

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10495 / May 15, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83235 / May 15, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33096 / May 15, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18482

In the Matter of

MARK A. KAROW and
LEGEND SECURITIES,
INC.,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, AND
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF
1934, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT,
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 against Mark A. Karow (“Karow” or “Respondent Karow”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act (“Investment Company Act”), and against Legend Securities, Inc. (“Legend” or “Respondent Legend”) pursuant to Sections 15(b) and 21C of the Exchange Act.

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., Respondents Karow and Legend consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, 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 Respondents' Offers, the Commission finds¹ that:

Summary

From mid-May 2013 to mid-June 2013, Mark Karow ("Karow"), then a registered representative at registered broker-dealer Legend Securities, Inc. ("Legend"), willfully violated Sections 5(a) and (c) of the Securities Act when he engaged in the illegal distribution of the securities of Biozoom, Inc. ("Biozoom" or "BIZM") by offering and selling shares of BIZM, which was quoted on the Over-the-Counter Bulletin Board ("OTCBB"), on behalf of four Argentine customers (the "Argentines"). Karow offered and sold approximately 6 million BIZM shares, which represented about 10% of BIZM's total outstanding shares and almost 33% of BIZM's total number of shares that did not bear a restrictive legend. The Argentines profited substantially on the illegal Biozoom sales, reaping proceeds of nearly \$15 million. Karow also profited from the illegal Biozoom trading by obtaining commissions of almost \$70,000.

Sections 5(a) and 5(c) of the Securities Act make it unlawful for any person, directly or indirectly, to offer or sell securities by any means or instruments of transportation or communication in interstate commerce unless a registration statement has been filed with the Commission with respect to Section 5(c) and is in effect with respect to Section 5(a), or an applicable exemption from registration applies. This applies to resales of deposited securities, such as the sale of the BIZM shares on behalf of the Argentines. No registration statement was in effect as to Karow's BIZM offers and sales, and no exemption from registration was applicable to them. Although brokers may rely on an exemption under Section 4(a)(4) of the Securities Act, this exemption would only be available to Karow for the offers and sales of BIZM if, after engaging in a reasonable inquiry into the facts surrounding the proposed sales, Karow was not aware of facts indicating that the customers would be engaging in an unlawful distribution of securities. Moreover, where, as here, Karow was presented with numerous and significant red flags of a potential unlawful distribution, Karow needed to conduct a searching inquiry to

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

determine that the proposed sales were not part of an unlawful distribution of securities. Despite these numerous and significant red flags, Karow failed to conduct a searching inquiry into the facts surrounding the proposed sales. In addition, Legend failed reasonably to supervise Karow because, during the relevant period, Karow did not have a supervisor to follow-up on whether Karow implemented Legend's written supervisory procedures concerning Section 5 compliance.

Karow also deleted from his personal cell phone text messages concerning certain Biozoom deposits and trading. Legend willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder by failing to maintain these text messages as the firm's business records, and Karow willfully aided and abetted and caused Legend's violations.

Respondents

1. Karow, 55, resides in Great Neck, New York. Karow was, from July 2011 until June 2014, a registered representative in Legend's Manhattan, New York office. Currently, he is not working in the securities industry.

2. Legend has been registered with the Commission as a broker-dealer with its principal place of business in New York, New York since November 1998. Legend is in the process of winding down its operations.

Facts

A. Overview of Unregistered Sales of BIZM Stock

3. In early 2013, a person Karow knew, a registered representative at a Florida broker-dealer registered with the Commission ("Registered Rep"), referred an Argentine national – "Argentine A" – to Karow to deposit a physical certificate for a company that Argentine A could not deposit at the Florida broker-dealer.

4. The Registered Rep subsequently referred three other Argentines to Karow – Argentines B, C, and D – who also wished to deposit physical certificates of the same company, which Karow learned was Entertainment Art, Inc. ("EERT"). In exchange for the referrals, the Registered Rep asked that Karow route him any customer orders to sell the deposited EERT securities.

5. From January through March 2013, the Argentines opened accounts at Legend with Karow as their registered representative. Neither Karow nor Legend had a prior relationship with any of the four Argentines. The Argentines subsequently deposited certificates representing approximately 6.8 million EERT shares.

