

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
OF THE STATE OF TENNESSEE AT NASHVILLE**

**IN THE MATTER OF:**

**EXCLUSIVE SAFE DRIVERS'  
MEMBERSHIP REWARD SYSTEM, INC.**

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**Docket No.: 12.06-010691J  
File No.: 00-009**

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**CONSENT ORDER**

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The Tennessee Securities Division (the "Division") and Exclusive Safe Drivers' Membership Reward System, Inc. (the "Issuer", occasionally "ESD-MRS") agree to the entry of this Consent Order in accordance with T.C.A. §48-2-116 of the Tennessee Securities Act of 1980, as amended, T.C.A. §§48-2-101, et seq. (the "Act"), which states that the Commissioner of Commerce and Insurance (the "Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act. Cease and Desist orders have been held to be proper orders issued under this part. *Wolcotts Financial Services, Inc. v. McReynolds*, 807 S.W.2d 708 (Tenn.Ct.App. 1990).

**FINDINGS OF FACT**

1. The Commissioner has jurisdiction over this matter pursuant to the Act, specifically as set forth in T.C.A. §48-2-115(a).
2. The Issuer is a Tennessee corporation with its principal place of business in Memphis, Tennessee. Eddie R. Newson ("Newson") is the President, Chief Executive Officer and Chairman of the Board of Directors.
3. On January 4, 1996, legal counsel for the Division responded to a request by Issuer for an Interpretive Opinion/ No-Action Letter regarding whether ESD-MRS memberships

are securities under the Act, by opining in the affirmative and stating the need for registration of the securities unless an exemption existed.

4. After the issuance of the Interpretive Opinion, Issuer conducted an unsupervised rescission offer to persons who had purchased memberships.

5. On October 30, 1997, a solicitation letter addressed to potential investors was publicly disseminated by the Issuer.

6. Between November 26, 1997 and November 14, 1998, the Issuer sold eighty-six (86) shares of common stock at \$2,500 per share for a total of \$215,000.

7. On December 5, 1997, Issuer attempted to make a "covered" security notice filing with the Division pursuant to Regulation D, Rule 506 and T.C.A. §48-2-125. However, Issuer did not file the required Form D notice with the Securities Exchange Commission. Additionally, the Issuer did not provide the investors with a private placement memorandum that had been prepared in accordance with the Regulation D standards.

8. On or around May 5, 1998 both Mr. Newson and legal counsel for the Issuer were informed by Sharon C. Foster, enforcement investigator for the Division, that the failure to properly complete the Regulation D filing, as well as the public solicitation of potential investors created a question regarding whether the Issuer had achieved "covered" security status. Additionally, legal counsel for the Issuer was told by Ms. Foster that the Division's concerns regarding the Regulation D filing would have to be resolved prior to the making of any other securities offerings by the Issuer.

9. Beginning on or about June 5, 1998, the Issuer offered and sold promissory notes in order to obtain funding for Regulation A filings with the Securities Exchange Commission and

the state securities regulation agencies in Tennessee, Mississippi, and Arkansas. The notes were issued to thirty-five (35) investors, totaling \$97,500.

10. The Issuer offered and sold a total of \$312,500 in securities between November 26, 1997 and November 14, 1998.

11. The Issuer's attempted notice filing of a "covered" security did not meet the criteria for such filings as provided under Section 18 of the U.S. Securities Act of 1933 ("33 Act"), as amended by the National Securities Markets Improvement Act of 1996 ("NSMIA").

12. The Issuer did not meet the criteria for a registration exemption under the Tennessee Securities Act of 1980, as amended and codified at Tennessee Code Annotated Section 48-2-103.

13. On or around July 13, 2000, a letter was sent to the investors on ESD-MRS letterhead which was signed by Mr. Newson. The letter offered to refund the money of any interested investors. In order to accept the offer, the letter had to be signed, dated and returned to Mr. Newson by August 1, 2000. The offer specified that the funds would be returned to the investors within sixty to ninety days of the date on which the acceptance was signed.

