

gasification machine; (iii) Bixby's prospects for conducting an initial public offering; and (iv) the criminal history of DeSender, the company's former chief financial officer.

3. Bixby and Walker used a large network of unregistered persons to offer and sell Bixby securities. Bixby paid DeSender and other Unregistered Brokers a total of at least \$4.9 million in transaction-based cash commissions and warrants to purchase over 900,000 shares of Bixby common stock for the sale of Bixby securities.

4. The Bixby offerings were not registered, nor were they exempt from registration.

5. As a result of their misconduct, Walker and DeSender violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77(e)(a), 77(e)(c), and §77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]. In addition, DeSender and DLD violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)], and Walker aided and abetted violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Rule 10b-5 thereunder.

6. The Commission seeks permanent injunctions against Walker, DeSender, and DLD to enjoin them from any future violations of, or from aiding and abetting future violations of, the above-cited provisions of the federal securities laws. The Commission further seeks disgorgement of Defendants' ill-gotten gains, plus prejudgment interest, and civil penalties. Finally, the Commission seeks an order prohibiting Walker and DeSender from serving as officers or directors of any public company.

7. In a related action filed on December 21, 2011, in the United States District Court for the District of Minnesota, the Commission alleged that Bixby, acting through Walker, hired

six individuals and three related entities (“Unregistered Brokers”) to offer and sell Bixby securities in violation of the broker-dealer registration provisions of the federal securities laws.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this action pursuant to Sections 20 and 22(a) of the Securities Act [15 U.S.C. §§ 77t and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. Walker, DeSender, and DLD, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, transactions, practices, and courses of business alleged herein.

9. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa]. The acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the District of Minnesota and elsewhere.

DEFENDANTS

10. **Robert A. Walker**, age 69, resides in Anoka, Minnesota. During the relevant period, Walker was the founder, President, chief executive officer, and chairman of the board of directors of Bixby. In May 2011, Walker was forced to resign from his positions at Bixby as part of a settlement of a civil action brought by two of Bixby’s outside directors against Bixby, Walker, DeSender, and others. Walker asserted his Fifth Amendment right against self-incrimination and refused to provide testimony in response to a Commission investigative subpoena.

11. **Dennis L. DeSender** age 64, resides in Minneapolis, Minnesota. DeSender has been associated with Bixby from 2001 to May 2011, and served variously as chief financial officer,

chief operating officer, and an independent financial consultant to the company. At all times, he was employed as an independent contractor rather than an employee of Bixby. DeSender is also the owner and control person of DLD Financial, Ltd., a Minnesota corporation. DeSender was convicted for bank fraud in 1998. In March 2011, DeSender pled guilty to one count of tax fraud. In September 2011, he pled guilty to one count of securities fraud in connection with the offer and sale of Bixby securities. On December 1, 2011, DeSender was arrested for soliciting investors for another issuer in violation of his plea agreement. DeSender asserted his Fifth Amendment right against self-incrimination and refused to provide testimony or produce documents in response to a Commission investigative subpoena.

12. **DLD Financial Ltd.** is a Minnesota corporation owned and controlled by DeSender, with its principal place of business in Minneapolis, Minnesota. DLD has never been a registered broker-dealer. In Forms D filed by Bixby in 2006 and 2007, DLD is identified as a person who “has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering.”

RELATED ENTITY

13. **Bixby Energy Systems, Inc.** is a privately held Delaware corporation founded by Walker in 2001, with its principal place of business in Ramsey, Minnesota. The company is engaged in the business of manufacturing and marketing alternative energy technologies and related products. The company filed Forms D, Notice of Exempt Offering of Securities, with the Commission in September 2006 and November 2007. Bixby has never been registered with the Commission in any capacity and has never registered any offering of securities. On December 14, 2011, the Office of the United States Attorney for the District of Minnesota announced that it had entered into a Deferred Prosecution Agreement with Bixby. In the Deferred Prosecution

Agreement, Bixby admits, among other things, that from at least 2006 through May 2011, two of its officers – DeSender and an unidentified individual – in connection with the offer and sale of Bixby securities, made numerous material false statements, false representations, and omissions about Bixby’s business and the prospects of conducting an initial public offering of Bixby’s shares.

FACTS

14. From approximately 2001 to 2010, Bixby raised at least \$43 million from over 1800 investors through a series of purported private placement offerings of stocks, warrants, and promissory notes. The company used this capital raising activity, in part, to fund its operations, to pay salaries, and to pay commissions to brokers that sold Bixby securities.