6. Based on EERT's filings on Forms 10-K and 10-Q, Karow should have known that the approximately 6.8 million deposited shares represented about 10% of the company's total outstanding shares and almost 33% of the company's total shares that did not bear a restrictive legend.

7. The documentation that the Argentines presented when opening their accounts and depositing shares demonstrated that they were connected and were, therefore, acting in concert. For example:

- Karow knew that all of the Argentines purportedly had acquired their EERT shares in private transactions in late 2012 and early 2013 for virtually no money: more than 6.6 million of the 6.8 million shares were acquired for between \$0.003 and \$0.005 per share. The remaining shares supposedly were purchased for \$0.15 per share;
- Moreover, the same attorney provided Karow with an opinion letter for each of the Argentines stating that the EERT shares the Argentines were seeking to deposit were not required to bear a restrictive legend and could be sold without registration in accordance with Securities Act Rule 144(d)(2).

8. On April 1, 2013 – soon after the Argentines deposited their EERT shares in their accounts at Legend – the EERT shares became Biozoom shares via a reverse merger. EERT had purported to design, market, and sell zip bags; Biozoom purported to be a medical device developer.

9. Over a one-month period beginning in mid-May 2013, Karow offered and sold almost 6 million of the approximately 6.8 million deposited BIZM shares in an illegal unregistered distribution that yielded profits for his Argentine customers of almost \$15 million. Karow received nearly \$70,000 in commissions from this illegal unregistered distribution as well.

B. Argentine Account Openings and Deposits of Substantial Amounts of Penny Stock Present Red Flags

10. Even before the unregistered distribution of BIZM stock, Karow became aware of significant red flags that sales of the shares the Argentines were depositing could constitute an unregistered distribution. Despite these significant red flags, however, Karow – rather than conducting a searching inquiry – simply accepted the suspect information he received.

11. For example, Karow became aware of red flags concerning two particular customers – Argentine A and Argentine B – and their purported purchase of the shares.

a. Argentine A

12. Karow knew that, on November 28, 2012, Argentine A purportedly purchased EERT shares from an original shareholder of the company.² On November 30,

² The stock purchase agreement reflecting Argentine A's purchase was, in fact, a sham. Argentine A did not purchase EERT/BIZM shares from an original shareholder whose shares had been registered pursuant to a Form S-1, but had purchased restricted shares instead.

2012, the certificate for those shares was issued in Argentine A's name. Argentine A presented the certificate for those shares for deposit at Legend on February 4, 2013.

13. To demonstrate supposed payment for those shares, Argentine A provided Karow a copy of a receipt dated February 21, 2013 reflecting a wire transfer of funds from a bank account in Greece in Argentine A's name to an Arizona-based attorney.

14. Karow asked why the funds to purchase the shares from the original shareholder went to the Arizona-based attorney (i.e., not directly to the selling shareholder) and further requested information demonstrating that the funds to purchase the shares had indeed gone to the selling shareholder.

15. In response, Karow received a nonsensical answer that he accepted. In particular, on February 27, 2013, someone identifying himself as an attorney associated with Argentine A ("Argentine A's Purported Attorney") called Karow because he had heard that Karow had requested documentation regarding Argentine A's purchase of EERT shares.

16. Argentine A's Purported Attorney informed Karow that the funds used to purchase the shares from the original shareholder were applied to pay outstanding debts that Argentine A owed to Argentine A's Purported Attorney's law firm. This was illogical, however, as Argentine A was the *purchaser* of the shares, and not a recipient of the purchase funds who was able to direct the assignment of the purchase funds.

17. Karow continued to request evidence that Argentine A had in fact paid the selling shareholder for the shares. Karow subsequently received a letter from the Arizona-based attorney, stating that he had entered into an escrow agreement with Argentine A on February 6, 2013 in connection with Argentine A's purchase from an original shareholder, and the funds had been "received and disbursed" on March 1, 2013.

18. The letter's generic description that the funds were "received and disbursed" did not establish that the funds from Argentine A were in fact disbursed to the original shareholder.

19. The Arizona-based attorney's letter raised even more red flags for Karow. In particular, the Arizona-based attorney wrote in his letter that the purchase funds were "disbursed" on March 1, 2013.

