

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
EXCHANGEMALL.COM, INC.)
)
RESPONDENT)

ADMINISTRATIVE ORDER
NO. CO-2001-0017

CONSENT ORDER

The Alabama Securities Commission ("Commission"), having the power to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act, upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the state of Alabama, has determined as follows:

RESPONDENT

1. EXCHANGEMALL.COM, INC. ("RESPONDENT") is represented to be a California entity, with a business address of 6917 Valjean Avenue, Van Nuys, CA 91406.

STATEMENT OF FACTS

2. On October 18, 2000, a notice filing, pursuant to Rule 506 of Regulation D, was filed with the Commission on behalf of RESPONDENT by the law firm of Richardson & Associates, Santa Monica, CA ("Richardson"). Review of the Form D reflected indications that sales totaling \$70,500 had been made to 2 Alabama investors, and that there were expenses of \$1,140,000 for offering costs and finder's fees.

3. On October 23, 2000, a deficiency letter was dispatched to Richardson requesting that the Commission be furnished with the names of those individuals to whom finder's fees were rendered for sales to Alabama investors. Additionally, Richardson was requested to furnish a list reflecting the names and addresses of Alabama investors; the dates of their purchase; the amounts of their purchase; amount of finder's fees earned, and the names and addresses of those individuals/entities to



whom finder's fees were rendered. No response was received to this request, and on December 6, 2000 an additional deficiency letter was dispatched to Richardson who was additionally requested to advise the Commission as to whether the filing had been abandoned and whether any sales had been made in the state of Alabama.

4. By letter, dated January 4, 2001, Richardson advised the Commission staff that RESPONDENT's offering was marketed by MILLENNIUM ASSOCIATES ("MILLENNIUM"), 7100 West Camino Real #401, Boca Raton, FL, a third-party entity based in Florida, which allegedly had a pre-existing relationship with all potential investors. MILLENNIUM is paid a marketing fee for its services but is not paid a "finder's fee" per se. Richardson also furnished documentation which reflected that sales totaling \$271,200 were made to 4 Alabama investors, during the period March 29, 2000 to October 3, 2000. The foregoing response resulted in another letter being dispatched to Richardson on January 8, 2001. This letter advised Richardson that the Form D reflected payments as "finder's fees", and requested additional information concerning the following:

- (a) Are finder's fees noted as an expense of the offering the fees paid to MILLENNIUM?
- (b) What are the specific duties of MILLENNIUM with respect to the issuer?
- (c) How are the fees determined and what type of pre-existing relationship does MILLENNIUM have with Alabama investors?
- (d) The identity of the entity or individual responsible for the Alabama transactions and how remuneration was afforded.

NOTE: Richardson furnished advice on January 17, 2001 that RESPONDENT was assembling the requested information. However, response was not received and was traced on March 14, 2001.

5. By letter, dated March 16, 2001, Richardson furnished advice that only 4 Alabama residents participated in RESPONDENT's offering, each is accredited and furnished subscription agreements for each. Further, it is their understanding that they had a pre-existing relationship with RESPONDENT's marketing company/investment adviser, MILLENNIUM, through prior transactions unrelated to RESPONDENT. Also, to

their knowledge, no general solicitations were made in Alabama; they do not know which particular individual(s) at MILLENNIUM were responsible for which investors, and roughly 40% of the offering proceeds were designated for the payment of costs and fees associated with the offering, including those related to marketing the offering. Each month MILLENNIUM provides RESPONDENT with an invoice for such fees and expenses, which is then paid, with the amounts varying each month, with the largest portion of such expenses being incurred at the beginning stages of the offering. MILLENNIUM is also reimbursed for its other expenses such as postage and telephone charges.

6. Review of the files of the Alabama Securities Commission disclosed no record of the registration of MILLENNIUM as a dealer or agent in the state of Alabama, and a review of the files of the National Association of Securities Dealers, Central Registration Depository ("NASDCRD") disclosed no record of the registration of MILLENNIUM in any locale. However, the files of NASDCRD did disclose that on April 29, 1999 the Indiana Securities Division entered into a Consent Agreement with MILLENNIUM for the sale of unregistered securities/sale of securities by unregistered agent, in that state. MILLENNIUM was fined \$4,500 and ordered to pay investigative fees of \$1,000 for the offense.

7. On April 18, 2001, a Cease and Desist Order, with Notice Of Right To A Hearing, was issued to RESPONDENT and MILLENNIUM alleging violations of Section 8-6-3(a), Code of Alabama 1975, for RESPONDENT allowing the sale of its securities by an unregistered dealer or agent and for MILLINNEUM effecting the sale of RESPONDENT's securities to Alabama residents without benefit of registration as a dealer or agent.

