

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98192 / August 22, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4446 / August 22, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21574

In the Matter of

OMNIA WELLNESS INC.,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Omnia Wellness Inc. (“Omnia” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of the violation of Exchange Act Rule 12b-25, which requires that issuers of a security registered pursuant to Section 12 of the Exchange Act that fail to file timely a periodic report shall file a Form 12b-25 "Notification of Late Filing," commonly known as "Form NT," which contains, among other things, reasonable detail as to why the issuer's periodic report could not be filed on time and an explanation of any anticipated, significant changes in the issuer's results of operations.

2. In November 2021, Omnia violated Rule 12b-25 by filing a Form 12b-25 with the Commission in which Omnia failed to disclose why, in sufficient detail under the circumstances presented, its period ended September 30, 2021 Form 10-Q could not be timely filed. Omnia's Form 12b-25 also failed to acknowledge anticipated, significant changes in Omnia's results of operations for the quarter, compared with Omnia's operating results in the period ended September 30, 2020, and to provide an explanation of the changes. Fourteen days after filing its Form 12b-25, Omnia filed a Form 8-K disclosing to investors and the market that the company's financial statements for the period ended June 30, 2021 could no longer be relied upon and would be restated. Omnia, however, had failed to include in its Form 12b-25 any disclosure that the discovery, and ongoing correction, of errors in its prior Forms 10-Q were among the principal reasons that it was unable to file timely the subject Form 10-Q for the period ended September 30, 2021. Ultimately, Omnia also failed to file the aforementioned Form 8-K within the required period under Exchange Act Rule 13a-11.

Respondent

3. Omnia, a Nevada corporation based in Buffalo, New York, is engaged in the business of "on demand" massage memberships featuring its patented technology. At all relevant times, Omnia common stock has been registered under Section 12(g) of the Exchange Act and is quoted on the OTC Pink Market under the symbol OMWS.

Legal Framework and Facts

4. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with a security registered pursuant to Section 12 of the Exchange Act to file with the Commission annual reports on Form 10-K and quarterly reports on Form 10-Q.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. Rule 12b-25 provides that if an issuer fails to file a Form 10-K or 10-Q within the time period prescribed for such report, the issuer, no later than one business day after the due date for such report, shall file a Form 12b-25 with the Commission, disclosing the issuer's inability to file the report timely and the reasons therefore in reasonable detail.² Form 12b-25 requires the issuer to affirm, among other things, that the subject periodic report will be filed within fifteen calendar days, for a Form 10-K, or within five calendar days, for a Form 10-Q, of the report's prescribed due date. Form 12b-25 also requires the issuer to confirm whether or not it anticipates that any significant change in results of operations from the corresponding period for the prior fiscal year will be reflected by the earnings statements to be included in the subject periodic report. If such change is anticipated, the issuer must attach a narrative and quantitative explanation of the anticipated change and, if appropriate, state the reasons why a reasonable estimate of the results cannot be made.

6. Section 13(a) and Rule 13a-11 of the Exchange Act require issuers with a security registered pursuant to Section 12 of the Exchange Act to file or furnish, as applicable, current reports with the Commission on Form 8-K. Issuers are required to file a Form 8-K within four business days after the occurrence of certain events specified in the Form 8-K. Item 4.02 of Form 8-K specifies that if an issuer concludes, or is advised by its auditor, that any previously issued financial statements required to have been provided should no longer be relied upon, the issuer shall disclose the event and certain enumerated information on a Form 8-K.

7. On November 15, 2021, Omnia filed with the Commission a Form 12b-25 disclosing that Omnia could not file timely its Form 10-Q for the period ended September 30, 2021, because management was "unable, without unreasonable effort or expense, to timely compile all information for the disclosures required to be included in its Quarterly Report on Form 10-Q for the fiscal Quarter ended September 30, 2021."

8. Furthermore, in its Form 12b-25, Omnia affirmed that it did not anticipate that any significant change in results of operations from the corresponding period for the prior fiscal year would be reflected in the subject Form 10-Q.

9. On November 29, 2021, Omnia filed with the Commission a Form 8-K disclosing that, "[d]uring the preparation of its financial statements for the fiscal quarter ended September 30, 2021, the Company determined on November 17, 2021 that the Company's previously issued financial statements for the fiscal quarter ended June 30, 2021 included in its Quarterly Report for the Fiscal Quarter ended June 30, 2021 (the "Form 10-Q") should no longer be relied upon" because Omnia had incorrectly accounted for, in those financial statements, research and development expenses. Omnia failed to file its Form 8-K within the required four business day period.

² Form 12b-25 specifies a "narrative" disclosure in "reasonable detail why" Form 10-Q or 10-K "could not be filed within the prescribed time period." (See Form 12b-25, Part III.)

10. Prior to November 15, 2021, Omnia understood that its inability to meet the filing deadline for the period ended September 30, 2021 Form 10-Q was due, in large part, to the discovery, and ongoing correction, of errors in its period ended June 30, 2021 Form 10-Q. Moreover, the company was aware that its period ended September 30, 2021 financial results, when reported, would differ significantly from its period ended September 30, 2020 financial results, including a 22% decrease in quarterly revenue. In its Form 12b-25, however, Omnia failed to disclose any of this information, much less provide the detailed narratives and quantitative explanation specifically called for by the form.

Violations

11. As a result of the conduct described above, Omnia violated Section 13(a) of the Exchange Act and Rules 12b-25 and 13a-11 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Omnia's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Omnia cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-25 and 13a-11 thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$60,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following five installments: (1) \$15,000 within 14 days of entry of this order; (2) \$11,250 within 90 days of entry of this order; (3) \$11,250 within 180 days of this order; (4) \$11,250 within 270 days of entry of this order; and (5) \$11,250 within 360 days of this order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Omnia as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to D. Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary