 provided retirement-aged California Customer 1 with a
18 copy of its TSP Playbook. Spencer told California
19 Customer 1 that he had a Ph.D. in economics and
20 encouraged California Customer 1 to liquidate 20-30%
21 out of his TSP account to purchase precious metals.
22 Spencer recommended the Canadian RTH coins. When
23 California Customer 1 inquired about purchasing non-
24 Canadian coins, Spencer was adamant that the RTH
25 coins would save California Customer 1 the most on
26 taxes. Spencer further told California Customer 1 the
27 importance of gold and silver in his IRA to protect
28

1 against market drops and inflation. California
2 Customer 1 liquidated \$150,000 worth of securities
3 from his TSP account to purchase RTH coins; and
4 (ii) In August of 2021, a Red Rock sales representative
5 informed prospective California Customer 2 that “silver
6 has a better upside than gold which could be double the
7 profit potential If the stock market has a
8 correction, and we are due for one, that could drive up
9 the price of precious metals so that could drive up those
10 expectations.” The Red Rock sales representative
11 recommended that prospective California Customer 2
12 transfer 10% to 30% of his retirement savings into
13 precious metals to diversify.

14 226. During the Relevant Period, Red Rock advertised in a widely circulated
15 newsletter for federal government employees. These advertisements were aimed at
16 TSP participants. A TSP is a retirement savings and investment plan for federal
17 government employees which offers participants the ability to invest in securities.

18 227. The advertisement invited readers to claim a free copy of the #1 TSP
19 Playbook and noted that inside the document prospective customers would discover:
20 How precious metals can protect [their] retirement savings from
21 inflation, economic uncertainty, stock market crashes and increasing
22 foreign currency manipulation. Why gold and silver are positioned
23 for big gains in the next 2-4 years.

24 228. The advertisement went on to discuss the “Advantages of Rolling Over
25 Your TSP to A Self Directed Gold IRA” including:

26 The current TSP structure could doom you to failure, locking you in
27 to poor investments in your portfolio. If the market crashes, your
28

1 retirement savings could be at risk for major losses. In times of
2 pandemic, tragedy and extreme market crashes, Gold has reached
3 record highs. It is truly the counterbalance investment when things go
4 bad.

5 229. Prospective customers were warned that they need to "Act quickly. For
6 those TSP holders that continue to follow the same path with their investment
7 strategy, things could get a lot worse: there is no stimulus for a loss of your
8 retirement savings. Even losing 50% of your retirement could have implications on
9 you and your family for decades to come."

10 230. During the Relevant Period, Red Rock, by and through its sales
11 representatives and other agents, routinely provided prospective customers with a
12 copy of the company's #1 TSP Playbook containing investment advice, including:

13 In the section titled Market Roller Coasters, Frank's Big Drop:
14 "Let's not fool ourselves, another market down turn is coming. It's
15 inevitable, like the tide. Markets run in waves, and all waves grow,
16 break and crash, right? So your TSPs total value is tied to whatever
17 market you're in. . . . As of July, 2019, we're back where we were a
18 dozen years ago. . . . That's why when the tide comes, if you've
19 moved out of your TSP into a self-directed IRA, you cannot only
20 avoid the pain of market crashes, you can profit by them. Because
21 there's another market we haven't talked about in this chapter
22 yet...and that's precious metals. Typically, when stocks, real estate,
23 and other dollar-denominated assets are up, metals move in the
24 opposite direction. And the reverse is also true."

25 In the section titled Where to Go from Here: "I've tried to explain
26 both the reasons we believe that precious metal should be a part of
27 your retirement. I've illustrated how moving a percentage of your
28

1 TSP into a self-directed individual retirement account can be a good
2 move in helping to secure your future. We've talked about market
3 trends and how to read them in order to create, grow and preserve
4 your wealth. . . . The one thing that's absolutely certain, however, is
5 that change is coming. As I write this, we're in an unprecedented bull
6 stock market. . . . it's destined to end up crashing on the shore."

7 231. During the Relevant Period, Red Rock, by and through its sales
8 representatives and other agents, routinely provided prospective customers with a
9 copy of the company's 2020 A Case for Silver Investment Guide containing
10 investment advice, including "You Can Protect Your Retirement Savings from a
11 Severe Market Correction." After discussing the worst stock market crashes in U.S.
12 history, the guide states: "Is there something you can do to protect yourself? Yes.
13 You can invest your hard-earned money in gold and silver."

14 232. During the Relevant Period, Red Rock, by and through its sales
15 representatives and other agents, routinely provided prospective customers with a
16 copy of the company's Gold and Silver Guide containing investment advice,
17 including:

18 So how can you diversify into gold, silver, and other precious metals?
19 You could use some of your savings to make a purchase right now.
20 But a better way [is] to use money already in a 401(k) or IRA account
21 to purchase gold and silver. . . .

22 b. Defendants' Representations About Metals Purchases

23 233. Defendants, directly or by and through Red Rock's sales representatives
24 or other agents, engaged in a scheme to defraud and made material
25 misrepresentations and material omissions in providing investment advice to
26 customers to transfer their Qualified Retirement Savings, including selling their
27 securities, to purchase commodities and commodity contracts in the form of RTH
28

1 coins from Red Rock.

2 234. During the Relevant Period, Defendants directly or by and through Red
3 Rock's sales representatives or other agents, willfully engaged in a scheme to defraud
4 by:

5 a) Advising prospective customers that precious metals can
6 protect retirement savings from stock market crashes and severe
7 market corrections, and that customers can profit by purchasing
8 precious metals including the RTH coin;

9 b) Steering a majority of all customers into the RTH coin, and
10 counseling sales representatives that were not recommending
11 the RTH coin which carried a high mark-up; and

12 c) Misrepresenting the mark-up on its premium coins in its
13 Transaction Agreements, misleading customers about the mark-
14 ups by routinely telling customers that Red Rock "charge[s] one
15 to five percent above our costs on common bullion assets,"
16 despite knowing that the company steered consumers into
17 "premium" coins including the RTH coin, with mark-ups above
18 1% to 5% and failing to disclose the actual mark-ups on the
19 RTH coins.

20 235. Red Rock, directly or by and through its sales representatives or other
21 agents, including Spencer, made material misrepresentations and material omissions
22 regarding Qualified Retirement Savings, including securities, as compared to
23 precious metals which included, but were not limited to, misleading statements to
24 instill fear in retirement-aged customers about their Qualified Retirement Savings to
25 justify the advice to liquidate securities and transfer these funds to Defendants for the
26 purchase of precious metals, while misrepresenting and failing to disclose the mark-
27 ups charged on the RTH coins.

1 236. Spencer and Red Rock, directly or by and through Red Rock's sales
2 representatives or other agents, made material misrepresentations and material
3 omissions regarding the company and its sales representatives or other agents'
4 experience and expertise which included, but were not limited to, the following:

- 5 a) Misrepresented to prospective customers that Spencer had a
6 Ph.D. in economics when he did not;
- 7 b) Misrepresented to prospective customers that Spencer had 25
8 years of experience in precious metals when he did not;
- 9 c) Misrepresented that Red Rock's leadership team, which
10 included Kelly and Spencer, "have worked tirelessly" on the #1
11 TSP Playbook and that they have "spent nights countless [sic]
12 hours pouring over pages of Thrift Savings Plan rules and
13 regulations so as to make your options clear and easy to
14 understand" when they did not.
- 15 d) Represented that Red Rock had 10 years in business, and failed
16 to clarify that it began operating in the precious metals industry
17 in 2016;
- 18 e) Misrepresented that Red Rock was an investment firm as
19 opposed to a "retail company," when, in fact, it was a retail
20 company; and
- 21 f) Misrepresented to customers and prospective customers that
22 Red Rock had a "direct relationship" with "the mints" and an
23 "exclusive relationship" with the RCM, and as such save their
24 clients' money on mark-ups and lack of a middleman, when, in
25 fact, no such relationships existed and Red Rock paid the
26 "middleman"—BME—an additional markup.

27 237. Red Rock, directly or by and through its sales representatives or other
28

1 agents, made material omissions regarding their compensation structure. In light of
2 the other statements made regarding transferring funds from Qualified Retirement
3 Savings to purchase precious metals, Red Rock and its agents failed to reveal
4 conflicts of interest arising from Red Rock's sales representatives' profit share,
5 commissions, and other compensation being tied to the amount of funds from
6 customers' Qualified Retirement Savings invested in precious metals including the
7 RTH coins.

8 238. Kelly, Spencer, and Red Rock, directly or by and through Red Rock's
9 sales representatives or other agents, made material misrepresentations regarding
10 their mark-ups and fees, which included, but were not limited to, the following:

- 11 a) Spencer and other Red Rock staff misled customers about the
12 mark-ups by routinely telling customers that Red Rock
13 "charge[s] one to five percent above our costs on common
14 bullion assets," despite knowing and failing to disclose that
15 they were steering customers into "premium" products,
16 specifically silver and gold RTH coins, which carried
17 significantly higher mark-ups above 1% to 5%;
- 18 b) Misrepresented how the company makes its money or
19 commissions. For example, in August 2021, when prospective
20 California Customer 2 asked how Red Rock makes its money
21 or commission, a Red Rock sales representative told
22 prospective California Customer 2 about the depository and
23 administrative fees, but did not disclose the mark-up or
24 commissions, even when this prospective customer asked the
25 sales representative to confirm there wasn't a percentage the
26 company makes on the transaction. The sales representative
27
28

1 stated, "No, it's not like the financial institution that gets a
2 percentage of your whole portfolio if it performs or not";

3 c) Misrepresented, in its Transaction Agreements until December
4 of 2021, that the mark-up on Red Rock's premium coins
5 typically ranges between 4% and 29% when in reality, the
6 mark-up on the majority of the premium coins it sold, including
7 the silver and gold RTH coins, carried mark-ups of
8 approximately 92% to 130%. Kelly chose the mark-ups on the
9 sale of the RTH coins and had the authority and responsibility
10 for determining what Red Rock told its clients and prospective
11 clients about the mark-ups and fees on the RTH coins;

12 d) Misrepresented in its December 2021 revised Transaction
13 Agreement that the mark-up on premium coins can range from
14 5% to 120%, when in reality, the mark-ups on the silver RTH
15 coins routinely exceeded 120%; and

16 e) Failed to disclose the mark-up on the gold and silver RTH coins
17 to prospective customers during the Relevant Period.

18 239. Spencer and Red Rock, directly or by and through Red Rock's sales
19 representatives or other agents, made material misrepresentations regarding the
20 precious metals it sold to customers, which included, but were not limited to, the
21 following:

22 a) Misrepresented that the value of the silver RTH coin was set by
23 the RCM when it was not. For example, Spencer
24 misrepresented to at least one customer that the value of the
25 silver RTH coin was set by the RCM, and as such the re-
26 salability and ROI were exceptionally, comparatively much
27 stronger than the common one oz. assets, when it was not;

- 1 b) Misrepresented there was a limited mintage population of the
2 silver RTH coins when there was not. Spencer under reported
3 the mintage population of the silver RTH coin to at least one
4 customer to make it appear as if the product justified a higher
5 price;
- 6 c) Misrepresented to customers that the metals they bought from
7 Red Rock were discounted when a discount was not applied;
8 and
- 9 d) Misrepresented the retail value of customers' precious metals in
10 its transaction agreements, on confirmation calls, and after the
11 customer purchased the metals, lulling customers to keep their
12 funds invested in the metals. For example, Spencer claimed
13 that the current retail value is based on the metals' spot price
14 plus market demand, investor demand, and supply and demand
15 when it is not.

16 240. Through this scheme to defraud and these material misrepresentations
17 and omissions, Defendants solicited customers to sell securities to ultimately gain
18 access to those funds through the sale of RTH coins. The profits obtained by Red
19 Rock and compensation paid to their sales representatives or other agents were
20 related to the amount of Qualified Retirement Savings, including securities, that
21 convinced customers to liquidate. During the Relevant Period, Red Rock sold more
22 than \$69.5 million worth of the RTH coins to customers nationwide. Customers paid
23 approximately \$39 million more than Red Rock's costs on the RTH coins with
24 average markups ranging from 92-130%.

25 241. The practices discussed in this section resulted in almost immediate
26 substantial losses for customers due to Defendants' scheme to defraud and material
27 misrepresentations and omissions.

28

1 242. The foregoing conduct in relation to all of Red Rock's offers and sales
2 during the Relevant Period (both cash and SDIRA sales) also violates California state
3 law prohibiting schemes to defraud and material misrepresentations or omissions in
4 connection with the offer, purchase, or sale of commodities.

5 14. Facts Relating to Claims Brought by the State of Hawaii

6 243. Under Hawaii Revised Statutes § 485A-501(a)(2), it is unlawful for a
7 person, in connection with the offer, sale, or purchase of a security, directly or
8 indirectly, to make an untrue statement of a material fact or fail to state a material fact
9 necessary to make the statements made, in light of the circumstance under which they
10 were made, not misleading.

11 a. Defendants' Representations to Hawaii Customer 1

12 244. From February 2020 through March 24, 2020, Defendants, directly or by
13 and through Red Rock's sales representatives or other agents, made material
14 misrepresentations and omissions to Hawaii Customer 1, age 72 at the time, which
15 resulted in Hawaii Customer 1 liquidating a portion of his TSP account that held
16 securities, including his Common Stock Index Investment (C) Fund and Small
17 Capitalization Stock Index Investment (S) Fund, in order to purchase precious metals
18 from Red Rock.

