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7-9-01

STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:

PROFITS PLUS, INC.	)	Order No. CD-01-10
P.O. Box 5	)	
Ozark, Missouri 65721; and	)	
	)	
PAMELA J. HARRINGTON	)	
P.O. Box 5	)	
Ozark, Missouri 65721,	)	
	)	
Respondents.	)	

**ORDER TO CEASE AND DESIST**

On the 23<sup>rd</sup> day of March 2001, John Ellis, Chief of Enforcement for the Securities Division, submitted a petition for a cease and desist order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT**

1. Profits Plus, Inc., is a Missouri corporation with a business address of P.O. Box 5, Ozark, Missouri 65721.
2. Pamela J. Harrington purports to be the president of Profits Plus and has a last-known business address of P.O. Box 5, Ozark, Missouri 65721.
3. On October 13, 1998, the Missouri Securities Division received information indicating that Respondents may have sold securities to Missouri residents and that Harrington may have acted as an investment adviser in the State of Missouri.
4. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for any securities offered or sold by Respondents in the State of Missouri.

5. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for Harrington as an investment adviser in the State of Missouri.
6. From October 1997 to May 1998, Harrington offered to sell securities in the form of shares of stock in Profits Plus to Missouri residents.
7. In connection with the sales of these securities, Harrington told the Missouri residents, among other things, the following:
  - a. Investors could purchase stock in Profits Plus at \$6 per share.
  - b. Funds invested in Profits Plus would be pooled and used to purchase other stocks and commodities.
  - c. The profits earned from Profits Plus' investing activities would be shared among all Profits Plus investors.
  - d. An investment in Profits Plus would be risk-free.
  - e. An investment in Profits Plus would double within one year.
  - f. Profits Plus' investors would become rich.
8. Respondents sold 13,300 shares of Profits Plus stock to at least 21 Missouri residents for a total investment of \$79,900.
9. In connection with the sales of these securities, Harrington failed to disclose to the Missouri residents, among other things, the following:
  - a. Harrington received management fees from the funds invested by Missouri residents in Profits Plus.
  - b. The shares of stock in Profits Plus were not registered or exempt from registration with the State of Missouri.
  - c. Harrington was not registered or exempt from registration as an investment adviser with the State of Missouri.
10. On November 17, 1998, the Division sent a letter of inquiry to Respondents that requested a claim of exemption or exception from definition upon which Respondents relied in selling unregistered securities in the State of Missouri. The letter also requested additional information about the sales to Missouri investors, and advised Respondents that failure to respond within a reasonable time as set by the Commissioner constituted proper ground for the entry of an order suspending the right to offer and sell securities in the State of Missouri.

11. On December 4, 1998, the Division received a response from Harrington to the November 17, 1998 letter. In this response, Harrington stated, in part, that "stock in Profits Plus, Inc., was sold in reliance on Section 409.402(b)(9) [RSMo 1994]." This exemption does not allow for the payment of a commission or other remuneration in connection with the offer or sale of a security.
12. In this December 4, 1998 response, Harrington further stated that Harrington had received the following "commissions or earnings" in connection with the offer and sale of securities in the State of Missouri:
  - a. A "management fee" from Profits Plus in the amount of \$8,715.
  - b. A "participation interest" of 1,500 shares of Profits Plus stock at the discounted price of 15 cents per share.
  - c. At least \$300 from several individual investors for providing investment advice.
13. On December 14, 1998, the Division sent a second letter of inquiry to Respondents requesting further information. The December 14, 1998 letter requested a claim of exemption or exception from definition upon which Harrington relied in acting as an investment adviser without registering. The letter also made a second request for copies of promotional materials used in the offer and sale of Profits Plus stock, and stated that Respondents' initial response to that request in Respondents' December 4, 1998 response was insufficient.
14. On January 13, 1999, the Division received a response to the December 14, 1998 letter to Harrington. In this response, Harrington stated that Harrington relied on an exception from the definition of an investment adviser. This exception, however, only applies to persons who have no place of business in the State of Missouri and who deal with five or fewer clients.
15. In this January 1999 response, Harrington also provided information about the use of investor funds in Profits Plus. Included in this information was a payment of \$28,920 from Profits Plus to Harrington for management fees. This management fee represented 36% of the \$79,900 invested in Profits Plus. This information also indicated that less than 60% of the funds from Missouri residents were used for investing activities by Profits Plus.
16. On January 21, 1999, the Division sent a final letter of inquiry to Respondents stating, in part, that Respondents' letter of January 13, 1999 was non-responsive to the Division's requests for information. The letter requested further information concerning promotional materials used in the offer and sale of Profits Plus stock, copies of contracts used in the sale of Profits Plus stock, and information concerning expenditures and losses noted in Profits Plus financial statements. The January 21, 1999 letter was received and signed for on January 26, 1999.