20. This March 1, 2013 date, however, was wholly inconsistent with documentation Karow had previously received stating that the transaction and issuance of the shares had occurred more than *three months earlier* – in November 2012. Moreover, this March 1, 2013 date was inconsistent with a promissory note that Argentine A provided to Karow stating that Argentine A would pay for the shares by February 21, 2013.

21. Despite these inconsistencies, Karow made no further inquiry into the circumstances surrounding Argentine A's share purchases and subsequently facilitated Argentine A's sales of BIZM shares.

b. Argentine B

22. Karow became aware of significant, similar red flags concerning Argentine B's purported acquisition of the shares.

23. On May 6, 2013, a Canadian attorney named Faiyaz Dean ("Dean") called Karow on behalf of Argentine B. Dean noted that – although the certificate for EERT shares had been issued in Argentine B's name on March 22, 2013 – there was only a promissory note to purchase the stock and the payment for the shares would be made later that week.³ Thus, Argentine B had not paid for the stock that she had already presented to Legend for deposit on May 6, 2013.

24. In response, Karow told Dean that the fact that payment for the shares was not made before the stock certificate was presented to Legend for deposit was "*a red flag*" (emphasis added).

25. Karow failed to obtain information to address his acknowledged concerns about "red flags" concerning the payment for the shares. Although he subsequently received two additional pieces of information, they did nothing to demonstrate that the selling shareholder had indeed received the purchase funds.

26. First, Argentine B provided Karow with wire transfer receipts showing two wire transfers on May 8, 2013 from a bank account in Argentine B's name in Cyprus to a law firm in Redmond, Washington purportedly to pay for the shares. These receipts, however, did not show that the Redmond, Washington law firm had subsequently sent the purchase funds to the selling shareholder. Nonetheless, Karow did not conduct any further inquiry and subsequently facilitated Argentine B's sales of BIZM.

27. Second, Karow received a letter dated June 24, 2013 (*after* Argentine B's deposit had been cleared, she had sold a substantial portion of the shares, and BIZM trading had ceased at Legend) from the Redmond, Washington law firm stating that the firm acted as escrow attorney in connection with Argentine B's purchase from certain original shareholders and the funds had been "received" and "disbursed." The letter – like the letter Karow received concerning Argentine A – did not confirm that the original shareholders actually had received the funds.

C. Karow Was Aware of Additional Red Flags During the Unregistered Distribution of BIZM Stock

28. As noted earlier, in total, from May 16, 2013 until June 18, 2013, Karow offered and sold approximately 6 million BIZM shares through the OTCBB for proceeds

³ The stock purchase agreement reflecting Argentine B's purchase was, in fact, a sham. Argentine B did not purchase EERT/BIZM shares from an original shareholder whose shares had been registered pursuant to a Form S-1, but had purchased restricted shares instead.

of nearly \$15 million on behalf of the Argentines. No registration statement was filed or in effect with regards to Karow's offers and sales of the BIZM shares and no exemption from the registration requirements was available for those sales. Throughout the trading period, Karow became aware of even more red flags of an illegal unregistered distribution as discussed below.

29. On May 16, 2013 – the first day Karow entered a limit order and sold BIZM shares on behalf of the Argentines – a promotional campaign began touting BIZM's new business in radio, web, and print ads. The promotional campaign also involved mass mailings by third party media sources and was supported by several press releases issued by the company. Karow was aware of this promotional campaign.

30. The unsolicited limit orders and sales Karow handled on behalf of the Argentines occurred amid a dramatic spike in trading of BIZM, with prices and volumes that never existed in the prior trading history of BIZM, or its predecessor company, EERT. Indeed, prior to mid-May 2013, EERT/BIZM had traded publicly only one time in its history: a 300-share trade in November 2012 at \$1.02 per share.

31. Over the one-month period beginning in mid-May 2013, however, BIZM traded at volumes that increased from 10,000 shares per day to 11.6 million shares per day. During that same period, prices rose from \$1.10 per share to over \$4.25 per share. This market was completely inconsistent with the prior trading history of BIZM and its predecessor company.

32. As Karow handled the Argentines' orders to sell BIZM shares during this substantial trading, Karow understood that they were trading as a group.