19 245. Defendants, directly or by and through Red Rock's sales representatives
20 or other agents, misrepresented the mark-ups in Red Rock's Transaction Agreement
21 provided to Hawaii Customer 1, which states that for certain "premium" precious
22 metals, including the silver and gold RTH coins, "[t]he difference between the
23 Purchase Price Client pays for Products under a Purchase Order and the price that
24 Red Rock actually pays for the Products purchased by Client under such Purchase
25 Order" typically ranges "between 4% and 29%[,]" when in reality, a majority of the
26 premium coins Red Rock sold, including the silver and gold RTH coins, routinely
27 carried mark-ups of approximately 100% to 130%.

1 246. On February 28, 2020, a Red Rock sales representative told Hawaii
2 Customer 1 that Spencer had a Ph.D. in economics when, in fact, he did not.

3 247. During the same call, Spencer told Hawaii Customer 1 that:

- 4 a) He had been assisting clients with TSP accounts over the “last 25
5 years,” when, in fact, he did not have 25 years of experience in the
6 metals business;
- 7 b) Red Rock “work[s] very closely with the TSP for, gosh, well over a
8 decade at this point,” when, in fact, Red Rock did not begin
9 operating in the precious metals business until 2016; and
- 10 c) “95% of our clients are TSP account holders.”

11 248. Spencer testified in deposition on March 16, 2022, that: (a) he did not
12 know the number of Red Rock’s customers who used TSP assets to purchase coins or
13 metals; (b) any number he provided of TSP customers would be a guess, but the
14 number would not be substantial; and (c) he did not believe the number of TSP
15 customers exceeded one-third of Red Rock’s total customer base.

16 249. On March 5, 2020, Spencer told Hawaii Customer 1 that, with a
17 \$100,000 metals purchase, “you’re also going to get 5% in more metal added to the
18 account, so that’s \$5,000 in additional metal that we are going to factor into the
19 trade.” Hawaii Customer 1 did not receive any additional metal from Red Rock.
20 Spencer did not disclose a 129% mark-up Red Rock charged Hawaii Customer 1 on
21 the silver RTH coins he purchased, which caused Hawaii Customer 1 to immediately
22 suffer a substantial loss on his investment.

23 250. As a result of the foregoing material misrepresentations and omissions,
24 on March 24, 2020, Hawaii Customer 1 paid Red Rock \$84,932.05 for 3,630 silver
25 RTH coins. Red Rock charged a mark-up of approximately 129% on the silver RTH
26 coins Hawaii Customer 1 purchased.

27 251. At no time prior to the sale did Defendants disclose to Hawaii Customer
28

1 1 that Red Rock would charge an approximately 129% mark-up on the silver RTH
2 coins he purchased.

3 252. As a result of the misrepresented and undisclosed mark-up, Red Rock kept
4 \$47,833.45 of the \$84,932.05 Hawaii Customer 1 paid, while paying BME only
5 \$37,098.60 for the RTH coins sold to Hawaii Customer 1.

6 253. Defendants' material misrepresentations and omissions were made in
7 connection with the sale of securities where Red Rock's sales representatives or other
8 agents assisted Hawaii Customer 1 with liquidating the securities held in his TSP
9 account and setting up his SDIRA with a third-party custodian in order to purchase
10 precious metals from Red Rock.

11 254. Hawaii Customer 1 had no experience purchasing precious metals at the
12 time he purchased silver RTH coins from Red Rock.

13 b. Defendants' Representations to Hawaii Customer 2

14 255. From late 2019 through March 25, 2020, Defendants, directly or by and
15 through Red Rock's sales representatives or other agents, made material
16 misrepresentations and omissions to Hawaii Customer 2, age 73 at the time, which
17 resulted in Hawaii Customer 2 liquidating a portion of her TSP account that held
18 securities, including her Common Stock Index Investment (C) Fund and Lifestyle
19 Investment (L) Fund, in order to purchase precious metals from Red Rock.

20 256. Defendants, directly or by and through Red Rock's sales representatives
21 or other agents, misrepresented the mark-ups in Red Rock's Transaction Agreement
22 provided to Hawaii Customer 2, which states that for certain "premium" precious
23 metals, including the silver and gold RTH coins, "[t]he difference between the
24 Purchase Price Client pays for Products under a Purchase Order and the price that
25 Red Rock actually pays for the Products purchased by Client under such Purchase
26 Order" typically "ranges between 4% to 29%[.]" when in reality, a majority of the
27 premium coins Red Rock sold, including the silver and gold RTH coins, routinely
28

1 carried mark-ups of approximately 100% to 130%.

2 257. On December 17, 2019, when confirming Hawaii Customer 2's purchase
3 of silver and gold RTH coins, Spencer told Hawaii Customer 2 "we only work with
4 the mints directly" and "we have an exclusive arrangement with all the mints, as a
5 matter of fact." In reality, Red Rock did not work with the mints directly and did not
6 have exclusive relationships with the mints. Rather, Red Rock bought all of the RTH
7 coins that it sold to its customers from BME.

8 258. As a result of the foregoing material misrepresentations and omissions,
9 on December 17, 2019, Hawaii Customer 2 paid Red Rock \$47,618.38 for 1,290
10 silver RTH coins and 40 gold RTH coins. Red Rock charged mark-ups of
11 approximately 120% on both the silver and gold RTH coins Hawaii Customer 2
12 purchased in December 2019.

13 259. At no time prior to the sale did Defendants disclose to Hawaii Customer
14 2 that Red Rock would charge an approximately 120% mark-up on both the silver
15 and gold RTH coins she purchased in December 2019.

16 260. As a result of the misrepresented and undisclosed mark-ups, Red Rock
17 kept \$26,015.98 of the \$47,618.38 Hawaii Customer 2 paid, while paying BME only
18 \$21,602.40 for the RTH coins sold to Hawaii Customer 2.

19 261. Thereafter, on March 25, 2020, Hawaii Customer 2 paid Red Rock
20 \$22,010.69 for 225 silver RTH coins and 40 gold RTH coins. Red Rock charged
21 mark-ups of approximately 134% on the silver RTH coins and approximately 120%
22 on the gold RTH coins Hawaii Customer 2 purchased in March 2020.

23 262. At no time prior to the sale did Defendants disclose to Hawaii Customer
24 2 that Red Rock would charge mark-ups of approximately 134% and approximately
25 120% on the silver and gold RTH coins she purchased in March 2020.

26 263. As a result of the misrepresented and undisclosed mark-ups, Red Rock
27 kept \$12,147.84 of the \$22,010.69 Hawaii Customer 2 paid, while paying BME only
28

1 \$9,862.85 for the RTH coins sold to Hawaii Customer 2 in March 2020.

2 264. Defendants' material misrepresentations and omissions were made in
3 connection with the sale of securities where Red Rock's sales representatives or other
4 agents assisted Hawaii Customer 2 with filling out paperwork to liquidate the
5 securities held in her TSP account and setting up her SDIRA with a third-party
6 custodian in order to purchase precious metals from Red Rock.

7 265. Hawaii Customer 2 had no experience purchasing precious metals at the
8 time she first purchased RTH coins from Red Rock in December 2019.

9 266. As a result of the foregoing acts, misrepresentations, and omissions,
10 Hawaii Customers 1 and 2 were deprived of material information when deciding
11 whether to liquidate their securities to purchase the RTH coins from Red Rock.

12 B. Conclusions of Law

13 1. Jurisdiction and Venue

14 267. This Court has jurisdiction over this action pursuant to Section 6c(a) of
15 the Act, 7 U.S.C. § 13a-1(a), which provides that whenever it shall appear to the
16 CFTC that any person has engaged, is engaging, or is about to engage in any act or
17 practice constituting a violation of any provision of the Act or any rule, regulation, or
18 order promulgated thereunder, the CFTC may bring an action in the proper district
19 court of the United States against such person to enjoin such act or practice, or to
20 enforce compliance with the Act, or any rule, regulation or order thereunder.

21 268. Section 6d(1) of the Act, 7 U.S.C. § 13a-2(1), authorizes the States to
22 bring a suit in the district courts of the United States to seek injunctive and other
23 relief against any person whenever it appears to the Attorneys General and/or
24 Securities Administrator of a State, or such other official that a State may designate,
25 that the interests of the residents of the State have been, are being, or may be
26 threatened or adversely affected because of violations of the Act or CFTC
27 Regulations.

1 269. Venue properly lies with this Court pursuant to Section 6c(e) of the Act,
2 7 U.S.C. § 13a-1(e), because the Defendants reside in this jurisdiction and the acts
3 and practices in violation of the Act occurred within this District.

4 2. Violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and
5 Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3)
6 (2023)

7 270. By the conduct described above in paragraphs 91-218, Red Rock, by and
8 through its officers, employees, and agents, including Spencer, and Spencer directly,
9 in connection with contracts of sale of commodities in interstate commerce,
10 intentionally or recklessly: (1) used or employed, or attempted to use or employ,
11 manipulative devices, schemes, or artifices to defraud; (2) made, or attempted to
12 make, any untrue or misleading statements of material fact or omissions of material
13 fact; and/or (3) engaged, or attempted to engage, in acts, practices, or courses of
14 business, which operated or would have operated as a fraud or deceit upon their
15 customers in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

16 271. During the Relevant Period, Kelly controlled Red Rock, directly or
17 indirectly, and did not act in good faith or knowingly induced, directly or indirectly,
18 Red Rock's act or acts in violation of the Act and Regulations. Therefore, pursuant
19 to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Kelly is liable for Red Rock's
20 violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

21 272. The foregoing acts, omissions, and failures of Kelly, Spencer, and other
22 officers, employees, and agents of Red Rock occurred within the scope of their
23 employment, agency, or office with Red Rock. Therefore, pursuant to Section
24 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2
25 (2023), Red Rock is liable for the acts, omissions, and failures of Kelly, Spencer, and
26 other officers, employees, and agents of Red Rock in violation of 7 U.S.C. § 9(1) and
27 17 C.F.R. § 180.1(a)(1)-(3).

3. State Law Violations

273. By the conduct described in paragraphs 91-266 above, Defendants violated various State laws prohibiting employing any artifice, or scheme to defraud in connection with the offer, purchase, or sale of commodities, and Defendants Red Rock and Spencer violated various State laws prohibiting: (1) unlicensed investment advice; (2) investment advisers from employing a device, scheme or artifice to defraud or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit; (3) making material misrepresentations or omissions in connection with the offer, purchase, or sale of securities; (4) making material misrepresentations or omissions in connection with the offer, purchase, or sale of commodities; and (5) financial exploitation of the elderly in violation of the following:

- a) Sections 25230, 25235, and 29536 of the California Corporations Code; and
- b) Sections 485A-501(a)(2) and 485A-603.5 of the Hawaii Revised Statutes.

(collectively the "State Law")

274. The facts, misrepresentations, and omissions described above are material because there is a substantial likelihood that a reasonable investor would consider them important in deciding whether to sell securities and/or invest in the coins sold by Red Rock.

275. By the conduct described above, Kelly controlled Red Rock, directly or indirectly, and/or induced the violations or substantially or materially assisted Red Rock's act or acts in violation of the State Law; this conduct was not undertaken in good faith or was willful or knowing. Therefore, Kelly is liable for Red Rock's violations of the State Law.

276. Spencer substantially or materially assisted in Red Rock's act or acts in

1 violation of the State Law; this conduct was not undertaken in good faith or was
2 willful or knowing. Therefore, Spencer is liable for Red Rock's violations of the
3 State Law.

4 277. Unless restrained and enjoined by this Court, there is a reasonable
5 likelihood that Defendants will continue to engage in the acts and practices alleged in
6 the Complaint and in similar acts and practices in violation of the Act and
7 Regulations and the State Law.

8 IV. INJUNCTIVE RELIEF

9 A. Permanent Injunction

10 IT IS HEREBY ORDERED THAT:

11 278. Based upon and in connection with the foregoing conduct, pursuant to
12 Sections 6c and 6d of the Act, 7 U.S.C. §§ 13a-1, 13a-2, Defendants are permanently
13 restrained, enjoined and prohibited from, directly or indirectly, in connection with
14 any contract of sale of any commodity in interstate commerce, intentionally or
15 recklessly: (1) using or employing, or attempting to use or employ, manipulative
16 devices, schemes, or artifices to defraud; (2) making, or attempting to make, any
17 untrue or misleading statements of material fact or omissions of material fact; or (3)
18 engaging, or attempting to engage, in acts, practices, or courses of business, which
19 operate or would operate as a fraud or deceit upon any person, in violation of Section
20 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3) 17 C.F.R. §
21 180.1(a)(1)-(3) (2023).

22 279. Based upon and in connection with the foregoing conduct, pursuant to
23 the laws of the States, Defendants are also permanently restrained, enjoined and
24 prohibited from directly or indirectly engaging in any conduct in violation of the
25 State Law described in paragraph 273.

26 280. Defendants are also permanently restrained, enjoined and prohibited
27 from directly or indirectly:
28

- a) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40));
- b) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2023), or Precious Metals that are commodities (as that term is defined herein), for accounts held in the name of any Defendant or for any account in which any Defendant has a direct or indirect interest;
- c) Having any commodity interests, or Precious Metals that are commodities, traded on any 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 or Precious Metals that are commodities;
- e) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests or Precious Metals that are commodities;
- 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2023); and/or
- g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2023)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), 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).

1 B. State Bar Orders

2 281. Defendants consent, without admitting or denying the allegations to be
3 contained therein, to the publication of this Consent Order or to the entry of an
4 administrative order by the States that ban or bar Defendants from participation in the
5 commodities or securities industries, including, but not limited to, any position of
6 employment, management, or control of any broker-dealer, investment adviser, or
7 commodity advisor.

8 282. Defendants consent and agree to the issuance of administrative bar
9 orders in the form set forth in Attachment 1 to this Consent Order.

