

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint Nos. 325669 & 325739

EnerFusion, Inc.  
Unregistered

Respondent.

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Issued and entered  
This 26<sup>th</sup> day of August, 2016

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director of the Corporations, Securities & Commercial Licensing Bureau (the “Administrator”), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq.* (“Securities Act”), hereby orders EnerFusion, Inc. (“Respondent”) to cease and desist from continuing to directly or indirectly make any untrue statements of material fact, or omit to state material facts necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, contrary to the Securities Act. Respondent is also notified of the opportunity to request a hearing in this matter.

**I. BACKGROUND**

**A. The Respondents**

1. EnerFusion, Inc. is a corporation incorporated under the laws of the State of Michigan. EnerFusion, Inc. is not registered in any capacity pursuant to the Securities Act in Michigan, nor has it registered any securities offerings pursuant to the Securities Act in Michigan.

**B. Findings of Fact**

1. The Bureau conducted an investigation of Respondent’s activities.

2. The investigation developed evidence that Respondent sold securities in the form of stock to investors in Michigan. The securities were not registered pursuant to the Securities Act, but were sold pursuant to an exemption from registration.
3. Respondent and its president and majority shareholder, Joseph Kobus, prepared a Prospectus (Exhibit 1) and a Business Plan (“Exhibit 2”) in or around 2008. The 2008 Business Plan stated in part on page 36 that the company would be “flush with cash” by 2010:

EnerFusion’s projected balance sheet shows an increase in net worth to just over \$1 million in 2010, at which point it expects to be making 28% profit on sales of \$3,293,760 million [sic]. With the present financial projections, EnerFusion expects to build a company with strong profit potential, and a solid balance sheet that will be asset heavy and flush with cash by the end of the second year. (Exhibit 2, Section 7.2 on page 36).

4. Respondent, through the efforts of its president and majority shareholder, Joseph Kobus, offered and sold stock to Michigan investors in or around 2010, and utilized the 2008 Prospectus (Exhibit 1) and Business Plan (Exhibit 2) in soliciting those investments. Respondent was not “flush with cash” at the time of the solicitation as stated in the solicitation materials; rather, it was operating at a loss.
5. Neither Respondent nor Mr. Kobus corrected the 2008 statements regarding the Respondent’s financial condition in the 2010 solicitations and sales. A reasonable investor reviewing the 2008 solicitation materials in 2010 might have considered it important to his or her investment decision that the company was not “flush with cash”, but rather was operating at a loss.
6. The 2008 Prospectus (Exhibit 1) and Business Plan (Exhibit 2) identified that Joseph Kobus may have the ability to influence corporate decisions as a result of his ownership of a majority of Respondent’s stock. It did not disclose that Mr. Kobus owned enough stock to unilaterally make many decisions without input from other shareholders. A reasonable investor might have considered it important to his or her investment decision to know that the person selling the stock could unilaterally make many, if not all, corporate decisions, regardless of the opinions of other shareholders.

## **II. RELEVANT STATUTORY PROVISIONS**

1. Section 102c(c) of the Securities Act, MCL 451.2102c(c), defines “Security”, in part, as:

a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities, put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a “security”; or a 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...

2. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusions.

3. Section 501 of the Securities Act, MCL 451.2501, states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:...

(b) Make an 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 were made, not misleading...

### **III. CONCLUSIONS OF LAW**

1. EnerFusion, Inc. stated through a 2008 Business Plan that it would be “asset heavy and flush with cash” by 2010; in 2010 it used those same offering documents to offer and sell securities, but did not update the information in the offering documents to reflect that the company was operating at a loss in 2010, rather than being “flush with cash”. The statement regarding the Respondent’s financial condition was a misstatement of material fact in connection with the offer and sale of a security, in violation of Section 501(b) of the Securities Act, MCL 451.2501(b).

2. EnerFusion, Inc. stated through a 2008 Business Plan that its president and majority shareholder, Joseph Kobus, may have the ability to influence corporate decisions. Respondent omitted to state that Joseph Kobus could unilaterally make many choices regarding Respondent's corporate governance without any input from minority shareholders. It was misleading under the circumstances to state that Joseph Kobus may have the ability to influence Respondent's corporate decisions while omitting to state that Joseph Kobus could unilaterally make decisions regarding Respondent's corporate governance without input from minority shareholders, in violation of Section 501(b) of the Securities Act, MCL 451.2501(b).

#### **IV. ORDER**

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

- A. Respondent shall immediately CEASE AND DESIST from continuing to directly or indirectly make any untrue statement of a material fact or omit to state material facts necessary in order to make other statement made, in the light of the circumstances under which they were made, not misleading, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose civil fines of \$20,000.00 against Respondent.
- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.
- E. The Administrator retains the right to pursue further administrative action against Respondent under the Securities Act if the Administrator determines that such action is necessary and appropriate in the public interest, for the protection of investors and is authorized by the Securities Act.

**V. NOTICE OF OPPORTUNITY FOR HEARING**

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau  
Regulatory Compliance Division  
P.O. Box 30018  
Lansing, MI 48909

**VI. ORDER FINAL ABSENT HEARING REQUEST**

- A. Under section 604 of the Securities Act, MCL 451.2604, the Respondents' failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

\$20,000.00 – EnerFusion, Inc., under section 604 of the Securities Act, MCL 451.2604.

- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

Corporations, Securities & Commercial Licensing Bureau  
Final Order Monitoring  
P.O. Box 30018  
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondents under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondents may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.

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- D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondents.

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU



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Julia Dale  
Director, Corporations, Securities &  
Commercial Licensing Bureau

8/26/16  
Date