15. As Bixby’s chief executive officer, Walker was responsible for, and oversaw, the entirety of Bixby’s business, including the development and marketing of the company’s products.

16. Walker was also responsible for, and oversaw, the company’s securities offering activities. As chairman of the board of directors, Walker approved Bixby’s private placement memoranda (“PPMs”). He was also named in the PPMs as the contact person for shareholders who wish to obtain additional information necessary to verify the accuracy of the information set forth in the PPMs. As president, Walker signed the company’s stock certificates, warrant certificates, and promissory notes.

17. As Bixby’s chief financial officer, DeSender was primarily charged with raising funds for Bixby and its business projects, including its coal gasification project.

A. Walker and DeSender Made Material Misrepresentations and Omissions Regarding Bixby in Connection with the Offer and Sale of Bixby Securities

18. Walker and DeSender, either directly or through the company's PPMs and shareholder newsletters (titled "The Bixby Blaze"), made numerous material misrepresentations and omissions to investors and prospective investors. Additionally, they provided this false information to some of the unregistered brokers who were pitching Bixby investments to others. Based on these misrepresentations and omissions, investors provided money to Bixby for the sole purpose of investing in Bixby's business.

Misstatements Regarding the Payment of Commissions to Officers and Directors

19. From approximately 2001 to 2010, the company's PPMs falsely stated that company officers and directors would not be compensated for their sale of Bixby securities.

20. In fact, during that period, Bixby paid DeSender at least \$3.6 million in cash and warrants to purchase more than 549,000 shares of Bixby common stock for his sale of Bixby securities. During most of this time, DeSender served as an officer of Bixby.

21. Moreover, from approximately 2004 to 2006, DeSender kicked back more than \$600,000 to Walker in an undisclosed commission-sharing arrangement. During this time, Walker served as the chief executive officer and chairman of the board of directors of Bixby.

Misstatements Regarding Functionality of Bixby's Technologies and Products

22. Walker and DeSender also made repeated misstatements to investors and prospective investors, both orally and in written materials, regarding the operational capability and functionality of Bixby's coal gasification and liquefaction technologies and its coal gasification machines.

23. Specifically:

a. In a letter to shareholders included in a May/June 2008 edition of “The Bixby Blaze,” Walker stated that “Our [Bixby’s] Gasification and Liquefaction technologies are proven, operating systems.”

b. Moreover, from at least January 2010 through May 2011, Walker and DeSender repeatedly told investors in in-person meetings and presentations that the Bixby coal gasification technology was proven, fully functional, and ready for market.

24. There was no reasonable basis for these representations. In fact, the liquefaction technology has never worked. In addition, at the time that the statements were made, Bixby did not have a coal gasification machine that could produce gas in an economically viable manner.

25. In fact, by at least 2010, Walker and DeSender knew that Bixby’s coal gasification machine had substantial technological defects, did not function properly, and was at risk of self-destruction.

26. Walker and DeSender never disclosed these problems to investors or prospective investors.

Other Material Misstatements and Omissions

27. Many of the Bixby PPMs touted DeSender’s “25 years of financial consulting and operations management experience” and his “extensive background in management and operations with NYSE listed firm,” but did not disclose that he had been convicted of bank fraud in 1998.

28. Finally, DeSender and Walker also induced investors to purchase Bixby securities by telling them that Bixby was going to conduct an initial public offering of its shares in the near term, even though they knew that Bixby could not do so.

B. The Unregistered Offer and Sale of Securities

29. Section 5 of the Securities Act prohibits any offers, directly or indirectly, to sell a security unless a registration statement for that offering has been filed with the Commission. Section 5 also prohibits any sale of a security unless a registration statement is effective. A registration statement is transaction-specific. Each sale of a security must either be made pursuant to an effective registration statement or fall under a registration exemption.

30. The stocks, warrants, and promissory notes issued by Bixby and sold by DeSender, DLD, and the other unregistered brokers were securities under federal law.

31. At the time of the offers and sales of the securities issued by Bixby, no registration statement was filed or in effect with respect to the offers and sales and no exemption from registration applied to the offers or sales.

C. The Use of Unregistered Brokers

32. Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from using the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security unless the broker or dealer is registered with the Commission. Section 3(a)(4) of the Exchange Act defines a “broker” as any person who is engaged in the business of effecting transactions in securities for the account of others.

