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BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE JAN 17 AM 10: 08

OF THE STATE OF IDAHO

STATE OF IDAHO  
DEPT OF FINANCE

STATE OF IDAHO, Department of Finance,  
Securities Bureau,

Complainant,

vs.

Docket No. 2010-7-20

PROFITS PLUS CAPITAL  
MANAGEMENT, LLC.,

AGREEMENT AND ORDER

Respondent.

The Director of the Department of Finance has instituted an investigation into the conduct of Respondent. Pursuant to said investigation it appears to the Director that violations of the Idaho Uniform Securities Act (2004), Idaho Code 30-14-101 *et seq.* have occurred. The Director and Respondent have agreed to resolve this matter without a public hearing or other adjudication of this matter. Therefore, the Director deems it appropriate and in the public interest that this Agreement and Order be entered, and the Respondent consents to the entry of this Agreement and Order.

RESPONDENT

1. Respondent has been registered as an investment adviser with the Department of Finance since October 3, 2001.
2. Respondent is also the General Partner of the Dollars and Sense Growth Fund, L.P. Interests in the Dollars and Sense Growth Fund, L.P. are exempt from registration and are qualified under federal Regulation D, Rule 506.
3. On June 18, 2012, the Complainant conducted a routine examination of Respondent's office located at 2245 North Samantha Court in Nampa, Idaho. During the examination, Complainant noted compliance deficiencies with regard to the compliance procedures and custody requirements of investment advisers. Certain violations remained uncorrected since the previous examination completed in February 2008. The

repeat violations were documented within the Complainant's August 3, 2012 examination findings letter.

#### FINDINGS OF FACT

4. Complainant's examination revealed that Respondent has failed to develop and follow certain internal policies and procedures for use in conducting its investment advisory business. Respondent's policies and procedures are inadequate concerning: (a) the designation of a chief compliance officer; (b) procedure to show evidence of initial and annual delivery of the privacy policy; and (c) no evidence of an annual review of certain compliance policies and procedures. These deficiencies were cited in the previous examination letter dated February 21, 2008, to which Respondent represented to the Complainant that deficiencies would be corrected. The Respondent has kept current certain regulatory filings such as submission of a balance sheet to the State of Idaho, annual renewal fees, annual renewal of bonding coverage, maintaining Form ADV Part 1 and ADV Part 2 and Form U4.

5. Respondent also failed to provide timely delivery of 2011 audited financial statements to "fund" clients of the Dollars and Sense Growth Fund within the required time period established under the Investment Advisers Act of 1940 ('40 Act), or, in lieu of the audit delivery, arrange for an unannounced examination pursuant to custody rules. This violation was also cited in the Complainant's examination letter dated February 21, 2008, to which Respondent represented to the Complainant that these changes would be made. Respondent represents that independent audited financial statements are completed every year for the Dollars and Sense Growth Fund. The 2011 audited financial statements were delayed due to a one-time event that has been favorably cleared up on behalf of the Respondent during 2012. Between 2005 through 2009, audited financial statements were not delivered on a timely basis; however Respondent does not foresee the delivery of independent audited financial statements being delayed in the future.

6. Complainant's June 18, 2012 examination verified that Respondent failed to provide evidence that "fund" clients were sent a privacy notice and that audited financial statements were not completed and delivered to "fund" clients as required by the '40 Act

and Idaho Uniform Securities Act (2004) (IUSA). A privacy notice was in the compliance file and submitted to the Complainant during the examination. Respondent represented that the privacy notice (listed on file) was mailed as required and that the notice meets the requirements under Regulation S-P and IDAPA 12.01.08.104.42 of the Rules pursuant to the IUSA.

#### VIOLATIONS

7. IDAPA 12.01.08.093 of the Rules pursuant to the IUSA requires every investment adviser to make and keep true, accurate and current books and records in compliance with 17 CFR 275.204-2. Complainant addressed specific shortfalls within an examination findings letter mailed to Respondent on February 21, 2008. Respondent failed to: (a) designate a Chief Compliance Officer within the written policies and procedures manual; (b) provide evidence of delivery of its privacy policy; and (c) maintain evidence of an annual compliance review. These are repeat violations and Respondent continues to be in violation of Rule 93.

8. Respondent's failure to provide evidence of delivery of its privacy policy to the Complainant has been noted as a compliance deficiency under the requirements pursuant to Regulation S-P and IDAPA 12.01.08.104.42 of the Rules pursuant to the IUSA.

9. IDAPA 12.01.08.096 of the Rules pursuant to the IUSA requires an investment adviser to maintain custody of client funds in a manner consistent with 17 CFR 275.206(4)-2 of the Investment Advisers Act of 1940. Respondent failed to deliver 2011 audited financial statements to fund clients within 120 days of year-end as required under 17 CFR 275.206(4)-2.

10. Section 30-14-412(d)(2) of the IUSA provides grounds for suspension or revocation of investment adviser registration in the event the investment advisory firm willfully failed to comply with the IUSA or a predecessor act or rule. As noted in items 1 through 9 above, Respondent failed to correct previous violations cited by Complainant as a result of Complainant's examination of Respondent's investment advisory business.

#### REMEDIES

11. Respondent admits the respective violations contained in the Order.

12. Respondent agrees to comply with all the provisions of the IUSA and Rules promulgated thereunder in the future.

13. Respondent represents that he has brought his investment advisory activities into compliance with the IUSA and promulgated Rules by December 31, 2012. Respondent's failure to come into compliance with the above violations will result in immediate suspension of Respondent's investment adviser registration without need for further notice or hearing, until compliance is achieved. Respondent specifically consents to suspension of his license under these terms.

14. Respondent agrees to remit a fine of \$2,500 to the Complainant within thirty (30) days of the date of this Order.

15. Respondent acknowledges and agrees that the violations contained herein may be used by Complainant against Respondent in subsequent proceedings in the event that Respondent violates this Order in the future.

DONE AND DATED at Boise, Idaho this 15 day of January, 2013.

Profits Plus Capital Management, LLC

BY: [Signature]

Name: Bob Coleman

Title: managing member, PCLM

[Signature]

MARILYN T. CHASTAIN

Bureau Chief, Securities Bureau

Department of Finance

State of Idaho

IT IS SO ORDERED This 18<sup>th</sup> day of January, 2013

[Signature]  
GAVIN M. GEE  
Director of Finance