33. In a series of instant messages to Karow on May 30 and 31, 2013, Argentine A complained about the commissions the "clients referred" were paying and referenced "me and the rest of the referred parties." Karow also referenced "the group" in those communications. In fact, once Karow agreed to reduce commissions, Karow sent identical confirmation emails to the Argentines.

34. In addition, on June 6, 2013, Karow informed Argentine B that she would not be able to sell any BIZM shares after a certain time that day due to clearing-firm restrictions. The Registered Rep and Karow then traded text messages. In one recovered text message fragment from that day, the Registered Rep asked Karow: "Ball park how many shares you have left?" Karow replied, "4 mill. I[?]ll chk". Karow's response of "4 mill" represented the shares remaining for *all* of the Argentines, again evidencing that Karow recognized the Argentines were liquidating their BIZM shares as a group.

35. Moreover, during a June 4, 2013 call between Karow and his Registered Rep, the Registered Rep said "you're finally making some money, huh?" Karow responded, "thank you so much. I was on the verge of God knows what." The Registered Rep then said, "I told you you would make some money *off this guy*." Karow then referenced the subject of commissions. Karow asked his Registered Rep whether an un-named "*he*" would try to get Karow to decrease commission rates for the Argentines

even further than Karow had agreed to pursuant to his communications with Argentine A just days earlier. The Registered Rep responded, “no, *he’s* not like that. *He* used to pay two and a half percent; *he’s* used to that...*he’s* not going to ask for anything else” (emphasis added).

36. Lastly, during a call with a friend in which Karow discussed his sales of the BIZM shares, Karow remarked, “I’m probably going to jail for this thing”.

37. As Karow completed liquidating all or substantially all of the deposited BIZM shares on behalf of each Argentine, that Argentine quickly requested that Karow wire out the proceeds, primarily to offshore accounts. In total, Karow received requests to wire out over \$3.85 million, and Legend wired out \$1.6 million.

38. On June 25, 2013, the Commission suspended trading in BIZM securities. On July 3, 2013, the Commission filed a civil action against – among others – Karow’s four Argentine national customers for Securities Act Sections 5(a) and (c) violations. The Commission obtained a freeze of the Argentines’ assets (including those at Legend) and subsequently obtained default judgments against all defendants in that matter, including Karow’s Argentine customers.

D. Karow Did Not Engage in a Reasonable Inquiry

39. Sections 5(a) and 5(c) of the Securities Act prohibit the offer and sale of securities through interstate commerce or the mails, unless a registration statement is filed with the Commission and is in effect, or the offer and sale are subject to an exemption. 15 U.S.C. §§ 77e(a) and (c).

40. Section 4(a)(4) of the Securities Act exempts from the registration requirements of Section 5 “brokers’ transactions executed upon customers’ orders on any exchange or in the over-the-counter market but not the solicitation of such orders.” 15 U.S.C. § 77d(4). Rule 144(g)(4) provides that for a transaction to qualify as a “brokers’ transaction” under Section 4(a)(4), the broker must engage in a “reasonable inquiry” prior to the transaction, and after such inquiry he must not be “aware of circumstances indicating that the person for whose account the securities are sold is an underwriter⁴ with respect to the securities or that the transaction is a part of a distribution of the securities of the issuer.” 15 U.S.C. § 77d(a)(4); 17 CFR § 230.144(g)(4).

41. The “reasonable inquiry” should consider, among other factors:

- the length of time the seller has held the securities;
- the nature of the transaction in which the securities were acquired;

⁴ Section 2(a)(11) of the Securities Act defines an underwriter as “any person who has purchased from an issuer, with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.” 15 U.S.C. § 77b(a)(11).

- whether the seller has made any payment to any other person in connection with the proposed sale; and
- the number of shares of the class outstanding or the relevant trading volume. Notes to 17 CFR § 230.144(g)(4).

42. However, certain facts and circumstances surrounding the transaction might require additional inquiry in order for the broker to rely on the Section 4(a)(4) exemption. For example:

A dealer who is offered a modest amount of a widely traded security by a responsible customer, whose lack of relationship to the issuer is well known to him, may ordinarily proceed with considerable confidence. On the other hand, when a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or *where the surrounding circumstances raise a question* as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then *searching inquiry* is called for.

