



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

RICK SNYDER  
GOVERNOR

SHELLY EDGERTON  
DIRECTOR

**Complaint Nos. 325669 & 325739**

**ENERFUSION, INC.  
Unregistered**

**Complaint Nos. 325670 & 325741**

**JOSEPH KOBUS  
Unregistered**

**FINE PAYMENT INSTRUCTIONS**

The FINE must be received by the Department on or before MAY 9, 2017. The FINE must be paid by cashier's check or money order, with the Complaint No. clearly indicated on the check or money order, made payable to the State of Michigan, and sent to the address indicated below.

Once the FINE has been overdue for at least six months, it will be referred to the Michigan Department of Treasury for collection. Questions may be directed to Final Order Monitoring staff at (517) 241-9180.

**To ensure the proper posting of the payment to your account, please mail the Fine Payment Processing Stub with your payment to:**

Michigan Department of Licensing and Regulatory Affairs  
**CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**  
**Final Order Monitoring – Securities & Audit Division**  
P.O. Box 30018 – Lansing, MI 48909

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**FINE PAYMENT PROCESSING STUB**  
**Please return this with your payment.**

Make your check or money order drawn from a U.S. financial institution payable to the STATE OF MICHIGAN.  
Do not send cash.

Agency C3 ACCOUNT Code  
10117

Complaint No.: 325669, 325739, 325670, 325741 <hr/>	Due: May 9, 2017 Total Amount Due: \$2,000.00
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**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**

In the Matters of:

ENERFUSION, INC.  
Unregistered

Complaint Nos. 325669 & 325739

and

JOSEPH KOBUS  
Unregistered

Complaint Nos. 325670 & 325741

Respondents.

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Issued and entered

This 10<sup>th</sup> day of March, 2017

**CONSENT ORDER RESOLVING  
NOTICES AND ORDERS TO CEASE AND DESIST**

- A. Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002) (“the Act”), 2008 PA 551, MCL 451.2101 *et seq.*:
1. On August 26th, 2016, 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 the Administrator of the Act (“the Administrator”) issued two Notices and Orders to Cease and Desist (collectively, the “cease and desist orders”) to Joseph Kobus (“Kobus”) and EnerFusion, Inc. (“EnerFusion”).
  2. The cease and desist orders ordered Kobus and EnerFusion to immediately cease and desist from violating the Act, specifically MCL 451.2501(b), and further imposed a civil fine against them in the amount of \$20,000.00 each, under MCL 451.2604(4)(a).
  3. Kobus and EnerFusion timely requested an administrative hearing, under MCL 451.2604(2) & (3), and subsequently cooperated with the Bureau in an attempt to resolve this matter by exchanging relevant documents and discussing outstanding issues, resulting in the Administrator ordering a settlement of this matter based on the terms and conditions set forth in the Stipulation below.

4. Neither Kobus nor EnerFusion is registered in Michigan under the Act.
5. Kobus and EnerFusion were represented by, and had the advice of, legal counsel throughout the process of resolving the cease and desist orders in Michigan.

## B. STIPULATION

Kobus, EnerFusion, and the Administrator (“the Parties”) agree that the August 26, 2016 cease and desist orders will be resolved with the following conditions:

1. The Parties acknowledge and agree that: (A) neither Kobus nor EnerFusion admit or deny any wrongdoing in connection with this matter, (B) this Consent Order contains no finding or ruling that Kobus or EnerFusion violated any laws or regulations, and (C) Kobus and EnerFusion consent to entry of this Consent Order only for the purpose of resolving the cease and desist orders in an expeditious fashion that avoids the time and expense associated with an administrative hearing. Kobus and EnerFusion agree that they will comply with the Act at all times going forward.
2. EnerFusion will make a written buyback offer at \$10.00/share to all shareholders who purchased shares in exchange for legal tender. The buyback offer will not extend to shareholders who received their shares in exchange for services as opposed to legal tender. Nothing in this Consent Order, the cease and desist orders or the buyback offer shall result in disqualification under Rule 506(d)(2)(iii) or Regulation D, 17 CFR 230.506(d).
3. By no later than forty-five (45) days after entry of this Consent Order, EnerFusion and Kobus will provide the proposed buyback offer letter for the Bureau’s review and approval before mailing it to the required investors. The buyback offer letter must contain the following sentences in the same typeface as all other text: “The State of Michigan has not examined or passed upon the merits of this investment opportunity, and makes no representations or assurances about the quality or suitability of any investment opportunity offered by EnerFusion. or Joseph Kobus. You may wish to seek the advice of an attorney, a tax advisor, or a financial adviser regarding this offer.” The letter must also contain express statements addressing the representations that are the basis of the August 26, 2016 cease and desist orders.
4. Within sixty (60) days after the date of entry of this Consent Order, EnerFusion and Kobus must provide the Bureau written confirmation of the date(s) the


buyback offer was mailed to investors (identifying each investor's name and date of mailing) and generally describing any materials enclosed with the letter.