10 283. Defendants consent to waive the right to any notice or hearings, and to
11 any reconsideration, appeal, or other right to review which may be afforded by the
12 applicable laws of the States, with full knowledge of their rights, voluntarily waive
13 the right to an adjudicative hearing in accordance with applicable state laws, as well
14 as any other appeal rights found therein. Defendants waive the issuance, lawful
15 service and receipt of any notice of allegations and charges against Defendants and
16 stipulate to the jurisdiction of the state securities regulators in California and Hawaii.

17 284. After being fully and adequately apprised of the right to appeal as set
18 forth in applicable state laws, Defendants knowingly and voluntarily consent to waive
19 the right to any notice or hearings, and to any reconsideration, appeal, or other right
20 to review which may be afforded by the applicable laws of California and/or Hawaii.
21 Defendants expressly waive any requirement for the filing of a pleading or
22 accusation. By waiving such rights, Defendants consent to the finality of the
23 administrative bar orders issued by the States as referenced herein.

24 V. STATUTORY AND EQUITABLE RELIEF

25 A. Civil Monetary Penalties

26 IT IS HEREBY ORDERED THAT:

27 285. Red Rock shall pay to the Plaintiffs a civil monetary penalty in the
28

1 amount of ten million dollars (\$10,000,000) ("Red Rock's CMP Obligation") within
2 30 days of the date of entry of this Consent Order. If Red Rock's CMP Obligation is
3 not paid in full within 30 days of the date of entry of this Consent Order, then post-
4 judgment interest shall accrue on the unpaid portion of Red Rock's CMP Obligation
5 beginning on the date of entry of this Consent Order and shall be determined by using
6 the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant
7 to 28 U.S.C. § 1961.

8 286. Kelly shall pay to the Plaintiffs a civil monetary penalty in the amount of
9 one million five hundred thousand dollars (\$1,500,000) ("Kelly's CMP Obligation")
10 within 30 days of the date of entry of this Consent Order. If Kelly's CMP Obligation
11 is not paid in full within 30 days of the date of entry of this Consent Order, then post-
12 judgment interest shall accrue on the unpaid portion of Kelly's CMP Obligation
13 beginning on the date of entry of this Consent Order and shall be determined by using
14 the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant
15 to 28 U.S.C. § 1961.

16 287. Spencer shall pay to the Plaintiffs a civil monetary penalty in the amount
17 of seven hundred fifty thousand dollars (\$750,000) ("Spencer's CMP Obligation")
18 within 30 days of the date of entry of this Consent Order. If Spencer's CMP
19 Obligation is not paid in full within 30 days of the date of entry of this Consent
20 Order, then post-judgment interest shall accrue on the unpaid portion of Spencer's
21 CMP Obligation beginning on the date of entry of this Consent Order and shall be
22 determined by using the Treasury Bill rate prevailing on the date of entry of this
23 Consent Order pursuant to 28 U.S.C. § 1961.

24 288. Defendants shall receive a dollar-for-dollar credit against their respective
25 CMP Obligations for any penalties paid in the matter SEC v. Red Rock Secured, LLC,
26 et al., Case No. 2:23-cv-03682-RGK-PVC (C.D. Cal. May 15, 2023) (the "SEC
27 Action"). Within ten days of any payment in the SEC Action, the paying Defendant
28

1 shall, under a cover letter that identifies the name and docket number of this
2 proceeding, transmit copies of the form of payment to the Chief Financial Officer,
3 Commodity Futures Trading Commission, and Rick Glaser, Deputy Director,
4 Commodity Futures Trading Commission, at 1155 21st Street, NW, Washington,
5 D.C. 20581, and counsel of record in this proceeding for the DFPI.

6 289. If not offset by payments in the SEC Action, any outstanding portions of
7 Defendants' CMP Obligations and any post-judgment interest, shall be paid by
8 electronic funds transfer, U.S. postal money order, certified check, bank cashier's
9 check, or bank money order. If payment is to be made other than by electronic funds
10 transfer, then the payment shall be made payable to the Commodity Futures Trading
11 Commission and sent to the address below:

12 MMAC/ESC/AMK326
13 Commodity Futures Trading Commission
14 6500 S. MacArthur Blvd.
15 HQ Room 266
16 Oklahoma City, OK 73169
17 9-amz-ar-cftc@faa.gov

18 290. If payment by electronic funds transfer is chosen, Defendants shall
19 contact the Federal Aviation Administration at the email address above to receive
20 payment instructions and shall fully comply with those instructions. Defendants shall
21 accompany payment of their respective CMP Obligations with a cover letter that
22 identifies the Defendant and the name and docket number of this proceeding.
23 Defendants shall simultaneously transmit copies of the cover letter and the form of
24 payment to the Chief Financial Officer, Commodity Futures Trading Commission,
25 Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and counsel
26 of record in this proceeding for the DFPI.

1 B. Restitution

2 IT IS HEREBY ORDERED THAT:

3 291. Red Rock shall pay restitution in the amount of thirty-eight million, nine
4 hundred eighty-four thousand, three hundred thirteen dollars and ninety cents
5 (\$38,984,313.90) ("Restitution Obligation"). If the Restitution Obligation is not paid
6 within 30 days of the date of entry of this Consent Order, post-judgment interest shall
7 accrue on the unpaid portion of the Restitution Obligation beginning on the date of
8 entry of this Consent Order and shall be determined by using the Treasury Bill rate
9 prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

10 292. Red Rock shall receive a dollar-for-dollar credit against its Restitution
11 Obligation for any restitution or disgorgement paid in the SEC Action. Within ten
12 days of any payment in the SEC Action, Red Rock shall, under a cover letter that
13 identifies the name and docket number of this proceeding, transmit copies of the form
14 of payment to the Chief Financial Officer, Commodity Futures Trading Commission,
15 and Rick Glaser, Deputy Director, Commodity Futures Trading Commission, at 1155
16 21st Street, NW, Washington, D.C. 20581, and counsel of record in this proceeding
17 for the DFPI.

18 293. If not offset by payments in the SEC Action, any outstanding portion of
19 Red Rock's Restitution Obligation and any post-judgment interest, shall be paid in
20 accordance with the procedures set forth in Section D below.

21 294. The amounts payable to each Red Rock customer shall not limit the
22 ability of any customer from proving that a greater amount is owed from Red Rock or
23 any other person or entity, and nothing herein shall be construed in any way to limit
24 or abridge the rights of any customer that exist under state or common law.

25 295. To the extent that any funds accrue to the U.S. Treasury for satisfaction
26 of Red Rock's Restitution Obligation, such funds shall be transferred to the Monitor
27 for disbursement in accordance with the procedures set forth in Section D below.

28

1 C. Disgorgement

2 IT IS HEREBY ORDERED THAT:

3 296. Kelly shall pay disgorgement in the amount of two million eight hundred
4 fifty thousand dollars (\$2,850,000) representing the gains he received in connection
5 with the violations described above ("Kelly's Disgorgement Obligation") within 30
6 days of the date of entry of this Consent Order. If Kelly's Disgorgement Obligation
7 is not paid in full within 30 days of the date of entry of this Consent Order, post-
8 judgment interest shall accrue on the unpaid portion of Kelly's Disgorgement
9 Obligation beginning on the date of entry of this Consent Order and shall be
10 determined by using the Treasury Bill rate prevailing on the date of entry of this
11 Consent Order pursuant to 28 U.S.C. § 1961.

12 297. Spencer shall pay disgorgement in the amount of two million two
13 hundred twenty-five thousand dollars (\$2,250,000) representing the gains he received
14 in connection with the violations described above ("Spencer's Disgorgement
15 Obligation") within 30 days of the date of entry of this Consent Order. If Spencer's
16 Disgorgement Obligation is not paid in full within 30 days of the date of entry of this
17 Consent Order, post-judgment interest shall accrue on the unpaid portion of Spencer's
18 Disgorgement Obligation beginning on the date of entry of this Consent Order and
19 shall be determined by using the Treasury Bill rate prevailing on the date of entry of
20 this Consent Order pursuant to 28 U.S.C. § 1961.

21 298. Kelly and Spencer shall receive a dollar-for-dollar credit against their
22 respective Disgorgement Obligations for any disgorgement paid in the SEC Action.
23 Within ten days of any payment in the SEC Action, Kelly or Spencer shall, under a
24 cover letter that identifies the name and docket number of this proceeding, transmit
25 copies of the form of payment to the Chief Financial Officer, Commodity Futures
26 Trading Commission, and Rick Glaser, Deputy Director, Commodity Futures Trading
27 Commission, at 1155 21st Street, NW, Washington, D.C. 20581, and counsel of
28

1 record in this proceeding for the DFPI.

2 299. If not offset by payments in the SEC Action, any outstanding portions of
3 Kelly's or Spencer's Disgorgement Obligation and any post-judgment interest, shall
4 be paid in accordance with the procedures set forth in Section D below.

5 300. To the extent that any funds accrue to the U.S. Treasury for satisfaction
6 of Kelly's or Spencer's Disgorgement Obligation, such funds shall be transferred to
7 the Monitor for disbursement in accordance with the procedures set forth in Section
8 D below.

9 D. Payment and Distribution of Restitution and Disgorgement
10 Obligations

11 IT IS HEREBY ORDERED THAT:

12 301. To effect payment of Red Rock's Restitution Obligation and Kelly's and
13 Spencer's Disgorgement Obligations (collectively, the "R&D Obligations") and the
14 distribution of any payments to Red Rock's RTH customers, the Court appoints the
15 National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall
16 receive payments on the R&D Obligations from Defendants and make distributions
17 as set forth below. Because the Monitor is acting as an officer of this Court in
18 performing these services, the NFA shall not be liable for any action or inaction
19 arising from NFA's appointment as Monitor, other than actions involving fraud.

20 302. Defendants shall make R&D Obligations payments, and any post-
21 judgment interest payments, under this Consent Order to the Monitor in the name of
22 "Red Rock Secured Restitution Fund" and shall send such payments by electronic
23 funds transfer, or by U.S. postal money order, certified check, bank cashier's check,
24 or bank money order, to the Office of Administration, National Futures Association,
25 320 South Canal Street, 24th Floor, Chicago, Illinois 60606 under cover letter that
26 identifies the paying Defendant and the name and docket number of this proceeding.
27 Defendants shall simultaneously transmit copies of the cover letter and the form of
28

1 payment to the Chief Financial Officer, Commodity Futures Trading Commission,
2 Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and counsel
3 of record in this proceeding for the DFPI.

4 303. The Monitor shall oversee the R&D Obligations and shall have the
5 discretion to determine the manner of distribution of such funds in an equitable
6 fashion to Red Rock's RTH customers identified by Plaintiffs or may defer
7 distribution until such time as the Monitor deems appropriate. In the event that the
8 amount of R&D Obligations payments to the Monitor are of a de minimis nature such
9 that the Monitor determines that the administrative cost of making a distribution to
10 eligible customers is impractical, the Monitor may, in its discretion, treat such
11 payments as civil monetary penalty payments, which the Monitor shall forward to the
12 CFTC.

13 304. Defendants shall cooperate with the Monitor as appropriate to provide
14 such information as the Monitor deems necessary and appropriate to identify the Red
15 Rock customers to whom the Monitor, in its sole discretion, may determine to include
16 in any plan for distribution of any R&D Obligations payments. Defendants shall
17 execute any documents necessary to release funds that they hold in any repository,
18 bank, investment or other financial institution, wherever located, in order to make
19 partial or total payment toward the R&D Obligations.

20 305. The Monitor shall provide Plaintiffs at the beginning of each calendar
21 year with a report detailing the disbursement of funds to Red Rock's customers
22 during the previous year. The Monitor shall transmit this report under a cover letter
23 that identifies the name and docket number of this proceeding to the Chief Financial
24 Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st
25 Street, NW, Washington, D.C. 20581, and counsel of record in this proceeding for the
26 DFPI.

27 306. The Monitor shall provide Plaintiffs at the beginning of each calendar
28

1 year with a report detailing the disbursement of funds to Red Rock customers. The
2 Monitor shall transmit this report under a cover letter that identifies the name and
3 docket number of this proceeding to the Chief Financial Officer, Commodity Futures
4 Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington,
5 D.C. 20581, and counsel of record in this proceeding for the DFPI.

6 E. Provisions Related to Monetary Sanctions

7 307. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each Red
8 Rock customer who suffered a loss is explicitly made an intended third-party
9 beneficiary of this Consent Order and may seek to enforce obedience of this Consent
10 Order to obtain satisfaction of any portion of the R&D Obligations that has not been
11 paid by Defendants to ensure continued compliance with any provision of this
12 Consent Order and to hold Defendants in contempt for any violations of any
13 provision of this Consent Order.

14 308. Partial Satisfaction: Acceptance by the CFTC, DFPI, SEB, or the
15 Monitor of any partial payment of the Defendants' R&D Obligations or CMP
16 Obligations shall not be deemed a waiver of their obligation to make further
17 payments pursuant to this Consent Order, or a waiver of Plaintiffs' right to seek to
18 compel payment of any remaining balance.

19 VI. MISCELLANEOUS PROVISIONS

20 309. Until such time as Defendants satisfy in full their R&D Obligations and
21 CMP Obligations under this Consent Order, upon the commencement by or against
22 any Defendant of insolvency, receivership, or bankruptcy proceedings or any other
23 proceedings for the settlement of Defendant's debts, all notices to creditors required
24 to be furnished to the Commission under Title 11 of the United States Code or other
25 applicable law with respect to such insolvency, receivership bankruptcy or other
26 proceedings, shall be sent to the address below:

27 Secretary of the Commission
28

Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

All notices required to be sent to the States shall be sent to their counsel of record in these proceedings.

