

TRAVIS J. ILES
SECURITIES COMMISSIONER



CLINTON EDGAR
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

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

E. WALLY KINNEY
CHAIR

KENNY KONCABA
MEMBER

ROBERT BELT
MEMBER

MELISSA TYROCH
MEMBER

EJIKE E OKPA II
MEMBER

IN THE MATTER OF §
FIRST CLASS WEALTH PRESERVATION LLC AKA §
FIRST CLASS METALS, MITCHEL KANE MALIZIO § Order No. ENF-21-CDO-1845
AKA MITCH KANE AND JASON SHAW §

First Class Wealth Preservation LLC aka First Class Metals

Service by certified mail, return receipt requested, addressed to (1) 433 Plaza Real, Suite 275, Boca Raton, Florida 33432; and (2) its Registered Agent for Service of Process in Florida, Mitchel Kane Malizio aka Mitch Kane, 6398 Amberwoods Drive, Boca Raton, Florida 33433.

Mitchel Kane Malizio aka Mitch Kane

Service by certified mail, return receipt requested, addressed to (1) 433 Plaza Real, Suite 275, Boca Raton, Florida 33432; and (2) 6398 Amberwoods Drive, Boca Raton, Florida 33433.

Jason Shaw

Service by certified mail, return receipt requested, addressed to (1) 433 Plaza Real, Suite 275, Boca Raton, Florida 33432; and (2) 6398 Amberwoods Drive, Boca Raton, Florida 33433.

EMERGENCY CEASE AND DESIST ORDER

This is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas ("**Securities Commissioner**") of an EMERGENCY CEASE AND DESIST ORDER pursuant to Section 23-2 of The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1-581-45 (the "**Securities Act**").

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

FINDINGS OF FACT

1. First Class Wealth Preservation LLC aka First Class Metals ("**Respondent First Class**") can be served by certified mail, return receipt requested, addressed to (1) 433 Plaza Real, Suite 275, Boca Raton, Florida 33432; and (2) its Registered Agent for Service of Process in Florida, Mitchel Kane Malizio aka Mitch Kane, 6398 Amberwoods Drive, Boca Raton, Florida 33433.

2. Mitchel Kane Malizio aka Mitch Kane ("**Respondent Malizio**") is the President and Owner of Respondent First Class and its Agent for Service of Process in Florida. He can be served by certified mail, return receipt requested, addressed to (1) 433 Plaza Real, Suite 275, Boca Raton, Florida 33432; and (2) 6398 Amberwoods Drive, Boca Raton, Florida 33433.
3. Jason Shaw ("**Respondent Shaw**") is an agent for Respondent First Class. He can be served by certified mail, return receipt requested, addressed to (1) 433 Plaza Real, Suite 275, Boca Raton, Florida 33432; and (2) 6398 Amberwoods Drive, Boca Raton, Florida 33433.

**RESPONDENT MALIZIO'S
CRIMINAL PROSECUTION FOR FELONY ASSAULT WITH A FIREARM**

4. In or around February 2019, Respondent Malizio was accused of attacking his ex-fiancé, pushing her to the ground, hitting and kicking her, holding a gun to her head and threatening to kill her.
5. Respondent Malizio was thereafter prosecuted for felony aggravated assault with a firearm, domestic battery and criminal mischief in State of Florida v. Mitchell K. Malizio, Case No. 502019-CF-002134-AXXX-MB, in the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida - Criminal Division.
6. On or about September 24, 2019, these criminal cases were resolved as follows:
 - A. Respondent Malizio pleaded guilty to aggravated assault with a firearm. The court withheld adjudication and ordered, among other things, that Respondent Malizio serve probation for a term of three years without early termination.
 - B. Respondent Malizio pleaded guilty to domestic battery. The court withheld adjudication and ordered, among other things, that Respondent Malizio serve probation for a term of one year without early termination.
 - C. Respondent Malizio pleaded guilty to criminal mischief. The court withheld adjudication and ordered, among other things, that Respondent Malizio serve probation for a term of six months without early termination.

RESPONDENT MALIZIO'S INCORPORATION OF RESPONDENT FIRST CLASS

7. On or about August 30, 2017, Respondent Malizio organized First Class Coins and Bullion LLC with the Florida Secretary of State, and First Class Coins and Bullion LLC thereafter operated under the alias First Class Metals.
8. On or about June 14, 2019, Respondent Malizio organized Respondent First Class with the Florida Secretary of State. It has also been operating under the alias First Class Metals.

9. Respondent First Class shared the same principal office address and mailing address as First Class Coins and Bullion LLC.
10. On or about September 27, 2019, First Class Coins and Bullion LLC was subject to administrative dissolution for failure to file an annual report. It is no longer an active company.

THE UNSOLICITED ADVERTISEMENTS SENT TO THE AGENCY

11. Beginning on or about March 21, 2021, Respondents First Class and Malizio inadvertently sent a series of unsolicited advertisements to state securities regulators, including the State Securities Board.
12. The unsolicited advertisements were directed to public state email accounts used to report the suspected financial exploitation of elderly or vulnerable victims.
13. The unsolicited advertisements promoted investing in precious metals through a self-directed individual retirement account (a "**SDIRA**") to protect against inflation and concerns about the stock market and financial regulation.
14. The unsolicited advertisements directed potential investors to contact Respondent First Class.