17. The Division received no response to the January 21, 1999 letter.
18. As of January 2001, almost all of the investors solicited by Respondents to invest in Profits Plus had seen no return on their investments.
19. Respondents offered and sold unregistered, non-exempt shares of stock in Profits Plus to Missouri residents.
20. Respondents failed to disclose to Missouri residents the material fact that the shares of stock in Profits Plus were not registered as securities in the State of Missouri.
21. Respondents failed to disclose to Missouri residents the material fact that Harrington was not registered as an investment adviser in the State of Missouri.
22. Respondents failed to disclose to Missouri residents the material fact that Harrington received management fees paid out of investor funds.
23. Respondents failed to disclose to Missouri residents the material fact that Harrington received compensation in the form of shares of discounted stock in Profits Plus.
24. Respondents misrepresented to Missouri residents the material fact that an investment in Profits Plus was risk-free.
25. Respondents misrepresented to Missouri residents the material fact that Profits Plus investors would double their money in one year.
26. Respondents misrepresented to Missouri residents the material fact that Profits Plus investors would become rich.
27. This Order is in the public interest.

#### **CONCLUSIONS OF LAW**

1. Section 409.401(o), RSMo 2000, includes within the definition of a security "stock." The shares of Profits Plus stock offered and sold by Respondents as described in the above findings of fact constitute securities.
2. Section 409.201(c), RSMo 2000, provides that it is unlawful for any person to act as an investment adviser in this state unless the person is so registered as an investment adviser. The conduct described in the above findings of fact constitutes a violation of this section.

3. Section 409.301, RSMo 2000, provides that it is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act; (2) the security or transaction is exempted under section 409.402; or (3) it is a federal covered security. The conduct described in the above findings of fact constitutes violations of this section.
4. Section 409.101(2), RSMo 2000, provides that it is unlawful, in connection with the offer, sale or purchase of any security, for any person to make any untrue statement of a material fact or to 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. The conduct described in the above findings of fact constitutes violations of this section.
5. Section 409.408(b), RSMo 2000, provides, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.
6. Transacting business as an unregistered investment adviser as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
7. The offer or sale of unregistered securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
8. Omitting to state material facts in connection with the offer and sale of securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
9. Misrepresenting material facts in connection with the offer and sale of securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
10. Section 409.402(f), RSMo 2000, provides that the burden of proving an exemption or an exception from a definition is upon the person claiming it. As described in the above findings of fact, Respondents failed to prove an

exemption from registration or an exception from the definition of a security or investment adviser.

11. Section 409.408(a), RSMo 2000, provides that the refusal to furnish information within a reasonable time as set by the Commissioner, shall be proper grounds for the entry of an order by the Commissioner suspending the right to offer and sell securities in the State of Missouri. As described above, Respondents failed to furnish information as requested by the Commissioner.
12. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.408(b), RSMo 2000.

## **ORDER**

**NOW, THEREFORE**, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. Offering or selling shares of stock in Profits Plus;
- B. Acting as an investment adviser in connection with the investment activities of Profits Plus in violation of §409.201 RSMo 2000;
- C. Omitting to state material facts in connection with the offer and sale of shares of stock in Profits Plus in violation of §409.101 RSMo 2000, including, but not limited to the following omissions of material fact:
  1. Shares of stock in Profits Plus were not registered as securities in the State of Missouri,
  2. Harrington was not registered as an investment advisor in the State of Missouri,
  3. Harrington received management fees paid out of investor funds, and
  4. Harrington received compensation in the form of discounted stock in Profits Plus;

- D. Making untrue statements of material facts in connection with the offer and sale of shares of stock in Profits Plus in violation of §409.101 RSMo 2000, including, but not limited to the following untrue statements of material fact:
1. Stating to Missouri residents that an investment in Profits Plus was risk-free, when in fact it carried substantial risk of unprofitability and investment loss,
  2. Stating to Missouri residents that Profits Plus investors would double their money in one year, when in fact this projection was made without reasonable basis, and
  3. Stating to Missouri residents that Profits Plus investors would become rich, when in fact this projection was made without reasonable basis; and
- E. Offering or selling any other security or acting as an investment adviser in violation of Sections 409.101, 409.201 or 409.301, RSMo 2000.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 27<sup>th</sup> DAY OF March, 2001.



MATT BLUNT  
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "Douglas M. Ommen", is written over a horizontal line.

DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES

**NOTICE**

Respondents and any unnamed representatives aggrieved by this Order may request a hearing in this matter. Any request for a hearing should be sent, in writing to Douglas M. Ommen, Commissioner of Securities, Office of the Secretary of State, Missouri State Information Center, Room 229, 600 West Main Street, Jefferson City, Missouri, 65102,