310. Notice: All notices required to be given by any provision in this Consent Order, except as set forth in the ¶ 289, shall be sent certified mail, return receipt requested, as follows:

a) Notice to CFTC, which shall reference the name and docket number of this action:

Rick Glaser
Deputy Director
1155 21st Street NW
Washington, DC 20581
rglaser@cftc.gov

b) Notice to States is required to be sent to the respective counsel of record for the States in these proceedings via email and certified mail, return receipt requested;

c) Notice to Defendant Red Rock:

Joseph P. Costa
CostaLaw
17383 Sunset Boulevard, Suite A-430
Pacific Palisades, California 90272
joseph.costa@costalaw.com

d) Notice to Defendant Kelly:

Marc S. Williams
Cohen Williams LLP
724 South Spring Street, 9th Floor
Los Angeles, CA 90014
mwilliams@cohen-williams.com

e) Notice to Defendant Spencer:

Rebecca Torrey
The Torrey Firm
1626 Montana Ave, Suite 647
Santa Monica, CA 90403
rebecca@torreyfirm.com

311. Change of Address/Phone: Until such time as Defendants satisfy in full their R&D Obligations and CMP Obligations as set forth in this Consent Order, the Defendants shall provide written notice to the CFTC by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

312. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

313. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

314. Waiver: The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce

1 the same or any other provision of this Consent Order. No waiver in one or more
2 instances of the breach of any provision contained in this Consent Order shall be
3 deemed to be or construed as a further or continuing waiver of such breach or waiver
4 of the breach of any other provision of this Consent Order.

5 315. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction
6 of this action to ensure compliance with this Consent Order and for all other purposes
7 related to this action, including any motion by any Defendant to modify or for relief
8 from the terms of this Consent Order.

9 316. Injunctive and Equitable Relief Provisions: The injunctive and equitable
10 relief provisions of this Consent Order shall be binding upon the following persons
11 who receive actual notice of this Consent Order, by personal service or otherwise:
12 (1) Defendants; (2) any officer, agent, servant, employee, or attorney of any
13 Defendant; and (3) any other persons who are in active concert or participation with
14 any persons described in subsections (1) and (2) above.

15 317. Authority: Defendant Kelly hereby warrants that he is an owner and the
16 CEO of Defendant Red Rock, that this Consent Order has been duly authorized by
17 Defendant Red Rock, and he has been duly empowered to sign and submit this
18 Consent Order on behalf of Defendant Red Rock.

19 318. Counterparts and Facsimile Execution: This Consent Order may be
20 executed in two or more counterparts, all of which shall be considered one and the
21 same agreement and shall become effective when one or more counterparts have been
22 signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise)
23 to the other party, it being understood that all parties need not sign the same
24 counterpart. Any counterpart or other signature to this Consent Order that is
25 delivered by any means shall be deemed for all purposes as constituting good and
26 valid execution and delivery by such party of this Consent Order.

27 319. Contempt: Defendants understand that the terms of the Consent Order
28

1 are enforceable through contempt proceedings to the fullest extent of applicable law,
2 and that, in any such proceedings, they may not challenge the validity of this Consent
3 Order.

4 320. Defendants agree that, for the purposes of exceptions to discharge set
5 forth in Sections 523, 1141(d)(6), and 1192 of the Bankruptcy Code, 11 U.S.C.
6 §§ 523, 1141(d)(6), 1192, the findings in this Consent Order are true and admitted
7 and any debt for restitution, disgorgement, civil penalty, or any other amounts due by
8 Defendants under this Consent Order or any other judgment, order, consent order,
9 decree, or settlement agreement entered in connection with this proceeding, is a debt
10 for violation of state securities laws, including but not limited to securities fraud, as
11 set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C §523(a)(19), and
12 Section 523(a)(2) of the Bankruptcy Code, 11 U.S.C. §523(a)(2), and incorporated by
13 reference under Section 1192 of the Bankruptcy Code, 11 U.S.C § 1192.

14 321. Agreements and Undertakings: Defendants shall comply with all of the
15 undertakings and agreements set forth in this Consent Order.

16 Because the parties have resolved this matter in its entirety, the Court
17 VACATES all future dates associated with this case and INSTRUCTS the Clerk to
18 close the case. There being no just reason for delay, the Clerk of the Court is further
19 directed to enter this *Consent Order of Permanent Injunction, Civil Monetary*
20 *Penalty, and Other Statutory and Equitable Relief Against All Defendants.*

21 * * * * *

22 **IT IS SO ORDERED.**

23 Dated: 4/23/2024

24 
25 The Honorable R. Gary Klausner
26 United States District Judge
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CONSENTED TO AND APPROVED BY:

RED ROCK SECURED, LLC

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Marc S. Williams
Cohen Williams LLP
COUNSEL FOR DEFENDANT SEAN
L. KELLY f/k/a SHADE L. KELLY-
JOHNSON

Dated: _____, 2024

Rebecca Torrey
The Torrey Firm
COUNSEL FOR DEFENDANT
ANTHONY SPENCER

Dated: _____, 2024

1 **CONSENTED TO AND APPROVED BY:**2 [REDACTED]
3 [REDACTED]
4 **RED ROCK SECURED, LLC**

By: Sean L. Kelly

5 Dated: 4/7/2024
6 _____, 2024

By: James A. Garcia

COUNSEL FOR COMMODITY
FUTURES TRADING COMMISSION

Dated: _____, 2024

8 [REDACTED]
9 [REDACTED]
10 **SEAN L. KELLY f/k/a SHADE L.**
11 **KELLY-JOHNSON**Dated: 4/7/2024
12 _____, 2024

By: Danielle A. Stoumbos

COUNSEL FOR CALIFORNIA
DEPARTMENT OF FINANCIAL
PROTECTION AND INNOVATION

Dated: _____, 2024

15 **ANTHONY SPENCER**

Dated: _____, 2024

19 Approved as to form:

21 [REDACTED]
22 [REDACTED]
23 **Joseph P. Costa**
CostaLaw24 **COUNSEL FOR DEFENDANT RED**
25 **ROCK SECURED, LLC**

Dated: April 8, 2024

By: Rayni M. Nakamura-Watanabe

COUNSEL FOR STATE OF HAWAII,
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS,
SECURITIES ENFORCEMENT
BRANCH

Dated: _____, 2024

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Marc S. Williams
Cohen Williams LLP
COUNSEL FOR DEFENDANT SEAN
L. KELLY f/k/a SHADE L. KELLY-
JOHNSON

Dated: April 8, 2024

Rebecca Torrey
The Torrey Firm
COUNSEL FOR DEFENDANT
ANTHONY SPENCER

Dated: _____, 2024

CONSENTED TO AND APPROVED BY:

RED ROCK SECURED, LLC

Dated: _____, 2024

Dated: _____, 2024

SEAN L. KELLY f/k/a SHADE L.
KELLY-JOHNSON

Dated: _____, 2024

ANTHONY SPENCER

Approved as to form:

Joseph P. Costa
CostaLaw

Dated: _____, 2024

1
2 Marc S. Williams
3 Cohen Williams LLP
4 COUNSEL FOR DEFENDANT SEAN
L. KELLY f/k/a SHADE L. KELLY-
JOHNSON

5 Dated: _____, 2024

6
7 
8 Rebecca Torrey
9 The Torrey Firm

10 COUNSEL FOR DEFENDANT
11 ANTHONY SPENCER

12 Dated: April 8, 2024
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Certification Pursuant to Local Rule 5-4.3.4(a)(2)(i)

Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.


JAMES A. GARCIA

Certificate of Service

On April 18, 2024, I served a copy of the foregoing *[PROPOSED]*
CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY, AND OTHER STATUTORY AND EQUITABLE RELIEF
AGAINST ALL DEFENDANTS by filing the document electronically via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.


JAMES A. GARCIA

FirstName	LastName	Address1
Margaret	Wade	[REDACTED], Knoxville TN [REDACTED]
Kenneth	Taromino	[REDACTED] Lyles TN [REDACTED]
Christine	Jessey	[REDACTED], Spring Hill TN [REDACTED]
Elizabeth	Reel	[REDACTED] Leoma, TN [REDACTED]
John	Munro	[REDACTED], Clarksville TN [REDACTED]
Jeanie	Shufelt	[REDACTED] Franklin, TN [REDACTED]
Jacob	Trujillo	[REDACTED] Hixson TN [REDACTED]
Eli	Miller	[REDACTED], Crossville TN [REDACTED]
John	Armitage	[REDACTED] Gallatin TN [REDACTED]
Ardis	Ferguson	[REDACTED] Mt Juliet, TN [REDACTED]
Kevin	Hensley	[REDACTED] Athens TN [REDACTED]
Grace	Benz	[REDACTED], Memphis, TN [REDACTED]
Tonya	Deynzer	[REDACTED] Maryville TN [REDACTED]
David	Johnson	[REDACTED], Livingston, TN [REDACTED]

Address2	City	State	zip	CSZ
	Knoxville	TN		Knoxville, TN
	Lyles	TN		Lyles, TN
	Spring Hill	TN		Spring Hill, TN
	TN	TN		Leoma, TN
	Clarksville	TN		Clarksville, TN
	TN	TN		Franklin, TN
	Hixson	TN		Hixson, TN
	Crossville	TN		Crossville, TN
	Gallatin	TN		Gallatin, TN
	TN 3	TN		Mt Juliet, TN
	Athens	TN		Athens, TN
	TN	TN		Memphis, TN
	Maryville	TN		Maryville, TN
	Livingston	TN		Livingston, TN

email

Phone1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 4447-002 NASHVILLE TN

POSTAGE WILL BE PAID BY ADDRESSEE

DEPT OF COMMERCE & INSURANCE
SECURITIES DIVISION
500 JAMES ROBERTSON PKWY
NASHVILLE TN 37243

ATTN: FTIA Patterson

FWD

9333110042321233
719



REGISTRATION SECTION
SECURITIES DIVISION



Investor Questionnaire

Investor Name: ARDIS G FERGUSON

Address: _____

Phone Number: Cell () Work ()

Email: [REDACTED] Are you over 65 years of age? ☐ No or ☒ Yes

(Please use additional paper for your responses if needed.)

1. How did you become acquainted with Red Rock Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

Website called Task & Purpose that sent advertisements to my email

2. What products were offered to you as suitable investments?

precious metals, silver in particular. The silver was Canadian Red Tail Hawk 1/2 oz coins

3. Do you recall filling out any suitability forms? ☒ No or ☐ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth ☒ Risk Tolerance ☐ Investment Objectives
☒ Annual Income ☒ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

a. Canadian 1/2 oz Red Tail Hawk coins \$ _____

b. _____ \$ _____

c. _____ \$ _____

6. What representations were made that convinced you to invest with Red Rock?

He would waive 1st year management fees and I missed the deadline for that added benefit

7. a. Who made these representations? Spencer
 b. Did you have an agent? ☒ No or ☐ Yes... If yes, who? STRATA
8. Did you research the investment? ☐ No or ☒ Yes... If yes, what resources did you use?
resources provided by Tony Spencer of
RED Rock and RED Rock internet, Rod
Herring was the person responsible for the paperwork
9. Did you understand the price of the metals before you invested? ☐ No or ☒ Yes
10. Were the mark-ups on these metals explained to you? ☐ No or ☒ Yes...
 a. If yes, what mark-up values were represented to you?
the mark-up values were explained, but as the
actual mark-ups came to light, the mark-ups were not as
clear as explained
 b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:
verbally, yes. I had to call Tony Spencer to get an account
statement, he said the actual value was different than
the value shown on the statements - explained as
TIER Precious Metals fee.
11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?
☐ No or ☒ Yes... If yes, please explain:
another agent at Red Rock, he would say to Spencer
'it's him again' Rod Herring was not able to answer
questions, there was another person who would take a
message but wouldn't/would not assist
12. Did you surrender any products or liquidate any accounts to make this investment? ☐ No or ☒ Yes...
 If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?
an IRA (traditional)

Red Rock Secured IQA

Page | 3

13. Did you liquidate any securities to purchase metals from Red Rock? ☐ No or ☐ Yes...

If yes, what securities did you liquidate and what were the amounts?

- a. IRA \$ ~~23000~~ appx
- b. _____ \$ _____
- c. _____ \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☐ No or ☒ Yes

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☐ No or ☒ Yes...

If yes, who was the custodian?

STRATA

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?

Spencer

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☐ No or ☒ Yes... If yes, please explain:

Spencer 'knew the value', Strata website's statement and I would look for the price of Canadian Red Tail Hawk on the market, Spencer would give me the actual value.

18. a. Did you have any control over your investment account? ☒ No or ☐ Yes

b. Were there any restrictions to your access of the investment? ☐ No or ☒ Yes

c. Were you able to review the value of your metals? ☒ No or ☐ Yes

19. Did you understand your account and account statement? ☐ Yes or ☒ No...

If No, did you speak to your representative about your concerns? ☒ Yes or ☐ No

20. Were you advised on agent commissions? ☒ Yes or ☐ No

21. How did you understand the investment(s) to work (rate of return, etc.)?

I gauged it from the Market reports for Canadian red tail hawk 1/2 oz coins, I didn't take into account \$195 storage fee plus the Red Rock Fees. The numbers never matched up

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☐ No or ☒ Yes**

**If yes, please provide a copy of the materials when you return the questionnaire*

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☒ No or ☐ Yes... If yes, please explain:

I don't remember those words

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☒ No or ☐ Yes... If yes, please explain:

25. Were there any discussions about state and/or federal registration or exempt filings?

☐ No or ☐ Yes... If yes, please explain:

only that I was rolling an IRA over to another IRA

26. Have you received any returns on your investment?

☒ No or ☒ Yes...

