

**ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF MARYLAND**

IN THE MATTER OF: *

Profitable Investments, Inc. *

and * File No. 2003-0770

Profitable Fund, LLC *

Respondents *

* * * * * * * * * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Office of the Maryland Attorney General (the “Division”), pursuant to the authority granted by section 11-411(f) of the Maryland Securities Act, Corporations and Associations Article, Title 11, Annotated Code of Maryland (1999 Repl. Vol. and 2004 Supp.) (the “Act”), conducted an examination of the books and records of Profitable Investments, Inc. (“Profitable Investments”); and

WHEREAS, on the basis of that examination the Maryland Securities Commissioner (the “Securities Commissioner”) has concluded that grounds exist to allege that Respondents Profitable Investments and Profitable Fund, LLC (“Profitable Fund” or “the Fund”) (collectively, “Respondents”) violated sections 11-501, 11-409, 11-410, 11-411, 11-301, and 11-302 of the Act; and

WHEREAS, the Commissioner issued an Order to Show Cause, which is incorporated by reference, requiring each Respondent to show cause why Respondent Profitable Investments, Inc.’s registration as an investment adviser should not be revoked; why each Respondent should not be barred permanently from engaging in the securities and investment advisory business in Maryland;

and why a statutory penalty of up to \$5,000 per violation should not be entered against each Respondent; and

WHEREAS, Profitable Fund's counsel has provided the Division with a representation that they failed to adequately advise Respondents as to their legal and compliance obligations under the Maryland Securities Act and the rules promulgated thereunder; and

WHEREAS, prior to the filing of an Answer to the Order to Show Cause by Respondents, the Securities Commissioner and the Respondents have reached an agreement in this action whereby the Respondents consent to the Findings of Fact herein, and to the terms of this Order; and

WHEREAS, Respondents waive their right to a hearing and any rights they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

WHEREAS, the Securities Commissioner has determined that it is in the public interest to issue this Consent Order;

THEREFORE, before the holding of a hearing in this matter, without trial or final adjudication of any issue of fact or law, and upon consent of the parties hereto,

IT IS HEREBY AGREED AND ORDERED:

I. JURISDICTION

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to section 11-701.1 of the Act.

II. PARTIES

2. Melanie Senter Lubin is the Securities Commissioner for the State of Maryland.

3. Profitable Investments is a Maryland based company with offices located at 6939 Copperbend Lane, Baltimore, MD. Profitable Investments, Inc. is now, and has been, registered as

an investment adviser in Maryland since May 1998. Ronald Bane (“Bane”) is the sole owner and President of Profitable Investments.

4. Profitable Fund, LLC is a limited liability company formed in Maryland. Profitable Investments is the managing member of the Profitable Fund.

III. FINDINGS OF FACT

On October 8, 2003, the Securities Division conducted an on-site audit of the books and records of Profitable Investments. During that audit, Division examiners learned the following:

5. Profitable Investments’ application for registration as an investment adviser was made effective in Maryland on May 7, 1998. From that time until approximately September 2002, as disclosed in its Form ADV Part II, Profitable Investments offered and provided investment advisory services to individually managed client accounts in exchange for an annual fee of 3% of assets under management.

6. On or about August 2, 2002, Profitable Investments and its principal, Ronald Bane, formed Profitable Fund to serve as an investment vehicle for trading in actively traded securities and other investments. Profitable Investments, the managing member of the Fund, appointed itself to serve as the investment manager to the Fund.

7. Beginning in September 2002, Profitable Investments and Bane began soliciting investors to invest in the Profitable Fund. No registration or claim of exemption was filed with the Securities and Exchange Commission with respect to these securities offerings. Likewise, the securities offerings were neither registered nor exempt from registration in Maryland and no claim of preemption was filed. At the Division’s request, a Form D was filed, and a notice filing fee was paid, with respect to the securities offerings by Respondent Profitable Fund on or about July 21,

2004.

8. Also, in September 2002, Profitable Investments began providing investment management services to the Fund and its underlying investors. In exchange for its investment management services, Profitable Investments received an annual fee of 2% of assets under management, payable monthly; and a performance based fee of 25% of net gains above a high water mark, payable monthly. Profitable Investments also received an annual administrative fee of 1% of the assets under management. Neither the change in its fee structure nor the fact that it had been formed, and was providing investment advice to, a hedge fund was disclosed to the Securities Commissioner.