5. The Administrator will reduce the fines in the cease and desist orders to an aggregate \$2,000 fine jointly and severally against both respondents.
6. EnerFusion and Kobus agree to comply with any reasonable investigative demands made by the Bureau in the future for purposes of ensuring compliance with this Consent Order and/or Michigan securities laws.
7. 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.
8. The Parties further agree that this matter 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, 1976 PA 442, as amended, MCL 15.241. The Administrator currently publishes copies of orders issued under the Act to the Bureau's website and includes a summary of order content in monthly disciplinary action reports separately published on the Bureau's website. The Administrator will also update its Form U6 filed with the CRD.
9. EnerFusion and Kobus understand and intend that by signing this Consent Order, they are waiving the right, pursuant to the Act, the rules promulgated under that Act and the predecessor Act, and the Administrative Procedures Act, 1969 PA 306, MCL 24.201 *et seq.*, to prior notice and a hearing before an administrative law judge, at which the Bureau would be required to defend any disciplinary action taken under Section 604 of the Act, MCL 451.2604, by presentation of evidence and legal authority and at which they would be entitled to appear with or without an attorney to cross-examine all witnesses presented by the Bureau and to present such testimony or other evidence or legal authority deemed appropriate.

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

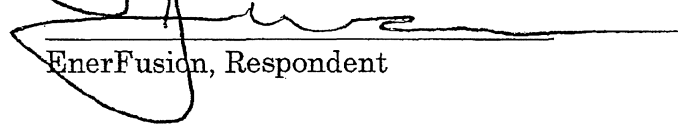
Dated: 2/28/2017

Signed:

  
Joseph Kobus, Respondent

Dated: 2/28/2017

Signed:

  
EnerFusion, Respondent

Acknowledged by:

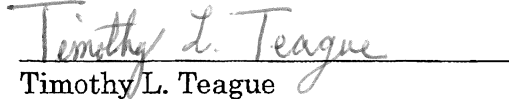
Dated: 3-3-17 Signed:



Nicholas Oertel  
Respondent's Attorney

Approved by:

Dated: 3-9-17 Signed:



Timothy L. Teague  
Bureau Securities & Audit Division Director

C. ORDER

The Administrator NOW, THEREFORE, ORDERS:

THE TERMS AND CONDITIONS IN THIS CONSENT ORDER ARE BINDING AND EFFECTIVE PURSUANT TO THE FULLY EXECUTED STIPULATION ABOVE.

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Julia Dale, Bureau Director  
(Administrator)

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

Signed: \_\_\_\_\_

Nicholas Oertel  
Respondent's Attorney

Approved by:

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

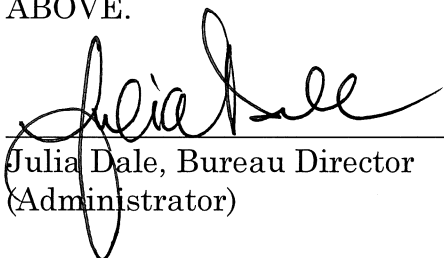
Signed: \_\_\_\_\_

Timothy L. Teague  
Bureau Securities & Audit Division Director

### C. ORDER

The Administrator NOW, THEREFORE, ORDERS:

THE TERMS AND CONDITIONS IN THIS CONSENT ORDER ARE BINDING AND EFFECTIVE PURSUANT TO THE FULLY EXECUTED STIPULATION ABOVE.



\_\_\_\_\_

Julia Dale, Bureau Director  
(Administrator)

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

In the Matter of:

Complaint Nos. 325670 & 325741

Joseph Kobus  
Unregistered

Respondent.

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 Joseph Kobus ("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. Joseph Kobus is the president and majority shareholder of EnerFusion, Inc., a corporation incorporated under the laws of the State of Michigan. Joseph Kobus is not registered in any capacity 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, on behalf of EnerFusion, Inc., solicited, offered, and sold securities in the form of EnerFusion, Inc. 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 prepared or assisted in the preparation of a Prospectus (Exhibit 1) and a Business Plan ("Exhibit 2") for an EnerFusion, Inc. securities offering 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, on behalf of EnerFusion, Inc., 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. EnerFusion, Inc. 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. Mr. Kobus did not correct or clarify the 2008 statements regarding the Respondent's financial condition in the 2010 solicitations and sales to Michigan investors. A reasonable investor reviewing the 2008 solicitation materials in 2010 might have considered it important to his or her investment decision that EnerFusion, Inc. 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 Respondent may have the ability to influence corporate decisions as a result of his ownership of a majority of EnerFusion, Inc.'s stock. It did not disclose that Mr. Kobus owned enough stock to unilaterally make many decisions without input from minority 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. Joseph Kobus, on behalf of EnerFusion, Inc., stated through a 2008 Business Plan that EnerFusion, Inc. 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. Joseph Kobus, on behalf of 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 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 – Joseph Kobus, under section 604 of the Securities Act, MCL 451.2604.

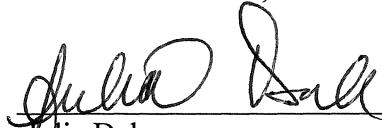
- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

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.

- 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

  
\_\_\_\_\_  
Julia Dale  
Director, Corporations, Securities &  
Commercial Licensing Bureau

8/26/16  
Date