33. Bixby used unregistered brokers to offer and sell its securities. In several Bixby PPMs, Bixby disclosed that up to 10% of the money raised in the private placement may be used to pay commissions to “placement agents” who “assist in the placement of the Shares.” The PPMs further disclosed that the company could additionally pay placement agents warrants to

purchase up to 10% of the number of common shares of Bixby stock that they were responsible for having placed.

34. In a Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption (“Form D”) filed with the Commission on September 12, 2006, Bixby identified DLD and others as entities that have been or will be paid commission or similar remuneration for solicitation of purchasers in connection with the sale of securities.

35. In a Form D filed with the Commission on November 20, 2007, Bixby identified DLD as an entity that has been or will be paid commission or similar remuneration for solicitation of purchasers in connection with the sale of security.

36. In 2006, Bixby’s audit committee oversaw an internal forensic accounting investigation of the company. As a result of this investigation, Bixby received in December 2006 a draft report of investigation that informed the company that the payment of commissions, or so-called “finder’s fees,” to unregistered persons and employees violated the securities laws.

37. In its PPM Supplement dated October 16, 2006, Bixby acknowledged that if “the finders to whom we have paid finder’s fees are found to have been acting as unregistered broker-dealers in violation of the Securities and Exchange Act of 1934 [*sic*] and/or state securities laws, we may [be] subject to consequences that could have an adverse impact on our financial position.” In several subsequent Bixby PPMs, Bixby disclosed that its payments to unregistered placement agents could give purchasers the right of rescission and thus have a material adverse effect on the company’s financial position. Notably, however, Bixby never disclosed the 2006 draft report of investigation.

38. Notwithstanding the foregoing, Bixby continued the practice of paying commissions to unregistered brokers until at least 2010.

39. From approximately 2001 to 2010, Bixby used numerous unregistered brokers, including DeSender and DLD, to solicit investors to purchase Bixby securities and promote securities transactions. As compensation for their sale of Bixby securities, Bixby paid DeSender, DLD, and the Unregistered Brokers more than \$4.9 million in transaction-based cash commissions and warrants to purchase at least 900,000 shares of Bixby common stock.

40. From approximately 2001 to 2010, DeSender and DLD sold over \$12 million in Bixby securities to more than 300 investors in Minnesota and other states. Among other things, DeSender and DLD solicited investors, handled investor funds, and fielded investor inquiries regarding Bixby. As compensation for their sale of Bixby securities, Bixby paid DeSender and DLD commissions of at least \$3.6 million in transaction-based cash commissions and warrants to purchase at least 549,000 shares of Bixby common stock.

41. DeSender, DLD, and the Unregistered Brokers were not registered as brokers nor were they associated with an entity that was registered as a broker or dealer.

42. Walker hired DeSender and the Unregistered Brokers to solicit investors to purchase Bixby securities. Among other things, Walker entered into so-called consulting agreements with DeSender and several of the Unregistered Brokers, approved payment on their invoices, and signed their commission checks.

COUNT I

***Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§77(e)(a) and 77(e)(c)]
(Against Walker and DeSender)***

43. Paragraph 1 through 42 are realleged and incorporated herein by reference.

44. Walker and DeSender each, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

45. No registration statement was filed with the Commission or was in effect with respect to the offerings alleged herein.

46. By engaging in the conduct described above, Walker and DeSender violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77e(c)].

COUNT II

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)] (Against Walker and DeSender)

47. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

48. By their conduct, Walker and DeSender, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, have employed devices, schemes or artifices to defraud.

49. Walker and DeSender acted with scienter.

50. By reason of the foregoing, Walker and DeSender violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT III

*Aiding and Abetting Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. §77q(a)(1)]
(Against Walker)*

51. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

52. By its conduct, Bixby, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, has employed devices, schemes or artifices to defraud.

53. Walker knowingly or recklessly provided substantial assistance to Bixby in the commission of these violations.

54. Walker and Bixby acted with scienter.

55. By reason of the foregoing, Bixby violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)] and Walker aided and abetted those violations pursuant to Section 15(b) of the Securities Act [15 U.S.C. §77o(b)].