14. Several investors requested the refund on or around July 22, 2000. However, the investors have complained to the Securities Division that they were not refunded their money according to the terms of the unsupervised rescission offer made by ESD-MRS and Mr. Newson.

## CONCLUSIONS OF LAW

1. Pursuant to Tennessee Code Annotated Section 48-2-115(a), the responsibility for the administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Tennessee Code Annotated Section 48-2-104 provides that it is unlawful for any person to sell any security in this state unless: (1) It is registered under this part; (2) The security or transaction is exempted under T.C.A. §48-2-103; or (3) Is a covered security.

3. Based upon the Findings of Fact contained herein, the Issuer offered and sold securities in the state of Tennessee that were neither registered nor qualified for an exemption pursuant to state or federal securities laws. The offer and sale of unregistered, nonexempt securities by the Issuer justifies the entry of an order requiring the Issuer to cease and desist the offer and/or sale of such securities.

4. As a result of the facts stated herein and in view of the fact that the parties wish to resolve this matter without resort to litigation, the Commissioner finds that entry of this Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the Act.

## ORDER

**NOW, THEREFORE**, on the basis of the foregoing, and the waiver by the Issuer of its right to a hearing and appeal under the Tennessee Securities Act with respect to this Consent Order, and the Issuer's admission of the jurisdiction of the Commissioner and the matters herein, the Commissioner finds that Exclusive Safe Drivers' Membership Reward System, Inc. has consented to the entry of this Order for the sole purpose of settling this matter, and that the

following Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, pursuant to Tennessee Code Annotated §48-2-116 of the Tennessee Securities Act that:

1. Exclusive Safe Drivers' Membership Reward System, Inc. shall fully comply with the Tennessee Securities Act of 1980, as amended, and all rules promulgated thereunder.

2. Exclusive Safe Drivers' Membership Reward System, Inc. shall **CEASE** and **DESIST** the offer and/or sale of securities which are neither registered nor exempt from registration pursuant to state or federal securities laws.

3. Any future offer and/or sale of securities made by Exclusive Safe Drivers Membership Reward System, Inc., its successors in interest, or any other entity under the control of the persons possessing control over Exclusive Safe Drivers Membership Reward System, Inc., from, in, or into the state of Tennessee shall not be eligible for any of the registration exemptions designated by the Tennessee Securities Act of 1980, as amended, and shall be filed with, and reviewed by, the Tennessee Securities Division in accordance with the provisions of Tennessee Code Annotated §48-2-106, and any rules promulgated thereunder.

4. Exclusive Safe Drivers Membership Reward System, Inc. is admonished to rescind the sales of the unregistered securities which are the subject of this Consent Order to the investors within sixty days of the date of entry of this order. The rescission of the sales of the unregistered securities must be conducted under the supervision of the Tennessee Securities Division.

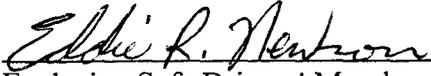
**IT IS ORDERED** that this Order represents the complete and final resolution of, and discharge with respect to, all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Exclusive Safe Drivers' Membership Reward System, Inc. in connection with its violations of the Act between November 26, 1997 and November 14, 1998, and is in lieu of further civil or administrative proceedings.

