

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

In the matter of:

Complaint No. 333697

VISALUS, INC.  
Unregistered

Respondent.

\_\_\_\_\_ /

Issued and entered  
this 13th day of July, 2018

**CONSENT ORDER RESOLVING  
NOTICE AND ORDER TO CEASE AND DESIST**

A. Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002) (the “Securities Act”), 2008 PA 551, MCL 451.2101 *et seq.*:

1. On April 23, 2018, the State of Michigan, Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau (the “Bureau”) and the Director of the Bureau, who serves as Administrator of the Act (the “Administrator”), issued a Notice and Order to Cease and Desist (the “C&D Order”) to ViSalus Inc. (“Respondent”) pursuant to MCL 451.2604, which was immediately effective under MCL 451.2604(2).
2. Respondent is a Nevada corporation with headquarters in Detroit, Michigan. Its business involves selling weight loss products, functional foods, energy drinks, and nutritional supplements through independent promoters which pay for the right to sell the products through a multi-level marketing structure.
3. Respondent is not registered in any capacity under the Securities Act, nor has it registered any securities products under the Securities Act.
4. Respondent was represented by, and had the advice of, legal counsel throughout the process of resolving the C&D Order.

## B. STIPULATION

Respondent and the Administrator (collectively, “the Parties”) agree that the C&D Order is resolved with the following conditions:

1. Respondent agrees to comply with the Securities Act in connection with all future conduct and activities, including but not limited to, ensuring that they are registered or exempt before effecting any securities transactions in Michigan and ensuring that any securities they offer or sell in Michigan are registered or exempt.
2. Respondent neither admits nor denies any wrongdoing in connection with this matter and consents to entry of this Consent Order only for the purpose of resolving the C&D Order in an expeditious fashion that avoids the time and expense associated with an administrative hearing and any appeals therefrom. This Consent Order is admissible only in a proceeding to enforce its provisions or an administrative proceeding under the Act, but it is not admissible for any purpose in any other administrative, civil, or criminal proceeding.
3. The Parties agree that this Stipulation and Consent Order resolves only the alleged violations of the Act raised in the C&D Order and does not address any other conduct engaged in by Respondent, including, but not limited to, whether Respondent’s multi-level marketing program and structure complies with the Securities Act generally, or any activities by Respondent occurring after the date this Consent Order is issued.
4. The Parties agree that the Administrator is permitted to use any of the facts set out in the C&D Order if and when considering future applications for registration by Respondent, and Respondent agrees to waive any assertion or claim under MCL 451.2412(9), which would otherwise bar the Administrator from consideration of such facts in making her determination.
5. The Administrator agrees to reduce the fine in the C&D Order, and Respondent agrees to pay the Bureau a Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) fine within sixty (60) calendar days of the mailing date of this Consent Order. The fine must be paid by cashier’s check or money order made payable to the “State of Michigan,” contain identifying information (name and “Complaint No. 333697”), and be mailed to:

Corporations, Securities & Commercial Licensing Bureau  
Securities & Audit Division – Final Order Monitoring  
P.O. Box 30018

Lansing, MI 48909


6. If any portion of the reduced civil fine is overdue, the Administrator may refer it to the Michigan Department of Treasury for collection action against Respondent or take other available legal action to enforce payment of the fine.
7. The Parties agree that this Consent Order is a public record required to be published and made available to the public, consistent with section 11 of the Michigan Freedom of Information Act, MCL 15.241. The Bureau currently publishes copies of orders issued under the Securities Act to the Bureau's website and includes a summary of order content in monthly disciplinary action reports separately published on its website.
8. Respondent agrees to comply with any reasonable investigative demands made by the Bureau in the future for purposes of ensuring compliance with this Administrative Consent Order or the Securities Act.
9. The Parties acknowledge and agree that the Administrator retains the right to pursue any action or proceeding permitted by law to enforce the provisions of this Consent Order, and that failure to comply with this Consent Order may result in the reinstatement of the C&D Order, pending any other action the Administrator chooses to take as a result of Respondent's failure to comply.
10. Respondent acknowledges and agrees that: (a) the Administrator has jurisdiction and authority to enter this Administrative Consent Order; (b) the Administrator may enter this Administrative Consent Order without any further notice to Respondent; and (c) upon entry of this Administrative Consent Order, it is final and binding, and Respondent waives any right to a hearing or appeal of this Administrative Consent Order and the C&D Order under the Securities Act, the rules promulgated under the Securities Act or the predecessor Act, the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 *et seq.*, or other applicable law.
11. The Parties agree that facsimile or electronically-transmitted signatures may be submitted in connection with this Administrative Consent Order and are binding on that party to the same extent as an original signature.

Through their signatures, the Parties agree to the above terms and conditions.

Signed:   
ViSalus, Inc. (Respondent)

Dated: 7/5/2018

Acknowledged and Reviewed by:

Signed:   
Daniel Stanley  
Respondent's Attorney

Dated: July 6, 2018

Approved by:

Signed: \_\_\_\_\_  
Timothy L. Teague  
Securities & Audit Division Director  
Corporations, Securities & Commercial  
Licensing Bureau

Dated: \_\_\_\_\_



Signed: \_\_\_\_\_  
ViSalus, Inc. (Respondent)

Dated: \_\_\_\_\_

Acknowledged and Reviewed by:

Signed: \_\_\_\_\_  
Daniel Stanley  
Respondent's Attorney

Dated: \_\_\_\_\_

Approved by:

Signed: Timothy L. Teague  
Timothy L. Teague  
Securities & Audit Division Director  
Corporations, Securities & Commercial  
Licensing Bureau

Dated: 7.10.18

C. ORDER

The Administrator NOW, THEREFORE, ORDERS:

THE TERMS AND CONDITIONS IN THIS CONSENT ORDER ARE BINDING AND EFFECTIVE, IN ACCORD WITH THE FULLY EXECUTED STIPULATION CONTAINED HEREIN.