8. By letter, dated May 29, 2001, RESPONDENT's counsel responded to the Cease and Desist Order by advising substantially that RESPONDENT took all reasonable steps to comply with the applicable securities laws by filing all forms and disclosure materials with the state of Alabama and the SEC. He reiterated that it was RESPONDENT's understanding that the 4 Alabama clients had a pre-existing

relationship with MILLENNIUM through prior transactions; that RESPONDENT relied upon MILLENNIUM to comply with the applicable state and federal securities laws, and if MILLENNIUM did not so comply, RESPONDENT should not be sanctioned for their actions or omissions.

9. MILLENNIUM receipted for the Order on April 23, 2001, but did not respond. Based upon MILLENNIUM's sale of securities without benefit of registration as a dealer/agent in this matter, as well as another matter, on July 10, 2001 an Order Of Bar, with Notice Of Right To A Hearing, was issued to MILLENNIUM. This Order was receipted for on July 17, 2001, with no response.

10. On July 10, 2001, a letter was dispatched to RESPONDENT's counsel requesting copies of all agreements, invoices and contracts entered into between RESPONDENT and MILLENNIUM to include any special documents regarding the 4 Alabama residents, as well as a statement as to any continuing relationship between RESPONDENT and MILLENNIUM.

11. By letter, dated July 31, 2001, RESPONDENT's counsel furnished advice that RESPONDENT did not have a written agreement with MILLENNIUM, nor did it receive invoices specifically related to RESPONDENT's Alabama investors. Instead, RESPONDENT received periodic invoices for services rendered generally, irrespective of the particular states, if any, for which the work was done. Further, RESPONDENT did not have any ongoing business relationship with MILLENNIUM. RESPONDENT's counsel furnished copies of agreements, etc., entered into with the 4 Alabama residents which reflect they purchased an aggregate of \$231,000.00 worth of RESPONDENT's stock.

CONCLUSIONS OF LAW

12. MILLENNIUM, without benefit of registration as a dealer or agent in the state of Alabama, sold the securities of RESPONDENT to 4 residents of the state of Alabama; and as stated in the Form D, and letters from Richardson, realized

remuneration for these sales. RESPONDENT hired and allowed the sale of its securities by MILLENNIUM, an unregistered dealer or agent.

13. The sale of securities by an unregistered dealer or agent in the state of Alabama is a violation of Section 8-6-3(a), Code of Alabama 1975, which cites "**It is unlawful for any person to transact business in this state as a dealer or agent for securities unless he is registered under this article. It is unlawful for any dealer or issuer to employ an agent unless the agent is registered.**", and a violation of the Commission policy statement concerning Rule 506 Limited Offering Exemption filings which states "**No commission, finders fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state, unless such person is registered as a broker-dealer agent in this state pursuant to Code of Alabama 1975, Section 8-6-3.**"

WHEREAS, RESPONDENT admits that securities transactions were effected in the state of Alabama by MILLENNIUM, but denies that it was aware that MILLENNIUM had not complied with applicable state and federal securities laws when it referred the 4 Alabama residents to RESPONDENT. RESPONDENT further states that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENT understands the Commission relied upon such information and assertions in its determination to accept this Order and that should information or assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil or criminal remedies that may be available to it under the provisions of the Act, and

WHEREAS, RESPONDENT has voluntarily waived all rights to a hearing upon entry of this Order and has consented to the entry of this Order, and

WHEREAS, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act, and

WHEREAS, the Commission and RESPONDENT are desirous of settling this matter as hereafter set forth and agree to the entry of this Order,

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That RESPONDENT shall ensure that future sales of its securities are effected in the state of Alabama by dealers/agents duly registered in the state of Alabama.

2. That the entry of this Consent Order resolves the Cease and Desist Order, Administrative Order No. CD-2001-0017, dated April 18, 2001, only as it pertains to RESPONDENT.

AGREED AND CONSENTED to on dates indicated:

RESPONDENT
EXCHANGEMALL.COM, INC.

BY: [Signature]
TITLE: CEO
DATE: 10-31-2001

APPROVED AND ORDERED this 6th day of November 2001



ALABAMA SECURITIES COMMISSION
770 Washington Avenue, Suite 570
Montgomery, AL 36130-4700
(334) 242-2984
BY:

[Signature]
JOSEPH P. BORG
Director