

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 81719 / September 26, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18216

In the Matter of

LBMZ Securities, Inc.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against LBMZ Securities, Inc., which was formerly known as Zacks and Company (“Respondent” or “LBMZ”).

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 Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) And 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. This matter arises out of the failure of LBMZ, a registered broker-dealer, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by LBMZ and persons associated with LBMZ during the period from 2013 to 2015.¹ Although LBMZ had policies and procedures calling for monthly reviews of its employees' brokerage statements, reviews of its employees' internal and external communications, and the creation of information barriers around its investment banking division, it did not obtain or review complete brokerage records for many employees, conducted a minimal review of employee communications, and did not create meaningful information barriers around the investment banking division. These efforts were inadequate given the nature of the relationship that existed between LBMZ's investment banking division and Zacks Small Cap Research ("SCR"), an affiliated purveyor of sponsored research. As a result, LBMZ willfully violated Section 15(g) of the Exchange Act.

Respondent

2. LBMZ, an Illinois corporation with its principal place of business in Chicago, Illinois, is a broker-dealer registered with the Commission since 1978 pursuant to Section 15(b) of the Exchange Act. Prior to 2015, LBMZ was named Zacks and Company.

Other Relevant Entities

3. Zacks Investment Research ("ZIR") is an Illinois corporation with its principal place of business in Chicago, Illinois. ZIR is not registered with the Commission. ZIR and LBMZ share the same Chief Executive Officer ("the CEO").

4. SCR is a division of ZIR. Since its inception in 2009, SCR has provided small-cap issuers with "sponsored research," in which issuers pay SCR an annual fee in exchange for the issuance of a certain number of research reports per year. SCR is not registered with the Commission.

Background

5. In April 2013, LBMZ created an investment banking division. The new division had two employees and was formed to build on their existing investment banking client relationships as well as SCR's relationships with small-cap companies that were often in need of capital. LBMZ hoped the investment banking division would perform services for existing and prospective clients in addition to SCR clients in need of capital, and would refer to SCR new investment banking clients that wanted sponsored research.

6. The company had in place Written Supervisory Procedures ("Procedures") that called for the monitoring of its employees' securities trading and email communications and for the

¹ There are no claims that LBMZ benefitted from any misuse of material nonpublic information.

creation of information barriers around its investment banking division. LBMZ failed to adhere to the Procedures.²

7. LBMZ's compliance department consisted of a single employee, the Chief Compliance Officer ("CCO"), who had no previous compliance experience when he became LBMZ's chief compliance officer in 2007. After assuming that role, the CCO continued to spend half his time on business activities, working as a relationship manager for ZIR. It was not until April 2013 when LBMZ created its investment banking division that the CCO gave up his ZIR responsibilities and worked full-time as LBMZ's CCO. The CCO was overburdened by the responsibility of overseeing between 45 and 50 registered employees. The CCO, on several occasions between 2013 and 2015, told the CEO that he needed help fulfilling all of his compliance responsibilities and asked whether LBMZ could engage the additional services of an outside compliance consultant to assist him with his duties. The CEO responded that LBMZ needed to generate more revenue before it could spend more money on compliance.

A. LBMZ failed to obtain or review complete brokerage records for many employees.

8. LBMZ's Procedures called for it to monitor its employees' securities trading. In a Section titled "Employee Brokerage Accounts," the Procedures stated that LBMZ's employees "shall request duplicate . . . statements to be sent to the Firm" for their own and their immediate family members' brokerage accounts. The Procedures then called for the Designated Principal for this section (in this case the CCO), to "review the statements of employee brokerage accounts monthly. Such review will be evidenced by [his] signing and dating [a] 'Control Sheet' monthly." The Control Sheet was to identify the employee, the relevant account, and the period of time covered by the account statement.

9. LBMZ failed to adhere to the Procedures. LBMZ failed to obtain or review complete brokerage records for many employees. Indeed, LBMZ did not maintain a Control Sheet, as described in its procedures, which was meant to inform LBMZ as to whether it received all employee brokerage statements that were subject to review. Instead, after looking over the statements when they arrived, the CCO initialed them and put them in a single file with the other employees' statements.

² In December 2013, LBMZ revised its Procedures by implementing a minimally customized off-the-shelf set of written supervisory procedures. While the new Procedures were more detailed and adopted a different organizational structure than the earlier Procedures, the specific procedures at issue here—reviewing employees' securities trading and communications and creating information barriers—were functionally the same both before and after the December 2013 update. As the December 2013 Procedures covered the majority of the time period relevant to this investigation, this Order cites provisions from the December 2013 revised Procedures.

10. For example, one employee within the investment banking division disclosed that he held a brokerage account at an on-line brokerage firm and later disclosed that he opened a brokerage account at a second on-line brokerage firm. The CCO sent timely letters to each brokerage firm requesting that each send duplicate copies of the account statements. However, neither firm sent the duplicate copies of the account statements. Because LBMZ did not keep the Control Sheet that would have identified the employee, the relevant account, and the period of time covered by the statements, the CCO did not realize that LBMZ had not received any of the employee's brokerage account statements during the employee's first 21 months of employment with LBMZ.³

11. LBMZ did not receive, and the CCO did not review, numerous monthly account statements for other LBMZ employees as well. Because it failed to maintain a Control Sheet, LBMZ did not realize that there were gaps in the brokerage account review for these employees.