9. As the managing member to the Profitable Fund, Profitable Investments had full and absolute authority over investor funds and securities held in the name of Profitable Fund. Included in this authority was Profitable Investments' ability to write checks on Profitable Fund's brokerage account as evidenced by the monthly checks that it made payable to itself in payment of advisory fees and expenses. Despite this control over client assets, Profitable Investments neither amended its Form ADV to reflect that it had custody of client assets nor otherwise notified the Commissioner of this material change. Further, Profitable Investments failed to obtain an audit of its balance sheet or a surprise examination of its clients' assets for calendar years 2002 through 2004.

10. Profitable Fund's brokerage account was funded with cash and securities on or about September 26, 2002. By September 30, 2002, the Fund's NAV had increased by approximately \$20,107.95. Based upon this four day increase, and despite the prohibition against charging performance based compensation unless based on the gains and losses in a client's account for a period of not less than one year, Profitable Investments assessed and collected a performance fee in

the amount of \$5,026.99, representing 25% of the four day gain. The fee was allocated pro rata to the accounts of the then three investors in the Fund.

11. In or about December 2002, Profitable Investments submitted its investment adviser renewal fee of \$300 and its Investment Adviser Registration Depository annual system fee of \$100 to the NASD. Profitable Investments subsequently charged both fees to the Fund and its underlying investors, and was reimbursed in the amount of \$400. While the Fund's PPM disclosed that Profitable Investments was entitled to reimbursement for "legal and accounting fees incurred in the formation of the Fund and this offering," Profitable Investments' registration fees did not fall into that category and should not have been borne by the investors.

12. By January 2003, Profitable Fund had suffered losses exceeding \$100,000 since inception. According to Profitable Fund's private placement memorandum ("PPM"), a performance fee would not be charged unless there was an "increase in the month-end Net Asset Value of the [Profitable] Fund. . . over the High-Water Mark." At the time, the Fund's NAV of approximately \$335,000 was no where near the Fund's high-water mark of \$455,450.40. The Fund, however, did manage to generate a small net gain for the month of January in the amount of \$4,442.67. An investor new to the Fund in late January was allocated a portion of this gain, resulting in an increase in his capital account. Despite the fact that the Fund had not reached its high-water mark and, in fact, had suffered substantial losses, Profitable Investments charged the new investor a performance fee of \$368.77 based upon the short-term gain allocated to his individual capital account.

13. Records produced during the October 8th audit disclosed that since inception the Fund had lost approximately \$600,000. As of September 30, 2003, the Fund's brokerage account was valued at approximately \$23,000.

14. During the audit, Division examiners requested copies of Profitable Investments' unaudited financial statements. Profitable Investments' balance sheets for the period ending December 31, 2002 as well as for the period ending September 30, 2003 reflected a net capital and net tangible assets of less than \$100, well below the minimum net capital required to be maintained under Maryland law by those advisers who have custody of client assets. Profitable Investments also did not possess the \$10,000 bond that is required to be maintained by those advisers failing to meet the minimum net capital requirements. At the request of the Division, Profitable Investments did obtain a bond in the amount of \$10,000 in or about January 2004.

15. In or about July 2005, the Profitable Fund was dissolved, and the remaining assets were distributed pro rata to the investors in the fund at the time of dissolution.

IV. CONCLUSIONS OF LAW

THE COMMISSIONER, THEREFORE, CONCLUDES AS A MATTER OF LAW:

16. Respondents violated section 11-501 of the Act by offering and selling securities that were neither registered nor exempt from registration in Maryland and for which a claim of preemption had not been filed.

17. Respondent Profitable Investments violated section 11-409 of the Act, and the regulations promulgated thereunder, by failing to maintain a minimum required net capital of \$20,000 or a minimum required net tangible assets of \$35,000, and by failing to notify the Commissioner that it had dropped below these requirements.

18. Respondent Profitable Investments violated section 11-410 of the Act, and the regulations promulgated thereunder, by failing to post a bond at a time that the Respondent maintained custody of client assets and failed to meet the minimum net capital requirements.

