

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

In the Matter of:

Complaint No. 340616

Heartland Production and Recovery, LLC  
Unregistered

Respondent.

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This 31<sup>st</sup> day of January, 2020

NOTICE AND ORDER TO CEASE AND DESIST

Linda Clegg, the Interim Director (the “Administrator”) of the Corporations, Securities & Commercial Licensing Bureau (“Bureau”), 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 Heartland Production and Recovery, LLC (“Respondent”) to cease and desist from employing or associating with an unregistered agent, 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. Heartland Production and Recovery, LLC is a Delaware-organized limited liability company with its principal place of business in Texas. Respondent is not registered in any capacity pursuant to the Securities Act, 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 under the Securities Act in Michigan.
2. The investigation developed evidence that Respondent offered and sold securities in Michigan. Respondent claimed reliance on a federal exemption from securities registration, 17 CFR 230.506(c) (“Rule 506(c)”), which preempts

state securities registration requirements for the issuance of securities. Rule 506(c) securities are considered federal-covered securities and are not required to be registered under section 301(a) of the Securities act, MCL 451.2301(a). The Bureau presently has no information to dispute that Respondent's reliance on the federal exemption and related federal-covered status was proper.

3. Respondent engaged the services of salespeople around the United States to offer and sell its securities, including in Michigan. Multiple salespeople in Michigan assisted investors to effect transactions in Respondent's securities pursuant to an Engagement Letter (Exhibit 1) and Standard Operating Procedures (Exhibit 2) which outlined the salespeople's authority to represent Respondent as the issuer of securities. The salespeople were authorized under the Engagement Letters and Standard Operating Procedures to discuss the merits and risks of the investment and to "stimulate interest in the Shares." Salespeople were further encouraged to deliver sales materials with a "warm relationship" and to have an "enthusiastic discussion" with potential investors about investing with Respondent. The salesperson-investor relationships went beyond mere location, introduction, or referral to the investment opportunity and included promotion of the securities to investors. Some salespeople were also paid transaction-based compensation<sup>1</sup> to facilitate sales of Respondent's securities.

## **II. RELEVANT STATUTORY PROVISIONS**

1. "Agent" is defined by section 102(b) of the Securities Act, MCL 451.2102(b):

[A]n individual other than a broker-dealer who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. The term does not include a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, unless the individual otherwise comes within the term. The term does not include an individual excluded by rule or order under this act. The term does not include a person acting solely as a finder and registered as a broker-dealer under this act or acting as a finder in a transaction exempt under section 202(1)(r).

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<sup>1</sup> Commission payments or "transaction-based compensation" is considered by the United States Securities and Exchange Commission ("SEC") to be a strong indicator that a person receiving compensation is a broker-dealer or agent. See generally: <https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html>

2. “Finder”<sup>2</sup> is defined by section 102(i), MCL 451.2102(i), states:

[A] person who, for consideration, participates in the offer to sell, sale, or purchase of securities by locating, introducing, or referring potential purchasers or sellers. Finder does not include a person whose actions are solely incidental to a transaction exempt pursuant to section 202(1)(r). The administrator may by rule or order exclude other persons from this definition.

3. Section 402(4) of the Securities Act, MCL 451.2402(4), states:

A broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, shall not employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (1) or exempt from registration under subsection (2).

4. 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 Heartland Production and Recovery, LLC, engaged as an issuer in an offering of securities, and in connection with that offering of securities, employed or associated with unregistered agents whose activities went beyond merely locating, introducing, or referring potential purchasers of securities, in violation of section 402(4) of the Securities Act, MCL 451.2402(4).

### **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 employing or associating with an unregistered agent, 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.

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<sup>2</sup> “A person serving as a finder whose activities go beyond those described under MCL 451.2102(i), however, must register as an agent, broker-dealer, or investment advisor, as the case may be.” *Pransky v Falcon Group, Inc*, 311 Mich App 164, at 187-88, 874 NW2d 367 (2015); leave to appeal denied, *Pransky v Falcon Group, Inc*, 499 Mich 908, 877 NW2d 721 (2016).

- 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 \$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.

**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:

\$20,000.00 – Heartland Production and Recovery, LLC,  
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:

**Notice & Order to Cease & Desist**  
**Heartland Production and Recovery, LLC (CN 340616)**

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.

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



Linda Clegg, Interim Director, Corporations, Securities,  
and Commercial Licensing Bureau and Administrator

1-31-2020  
Date