BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE SECURITIES DIVISION,	)	
Petitioner,	)	
	)	
v.	)	**No. 03-017**
	)	
VERMICOM, INC.,	)	
THE SEABERG GROUP, INC., and	)	
CHRIS C. BERG,	)	
Respondents.	)	

ORDER TO CEASE AND DESIST

This Order issues as a result of a Petition and its exhibits attached hereto filed by the Tennessee Securities Division of the Department of Commerce and Insurance and is predicated upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101-126 ("Act") assigns the responsibility for administration of the Act to the Commissioner of Commerce and Insurance ("Commissioner").

2. The Petitioner, the Tennessee Securities Division ("Division"), is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.

3. The Act assigns the responsibility for its administration to the Commissioner. The Division, is the lawful agent through which the Commissioner administers the Act, and is authorized to bring this action for the protection of investors and the public.

4. The Division's official residence and place of business is in Nashville, Davidson County, Tennessee.

5. Vermicom, Inc. ("VI") is a business entity whose principal place of business is located at 510 Bering Drive, Suite 300, Houston, Texas 77057. VI purports to be a wholly owned subsidiary of The Seaberg Group, Inc., a Texas corporation. VI is a Nevada Corporation and lists its offices as being located at 2764 Lake Sahara Drive, Suite 111, Las Vegas, Nevada 89117. VI has never been registered with the Division as a broker-dealer, investment adviser, or agent thereof.

6. The Seaberg Group, Inc. ("SGI") is a Texas corporation whose principal place of business at 1450 W. Horizon Ridge Pkwy., # 112, Henderson, Nevada 89012 and maintains an office located at 510 Bering Drive, Suite 300, Houston, Texas 77057. Chris C. Berg is listed as SGI's agent for service of process.

7. Chris C. Berg ("Berg") is an individual whose business address is located at 510 Bering Drive, Suite 300, Houston, Texas 77057. Berg is the president/CEO of VI and SGI. Berg has never been licensed with the Division under the Act as a broker-dealer, investment adviser or agent thereof.

8. VI, SGI and/or Berg have operated a website at www.vermicom.com that has recently offered investment opportunities to Tennessee residents ranging from five thousand dollars ($5,000.00) to thirty thousand dollars ($30,000.00).

9. VI stated on its website that it provides investors and potential investors with a certain amount of worms measurable by the pound along with equipment to engage in the raising of worms.

10. VI represented to investors and potential investors *via* its website that the worms bred will reproduce and that at the end of three (3) months the initial amount of worms will have doubled and that the reproduction will double every two (2) months thereafter until the end of eleven (11) months.

11. VI represented on its website to investors and potential investors that in month twelve (12), the worms will be harvested and VI will purchase one-sixth (1/6) of the total amount of worms measurable by the pound at the contract price of the agreement. VI represents that the worm harvests will provide a monthly income throughout the contract period.

12. The total returns promised to investors and potential investors for the contracts sold by VI ranged from thirty-eight thousand four hundred dollars ($38,400.00) in returns for a five thousand dollar ($5,000.00) investment with VI to seven hundred sixty-eight thousand dollars ($768,000.00) in returns for a thirty thousand dollar ($30,000.00) investment with VI.

13. VI's website did not make any disclosures about any possible risks or difficulties associated with its investments other than a generic warning that any business opportunity involves risk. Investors and potential investors are informed by VI on its website that they do not need any knowledge or experience in "vermiculture," but only need a desire to succeed and profit. VI, on its website, followed these representations with the following statement: "WE WILL NOT LET YOU FAIL!"

14. In the contracts offered by VI, VI agrees to buy back a guaranteed number of pounds of worms each month during the contract period. VI represented on its website that VI has realized an incredible opportunity to develop a yet untapped industry: "vermiculture" and "vermicomposting."

15. VI represented on its website that there is great demand for its services and products and that this demand presents a great opportunity for a new worm "breeder" to become part of its growing organization.

16. VI represented on its website that it needs to maintain a supply line of redworms for "vermicomposting" as well as for byproducts, such as "vermicompost," "castings" and "worm tea" for sale to local, regional and national distributors and end users.

17. Recently, VI changed its website which omits much of the information regarding investments with VI but still solicits investments in "breeder contracts" with VI. VI states on its current website that "[w]e have offered 22 - 25 Breeder Contracts, of which 16 Breeder Opportunities have already been filled" and that it is seeking "Farmers and Ranchers in and around the Ohio Valley and Tennessee River Valley."

18. On its current website, VI states that investors in its "breeder opportunities" will be "compensated not only for the worms you produce, but also by the bedding material (byproducts) that the worms generate."