THE FACEBOOK SOLICITATION

15. Respondent Malizio created a webpage through Facebook accessible by the public at www.facebook.com/FirstClassMetals/ (the "**First Class Facebook Webpage**").
16. The First Class Facebook Webpage provides information about investments in precious metals, describes Respondent First Class as an Investment Management Company and claims Respondent First Class "has thousands of successful transactions with a 5 star rating."
17. The First Class Facebook Webpage also claims Respondent Malizio owns Respondent First Class and he "has 11 years of investment advisory experience."
18. The First Class Facebook Webpage directs potential investors to contact Respondent First Class by telephone or by electronic mail and provides a link to www.firstclassmetals.com (the "**First Class Website**").

THE LINKEDIN WEBPAGE

19. Respondent Malizio created a webpage through LinkedIn accessible at <https://www.linkedin.com/in/mitch-kane-b29217a1/> (the "**First Class LinkedIn Webpage**").
20. The First Class LinkedIn Webpage identifies Respondent Malizio as the owner of Respondent First Class. It also falsely claims he attended New York University

from 2007 through 2011 and graduated with a Bachelor's degree in Business Administration and Management.

21. The First Class LinkedIn Webpage also provides a link to the First Class Website.

THE FIRST CLASS WEBSITE

22. The First Class Website promotes Respondent First Class, claiming its team consists of certified metals experts, has over 30 combined years of experience and has completed transactions valued at more than \$20 million since 2013.
23. The First Class Website also promotes investing in precious metals through SDIRAs and provides a "revolutionary" guide describing the process of purchasing these investments.
24. The guide explains that Respondent First Class is responsible for dealing with current IRA custodians, claiming Respondent First Class "reach[es] out to your current IRA custodian to arrange for the tax-free rollover of your retirement monies."

THE ILLEGAL ADVISORY SCHEME

25. Respondents First Class and Malizio, along with Respondent Shaw, are soliciting potential investors residing in Texas and throughout the country.
26. Respondents are encouraging these potential investors to provide personal information, including financial information describing securities purchased from dealers and/or managed by investment advisers.
27. Respondents are representing these securities are not safe investments and maintaining ownership of these securities subjects owners to significant risk of loss.
28. Respondents are then encouraging potential investors to protect their investments by liquidating their securities and using the proceeds to purchase precious metals through SDIRAs.
29. Respondents are receiving compensation as part of the scheme.

PRECIOUS METALS DEALER RECORDS AND THE VALUE OF THE INVESTMENTS

30. Respondents are purchasing coins from APMEX, Inc., a precious metals dealer.
31. Records maintained by APMEX, Inc. reflect a significant difference between principal investments and the price paid by Respondent First Class for the precious metals.

INVESTOR EXAMPLE: PART I

32. On or about December 31, 2020, an investor purchased 1,295 silver coins from Respondent First Class for approximately \$119.99 per silver coin.
33. On or about January 6, 2021, Respondent First Class purchased the 1,295 silver coins from a coin wholesaler for \$47.36, a difference of around 61% of the amount paid per silver coin by the investor.

INVESTOR EXAMPLE: PART II

34. On or about December 31, 2020, an investor purchased 49 silver coins from Respondent First Class for approximately \$84.99 per silver coin.
35. On or about January 6, 2021, Respondent First Class purchased the 49 silver coins from a coin wholesaler for \$43.36, a difference of around 49% of the amount paid per silver coin by the investor.

INVESTOR EXAMPLE: PART III

36. On or about December 31, 2020, an investor purchased 406 silver coins from Respondent First Class for approximately \$104.99 per silver coin.
37. On or about January 6, 2021, Respondent First Class purchased the 406 silver coins from a coin wholesaler for \$54.99, a difference of around 48% of the amount paid per silver coin by the investor.

FALSE CLAIMS ABOUT QUALIFICATIONS AND CREDENTIALS

38. In furtherance of the scheme, Respondents are claiming Respondent First Class is an authorized dealer with the Numismatic Guaranty Corporation ("**NGC**").
39. The representation is not true. Respondent First Class is not an authorized dealer with the NGC.

REGISTRATION VIOLATIONS

40. Respondent First Class is acting as an investment adviser because Respondent First Class is a person who, for compensation, is engaging in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities.
41. Respondent First Class has not been registered or notice-filed as an investment adviser with the Securities Commissioner pursuant to Sections 12 and 12-1 of the Securities Act at any time material hereto.

42. Respondents Malizio and Shaw are acting as investment adviser representatives because they are persons who, for compensation, are employed, appointed, or authorized by Respondent First Class to solicit clients for Respondent First Class and they, on behalf of Respondent First Class, are providing investment advice to Respondent First Class's clients.
43. Respondents Malizio and Shaw have not been registered or notice-filed as investment adviser representatives with the Securities Commissioner pursuant to Section 12 and 12-1 or the Securities Act at any time material hereto.