If yes, how much have you received?

\$ 13,079.00

27. Have you experienced any loss on your investments?

☐ No or ☒ Yes...

If yes, what is the amount of your loss?

\$ about \$12,500

28. What is your profession?

RETIRED FEDERAL EMPLOYEE

29. What is the value of your portfolio?

\$ 400,000

30. Have you ever invested with a registered brokerage firm?

☐ No or ☒ Yes

31. Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:

NO

1.

2.

3.

32. Would you be willing to participate in an interview?

☐ No or ☒ Yes

33. Would you be willing to testify in a hearing if called upon?

☒ No or ☐ Yes

34. Has your experience with Red Rock negatively affected you personally or financially?

☐ No or ☒ Yes

35. Is there any additional information you would like to provide about your experience with Red Rock?

(please use additional paper if needed)

I felt there was something wrong, I read material on investing in precious metals, silver in particular. Most were not specific in buying coins and the value of my holdings were not in keeping with silver and ~~my~~ I was losing principal when I watched the STRATA website, different from what I calculated from Red Rock so I closed the account. This is to the best of my memories.



Client Services

866.928.9394

512.637.5739

www.StrataTrust.com

SOURCE _____

IRA Transfer Request

Send to:

(Please Submitting this form)

Email: Operations@StrataTrust.com

Fax: 512.495.9554

US Mail: P.O. Box 23149 Waco, TX 76702

Overnight: 7901 Woodway Dr, Ste 200, Waco, TX 76712

Section 1 Account Information

Account from which you wish to transfer:

Account Number with
Current CustodianName as it appears
on the Account

Ardis Ferguson

Type of IRA:



Traditional IRA



SEP IRA



Roth IRA



SIMPLE IRA

Account to receive your transfer:

Your
Name

Ardis Ferguson

Social
Security Number

Type of IRA:



Traditional IRA



SEP IRA



Roth IRA



SIMPLE IRA

***To initiate a direct rollover from an employer-sponsored retirement plan, contact your plan administrator.

Name of

Current Custodian

Fidelity

Current Custodian's
Physical AddressAddress Line 2
(No PO Boxes)

City

State

Zip

Custodian's Phone Number

Custodian's Fax Number

STRATA IRA Number

Your Daytime
Phone Number

Check if this Transfer is:



Transfer of an IRA for which you are the Spouse Beneficiary



Transfer of an Inherited IRA



Transfer Due to Divorce

Section 2 Cash/Assets to Transfer

☒ Transfer All Available Cash☐ Transfer Exactly: \$ _____☐ Transfer in-kind/reregister all assets shown below:☐ Transfer in-kind/reregister only the following assets:

Asset Description

of Shares

Approximate Value

\$

\$

\$

\$

\$

\$

Select One: This is a



Full Transfer (This will close my account)



Partial Transfer (This account will remain open)

***Attach a copy of your most recent account statement with your Current Custodian to this form.

Remit Cash to STRATA Trust Company as shown below:

☒ Send Check by U.S. Mail☐ Send Check for Overnight Delivery

Make check payable and mail as shown below:

STRATA Trust Company, Custodian

FRQ Ardis Ferguson

IRA #

U.S. Mail Address:

PO Box 849
Austin, TX 78767

Overnight Delivery Address:

901 S. Mopac Expressway
Barton Oaks Plaza II, Suite 100
Austin, TX 78746

☐ Wire Funds

If no selection is made, STRATA will request your Current Custodian mail a check by USPS first class mail.

IRA #

Reregister Assets to STRATA Trust Company as shown below:

☐ Send by U.S. Mail

STRATA Trust Company, Custodian

☐ Send by Overnight Delivery

FBO

IRA #

7901 Woodway Dr, Suite 200
Waco, TX 76712

Tax ID: 26-2637994

If I am 70½ or older, I instruct my Current Custodian to process my Required Minimum Distribution payment as shown below:

☐ Distribute my RMD or life expectancy payment to me prior to transferring my assets.

☐ ~~Secrete and retain my RMD or life expectancy payment amount.~~

Include the amount that represents my RMD or life expectancy payment in the transfer.

☐ UPS Ground

If no selection is made, this request will be sent by UPS Ground Delivery to the Current Custodian.

☐ Overnight ☐ Select ☐ FedEx ☐ UPS☐ Deduct the overnight fee from my Account.

Charge my FedEx or UPS account # _____

☒ Fax # 888-321-7349

Attn Transaction Processing

You must first verify the Current Custodian will accept a faxed copy.

Section 4 Accountholder Authorization

I authorize the IRA transfer or direct rollover in the manner described above and certify that all of the information provided by me is correct and may be relied upon by the Custodian. I understand that I am responsible for determining my eligibility for transfer or direct rollover within the limits set forth by tax laws, related regulations and plan agreements. I represent that I have established an IRA account with STRATA Trust Company ("STRATA") as Custodian. I agree to indemnify and hold harmless both my present Custodian and STRATA from any and all costs, obligations, losses, claims, damages and expenses (including reasonable attorney fees) related or associated with this request. If special handling is requested (wire or overnight delivery), I authorize the deduction of applicable fees from my account. I assume responsibility for any tax consequences or penalties that may apply and I agree that the Custodian shall in no way be held responsible.

- Before signing, check with your present Custodian to determine whether it will require a Medallion Signature Guarantee to process this request.
- If a signature guarantee is not required, please sign below and send this form to STRATA.
- If required, a signature guarantee can be obtained from your bank or a brokerage firm. A signature guarantee may not be obtained from a notary public.
- STRATA permits an Accountholder to e-sign the Transfer Request. However, you should first check with your current Custodian to confirm whether they will honor it. Otherwise, they may reject this request which would delay your transfer.

MEDALLION SIGNATURE GUARANTEE

Section 5 Letter of Acceptance

This account for the above-named individual is a valid IRA and STRATA Trust Company hereby accepts appointment as Custodian for the IRA account and agrees to accept the assets for transfer or direct rollover as indicated herein.

Authorized Signatory of STRATA Trust Company, IRA Custodian

Date _____

BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 4447-002 NASHVILLE TN

POSTAGE WILL BE PAID BY ADDRESSEE

DEPT OF COMMERCE & INSURANCE
SECURITIES DIVISION
500 JAMES ROBERTSON PKWY
NASHVILLE TN 37243

ATTN: FSIA Patterson



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



RECEIVED

JUL 11 2024

STATE OF TENNESSEE
SECURITIES DIVISION



RECEIVED



Department of
Commerce &
Insurance

JUL 11 2024

STATE OF TENNESSEE
SECURITIES DIVISION

Investor Questionnaire

Investor Name:

DAVID P JOHNSON

Address:

[REDACTED]

LIVINGSTON TN [REDACTED]

Phone Number:

Cell

[REDACTED]

Work ()

Email:

[REDACTED]

GMAIL.COM

Are you over 65 years of age? ☐ No or ☒ Yes

(Please use additional paper for your responses if needed.)

1. How did you become acquainted with Red Rock Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

EMAIL

2. What products were offered to you as suitable investments?

GOLD & SILVER METALS

3. Do you recall filling out any suitability forms? ☒ No or ☐ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth☐ Risk Tolerance☒ Investment Objectives☒ Annual Income☐ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

a. GOLD APPROX \$30K

\$

b. SILVER APPROX 80K

\$

c.

\$

6. What representations were made that convinced you to invest with Red Rock?

METAL IRA HELD WITHOUT COST AT STRATA TRUST

7. a. Who made these representations? RED ROCK SECURED
- b. Did you have an agent? ☐ No or ☒ Yes... If yes, who? ASHLEY AUSTIN
8. Did you research the investment? ☒ No or ☐ Yes... If yes, what resources did you use?
9. Did you understand the price of the metals before you invested? ☒ No or ☐ Yes
10. Were the mark-ups on these metals explained to you? ☒ No or ☐ Yes...
- a. If yes, what mark-up values were represented to you?
- b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:
11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?
- ☒ No or ☐ Yes... If yes, please explain:
12. Did you surrender any products or liquidate any accounts to make this investment? ☐ No or ☒ Yes...
- If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?
- USPS THRIFT SAVINGS PLAN. LOST ABOUT \$80,000 IN FEES

13. Did you liquidate any securities to purchase metals from Red Rock? ☒ No or ☐ Yes...

If yes, what securities did you liquidate and what were the amounts?

a. _____ \$ _____
 b. _____ \$ _____
 c. _____ \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☐ No or ☒ Yes

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☐ No or ☒ Yes...

If yes, who was the custodian?

STRATA TRUST

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?

ASHLEY AUSTIN

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☒ No or ☐ Yes... If yes, please explain:

18. a. Did you have any control over your investment account? ☐ No or ☒ Yes
 b. Were there any restrictions to your access of the investment? ☒ No or ☐ Yes
 c. Were you able to review the value of your metals? ☐ No or ☒ Yes

19. Did you understand your account and account statement? ☒ Yes or ☐ No...

If No, did you speak to your representative about your concerns? ☐ Yes or ☒ No

20. Were you advised on agent commissions? ☐ Yes or ☒ No

21. How did you understand the investment(s) to work (rate of return, etc.)?

THE VALUE WOULD DEPEND ON GOLD & SILVER VALUE

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☒ No or ☐ Yes*

**If yes, please provide a copy of the materials when you return the questionnaire*

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☒ No or ☐ Yes... If yes, please explain:

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☒ No or ☐ Yes... If yes, please explain:

25. Were there any discussions about state and/or federal registration or exempt filings?

☒ No or ☐ Yes... If yes, please explain:

26. Have you received any returns on your investment? ☒ No or ☐ Yes...

If yes, how much have you received? \$ _____

27. Have you experienced any loss on your investments? ☐ No or ☒ Yes...

If yes, what is the amount of your loss? \$ GOLD LOST SOME VALUE

Letter Carrier for USPS

What is your profession?

What is the value of your portfolio? \$

Have you ever invested with a registered brokerage firm? ☒ No or ☐ Yes

Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:

1.

2.

3.

Would you be willing to participate in an interview? ☐ No or ☒ Yes

Would you be willing to testify in a hearing if called upon? ☐ No or ☒ Yes

Has your experience with Red Rock negatively affected you personally or financially? ☐ No or ☒ Yes

Is there any additional information you would like to provide about your experience with Red Rock?
(please use additional paper if needed)

Please include copies (no originals) of all documentation that you have regarding your investment with Red Rock Secured LLC when returning this questionnaire. Thank you!

RECEIVED



Department of
Commerce &
Insurance

JUL 11 2024

STATE OF TENNESSEE
SECURITIES DIVISION

Investor Questionnaire

Betty Jean Shufelt
Spouse

Investor Name: George W Shufelt II (deceased)

Address: [REDACTED] Franklin, TN [REDACTED]

Phone Number: Cell [REDACTED] Work ()

Email: [REDACTED] aol.com Are you over 65 years of age? ☐ No or ☒ Yes

(Please use additional paper for your responses if needed.)

1. How did you become acquainted with Red Rock-Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

Social media

2. What products were offered to you as suitable investments?

1/2 oz red tailed hawk Canadian silver coins

3. Do you recall filling out any suitability forms? ☐ No or ☒ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth ☐ Risk Tolerance ☒ Investment Objectives
☐ Annual Income ☐ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

a. 1/2 oz Canadian Red tail Hawk coins \$ \$725,000

b. _____ \$ _____

c. _____ \$ _____

6. What representations were made that convinced you to invest with Red Rock?

Personal calls with executives Tony, Jeff, Sean
brochure

7. a. Who made these representations?

Sean Kelly
Tony Spencer, Jeff Ward,

b. Did you have an agent? ☒ No or ☐ Yes... If yes, who?

8. Did you research the investment? ☒ No or ☐ Yes... If yes, what resources did you use?

I'm sure he didn't. He was in early stage
temp frontal dementia

9. Did you understand the price of the metals before you invested? ☒ No or ☐ Yes

10. Were the mark-ups on these metals explained to you? ☐ No or ☐ Yes...

a. If yes, what mark-up values were represented to you?

not known

b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:

not known

11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?

☒ No or ☐ Yes... If yes, please explain:

contact by phone or computer

12. Did you surrender any products or liquidate any accounts to make this investment? ☐ No or ☒ Yes...

If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?

ROTH IRA
Traditional IRA

13. Did you liquidate any securities to purchase metals from Red Rock? ☐ No or ☒ Yes...

If yes, what securities did you liquidate and what were the amounts?

- a. Roth IRA w/ Charles Schwab \$ _____
b. Traditional IRA w/ Charles Schwab \$ _____
c. _____ \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☐ No or ☒ Yes

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☐ No or ☒ Yes...

If yes, who was the custodian?

Strata Trust Co

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?

Tony Spencer, Jeff Ward, Sean Kelly

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☐ No or ☒ Yes... If yes, please explain:

everything quoted was based on 1 oz of silver

18. a. Did you have any control over your investment account? ☐ No or ☒ Yes

b. Were there any restrictions to your access of the investment? ☐ No or ☒ Yes

c. Were you able to review the value of your metals? ☐ No or ☒ Yes

19. Did you understand your account and account statement? ☐ Yes or ☒ No...

If No, did you speak to your representative about your concerns? ☒ Yes or ☐ No

20. Were you advised on agent commissions? ☐ Yes or ☐ No

unknown

difficult!!!

now I have

21. How did you understand the investment(s) to work (rate of return, etc.)?

Not until my husbands passing

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☒ No or ☐ Yes*

**If yes, please provide a copy of the materials when you return the questionnaire*

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☒ No or ☐ Yes... If yes, please explain:

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☐ No or ☐ Yes... If yes, please explain:

Unknown

25. Were there any discussions about state and/or federal registration or exempt filings?

☒ No or ☐ Yes... If yes, please explain:

26. Have you received any returns on your investment? ☐ No or ☒ Yes...

If yes, how much have you received? \$ 2 RMD's

27. Have you experienced any loss on your investments? ☐ No or ☒ Yes...

If yes, what is the amount of your loss? \$ anticipated over \$375,000

28. What is your profession? George - Metallurgical Engineer

29. What is the value of your portfolio? \$ 391,871.64 - ALCOA
7,500 - Roth IRA

30. Have you ever invested with a registered brokerage firm? ☐ No or ☒ Yes

31. Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:
Charles Schwab

1. No Known other people

2.