This Consent Order is in the public interest and in the best interests of the parties, represents a compromise and settlement of the controversy between the parties, and is for settlement purposes only. By the signature of its authorized representative, Exclusive Safe Drivers' Membership Reward System, Inc. affirmatively states that it has been advised by counsel in this matter, that it waives its right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and affirm that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

**ENTERED** this 16th day of October, 2003.

Paula A. Flowers  
Paula A. Flowers, Commissioner  
Department of Commerce and Insurance

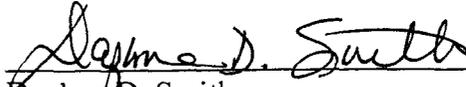
**APPROVED FOR ENTRY:**



Exclusive Safe Drivers' Membership  
Reward System

By: Eddie R. Newson

Title: President, Chief Executive Officer,  
and Chairman of the Board of Directors



Daphne D. Smith

Assistant Commissioner for Securities  
Department of Commerce and Insurance



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[COMPANY LETTERHEAD]

DATE

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

\_\_\_\_\_ ADDRESS \_\_\_\_\_

RE; Offer of Rescission

Dear Shareholder:

Shares of the \_\_\_\_\_ were offered and sold to Tennessee Investors during the period \_\_\_\_\_ through \_\_\_\_\_. The Tennessee Securities Act of 1980, as amended (the "Act"), asserts in Section 48-2-104 that it is unlawful for any person to sell any security in this state unless the security is registered or exempt from the registration requirements under the Act. The shares sold to you were neither registered nor exempt from registration; therefore, the offer and sale of these shares were made in violation of Sections 48-1-104 through 48-2-107 of the Act. You have been identified as a Tennessee investor who has purchased shares of the issuer during the above-mentioned time period, either directly or through dividend reinvestment.

Pursuant to Section 48-2-122 of the Act and the November 14, 1986 Policy Statement on recession offers, the \_\_\_\_\_, (the "Company") is offering to rescind your purchase of shares bought during the above-mentioned time period and to refund the entire purchase of the shares through the date the company receives notice of your election to rescind, less the amount of interest paid during said period.

This rescission offer will remain open for thirty (30) days from the date you receive this letter. Should you elect to retain your shares, you need not respond. However, if you would like to have a record of your election you may respond by making the applicable election on the enclosed form entitled "Election Form". If upon the expiration of thirty days from your receipt of this letter, the company has not received a response requesting recession, this offer of rescission will be deemed to have been rejected. Should you elect to rescind, you must respond within thirty days to \_\_\_\_\_ by so indicating on the enclosed "Election Form" and by tendering your original certificates. The "Election Form" must be returned to the Company by **certified mail, return receipt requested**. The Company will promptly tender the amount owed to you under the terms of this rescission offer.

Name  
Date  
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You may wish to consult with independent counsel before deciding whether to accept or reject this offer so as to be fully informed about the tax and legal consequences attached to either choice.

In making your decision with respect to this offer, if you have any questions at all, please feel free to contact me at ( ) \_\_\_\_--\_\_\_\_.

Sincerely,

By \_\_\_\_\_

Xx/xx  
Enclosure

**“ELECTION FORM”**

**PLEASE CHECK ONE OF THE PARAPRAPHS BELOW THEN SIGN AND RETURN THIS FORM AS SOON AS POSSILE**

{ \_\_\_\_\_ } Pursuant to \_\_\_\_\_ Company \_\_\_\_\_ Letter dated \_\_\_\_\_, I hereby **accept** the rescission offer made therein to repurchase all of my \_\_\_\_\_ Common Stock no-par capital stock or the note obligation, purchased by me pursuant to my signed subscription agreement, dated \_\_\_\_\_. Accordingly, I understand that within Thirty (30) days of \_\_\_\_\_ receipt of this form and my stock certificate for such shares, duly endorsed by me on the back in favor of \_\_\_\_\_, \_\_\_\_\_ will refund to me the full amount I had paid to \_\_\_\_\_ company \_\_\_\_\_ to the priority for payment, consisting of monies invested, plus interest at the rate of ten percent (10%) on such amount, to be calculated from the date of my purchase of said shares or note through the date \_\_\_\_\_ company \_\_\_\_\_ receives this notice electing to rescind, less the amount of any interest paid during said period.