CONCLUSIONS OF LAW

19. Tenn. Code Ann. § 48-2-104 provides that:

(a) 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 § 48-2-103; or
(3) The security is a covered security.

20. Tenn. Code Ann. § 48-2-102(16) provides that:

> "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing . . .(emphasis added).

21. In *King v. Pope*, 91 S.W.3d 314, 321 (Tenn. 2002), the Tennessee Supreme Court held that an investment contract must satisfy the following four elements:

> (1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

22. The facts presented by the Division in this matter demonstrate that: (1) the contracts offered and/or sold in Tennessee by the Respondents meet the definition of investment contracts as defined in *King*, 91 S.W.3d at 321, and are therefore securities under the Act, pursuant to Tenn. Code Ann. § 48-2-102(16); (2) that the Respondents have offered and/or sold securities in Tennessee without first having registered such securities with the Division, as required by the Act; (3) that such securities are not subject to any exemptions under the Act; and (4) that such securities are not "covered" securities, as defined under the Act.

23. Tenn. Code Ann. § 48-2-102(3) defines a "broker-dealer" as any person engaged in the business of effecting transactions in securities for the account of others, or any person engaged in the business of buying or selling securities issued by one (1) or more other persons for such person's own account and as part of a regular business rather than in connection with such person's investment activities.

24. Tenn. Code Ann. § 48-2-102(2) defines an "agent" as any individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities from, in or into this state.

25. Tenn. Code Ann. § 48-2-109(a) provides, in pertinent part, that:

> (a) It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

26. Tenn. Code Ann. § 48-2-121(a) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

27. Based upon the Findings of Fact, the Respondents have violated, are violating and/or will violate Tenn. Code Ann. § 48-2-104(a) by selling unregistered securities in Tennessee which are not subject to an exemption and which are not covered securities, as defined in the Act.

28. Based upon the Findings of Fact, the Respondents have violated, are violating and/or will violate Tenn. Code Ann. § 48-2-109(a) by acting as an unregistered broker-dealer and/or investment adviser and/or agent thereof in Tennessee.

29. Based upon the Findings of Fact, the Respondents have violated, are violating and/or will violate Tenn. Code Ann. § 48-2-121(a) by making material misrepresentations and omissions of facts in connection with the offer and sale of securities in Tennessee.

30. Tenn. Code Ann. § 48-2-116 provides that the Commissioner may make, promulgate, amend, and rescind such Orders as are necessary to carry out the provisions of the Act, and that such Order is in the public interest, necessary for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

31. Tenn. Code Ann. § 48-2-116(e)(2) provides that no Order may be entered without (1) prior notice to affected parties unless the Commissioner determines that prior notice would not be in the public interest and would be detrimental to the protection of investors, (2) an opportunity for a hearing before the Commissioner, and (3) written Findings of Fact and Conclusions of Law.

32. Based upon the Findings of Fact and Conclusions of Law described herein, it would not be in the public interest and would be detrimental to the protection of investors if prior notice of this Order were given to the affected parties.

NOW, THEREFORE, in consideration of the foregoing, it is **ORDERED** that:

1. The Respondents shall comply with all provisions of the Act.

2. The Respondents shall cease and desist in further conduct as a broker-dealer, investment adviser or agent thereof from, in, or into the State of Tennessee until such time as they are effectively registered with the Division to engage in such activity.

3. The Respondents shall cease and desist in further offerings and sales of securities from, in or into the State of Tennessee until such time as they have complied with all registration requirements under the Act and the rules and regulations promulgated thereunder.

4. The Respondents shall cease and desist further use of any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in the offer and/or sale of a security from, in or into this State.

5. All persons in any way assisting, aiding, or helping any of the aforementioned Respondents in any of the aforementioned violations of the Act shall cease and desist from all such activities in violation of the Act.

This Order is not intended to prohibit any lawful conduct in which the Respondents might be engaged.

Entry of this Order shall not in any way restrict the Tennessee Securities Division or the Commissioner of Commerce and Insurance from taking further action with respect to these or other possible violations by the Respondents of the Act or any of the Rules promulgated thereunder.

This Order shall become a ***Final Order*** *thirty (30) days from the date of its entry, unless written notification requesting a hearing is made by the parties within the thirty (30) day period.*

You are advised that you have the right to a hearing as to all matters raised in this Order. If you wish to exercise your right to a hearing, please notify:

DAPHNE D. SMITH
ASSISTANT COMMISSIONER FOR SECURITIES
STATE OF TENNESSEE, DEPARTMENT OF COMMERCE AND INSURANCE
DAVY CROCKETT TOWER, SUITE 680
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

Such request must be received within thirty (30) days of the date of entry of this Order.

ENTERED this the 21st day of July, 2003.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

APPROVED FOR ENTRY:

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