3.

32. Would you be willing to participate in an interview? ☐ No or ☒ Yes

33. Would you be willing to testify in a hearing if called upon? ☐ No or ☒ Yes

34. Has your experience with Red Rock negatively affected you personally or financially? ☐ No or ☒ Yes

35. Is there any additional information you would like to provide about your experience with Red Rock?
(please use additional paper if needed)

There was a 3 year contract which meant
I couldn't access any funds.

Additional doc's (brochure, etc) sent to
Dept of Labor, Pasadena CA - Kevin Burt

Betty Jean C. Infeet
Spousal Beneficiary

6/7/22

Jeff Red Rock ret. my call

~~Account~~ RMD canceled by Strata

Move to Equity

Reuben - WC Strata

3 yr. contract will
not be removed

Jeff said he
would cover the
years.

Value of account - \$848,925.60 Retail value
of "traditional"

JUL 08 2024

Registration Section
Securities Division

Investor Questionnaire

Investor Name: Grace Benz
Address: [REDACTED] Memphis, TN [REDACTED]
Phone Number: Cell [REDACTED] Work () Retired
Email: [REDACTED] gmail.com Are you over 65 years of age? ☐ No or ☒ Yes

(Please use additional paper for your responses if needed.)

1. How did you become acquainted with Red Rock Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

I was sent information through the mail and
contacted by phone.

2. What products were offered to you as suitable investments?

Silver + Gold

3. Do you recall filling out any suitability forms? ☒ No or ☐ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth ☒ Risk Tolerance ☒ Investment Objectives
☐ Annual Income ☒ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

Rate (Initial Investment 50,000)
a. Silver Canadian Red Hawk 1/2 oz Box of 240 \$ 8,476.80 $\times 5 = 42,384.00$
b. Silver Canadian Red Hawk 1/2 oz Tube of 20 \$ 706.40 $\times 10 = 7,064.00$
c. Silver Canadian " " " " " 5 \$ 176.60 $= 176.60$
 " " " " " " 4 115.40 $= 115.40$
 " " " " " " 10 260.00 $\text{Fees} = 260.00$

6. What representations were made that convinced you to invest with Red Rock?

I was told I wouldn't have to worry about losing money in their
retirement account because they would convert my money into physical
gold+silver so I could enjoy a worry-free retirement

7. a. Who made these representations? Dr. Tony Spencer Senior Director, Barry, Leyla Yadenzuela
- b. Did you have an agent? ☒ No or ☐ Yes... If yes, who? _____
8. Did you research the investment? ☒ No or ☐ Yes... If yes, what resources did you use?

9. Did you understand the price of the metals before you invested? ☒ No or ☒ Yes
only what they explained to me + showed me on paper
10. Were the mark-ups on these metals explained to you? ☒ No or ☐ Yes...
- a. If yes, what mark-up values were represented to you?

- b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:

11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?
☒ No or ☐ Yes... If yes, please explain:

12. Did you surrender any products or liquidate any accounts to make this investment? ☐ No or ☒ Yes...
If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?
An IRA account they walked me through

13. Did you liquidate any securities to purchase metals from Red Rock? ☐ No or ☒ Yes...

If yes, what securities did you liquidate and what were the amounts?

- a. 401 K (late husband) 1/2 of my retirement income \$ 50,000.
- b. _____ \$ _____
- c. _____ \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☐ No or ☒ Yes

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☐ No or ☒ Yes...

If yes, who was the custodian? _____

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?

Red Rock representatives.

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☐ No or ☐ Yes... If yes, please explain:

I was unaware of any

18. a. Did you have any control over your investment account? ☒ No or ☐ Yes

b. Were there any restrictions to your access of the investment? ☐ No or ☒ Yes

c. Were you able to review the value of your metals? ☒ No or ☐ Yes

19. Did you understand your account and account statement?

☒ Yes or ☒ No... (I thought I did)

If No, did you speak to your representative about your concerns? ☐ Yes or ☒ No

20. Were you advised on agent commissions? ☐ Yes or ☒ No only the storage fee

21. How did you understand the investment(s) to work (rate of return, etc.)?

My understanding at the time of investment was based on the information provided by the RedRock representatives, Barry. In retrospect I realize I did not have a clear understanding whatsoever. I expected silver would be going up in the future.

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☒ No or ☐ Yes*

**If yes, please provide a copy of the materials when you return the questionnaire*

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☒ No or ☐ Yes... If yes, please explain:

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☒ No or ☐ Yes... If yes, please explain:

My understanding was they would handle everything for me.

25. Were there any discussions about state and/or federal registration or exempt filings?

☒ No or ☐ Yes... If yes, please explain:

26. Have you received any returns on your investment? ☒ No or ☐ Yes...

If yes, how much have you received? \$ _____

27. Have you experienced any loss on your investments? ☐ No or ☐ Yes...

If yes, what is the amount of your loss? \$ _____

I was not aware of any loss

28. What is your profession?

Retired teacher

29. What is the value of your portfolio?

\$ 52,000.00

30. Have you ever invested with a registered brokerage firm?

☒ No or ☐ Yes

31. Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:

1. _____

2. _____

3. _____

32. Would you be willing to participate in an interview?

☐ No or ☒ Yes

33. Would you be willing to testify in a hearing if called upon?

☐ No or ☒ Yes34. Has your experience with Red Rock negatively affected you personally or financially? ☐ No or ☒ YesIf I have lost my investment, it will certainly affect my only retirement funds.35. Is there any additional information you would like to provide about your experience with Red Rock?
(please use additional paper if needed)I was grieving the recent loss of my husband of 42 years and guided by the RedRock reps to take steps to invest to secure my limited resources.I was overwhelmed and attempting to manage affairs that my late husband had taken care of previously.

From: [teletypest](#)
To: [Amber Patterson](#)
Subject: [EXTERNAL] re red rock secured LLC
Date: Sunday, June 23, 2024 2:15:26 PM

Hi

I received a letter from you in regard's to Red rock Secured LLC Yes.

I send lost big in the stock market. Wanted to try silver. I sent over 100000.00

for silver coins. They sent me 1/2 ounce silver coins. A man from Texas

sent me a document folder for tax purposes. I showed him what they sent me and He claimed

it was only 40,000.00 worth. I of coins. I kept calling for a return but they stalled and

stalled. I had to go threw the BBB and got a special lawyer. I had to sign a document to

tell no one? But BBB only resolves issues with a person. Then they get a clean slate.

Before you ask me more I want proof. No legal action will come against me for telling you.
or giving evidence.

John Munro


RECEIVED

JUL 12 2024

STATE OF TENNESSEE
SECURITIES DIVISION



KNOXVILLE TN 377

3 JUL 2024 PM 3 L

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 4447-002 NASHVILLE TN

POSTAGE WILL BE PAID BY ADDRESSEE

DEPT OF COMMERCE & INSURANCE
SECURITIES DIVISION
500 JAMES ROBERTSON PKWY
NASHVILLE TN 37243

Attn: Amber Patterson

2



RECEIVED

JUL 12 2024

STATE OF TENNESSEE
SECURITIES DIVISIONInvestor QuestionnaireInvestor Name: Margaret A. WadeAddress: [REDACTED]Phone Number: Cell [REDACTED] Work (☒)Email: [REDACTED] hotmail.com Are you over 65 years of age? ☐ No or ☒ Yes*(Please use additional paper for your responses if needed.)*

1. How did you become acquainted with Red Rock Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

Outlook

2. What products were offered to you as suitable investments?

silver coins

3. Do you recall filling out any suitability forms? ☒ No or ☐ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth ☐ Risk Tolerance ☒ Investment Objectives
☐ Annual Income ☐ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

a. silver coins \$?
 b. _____ \$ _____
 c. _____ \$ _____

6. What representations were made that convinced you to invest with Red Rock?

7. a. Who made these representations? _____
b. Did you have an agent? ☐ No or ☐ Yes... If yes, who? _____
8. Did you research the investment? ☒ No or ☐ Yes... If yes, what resources did you use?

9. Did you understand the price of the metals before you invested? ☒ No or ☐ Yes
10. Were the mark-ups on these metals explained to you? ☒ No or ☐ Yes...
a. If yes, what mark-up values were represented to you?

b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:

11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?
☐ No or ☐ Yes... If yes, please explain:

12. Did you surrender any products or liquidate any accounts to make this investment? ☐ No or ☒ Yes...
If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?
Same type - silver coins

Red Rock Secured IQA

Page | 3

13. Did you liquidate any securities to purchase metals from Red Rock? ☒ No or ☐ Yes...

If yes, what securities did you liquidate and what were the amounts?

- a. _____ \$ _____
- b. _____ \$ _____
- c. _____ \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☒ No or ☒ Yes

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☐ No or ☒ Yes...

If yes, who was the custodian? _____

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?
- _____

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☐ No or ☐ Yes... If yes, please explain:

18. a. Did you have any control over your investment account? ☒ No or ☐ Yes

b. Were there any restrictions to your access of the investment? ☒ No or ☐ Yes

c. Were you able to review the value of your metals? ☒ No or ☐ Yes

19. Did you understand your account and account statement? ☐ Yes or ☒ No...

If No, did you speak to your representative about your concerns? ☐ Yes or ☒ No

20. Were you advised on agent commissions? ☐ Yes or ☒ No

21. How did you understand the investment(s) to work (rate of return, etc.)?

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☒ No or ☐ Yes*

**If yes, please provide a copy of the materials when you return the questionnaire*

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☒ No or ☐ Yes... If yes, please explain:

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☒ No or ☐ Yes... If yes, please explain:

25. Were there any discussions about state and/or federal registration or exempt filings?

☒ No or ☐ Yes... If yes, please explain:

26. Have you received any returns on your investment? ☒ No or ☐ Yes...

If yes, how much have you received? \$ _____

27. Have you experienced any loss on your investments? ☐ No or ☒ Yes...

If yes, what is the amount of your loss? \$ _____

Red Rock Secured IQA

Page | 5

28. What is your profession? retired teacher
29. What is the value of your portfolio? \$?
30. Have you ever invested with a registered brokerage firm? ☒ No or ☐ Yes
31. Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:
1. _____
2. _____
3. _____
32. Would you be willing to participate in an interview? ☒ No or ☐ Yes
33. Would you be willing to testify in a hearing if called upon? ☒ No or ☐ Yes
34. Has your experience with Red Rock negatively affected you personally or financially? ☐ No or ☒ Yes
35. Is there any additional information you would like to provide about your experience with Red Rock?
(please use additional paper if needed)

This investment was made a long time ago! I
don't remember details, I know I lost a lot
of money!

Please include copies (no originals) of all documentation that you have regarding your investment with Red Rock Secured LLC when returning this questionnaire. Thank you!



Investor Questionnaire

Investor Name: El. Miller Diana Miller
 Address: [REDACTED] Crossville TN [REDACTED]
 Phone Number: Cell [REDACTED] Work [REDACTED]
 Email: [REDACTED]@cloud.com Are you over 65 years of age? ☒ No or ☐ Yes

(Please use additional paper for your responses if needed.)

1. How did you become acquainted with Red Rock Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

Father

website

2. What products were offered to you as suitable investments?

don't remember found Email - Gold Bar / Gold Coin

I only wanted silver

Silver Bar / Silver Coin

Palladium Bar + Coin

Platinum Bar + Coin

3. Do you recall filling out any suitability forms? ☐ No or ☒ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth

☐ Risk Tolerance

☒ Investment Objectives

☐ Annual Income

☐ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

a. Silver

\$50,000.00

\$

b.

\$

c.

\$

6. What representations were made that convinced you to invest with Red Rock?

I was told silver is \$22.40 per OZ

I ended up with 1,345 Silver Red Tail Hawk 0.5-OZ, Coins
Canadian

7. a. Who made these representations? Dr. Tony Spencer + Gabe Green
 b. Did you have an agent? ☐ No or ☐ Yes... If yes, who? Dr Tony Spencer
8. Did you research the investment? ☐ No or ☒ Yes... If yes, what resources did you use?
bbb
Googled web search
9. Did you understand the price of the metals before you invested? ☐ No or ☒ Yes
10. Were the mark-ups on these metals explained to you? ☒ No or ☐ Yes...
 a. If yes, what mark-up values were represented to you?
? I printed most of my emails
 b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:
silver was \$16 + per oz
They would sell to me for \$22.40
It cost me \$37.1747211 per 1/2 oz coin
I called several times and always was told that I use the wrong type of oz
11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?
☒ No or ☐ Yes... If yes, please explain:

12. Did you surrender any products or liquidate any accounts to make this investment? ☒ No or ☐ Yes...
 If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?

13. Did you liquidate any securities to purchase metals from Red Rock? ☐ No or ☐ Yes... ?

If yes, what securities did you liquidate and what were the amounts?

- a. I had the money and wired it \$ _____
- b. from my Highland Federal checking \$ _____
- c. account \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☐ No or ☐ Yes ?
don't Remember

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☒ No or ☐ Yes...

If yes, who was the custodian? _____

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?

