

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

In the Matter of:

Complaint No. 334030

ADEBOWALE AJAGBE
Unregistered

Respondent.

Issued and entered
This 7th day of March, 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 Adebowale Ajagbe (“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. Adebowale Ajagbe is an individual who resides in the State of Michigan. He, along with a business partner, incorporated Zuvan Technologies, Inc., a Michigan corporation, in order to produce, market, and sell wearable technology, such as smart watches.
2. Respondent is not registered in any capacity 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, on behalf of Zuvan Technologies, Inc., offered and sold a promissory note security to Michigan investors WD and SD (Exhibit 1 – Promissory Note).¹
3. The Zuvan Technologies, Inc. promissory note security was sold with an option to convert the promissory note to Zuvan Technologies, Inc. common stock, which option investors WD and SD executed on the same date that they purchased the note. (Exhibit 2 – Debt Conversion Agreement).
4. Neither the Zuvan Technologies, Inc. promissory note nor the option to convert the promissory note to Zuvan Technologies, Inc. common stock were registered pursuant to the Securities Act. Respondent has not identified a relevant exemption from registration.
5. Respondent provided investors WD and SD with a Zuvan Technologies, Inc. Confidential Offering Memorandum (“COM”) (Exhibit 3 – COM) which outlined the terms of the securities offering. The COM stated, in part:

All Stockholders and Investors will receive unaudited quarterly and annual statements of the Company's financial condition, as well as a Schedule K-1 and any other necessary tax information after year end. The company has no current plans to seek audited financial statements. (Exhibit 3, pg. 7).

6. Investors WD and SD did not receive unaudited financial statements, Schedules K-1, or any other written information regarding the financial or operational status of Zuvan Technologies, Inc. after their investment, contrary to the representations made in the COM. A reasonable investor might consider it important to his or her investment decision that basic information a company promises to provide after the person's investment will not actually be provided.

¹ A promissory note is presumed to be a security under the “Family Resemblance Test” adopted by the United States Supreme Court in *Reves v Ernst & Young*, 494 US 56, 64-67 (1990). The presumption may be rebutted by analyzing four factors to determine if the notes have non-security characteristics. Those factors as applied here support the conclusion that the debenture is a security: (1) the note was intended by the issuer to raise capital for the general business use of Zuvan Technologies, Inc., and by the buyers, investors WD and SD, to be a vehicle to generate investment income; (2) the note was part of a securities offering with a plan of distribution intended for investment; (3) the note was identified in offering materials provided to investors as being a security; and (4) the note was not the subject of another regulatory scheme which would reduce the risk of the note.

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 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:

(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 Adebowale Ajagbe offered and sold a security in the form of a Zuvan Technologies, Inc. promissory note to investors WD and SD which was not federally covered, exempt from registration, or registered, in violation of section 301 of the Securities Act, MCL 451.2301.
2. Respondent Adebowale Ajagbe offered and sold a security in the form of a right or privilege to convert one security, the Zuvan Technologies, Inc. note, into another security, common stock of Zuvan Technologies, Inc., to investors WD and SD which was not federally covered, exempt from registration, or registered, in violation of section 301 of the Securities Act, MCL 451.2301.
3. Respondent Adebowale Ajagbe represented through Zuvan Technologies, Inc. offering materials that investors WD and SD would receive periodic information, including unaudited financial statements, Schedules K-1, and other relevant corporate information; however, Respondent failed to provide any of the information promised to investors WD and SD, contrary to the assertions made. The statements of fact regarding the provision of documentation to investors 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, 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

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:

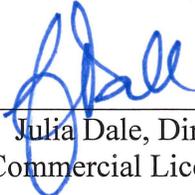
\$30,000.00 – Adebowale Ajagbe, under section 604 of the Securities Act, MCL 451.2604.

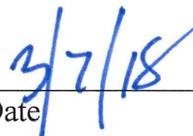
- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

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