FRAUD AND DECEIT AND RESPONDENT MALIZIO'S PAST

44. Respondents First Class and Malizio are and/or are about to, in connection with the rendering of investment advice, intentionally fail to disclose the material fact that Respondent Malizio was prosecuted for felony aggravated assault with a firearm, domestic battery and criminal mischief in State of Florida v. Mitchell K. Malizio, Case No. 502019-CF-002134-AXXX-MB, in the County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida - Criminal Division, and that the cases were resolved as follows:
 - A. Respondent Malizio pleaded guilty to aggravated assault with a firearm. The court withheld adjudication and ordered, among other things, that Respondent Malizio serve probation for a term of three years without early termination.
 - B. Respondent Malizio pleaded guilty to domestic battery. The court withheld adjudication and ordered, among other things, that Respondent Malizio serve probation for a term of one year without early termination.
 - C. Respondent Malizio pleaded guilty to criminal mischief. The court withheld adjudication and ordered, among other things, that Respondent Malizio serve probation for a term of six months without early termination.
45. Respondents First Class and Malizio are and/or are about to, in connection with the rendering of investment advice, intentionally fail to disclose Respondent Malizio is currently serving felony probation, and this information constitutes a material fact.

FRAUD AND BUSINESS REPUTE, QUALIFICATIONS AND SUCCESS

46. Respondents are and/or are about to, in connection with the rendering of investment advice, intentionally fail to disclose the following material facts about their experience with financial services and products:
 - A. Their business repute, qualifications and experience in advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities;

- B. Their business repute, qualifications and experience in forecasting economic conditions, such as the likelihood of recessions and the possibility of inflation, as well as predicting the exchange rate of the dollar;
- C. Their business repute, qualifications and experience in determining the impact on the value of securities resulting from changes in economic conditions, recessions, inflation, and changes in the exchange rate of the dollar;
- D. Their business repute, qualifications and experience in determining whether securities and other investments constitute suitable products; and
- E. Their success in generating profits for clients after they liquidate securities and then purchase precious metals.

FRAUD AND FALSE CLAIMS REGARDING NGC AUTHORIZATION

- 47. Respondents are advising and/or are about to advise potential investors to invest in precious metals while falsely claiming that Respondent First Class is an authorized dealer with the NGC. As such, Respondents are and/or are about to, in connection with the rendering of investment advice, misrepresent relevant facts because Respondent First Class is not a dealer authorized by the NGC.

MISLEADING STATEMENTS REGARDING THE HISTORIC SUCCESS OF RESPONDENT FIRST CLASS

- 48. Respondents are advising and/or are about to advise potential investors to invest in precious metals while falsely claiming that Respondent First Class has completed over \$20 million in transactions since 2013. This statement is materially misleading or otherwise likely to deceive the public because Respondent First Class was organized with the Florida Secretary of State in June 2019 and was not authorized to transact business as a limited liability company from 2013 to June 2019.

FRAUD AND DECEIT AND THE VALUE OF PRECIOUS METALS

- 49. Respondents are or are about to, in connection with the rendering of investment advice, intentionally fail to disclose the difference between the purchase price of precious metals and the price paid by Respondents for the precious metals.

CONCLUSIONS OF LAW

- 1. Respondent First Class is acting as an investment adviser as that term is defined in Section 4.N of the Securities Act.
- 2. Respondent First Class is violating Sections 12 and/or 12-1 of the Securities Act by rendering services as an investment adviser in Texas without being registered or notice-filed as an investment adviser.

3. Respondents Malizio and Shaw are acting as investment adviser representatives as that term is defined in Section 4.P of the Securities Act.
4. Respondents Malizio and Shaw are violating Section 12 and/or 12-1 of the Securities Act by rendering services as investment adviser representatives in Texas without being registered or notice-filed as investment adviser representatives.
5. Respondents are engaging or are about to engage in fraud in connection with the rendering of investment advice.
6. Respondents have made an offer containing a statement that is materially misleading or otherwise likely to deceive the public.
7. Respondents are engaging in conduct, acts and practices that threaten immediate and irreparable harm.
8. The foregoing violations constitute bases for the issuance of an Emergency Cease and Desist Order pursuant to Section 23-2 of the Securities Act.

ORDER

1. It is therefore ORDERED that Respondent First Class immediately CEASE AND DESIST from acting as an investment adviser in Texas until it is registered or notice-filed with the Securities Commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or it is acting pursuant to an exemption under the Securities Act.
2. It is further ORDERED that Respondents Malizio and Shaw immediately CEASE AND DESIST from acting as investment adviser representatives in Texas until they are registered or notice-filed with the Securities Commissioner pursuant to Sections 12 and/or 12-1 of the Securities Act or they are acting pursuant to an exemption under the Securities Act.
3. It is further ORDERED that Respondents immediately CEASE AND DESIST from making an offer containing a statement that is materially misleading or otherwise likely to deceive the public.
4. It is further ORDERED that Respondents immediately CEASE AND DESIST from engaging in any fraud in connection with the rendering of investment advice in Texas.

NOTICE

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

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

SIGNED AND ENTERED by the Securities Commissioner this 6th day of August, 2021.



TRAVIS J. ILES
Securities Commissioner