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Attorney for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR**

IN THE MATTER OF:)
) CASE NO. SEC-2015-205
)
YOUNGEVITY INTERNATIONAL, INC.,) NOTICE OF AGENCY ACTION, TEMPORARY ORDER TO CEASE AND DESIST, AND OPPORTUNITY FOR HEARING
Respondent.)
)

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (the Act), sets forth the following allegations of fact, conclusions of law, notice of agency action, temporary order to cease and desist, and notice of right to a hearing. The Commissioner has authority to take such action under §§ 30-10-102, 30-10-107, 30-10-201, 30-10-202, 30-10-301, 30-10-304, 30-10-305, and 30-10-309. Service of process is pursuant to § 30-10-107(8).

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support this action. Furthermore, there is reason to believe that the following facts will be proven true, and, therefore, justify and support the relief requested.

ALLEGATIONS OF FACT

1. Respondent Youngevity International, Inc., is a corporation organized under the laws of the State of California since 2012.

2. Respondent’s primary business is selling health supplements and other products through a multilevel marketing arrangement. According to its 2014 annual report, Respondent earned \$134 million of revenue, 87 percent of which was derived from its direct sales market.

3. Respondent touts its compensation plan for individual distributors by stating that “no other company offers a more comprehensive or exciting compensation plan than Youngevity.” Respondent offers two levels of compensation, as the chart below shows:

No one offers a more robust package of incentives and commissions along with the additional benefits of being “CEO Qualified”. Add to this the mentorship of seasoned leaders, fantastic local and national training events, and top-notch distributor support technology, and the bottom line is a proven path to success.



4. In order to become “CEO Qualified” under Respondent’s multilevel marketing plan, a person must purchase a Youngevity “CEO Mega Pak” of Respondent’s products, which currently costs between \$399.99 and \$499.99 on Respondent’s website.

5. One of the compensation benefits touted by Respondent is the option to purchase shares of company stock, as shown below:



Stock Option Rewards

Youngevity is a publicly traded global company and you can own a piece. When you promote to the rank of VPMD or higher, you can receive between 5,000 and 100,000 in stock option rewards for a total of up to 275,000.

To qualify:

- Be CEO Qualified
- Achieve VCMD rank or higher

RANK	OPTIONS
VPMD	5,000
PMD	15,000
VCMD	30,000
SVCMD	50,000
DCMD	75,000
BDCMD	100,000

6. The CSI first contacted Respondent in July of 2015. Respondent provided information to the CSI stating that 651 Montana residents had enrolled in Respondent’s multilevel marketing scheme. Of those 651 Montana participants, 60 had purchased a “CEO Mega Pak.”

7. Respondent has never registered with or filed a multilevel marketing notice form with the CSI.

8. Respondent’s stock has never been, and currently is not, registered as a security with the CSI. Respondent’s stock does not qualify for any registration exemption under Montana law.

9. Respondent has never been, and currently is not, registered as a securities salesperson with the CSI. The CSI is not aware of any employee of Respondent that is registered as a securities salesperson in Montana. Respondent's offers of stock options to its multilevel marketing participants do not qualify for any registration exemption under Montana law.

10. Since the initial contact with the CSI, Respondent has continued to market its multilevel marketing scheme and its stock options in Montana. As of December 8, 2015, an additional 131 Montanans have joined Respondent's multilevel marketing scheme, purchasing \$16,307.55 of product from Respondent. It appears that at least eight of those additional Montanans purchased a "CEO Mega Pak" and are eligible to receive stock options from Respondent.

CONCLUSIONS OF LAW

1. The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), has jurisdiction over this matter pursuant to § 30-10-101 et seq.

2. A "person" is an individual, a corporation, a partnership, or an association. § 30-10-103(16).

3. Respondent is a "person" as defined under § 30-10-103(16).

4. A "stock" is a "security" under § 30-10-103(22)(a)(ii).

5. Respondent's stock is a security under Montana law. *See State v. Redding*, 2012 MT 144A, ¶¶ 23-51, 281 P.3d 189.

6. It is unlawful for a person to transact business in Montana as a broker-dealer or salesperson unless the person is registered with the CSI or subject to an exemption. § 30-10-201(1).