Distribution by Broker-Dealers of Unregistered Securities, Securities Act Rel. No. 4445 (Feb. 2, 1962) (emphasis added). See also *Bloomfield et al.*, Exchange Act Release No. 71632, at 5 (Feb. 27, 2014) (“The accounts received large blocks of privately obtained shares of obscure penny stocks. Although the securities initially traded at low prices and in low volumes, the prices of, and trading volume in, these securities quickly escalated around the time of large deposits into the [] accounts. The escalation in prices and trading volume was generally associated with coordinated transactions among the various [] accounts and often accompanied by spam email campaigns touting the issuers’ prospects. Once prices had risen substantially, the accounts started selling blocks of stocks. Eventually the stocks’ prices collapsed. These indicia raised red flags of a possible unlawful distribution and market manipulation.”); *Midas Securities, LLC and Jay S. Lee*, Exchange Act Rel. No. 66200, at 14 (Jan. 20, 2012) (holding that because “[t]he amount of inquiry required necessarily varies with the circumstances of the proposed transaction,” in certain circumstances, a broker-dealer may need to “conduct a searching inquiry to assure itself that . . . proposed sales [are] exempt from the registration requirements and not part of an unlawful distribution.”).

43. When conducting a reasonable inquiry, a registered representative may not rely on others, such as counsel’s advice, to fulfill his reasonable inquiry obligation. *Wonsover v. SEC*, 205 F.3d 408, 415-16 (D.C. Cir. 2000) (rejecting registered representative’s reliance on clearing firm, the transfer agent, counsel, and reliance on the clearance of sales by the “Restricted Stock Department” of his firm); see also *World Trade Financial Corp. v. SEC*, 739 F.3d 1243, 1249 (9th Cir. 2014) (rejecting argument that duty of reasonable inquiry was satisfied by reliance on third parties in conformity with industry practice and stating “brokers rely on third parties at their own peril, and will not avoid liability through that reliance when the duty of reasonable inquiry rests with the brokers”).

44. It is not sufficient “for [the registered representative] merely to accept ‘self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contradictory facts.’” *Distribution by Broker-Dealers of Unregistered Securities*, Securities Act Rel. No. 4445 (Feb. 2, 1962) (quoting *SEC v. Culpepper*, 270 F.2d 241, 251 (2d Cir. 1959)). Nor may a broker “rely upon the absence of restrictive legends on the stock certificates when the circumstances surrounding the transaction indicate the need for a thorough investigation.” *Transactions in the Securities of Laser Arms Corporation by Certain Broker-Dealers*, Exch. Act Rel. No. 34-28878, 1991 WL 292009 (Feb. 14, 1991).

45. No registration statement was filed or in effect as to Karow’s offers and sales of the BIZM shares on behalf of the Argentines and no exemption from the registration requirements was available. Karow made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, sell, and deliver after sale the BIZM shares to the public.

46. Karow was presented with numerous and significant red flags in connection with the deposits of BIZM shares and subsequent sales of those shares, which should have raised questions as to whether the Argentines were engaged in an unlawful distribution by, for example, acting as underwriters, including:

- the Argentines opened new accounts and delivered physical certificates representing a large block of thinly traded and low-priced securities;
- the deposited share certificates had been recently issued and represented a large percentage of the float for the security;
- the Argentines had a pattern of depositing physical share certificates, immediately selling the shares and then wiring out the proceeds to offshore accounts;
- the Argentines were unable to demonstrate payment for the share certificates issued in their names, raising the question of ownership of those shares; and
- there was a sudden spike in volume, coupled with a rising price in a thinly traded and low-priced security.

47. Throughout the process of opening the Argentines’ accounts, depositing their certificates, and then offering and selling those shares into the market on behalf of the Argentines, Karow was confronted with red flag after red flag that he was facilitating an unregistered distribution of those shares. Yet despite these ample and glaring red flags, Karow did not perform a “reasonable inquiry” regarding the facts and circumstances surrounding those transactions, let alone the “searching inquiry” he was required to perform.