Dr Tony Spencer + Gabe Green

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☐ No or ☒ Yes... If yes, please explain:

I expected double the oz of silver
They talked that I don't understand Troy oz

18. a. Did you have any control over your investment account? ☒ No or ☐ Yes

- b. Were there any restrictions to your access of the investment? ☒ No or ☐ Yes

- c. Were you able to review the value of your metals? ☐ No or ☐ Yes ?

19. Did you understand your account and account statement? ☐ Yes or ☐ No... ?

If No, did you speak to your representative about your concerns? ☒ Yes or ☐ No

20. Were you advised on agent commissions? ☐ Yes or ☒ No

? I made them
? ship me the
silver

21. How did you understand the investment(s) to work (rate of return, etc.)?

silver only goes up in value in the long term

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☒ No or ☐ Yes*

*If yes, please provide a copy of the materials when you return the questionnaire

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☐ No or ☒ Yes... If yes, please explain:

I see the term melt value in my notes

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☐ No or ☒ Yes... If yes, please explain:

? Cusib = serial number

25. Were there any discussions about state and/or federal registration or exempt filings?

☐ No or ☐ Yes... If yes, please explain:

?

26. Have you received any returns on your investment? ☒ No or ☐ Yes...

If yes, how much have you received? \$ I have the coins in my possession

27. Have you experienced any loss on your investments? ☒ No or ☐ Yes...

If yes, what is the amount of your loss? \$?

28. What is your profession? Farmer = Beef cow + Carpenter
29. What is the value of your portfolio? \$ _____
30. Have you ever invested with a registered brokerage firm? ☐ No or ☐ Yes
31. Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:
1. No my father discussed investments
 2. but has since passed.
 3. _____
32. Would you be willing to participate in an interview? ☐ No or ☒ Yes
33. Would you be willing to testify in a hearing if called upon? ☐ No or ☒ Yes
34. Has your experience with Red Rock negatively affected you personally or financially? ☒ No or ☐ Yes
35. Is there any additional information you would like to provide about your experience with Red Rock?
(please use additional paper if needed)

I was very displeased that it cost me \$37.17
per physical 2 oz ~~one~~ when it was
shipped.

again I was told that my math was wrong

I was quiet about it

Never fun to tell others that
I made a big Bad investment

Highland Federal
106 South Main St
Crossville, TN 38555-

Wire/Funds Transfer Payment Order

The undersigned originator requests payment to be made to the beneficiary or account number named below. To the extent not prohibited by law, the undersigned agrees that this wire transfer is irrevocable and that the sole obligation of the institution named above is to exercise ordinary care in processing this wire transfer and that it is not responsible for any losses or delays which occur as a result of any other party's involvement in processing this transfer.

ORIGINATING BANK PROCESSING DATA

Transfer Number (if not numbered above): _____
Date: 06 /17 /21 Time: 9:37 Fee: \$ 20.00
Method of Payment: DDA 0160089838
System: ☒ Fedwire ☐ S.W.I.F.T. ☐ CHIPS ☐ Telex ☐ Other _____
Prepared By: Tina Webb
Record Kept? ☐ Yes

BENEFICIARY BANK DATA

ABA Routing Number: _____
Name of Institution: JP Morgan Chase
Branch Information: New York, NY

BENEFICIARY DATA

Beneficiary's Name: Red Rock Secured LLC
Address: 400 N Continental Blvd Suite 200 El Segundo, CA
Account Number (if any): 90245 712-566-857
Instructions: Memo 1222238 Eli Miller

ORIGINATOR DATA

Sender's Name: Eli MILLER
Address: _____
CROSSVILLE, TN
Phone Number: _____
Driver's License Number: _____
Account Number: _____
Dollar Amount: \$ 50,000.00
Sender's Signature: _____

X _____
Eli MILLER

STATE OF NEW YORK

IN SENATE
January 10, 1907.

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
MAY 10, 1906.

ALBANY:
J. B. LIPPINCOTT & COMPANY, PRINTERS.
1907.

Red Rock Secured Transaction Agreement

2-2-21

Final Audit Report

2021-06-17

Created:	2021-06-17
By:	Jeff Ward (jeffw@redrocksecured.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAfAotDphdTAhXIDb3CJDe3SAIoXxGW6ZV

"Red Rock Secured Transaction Agreement 2-2-21" History

-  Web Form created by Jeff Ward (jeffw@redrocksecured.com)
2021-03-19 - 8:39:15 PM GMT
-  Web Form filled in by Eli Miller ([REDACTED]@gmail.com)
2021-06-17 - 12:11:51 PM GMT- IP address: 208.82.40.2
-  Document emailed to Eli Miller ([REDACTED]@gmail.com) for signature
2021-06-17 - 12:11:54 PM GMT
-  Email viewed by Eli Miller ([REDACTED]@gmail.com)
2021-06-17 - 12:18:09 PM GMT- IP address: 208.82.40.2
-  E-signature verified by Eli Miller ([REDACTED]@gmail.com)
2021-06-17 - 12:19:09 PM GMT- IP address: 208.82.40.2
-  Agreement completed.
2021-06-17 - 12:19:09 PM GMT

24.
1. 25.97
22.40 per oz
140 lb
500.00
1-1/4 table
44.80
7-Tubes 5' 219.20
6-21-21
240
x5
1200
140
5
1345
X-6725
24000

5 full Box 107
2516
125
44.736
8'
Silver Canadian
Red tail Hawk
Retailer - melt value
Time + date

Dr. Tony Spencer
Spencer
@ Red Rock secured. con.
Cusib = Serial #
1-07
Bulion Coin
Hawk
Canada - 1/2 oz
British
6-21-21
4.59

Traded agreement = mail
Holley
June 17 - 2021
Gold -
Silver - best

Troy oz



micheh

Exhibit L 000013

Red Rock Secured, LLC
898 Pacific Coast Highway, #440
El Segundo, CA 90245
(844) 824-5051
accounting@redrocksecured.com
http://www.redrocksecured.com



Red Rock
SECURED

INVOICE

BILL TO

Eli Miller

Crossville, TN

INVOICE # 2285**DATE** 06/17/2021**DUE DATE** 06/17/2021**TERMS** Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Silver Canadian Red Hawk 1/2-oz - Box of 240	5	8,947.20	44,736.00
Silver Canadian Red Hawk 1/2-oz	7	745.60	5,219.20
Silver Canadian Red Hawk 1/2-oz - Tube of 20	1	44.80	44.80
Silver Canadian Red Hawk 1/2-oz			
Silver Canadian Red Hawk 1/2-oz - Tube of 5			
Silver Canadian Red Hawk 1/2-oz			

"In Storage"

**PAYMENT
BALANCE DUE**

50,000.00

\$0.00

From: Gabe Green ggreen@redrocksecured.com
Subject: Payment Instructions for your Red Rock Secured Account
Date: Jun 16, 2021 at 1:15:32 PM
To: [REDACTED]@gmail.com
Cc: Gabe Green ggreen@redrocksecured.com

1222238

Dear Eli,

Thank you for your interest in Red Rock Secured! As a follow up to your request, below are the payment instructions in order to activate your client account with us. We look forward to assisting you, and thank you for your business.

Wiring Instructions:

\$ 50,000



If this is a cash transaction, please put your last name in the memo field.

Zelle Instructions:

Email: Accounting@redrocksecured.com

Check and Mailing Instructions:

Please make checks payable to: **Red Rock Secured**

Mail to:
Red Rock Secured, LLC
400 N. Continental Blvd. Suite 200
El Segundo, CA 90245

Please write "1222238" in the memo section.

Best regards,

Gabe Green

844-824-5051

400 Continental Blvd. Suite 200, El Segundo, CA
90245

*CONFIDENTIAL COMMUNICATIONS: This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy, or disseminate it unless you are the addressee. If you have received it in error, please call us. Also, please forward the message back to us and delete it from your system. Thank you. This e-mail is for informational purposes only. It is not intended to constitute either a confirmed trade, electronic signature, or an agreement.

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Received

JAN 16 2025



Investor Questionnaire

State of Tennessee
Securities DivisionInvestor Name: Christine JesseyAddress: [REDACTED] Spring Hill, TN [REDACTED]Phone Number: Cell [REDACTED] Work [REDACTED]Email: [REDACTED] Are you over 65 years of age? ☐ No or ☒ Yes

(Please use additional paper for your responses if needed.)

1. How did you become acquainted with Red Rock Secured LLC ("Red Rock")? (friends, family, financial professional, website, social media, etc.)

Friend

2. What products were offered to you as suitable investments?

Silver coins

3. Do you recall filling out any suitability forms? ☒ No or ☐ Yes

4. Did you provide any of the following? Check all that apply...

☐ Net Worth ☐ Risk Tolerance ☐ Investment Objectives
☐ Annual Income ☐ Investment Experience

5. What metals did you invest in, and how much was invested in each metal?

a. Silver \$ 50,000
 b. \$
 c. \$

6. What representations were made that convinced you to invest with Red Rock?

The ability to take physical possession + store
it in a safe deposit box while using an IRA
to make it no taxable at this time

7. a. Who made these representations? salesperson at Red Rock
- b. Did you have an agent? ☒ No or ☐ Yes... If yes, who? _____
8. Did you research the investment? ☐ No or ☒ Yes... If yes, what resources did you use?
Just looked online for reviews
9. Did you understand the price of the metals before you invested? ☐ No or ☒ Yes
10. Were the mark-ups on these metals explained to you? ☒ No or ☐ Yes...
 a. If yes, what mark-up values were represented to you?

- b. If yes, were the mark-up values represented to you verbally, in your contract and/or on your account statements? Please explain:
Verbal - I was told I would be sent Silver coins
for my \$50,000 + that only a modest fee would
be applied
11. Did you meet with any other representatives or advisors in relation to the purchase of these metals?
☒ No or ☐ Yes... If yes, please explain:
I have a string of emails
12. Did you surrender any products or liquidate any accounts to make this investment? ☐ No or ☒ Yes...
 If yes, what type(s) of accounts did you surrender/liquidate and did you lose money on fees?
IRA

13. Did you liquidate any securities to purchase metals from Red Rock? ☐ No or ☐ Yes...

If yes, what securities did you liquidate and what were the amounts?

- a. _____ \$ _____
- b. _____ \$ _____
- c. _____ \$ _____

14. Were you ever told to use your retirement funds to invest in precious metals from Red Rock? ☐ No or ☐ Yes

15. Were your funds in a self-directed IRA or were you advised to move funds to a self-directed IRA?

☐ No or ☐ Yes...

If yes, who was the custodian? _____

16. If you answered "yes" to question 12, 13, 14, or 15, who advised you to liquidate securities and/or move retirement funds to invest with Red Rock?
- _____

17. Was there ever any discrepancy in the amount value you liquidated and the value of the precious metals' holdings?

☐ No or ☐ Yes... If yes, please explain:

18. a. Did you have any control over your investment account? ☐ No or ☐ Yes
- b. Were there any restrictions to your access of the investment? ☐ No or ☐ Yes
- c. Were you able to review the value of your metals? ☐ No or ☐ Yes

19. Did you understand your account and account statement? ☐ Yes or ☐ No...

If No, did you speak to your representative about your concerns? ☐ Yes or ☐ No

20. Were you advised on agent commissions? ☐ Yes or ☐ No

21. How did you understand the investment(s) to work (rate of return, etc.)?

I am comfortable with the modest return on Silver but I like the security of it

22. Were you provided informational materials for this investment that outlined risk, expected return, redemption policies, fees, or associated costs? ☒ No or ☐ Yes*

*If yes, please provide a copy of the materials when you return the questionnaire

23. Were the terms "melt value" or "numismatic value" ever mentioned to you?

☒ No or ☐ Yes... If yes, please explain:

I was told I would get coins equal to my investment. They sent me coins worth about 20% of what I gave them

24. Was there any discussion about the investment requiring registration with the Securities Exchange Commission (SEC) or the Tennessee Securities Division?

☒ No or ☐ Yes... If yes, please explain:

No registration was mentioned. They just told me to sign forms to open an IRA with them.

25. Were there any discussions about state and/or federal registration or exempt filings?

☐ No or ☒ Yes... If yes, please explain:

They said my IRA would keep it tax free. They set that up. No other filings or registrations were mentioned

26. Have you received any returns on your investment? ☒ No or ☐ Yes...

If yes, how much have you received? \$ _____

27. Have you experienced any loss on your investments? ☐ No or ☒ Yes...

If yes, what is the amount of your loss? \$ 40,000 by my estimate

28. What is your profession? Health plan sales
29. What is the value of your portfolio? \$ 300,000.-
30. Have you ever invested with a registered brokerage firm? ☐ No or ☒ Yes
31. Do you know of any other people who invested through Red Rock? If so, please list their names and contact information below:
1. _____
2. _____
3. _____
32. Would you be willing to participate in an interview? ☐ No or ☒ Yes
33. Would you be willing to testify in a hearing if called upon? ☐ No or ☒ Yes
34. Has your experience with Red Rock negatively affected you personally or financially? ☐ No or ☒ Yes
35. Is there any additional information you would like to provide about your experience with Red Rock?
(please use additional paper if needed)

I gave them \$50,000 expecting a bunch of coins roughly equal to the cash minus small fees

By my estimate they sent about \$10,000 worth of coins.

When I called them to complain about the small number of coins I was told that the value was in the possession.

The fees to set up the IRA to hold it has been expensive too, And they bill me again every year to keep it from becoming taxable!!

Please include copies (no originals) of all documentation that you have regarding your investment with Red Rock Secured LLC when returning this questionnaire. Thank you!



**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE**

TENNESSEE SECURITIES DIVISION,
Petitioner,

v.