7. Respondent violated § 30-10-201(1) when it offered a security in Montana without being properly registered or subject to a registration exemption.

8. It is unlawful for a person to offer or sell any security in Montana unless the security is registered with the CSI by notification, coordination, or qualification, or subject to an exemption. § 30-10-202.

9. Respondent violated § 30-10-202 when it offered an unregistered security in Montana without the benefit of a registration exemption.

10. Respondent is a multilevel marketing company. § 30-10-324(4).

11. It is unlawful for a multilevel marketing company to obtain a participant in Montana without first filing notice with the CSI, on forms prescribed by the CSI. § 30-10-327(1).

ADDITIONAL RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. Pursuant to § 30-10-305, imposition of a fine not to exceed \$5,000 for each identifiable violation of the Act, or a fine not to exceed \$20,000 per violation if Respondent has willfully engaged in an act or practice that affected a vulnerable person.

2. Pursuant to § 30-10-305, an order permanently enjoining Respondent from offering or selling its stock in Montana or to Montana residents.

3. Pursuant to § 30-10-305, an order permanently enjoining Respondent from soliciting, offering, or selling participation in Respondent's multilevel marketing in Montana.

4. Pursuant to § 30-10-309, restitution for all financial losses incurred by all Montana participants in Respondent's multilevel marketing.

5. Any other relief deemed just and proper.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael A. Kakuk, attorney for the CSI, at 840 Helena Avenue, Helena, MT, 59601, (406) 444-5223. If you retain counsel, please make any contacts with this office through your attorney.

DATED this 15th day of January, 2016.



MICHAEL A. KAKUK
Attorney for the CSI

TEMPORARY CEASE AND DESIST ORDER

Pursuant to § 30-10-305, it appears to the CSI that Respondent has engaged, is engaged, and is about to engage in acts or practices constituting violations of the Securities Act of Montana.

Therefore, it is hereby ORDERED that Respondent shall immediately cease and desist from transacting any business in Montana involving securities or its multilevel marketing.

PENALTIES

Pursuant to § 30-10-305, a violation of this Order is a separate violation for which the CSI may impose a fine not to exceed \$5,000 per violation in addition to any other penalties imposed by law.

NOTICE OF RIGHT TO HEARING

You are entitled to a hearing to respond to this Notice of Agency Action, Temporary Order to Cease and Desist, and Opportunity for Hearing (Notice), and to present evidence and arguments on all issues involved in this case. If you wish to contest these allegations, you must make a written request for a hearing within 15 days of receipt of this Notice to: The Office of the Montana State Auditor, Commissioner of Securities and Insurance, c/o Michael A. Kakuk, 840

Helena Avenue, Helena, MT 59601. The hearing shall then be held within 20 days of the CSI's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. If you do not request a hearing and the CSI orders none, the temporary order in this Notice shall become permanent, and the above allegations will be declared the findings of fact and the above conclusions of law will be declared the final conclusions of law.

Should you request a hearing, you have the right to be accompanied, represented, and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar for appearing pro hac vice and the requirements of *Application of American Smelting and Refining Co.* (1973), 164 Mont. 139, 520 P.2d 103 and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 15 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 15th day of January, 2016.

MONICA J. LINDEEN
Commissioner of Securities and Insurance,
Montana State Auditor

By: 
LYNNE EGAN
Deputy Securities Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the Notice of Agency Action, Temporary Order to Cease and Desist, and Opportunity for Hearing was sent to Respondent on the 15th day of January, 2016, by certified, first class mail, postage prepaid, to Respondent's counsel at the following addresses:

Richard Waak
Nehra & Waak
11300 East Shore Drive
Delton, MI 49046

Richard I. Alvarez
68 South Service Road, Suite 100
Melville, NY 11747