By:  \_\_\_\_\_  
Julia Dale, Administrator and Director  
Corporations, Securities & Commercial Licensing Bureau

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

In the Matter of:

Complaint No. 333697

VISALUS, INC.  
Unregistered

Respondent.

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Issued and entered  
This 23<sup>rd</sup> day of April, 2018

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 ViSalus, Inc. (“Respondent”) to cease and desist from offering or selling unregistered securities, and from making untrue statements of material fact, or omitting to state material facts necessary to make other statements made, in 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 Respondent**

1. ViSalus, Inc. is a Nevada corporation with headquarters in Detroit, Michigan. Its business involves selling weight loss products, functional foods, energy drinks, and nutritional supplements through independent promoters which pay for the right to sell the products through a multi-level marketing structure.
2. Respondent is not registered in any capacity pursuant to the Securities Act, nor has it registered any securities offerings pursuant to the Securities Act.

**B. Findings of Fact**

1. The Bureau conducted an investigation of Respondent's activities under the Securities Act in Michigan.
2. The investigation developed evidence that Respondent, through videos and written content on generally available websites, offered its "Founders Equity Incentive plan" ("FEIP"), including to Michigan residents. The FEIP units are advertised as equity of Respondent and were stock or investment contract securities.<sup>1</sup> The FEIP securities offerings were not registered under the Securities Act, and Respondent has not identified a relevant exemption from registration.
3. Respondent represented through a video on its website that, "The only risk is to myself, Blake, and Ryan... because of this idea that we gave all of you equity..." (Exhibit 1 – Video Transcript). The representation in the video that there are no risks associated with the investment is false because it ignores the risk that the company may not be successful enough to pay dividends to shareholders, or that it may fail entirely and cause investors to lose their entire investment. A reasonable investor might consider it important to his or her investment decision that an investment is not in fact risk-free, but that it carries numerous risks, such as the fact that dividends might not be paid or that the investment could become a total loss.
4. Respondent represented through a video on its website that, "Twenty years from now if you own a small piece of this company, you get a \$4,000 dividend for work you did twenty years ago. You haven't even mentioned the name ViSalus in seventeen years but you had a \$4,000 dividend check still..." (Exhibit 1). Respondent's marketing materials contradict this assertion, stating, "In order to be eligible to receive any Cash Payout, you must be an Active Promoter in good standing..." (Exhibit 2 – About ViSalus FEIP). A reasonable investor might consider it important to his or her investment decision that in order to receive dividends from the investment, they would have to remain an active promoter of it, despite the representation that they could not mention Respondent's name for twenty years and still receive dividends.

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<sup>1</sup> Video clips describe purchasers of the FEIP units receiving income from the equity interest 20 years after they stop selling products on behalf of Respondent.



## **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...

(v) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this subparagraph, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

2. Section 102c(a) of the Securities Act, MCL 451.2102c(a) defines "Sale" as follows:

(a) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include any of the following:

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(iii) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security

3. Section 301 of the Securities Act, MCL 451.2301, states:

A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under section 201 to 203.
- (c) The security is registered under this act.

4. 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:

- (a) Employ a device, scheme, or artifice to defraud.
- (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.
- (c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

5. 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.

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

1. Respondent ViSalus, Inc. offered or sold securities in Michigan which were not federally covered, exempt from registration, or registered, in violation of section 301 of the Securities Act, MCL 451.2301.
2. Respondent ViSalus, Inc. represented to potential investors in connection with the offer or sale of a security that the FEIP investment carried no risks; however, the investment does carry the risks that dividend might not be paid or that the company might fail and cause the investment to become valueless. The statements of fact regarding risks of the investment were material and were untrue, contrary to section 501 of the Securities Act, MCL 451.2501.
3. Respondent ViSalus, Inc. represented to potential investors in connection with the offer or sale of a security that they could not participate in marketing

ViSalus, Inc. products for twenty years and still receive dividends from the FEIP investment; however, Respondent's marketing materials contradict this representation, and require active promotion of ViSalus, Inc. products by investors in order to be eligible for dividends. The statements of fact regarding dividend eligibility were material and were untrue, contrary to section 501 of the Securities Act, MCL 451.2501.

#### 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 offering or selling unregistered securities and from misstating material facts in connection with the offer or sale of securities, 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 a civil fine of \$30,000.00 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.

#### 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

Notice & Order to Cease & Desist  
ViSalus, Inc. (CN 333697)



**VI. ORDER FINAL ABSENT HEARING REQUEST**

- A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's 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:

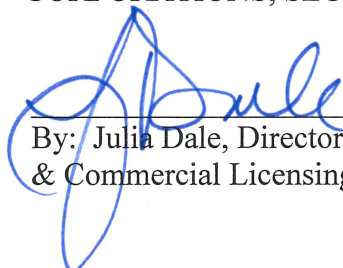
\$30,000.00 – ViSalus, Inc., under section 604 of the Securities Act, MCL 451.2604.

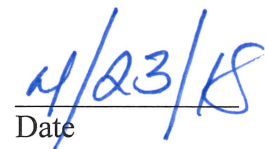
- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

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 Respondent 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. Respondent 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.
- 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

  
By: Julia Dale, Director, Corporations, Securities  
& Commercial Licensing Bureau

  
Date