COUNT IV

*Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§77q(a)(2) and 77q(a)(3)]
(Against Walker and DeSender)*

56. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

57. By their conduct, Walker and DeSender, in the offer or sale of securities, by the use of any means or instruments of transportation and communication in interstate commerce and by the use of the mails, directly or indirectly, have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make

the statements made, in light of the circumstances under which they were made, not misleading; or have engaged in transactions, practices or courses of business that have been operating as a fraud or deceit upon purchasers of securities.

58. By reason of the foregoing, Walker and DeSender violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)].

COUNT V

Aiding and Abetting Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)] (Against Walker)

59. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

60. By its conduct, Bixby, in the offer or sale of securities, by the use of any means or instruments of transportation and communication in interstate commerce and by the use of the mails, directly or indirectly, has obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or has engaged in transactions, practices or courses of business that have been operating as a fraud or deceit upon purchasers of securities.

61. Walker knowingly or recklessly provided substantial assistance to Bixby in the commission of these violations.

62. By reason of the foregoing, Bixby violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)] and Walker aided and abetted those violations pursuant to Section 15(b) of the Securities Act [15 U.S.C. §77o(b)].

COUNT VI

*Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
[15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5]
(Against Walker and DeSender)*

63. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

64. By their conduct, Walker and DeSender, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business that has been or is operating as a fraud or deceit upon other persons, including purchasers and sellers of such securities.

65. Walker and DeSender acted with scienter.

66. By reason of the foregoing, Walker and DeSender violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

COUNT VII

*Aiding and Abetting Violations of Section 10(b) and Rule 10b-5 Thereunder
[15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5]
(Against Walker)*

67. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

68. By its conduct, Bixby, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or by the use of the mails, directly

or indirectly: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business that has been or is operating as a fraud or deceit upon other persons, including purchasers and sellers of such securities.

69. Walker knowingly or recklessly provided substantial assistance to Bixby in the commission of these violations.

70. Bixby and Walker acted with scienter.

71. By reason of the foregoing, Bixby violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and Walker aided and abetted those violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

COUNT VIII

***Violations of Section 15(a) of the Exchange Act
[15 U.S.C. §78o(a)]
(Against DeSender and DLD)***

72. Paragraphs 1 through 42 above are realleged and incorporated herein by reference.

73. By their conduct, DeSender and DLD, while acting as a broker or dealer, effected transactions in, and induced and attempted to induce the purchase or sale of, securities when they were not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

74. By reason of the foregoing, DeSender and DLD violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

COUNT IX

***Aiding and Abetting Violations of Section 15(a) of the Exchange Act
[15 U.S.C. §78o(a)]
(Against Walker)***

75. Paragraph 1 through 42 above are realleged and incorporated herein by reference.

76. By their conduct, DeSender and DLD, while acting as a broker or dealer, effected transactions in, and induced and attempted to induce the purchase or sale of, securities when they were not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

77. By their conduct, the Unregistered Brokers, while acting as a broker or dealer, effected transactions in, and induced and attempted to induce the purchase or sale of, securities when they were not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker or dealer.

78. Walker knowingly or recklessly provided substantial assistance to DeSender, DLD, and the Unregistered Brokers in the commission of these violations.

79. By reason of the foregoing, DeSender, DLD, and the Unregistered Brokers violated Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)], and Walker aided and abetted these violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Find that Defendants committed the violations alleged herein and find that, as a result of these violations, Defendants received ill-gotten gains.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining:

- A. Walker, and his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§77(e)(a), 77(e)(c), and 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] and from aiding and abetting violations of Section 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act [15 U.S.C. §78o(a)], and Rule 10b-5 thereunder; and
- B. DeSender, and his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with him, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§77(e)(a), 77(e)(c), and 77q(a)], Section 10(b) and 15(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78o(a)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].
- C. DLD, and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, and each of them, from violating Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

III.

Order Defendants to disgorge their ill-gotten gains, derived directly or indirectly from the misconduct alleged, together with prejudgment interest thereon.

IV.

Order Defendants to pay the Commission civil penalties pursuant to Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)], and, with respect to Walker and DeSender, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

V.

Permanently prohibit Walker and DeSender from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)], pursuant to Section 20(e) of the Securities Act [15 U.S.C. §77t(e)] and Section 21(d) of the Exchange Act [15 U.S.C §78u(d)].

VI.

Retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as the Court deems just and appropriate.

JURY TRIAL DEMAND

The Commission requests a trial by jury.

Dated: December 21, 2011

Respectfully submitted,

s/ Thu B. Ta

Thu B. Ta

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