19. Respondent Profitable Investments violated section 11-411 of the Act, and the regulations promulgated thereunder, by failing to amend its registration application to reflect that it had custody of client assets, that it was providing investment advisory services through a hedge fund vehicle, and that it had materially changed its fee structure.

20. Respondents violated section 11-301 of the Act by misrepresenting, among other things, the manner in which they calculated their fees and expenses.

21. Respondents violated section 11-302(c) of the Act by misrepresenting, among other things, the manner in which they calculated their fees and expenses.

22. Respondent Profitable Investments violated section 11-302(e) of the Act, and the regulations promulgated thereunder, by:

- a. failing to notify the Securities Commissioner in writing that it had custody of client assets;
- b. failing to obtain an audited balance sheet for calendar years 2002 through 2004;
- c. failing to obtain a surprise examination for calendar years 2002 through 2004;
- d. charging performance based compensation based on the gains and losses in investors' accounts over a period of less than one year; and
- e. misrepresenting the manner in which it calculated its performance based compensation.

V. CONSENT TO CEASE AND DESIST AND OTHER RELIEF

NOW, THEREFORE, IT IS HEREBY ORDERED, and each Respondent expressly consents and agrees that:

23. Each Respondent shall permanently cease and desist from engaging in activities in violation of Sections 11-501, 11-409, 11-411, and 11-302 of the Securities Act.

24. Respondent Profitable Investments shall pay a civil penalty pursuant to section 11-701.1 of the Act in the amount of \$25,000 for the violations set forth in this Order. In light of the sworn financial statements, incorporated by reference herein, provided by Profitable Investments and its principal, Ronald Bane, and in lieu of paying a fine in connection with this matter, Profitable Investments shall make restitution of the performance based compensation erroneously collected by Profitable Investments in the amount of \$5,395.76, and the \$400 2003 IARD renewal and annual system fee charged to the Fund in December 2002, for a total of \$5,795.76. The payments shall be made in installments, *i.e.* \$500 a month for an eleven month period, as follows: \$500 contemporaneous with the issuance of this Order; ten \$500 payments by the 10th of each consecutive month; and within 30 days of the last required \$500 payment, an additional \$295.76 payment. Each check shall be payable to the "Office of the Attorney General." Restitution shall be distributed by the Office of the Attorney General to investors in a manner within its discretion.

25. For two years following the date of this Order, Profitable Investments shall provide a written report to the Division of any customer complaints, whether written or verbal, within one week of receipt of the complaint. Profitable Investments shall provide to the Division a written summary of any verbal complaint.

26. Each Respondent shall in all future activities in Maryland comply fully with the Act and the rules and regulations promulgated thereunder.

27. Each Respondent waives reliance upon section 11-412(b) of the Act.

VI. JURISDICTION RETAINED

28. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Consent Order.

29. If any Respondent fails to comply with any term of this Consent Order, the Securities Commissioner may institute administrative or judicial proceedings against that Respondent to seek to enforce this Consent Order or to seek to sanction that Respondent for violating an Order of the Securities Commissioner, and may take any other action authorized under the Act or under any other applicable law, including the issuance of fines or penalties as provided by the Act. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or the court finds that any Respondent has violated this Consent Order, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Findings of Facts and violations of the Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against Respondents.

30. In the event that judicial intervention in this matter is sought by the Securities Commissioner or Respondents, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to section 11-702 of the Act. The Circuit Court for Baltimore City will have personal jurisdiction over Respondents pursuant to section 6-103(b) MD. COURTS AND

JUDICIAL PROCEEDINGS CODE ANN. (2002 Repl. Vol. and 2003 Supp). Venue will be properly in that Court pursuant to section 6-201(a) and 6-202(11) of that article.

31. The terms of this Consent Order may be vacated or modified only by a subsequent order issued by the Securities Commissioner.

SO ORDERED:

Date: _____, 2005_____

Melanie Senter Lubin
Maryland Securities Commissioner

BY CONSENT:

Profitable Investments, Inc.
by: Ronald Bane, President

_____, 2005
Date

Subscribed and sworn to before me
this ____ day of _____, 2005.

Notary Public

My Commission expires _____

Profitable Fund, LLC
by: Ronald Bane

_____, 2005
Date

Subscribed and sworn to before me
this ____ day of _____, 2005.

Notary Public

My Commission expires _____