B. LBMZ failed to adequately monitor employee communications.

12. LBMZ also had Procedures for monitoring its employees' communications. Those Procedures instructed LBMZ "on a monthly basis," to (i) "review all interdepartmental communications with the Research Department, Investment Banking Department and any other departments of the Firm;" (ii) "look for any evidence of material non-public information being disseminated from the Investment Banking or Research Departments to other departments of the Firm"; (iii) compare the correspondence "with the current as well as the pertinent restricted securities list as of the time the correspondence being reviewed was initiated;" and (iv) maintain a review log containing the date of review, correspondence reviewed, and exceptions noted.

13. LBMZ did not follow these procedures. For example, LBMZ reviewed a trivial amount of interdepartmental emails, as well as a trivial amount of emails between its investment banking division and SCR. One of the reasons LBMZ started the investment banking division was specifically to build on SCR's relationships with small-cap companies needing to raise capital. To achieve that goal, investment banking needed to communicate regularly with SCR about the companies SCR was covering. This relationship provided the investment banking division with unique access to material nonpublic information about the timing of SCR's reports. LBMZ's email review was insufficient because it did not take into consideration the nature of this business by focusing on interdepartmental communications involving LBMZ's investment banking division. While the CCO reviewed a few emails, instant messages and social media posts from each division per day, this review was not sufficient to look for evidence of the dissemination of material nonpublic information or to compare the correspondence with the restricted securities list. Nor did LBMZ keep a complete review log containing the date of review, correspondence reviewed, and exceptions noted.

³ The CCO only learned that he did not have the account statements after FINRA requested to see them as part of an examination.

C. LBMZ did not create effective information barriers around the investment banking division.

14. In a section titled “Information Barriers,” the Procedures called for LBMZ to “maintain and enforce certain internal policies and controls to prevent the misuse of material, non-public information” by employees of any “department that has access to non-public information, such as a[n] . . . Investment Banking Department.” According to the Procedures, these policies and controls must contain the following “minimal elements in order to consider its Information Barriers adequate: a review of employee . . . trading; a memorization and related documentation of the Firm’s procedures, sufficient to recreate actions taken pursuant to Information Barrier procedures, [and] substantive supervision of inter-departmental communications by the Firm’s compliance department.” Because LBMZ failed to perform the “minimal elements” described in the Procedures, its information barriers were inadequate.

Legal Analysis

15. Section 15(g) of the Exchange Act requires broker-dealers to establish, maintain and enforce written policies and procedures, reasonably designed, taking into consideration the nature of the broker’s or dealer’s business, to prevent the misuse of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer, in violation of the Exchange Act or the rules and regulations thereunder. “The internal controls requirements imposed by Section 15(g) are essential to protect against the risk of misuse of material, nonpublic information, which can undermine investor confidence in the integrity of the markets. Section 15(g) is intended to guard against a broad range of potential market violations, including insider trading and trading in advance of material research changes.” *In the Matter of Deutsche Bank Securities Inc.*, Exchange Act Rel. No. 79083, 2016 WL 5930406, at *13 (October 12, 2016) (finding a violation of Section 15(g) of the Exchange Act for failing to establish, maintain, and enforce policies and procedures reasonably designed to prevent analysts from disclosing the substance of unpublished research reports) (citing 143 Cong. Rec. E3078-04, 1988 WL 180248 (Sept. 13, 1988)).⁴ The mere establishment of policies and procedures alone is not sufficient to prevent the misuse of material, nonpublic information. It also is necessary to implement measures to monitor compliance with and enforcement of those policies and procedures. *See Id. at *14.*

16. LBMZ failed to establish, maintain, and enforce the policies and procedures that it had designed to prevent the misuse of material, nonpublic information by LBMZ and its associated persons. Specifically, LBMZ failed to follow the provisions in its Procedures regarding monitoring its employees’ personal securities transactions and communications. In addition, despite the fact that the relationship between the investment banking division and SCR created a risk that material nonpublic information could be shared, LBMZ did not take the necessary steps to

⁴ *Hevesi v. Citigroup, Inc.*, 366 F.3d 70, 79 n.6 (2d Cir. 2004) (noting that an analyst’s research report may be material as it could affect the market price of securities); *SEC v. Seibald*, 1997 WL 605114, at *5 (S.D.N.Y. 1997) (stating that a research analyst’s recommendation may be material as it could be significant to a reasonable investor).

establish, maintain, and enforce adequate information barriers for its investment banking division. Accordingly, LBMZ willfully violated Section 15(g) of the Exchange Act.⁵

LBMZ's Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent.

IV.

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

Accordingly, pursuant to Sections 15(b)(4) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent cease and desist from committing or causing any violations and any future violations of Section 15(g) of the Exchange Act.
- B. Respondent is censured.
- C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$240,000 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. 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

⁵ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying LBMZ 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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.

Brent J. Fields
Secretary