{ \_\_\_\_\_ } Pursuant to \_\_\_\_\_ company’s \_\_\_\_\_ letter dated \_\_\_\_\_, I hereby **Reject** the rescission offer made by \_\_\_\_\_ company \_\_\_\_\_ and which to retain my \_\_\_\_\_ company \_\_\_\_\_ note or shares of common no-par capital stock. Accordingly, as of the date hereof, I hereby reaffirm my acceptance of the offer to purchase such securities, which acceptance was indicated in the subscription agreement signed by me on \_\_\_\_\_.

**If no choice is made prior to the expiration of thirty (30) days from the date of your receipt of this rescission offer, this rescission offer will be deemed to have been rejected.**

\_\_\_\_\_  
**SIGNATURE**  
\_\_\_\_\_  
**PRINT NAME**  
\_\_\_\_\_  
**DATE**

**SEND TO: ADDRESS OF COMPANY**  
\_\_\_\_\_

**BLUE-SKY-POLICY, BSLR-COMP ¶54,518, TENNESSEE,  
Rescission offers.  
Rescission offers.**

This statement of policy is a response to inquiries regarding the procedures followed by the Tennessee Securities Division (the "Division") with respect to rescission offers directed to Tennessee residents who have invested in securities sold in violation of the Tennessee Securities Act of 1980, as amended, Tennessee Code Annotated §48-2-101, *et seq.* (the "Act").

T.C.A. §48-2-122 requires that any person who:

1. Sells a security in violation of [T.C.A.] §§48-2-104-48-2-109 [which set forth the registration requirements for securities, broker-dealers, agents and investment advisers], or of any condition imposed under [T.C.A.] §48-2-107(f) [this section empowers the Commissioner to require by rule or order as a condition of registration the escrow of cheap stock or the impoundment of offering proceeds], or any rule or order under this part of which he has notice; or

2. Sells a security in violation of [T.C.A.] §48-2-121(a) [which prohibits the sale of securities by means of "Fraudulent Acts or Devices"] (the purchaser not knowing of the violation of §48-2-121(a), and who does not carry the burden of proof of showing that he did not know and in the exercise of reasonable care could not have known of the violation of §48-2-121(a)), shall be liable to the person purchasing the security from him to recover the consideration paid for the security, together with interest at the legal rate [currently ten percent (10%) per annum] from the date of payment, less the amount of any income received on the security, upon the tender of the security, or, if he no longer owns the security, the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

Because no general statement of policy will cover every rescission offer scenario the Division has encountered, the Division supervises rescission offers made to Tennessee residents based on the facts and circumstances of each case. Such supervision entails, among other things, the Division's review and written approval of the terms of the rescission offer.

Generally, the Division requires that the following be included in every offer of rescission to be conducted in Tennessee:

1. A statement as to the reasons for the rescission offer, for example that the securities were sold in violation of the Act.

2. Full and fair disclosure of all material facts surrounding the offer of rescission as well as any material facts that have arisen with respect to the issuer and the investment since the commencement of the initial offering.

3. A notice of the investor's right under the Act to rescind his/her purchase and recover the consideration paid plus interest at the legal rate (currently ten percent (10%) per annum) from the date the subscription amount was paid by the investor.

4. A statement of the amount of time in which the investor must elect to accept or reject the offer of rescission, which must be no less than thirty (30) days from the date the investor is notified of the offer.

5. A statement describing the effect of the failure of an investor to accept or reject the rescission offer within the designated time period, for example that the offer of rescission will be deemed to have been rejected.

6. A description of the procedure for accepting or rejecting the rescission offer.

7. A statement that the offeree may wish to consult with independent counsel before deciding to accept or reject the rescission offer so as to be fully informed about the risks and the consequences attached to either choice.

In addition to the foregoing, the Division may require that a rescission offer include such other terms as it deems appropriate and necessary for the protection of investors given the particular facts and circumstances relating to the sale of securities which underlie the rescission offer.

[*Policy Statement*, Securities Division, JAMES C. MEYER, Director, 11-14-86.]