RED ROCK SECURED, LLC,
SEAN KELLY, AND ANTHONY SPENCER,
Respondent

OI: 2023-0044

AFFIDAVIT OF APRIL ODOM

STATE OF TENNESSEE
COUNTY OF DAVIDSON

1. I am over eighteen (18) years of age, competent to provide testimony, and a citizen of Tennessee, with personal knowledge of the matters stated herein.

2. The statements contained herein are true, accurate, and correct to the best of my knowledge, information, and belief.

3. The Statements contained herein are true, accurate, and correct to the best of my knowledge and belief.

4. I am currently employed as the Director of Registration for the Securities Division of the Tennessee Department of Commerce and Insurance ("Division").

5. As the Director of Registration, my duties include, but are not limited to, regulating registered and unregistered activity of broker-dealers, agents, investment advisers, and investment adviser representatives in Tennessee to assure the protection of Tennessee investors and

compliance with applicable statutes, rules, and regulations, as set forth in the Tennessee Securities Act of 1980.

6. As Director of Registration, I am familiar with the types of records that the Registration Section of the Division keeps during its daily operations.

7. It is a regular practice of the Registration Section of the Division to create, keep, store, and maintain records of broker-dealers, agents, investment advisers, and investment adviser representatives in Tennessee that the Division registers.

8. The Division's official records for broker-dealer, broker-dealer agent, investment adviser, and investment adviser representative registration are kept, stored, and maintained electronically on two (2) databases called the Central Registration Depository ("CRD") and Investment Adviser Registration Depository ("IARD"). Any additional registration documents are kept electronically internally.

9. I am familiar with the use of CRD and IARD to review the records of securities industry professionals.

10. On June 4, 2026, I reviewed CRD/IARD and determined that Sean L. Kelly f/k/a Shade L. Kelly-Johnson ("Kelly"), and Anthony "Tony" Spencer ("Spencer") was not registered as a broker-dealer or broker-dealer agent with the Division.

11. On June 4, 2026, I reviewed CRD/IARD and determined that Red Rock Secured, LLC was not registered as a broker-dealer or broker-dealer agent with the Division.

12. On June 4, 2026, I reviewed CRD/IARD and determined that Kelly and Spencer was not registered as an investment adviser or investment adviser representative with the Division.

13. On June 4, 2026, I reviewed CRD/IARD and determined that Red Rock Secured, LLC was not registered as an investment adviser or investment adviser representative with the Division.

14. The Division's official records for securities product filings are kept, stored, and maintained electronically on an internal database and on the North American Securities Administrators Association Electronic Filing Depository ("NASAA EFD").

15. I am familiar with the use of these databases to review the records of securities product filings.

16. On June 4, 2026, I reviewed the Division's database and determined that there were no registration filings under the issuer's name Red Rock Secured, LLC.

17. On June 4, 2026, I reviewed the Division's database and determined that there were no exemption filings under the issuer's name Red Rock Secured, LLC.

18. On June 4, 2026, I reviewed the Division's database and determined that there were no notice filings under the issuer's name Red Rock, Secured, LLC..

I have read the foregoing statement and any supplemental documents. I attest under the penalty of perjury that this statement is true, accurate, and complete to the best of my knowledge and belief. I made the corrections shown, if any, and placed my initials opposite each. I made this statement freely and voluntarily without any threat, reward, or promise of reward having been made to me in return for it.

 (signature)
Affiant/Declarant

April Odom (print name)

Subscribed and sworn before me this 10th day of June, 2026.

I attest under the penalty of perjury that the information in this document is notarized by me, a Notary Public, and subscribed by the notary information listed below.



[Signature] (Signature)

Joanna M. Maldonado (Print Name)

My commission expires: 9/5/2028

State of TN, County of Davidson



interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

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 daily 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.

6. 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.

7. 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's facilitation of a \$62 million fraud scheme, showcased in lawsuits filed in federal and state courts in California. Additionally, the Division discovered that there was at least one Tennessee resident who complained to consumer affairs at https://www.consumeraffairs.com/finance/red-rock-secured.html#scroll_to_reviews=true, leaving a review stating that he lost a significant portion of his 401 (k) due to exorbitant fees charged for the sale of the precious metals.

8. On or about July 7, 2023, the Commissioner issued Order of Investigation 2023-0020, which was later amended to Order of Investigation 2023-0044 on February 21, 2024.

9. According to the CFTC Consent Order, the following facts were agreed to:
- a. From at least November 2019 through June 2022, Red Rock purchased all of its precious metals products from a single wholesaler, Bayside Metal Exchange (“BME”).
 - 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.
 - c. Red Rock told prospective customers numerous misrepresentations about the metals they were purchasing, including monetary value and how the assets appreciate in value in the long term.
 - d. Furthermore, the prices Red Rock paid BME to acquire the 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.”
 - 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 tell its customers about the actual markups it charged.

- f. Red Rock agreed via the consent order to pay restitution (\$38,984,313.90) and disgorgement (“R&D”). The court appointed National Futures Association as the monitor to receive payments on the R&D Obligations from the Respondents and make distributions. Lastly, the order bars the Respondents from the securities industry.

10. On or about April 25, 2024, the California Department of Financial Protection and Innovation (“DFPI”) made final 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 the securities industry. On March 24, 2024, the CFTC sent the Division a complete client list of Red Rock. From that list, 14 TN clients of Red Rock were identified.

- a. Margaret Wade, Knoxville, TN
- b. Kenneth Taromino, Lyles, TN
- c. Christine Jessey, Spring Hill, TN
- d. Elizabeth Reel, Leoma, TN
- e. John Munro, Clarksville, TN
- f. Jeanie Shufelt, Franklin, TN
- g. Jacob Trujillo, Hixson, TN

- h. Eli Miller, Crossville, TN
- i. John Armitage, TN
- j. Ardis Ferguson, Mt Juliet, TN
- k. Kevin Hensley, Athens, TN
- l. Grace Benz, Memphis, TN
- m. Tonya Deynzer, Maryville, TN
- n. David Johnson, Livingston, TN

11. 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 submitted a completed questionnaire and documentation indicating that he received an advertisement for an investment via email. After inquiring, he was offered silver in the form of Canadian Redtail Hawk 0.5 oz. silver coins. He provided Red Rock with his annual income, risk tolerance, and investment experience. He rolled over \$23,000 from his IRA with STRATA to invest under Red Rock's advisement. Although the mark-ups were explained initially, they were not very clear. Spencer tried to justify this by saying the actual value was different from what was on the statements he received. Ferguson believes he lost approximately \$12,500 due to the actual values and mark-ups.
- b. On July 11, 2024, David Johnson stated that he received an advertisement for an investment in his email. He purchased \$30,000 worth of gold and \$80,000

worth of silver with Red Rock. He held an IRA account with STRATA that he used for investing. Johnson believes he has lost over \$80,000 due to actual values and markups.

- c. Betty Jean Shufelt filled out the questionnaire for her deceased husband, George Shufelt II. She stated that she believed they learned about Red Rock through social media. After a call with Kelley and Spencer, they were advised to purchase \$725,000 worth of Canadian Redtail Hawk 0.5oz. silver coins. The Shufelts moved money from their Roth and Traditional IRAs. Ms. Shufelt expects a loss of \$375,000 due to actual values and mark-ups.
- d. Grace Benz stated that she received information in the mail and was contacted by phone as well. She provided Red Rock with her annual income, risk tolerance, and investment experience. Ms. Benz was told by Spencer and another representative, named Barry Leyla Valenzuela that she didn't have to worry about losing money in her retirement account, as they would convert her money into physical gold and silver for a worry-free retirement. \$50,000 was rolled over from her late husband's 401(k). Her purchases included Silver Canadian Red Hawk ½ oz boxes of 240, Silver Canadian Red Hawk ½ oz tubes of 20, Silver Canadian Red Hawk ½ oz tubes of 5, Silver Canadian Red Hawk ½ oz tubes of 5, and Silver Canadian Red Hawk ½ oz tubes of 10.
- 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.”

- f. Margaret Wade stated that she received an advertisement in her email. She 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 remembers losing a lot of money.
- 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.
- h. Chris Jessey learned about Red Rock from a friend. He bought \$50,000 worth of silver. He believed he would receive about that amount in coins, minus small fees. He stated that he thinks 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 that the value is in the coins themselves. He also mentioned that he was

charged high fees to set up the IRA to hold the coins, which are billed annually to keep the account from being taxed.

12. 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 are 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 are 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.

APPLICABLE LAW

13. 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;

14. 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

15. 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;
16. 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;
17. 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;
18. 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;

19. 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.

20. 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.

21. 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.

22. 37. 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.

23. 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;

...

(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)

24. 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.

25. 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)).

26. 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 of 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).

CONCLUSIONS OF LAW

27. The Commissioner finds that this Ex Parte Cease and Order 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 pursuant to Tenn. Code Ann. § 48-1-116(b). In addition, the Commissioner finds that prior notice to the Respondents of this Cease and Desist Order would not have been in the public interest and would have been detrimental to the protection of Tennessee securities consumers pursuant to Tenn. Code Ann. § 48-1-116(e)(2)(A).

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

28. Respondents' actions of encouraging fourteen (14) Tennessee residents to use their tax-deferred or other retirement funds to purchase precious metals from them was acting as investment advisers and investment adviser representatives as defined in Tenn. Code Ann. § 48-1-102(14).

29. The Respondents' actions of providing investment adviser services in Tennessee in violation of the Act creates 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

Order to Cease and Desist

In the matter of Red Rock Secured LLC, Sean Kelly and Anthony Spencer

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all securities activity.

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

30. The Respondents facilitated 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. The Respondents' acts in effectuating the sale of securities using the funds in the retirement accounts facilitated consumers' investments in Red Rock, demonstrating that the Respondents acted as broker-dealers and agents in Tennessee. Such securities sold were investment contracts as defined in Tenn. Code Ann. § 48-1-102(20)(A).

31. 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 securities registration requirement. The Respondents' acts of effecting and attempting to effect the sale of such securities through its website links and social media constitute acting as a broker-dealer in effecting the sale of unregistered securities 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.

32. The Respondents made untrue and misleading statements of material fact when they 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 metals sold to customers 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 Respondents’ 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).

33. 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.

ORDER

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents **SHALL COMPLY** with the provisions of the Act.
2. The Respondents **SHALL CEASE AND DESIST** from engaging in any further unregistered conduct as an investment adviser, investment adviser representative, broker-dealer, or agent from or in the State of Tennessee until such time they are effectively registered with the Division to engage in such activity.
3. The Respondents **SHALL CEASE AND DESIST** from further conduct as an investment adviser, investment adviser representative, broker-dealer, or agent in Tennessee while not being registered. This includes, but is not limited to, providing investment advice to the public for any compensation through their social media accounts, websites, YouTube channels, or any other medium. They must also refrain from affecting or attempting to effectuate the sale of securities through those same platforms.

4. Any persons aiding or otherwise acting in concert with the Respondent or facilitating the unlawful activities of the Respondent through operation of its social media accounts, websites, and YouTube channels to and from Tennessee, and any successor entities or individuals, **SHALL IMMEDIATELY CEASE AND DESIST** from aiding such unlawful conduct of the Respondents.

5. This Order to Cease and Desist is not intended to prohibit any lawful conduct in which the Respondents might be engaged.

6. Entry of this Order to Cease and Desist shall not in any way restrict the Division or the Commissioner from taking further action, including the imposition of maximum civil penalties allowed under the Act, with respect to these or other possible violations of the Act, or any of the rules promulgated thereunder, by the Respondents.

7. The Respondents are advised that the right to a hearing as to all matters raised in this Order to Cease and Desist is available. If the Respondents wish to exercise the right to a hearing, please notify:

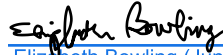
ELIZABETH H. BOWLING
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER, 10th FLOOR
NASHVILLE, TENNESSEE 37243

8. Such request must be received within thirty (30) days from the date of execution of this Order to Cease and Desist. This Order to Cease and Desist shall become a Final Order thirty (30) days from the date of its entry, unless written notification requesting a hearing is made within that thirty (30) day period.

ENTERED this 14 day of June, 2026.


Carter Lawrence (Jun 15, 2026 08:44:19 CDT)
Carter Lawrence, Commissioner

APPROVED FOR ENTRY:


Elizabeth Bowling (Jun 14, 2026 21:10:30 CDT)
Elizabeth H. Bowling
Assistant Commissioner for Securities
Department of Commerce and Insurance


Courtney Anne Smith (Jun 12, 2026 12:05:35 CDT)
Courtney Smith, BPR #032367
Associate Counsel
500 James Robertson Parkway
Davy Crockett Tower
Nashville, TN 37243
(615) 253-9910
courtney.anne.smith@tn.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Petition for Ex Parte Order to Cease and Desist and Ex Parte Order to Cease and Desist will be served upon the Respondent via overnight mail and email to the below enclosed address on 22nd day of June, 2026.

Red Rock Secured LLC - United States Postal Service No. 9589 0710 5270 4047 4919 58
400 N. Continental Blvd., Suite 200
El Segundo, CA

Red Rock Secured LLC - United States Postal Service No. 9589 0710 5270 4047 4918 97
401 Ryland Street, Suite 200-A
Reno, NV 89502

SEAN KELLY - United States Postal Service No. 9589 0710 5270 4047 4919 03
12015 Ricasoli Way
Porter Ranch, CA 91326

ANTHONY C. SPENCER- United States Postal Service No. 9589 0710 5270 4047 4919 10
8708 Glider Avenue
Los Angeles, CA 90045


Courtney A. Smith (Jun 18, 2026 16:21:12 CDT)
Courtney A. Smith