E. Legend Failed Reasonably to Supervise Karow

48. Legend's written supervisory procedures directed a registered representative such as Karow to engage in steps to detect and prevent potential unregistered distributions in violation of Section 5 of the Securities Act, and directed that the registered representative be supervised by his "Designated Supervisor." However, Legend did not reasonably implement this provision because no supervisor reasonably oversaw Karow with respect to the requirements of that policy. If Legend had reasonably implemented this provision, it is likely that the firm would have prevented or detected Karow's Sections 5(a) and (c) violations. A supervisor could have likely prevented and detected Karow's Sections 5(a) and (c) violations.

49. Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to sanction a broker-dealer for failing reasonably to supervise another person subject to its supervision who commits a violation of the federal securities laws. There must be: (1) an underlying violation of the federal securities laws; (2) the person who committed the violation is associated with the broker-dealer; (3) supervisory authority over that person; and (4) a failure reasonably to supervise the person committing the violation. *See, e.g., John A. Carley*, Exchange Act Rel. No. 57246 (Jan. 31, 2008).

50. Regarding the final prong, a broker-dealer can demonstrate that its supervision of the associated person was reasonable by showing that it established both reasonable procedures and a system to implement those procedures designed to prevent and detect the underlying violations by associated persons. 15 U.S.C. § 78o(b)(4)(E)(i).

51. As described above, Karow willfully violated Securities Act Sections 5(a) and (c) in the course of his employment as a registered representative at Legend and was subject to Legend's supervision, thus satisfying the first three elements of Section 15(b)(4)(E).

52. Legend's written supervisory procedures directed registered representatives such as Karow to "be aware of 'red flags' that may indicate a customer is selling unregistered securities." These red flags included several of the red flags listed above.

53. Also according to the written supervisory procedures, Karow's "Designated Supervisor" was to ensure that Karow performed the review for red flags.

54. However, Legend did not have a system to implement adequately these written supervisory procedures designed to prevent and detect violations of Section 5 because no one supervised Karow.

55. In particular, there was confusion at Legend concerning who supervised Karow. As a result, no one at Legend carried out the duties of supervising Karow.

56. No one, for example, regularly reviewed Karow's activities with respect to Section 5 compliance, such as Karow's reviews of red flags of a potential unregistered distribution.

57. Accordingly, Karow did not have a supervisor at Legend who monitored appropriately the steps that Karow took to evaluate the red flags of an unregistered distribution of BIZM stock. Therefore, Legend did not reasonably implement its written supervisory procedures regarding how to detect and address “red flags” of a possible unregistered distribution, and failed to timely prevent and detect Karow’s massive unregistered distribution of BIZM stock.

F. Legend Failed to Maintain Business Records in Willful Violation of Section 17(a) and Rule 17a-4(b)(4), and Karow Willfully Aided and Abetted and Caused Legend’s Violation

58. As referenced above, Karow used his personal cell phone for business communications. In particular, Karow sent text messages from his personal cell phone to communicate with his Registered Rep regarding the Argentines’ accounts and BIZM trading.

59. Karow’s email signature and contact block used for both Legend internal and external communications contained a line with his personal cell phone number, which was conspicuous because it used an area code (New York City outer boroughs) different from the area code that Legend’s phones used (Manhattan).

60. Karow’s personal cell phone contained business records related to customer trading and accounts, such as the text messages with Karow’s Registered Rep. Legend, however, did not retain those text messages in any format.

61. After the Commission had halted trading in the BIZM securities, but before he provided his personal cell phone for imaging pursuant to a subpoena issued by the Commission, Karow deleted *all* text messages he had with his Registered Rep from his phone. The deletion included all text messages Karow had with his Registered Rep regarding the Argentines’ accounts and BIZM trading.

62. The Division of Enforcement (“Division”) was able to recover certain of the messages and/or message fragments from Karow’s phone, but others were irretrievable. Legend did not maintain records of text messages sent to and from Karow’s personal cell phone.

63. Exchange Act Rule 17a-4(b)(4) requires broker-dealers to preserve, for at least three years, “[o]riginals of all communications received and copies of all communications sent...relating to its business as such.” This rule applies to any form of communication, including text messages. *See, e.g., In the Matter of Evergreen Investment Co., LLC*, Exchange Act Rel. No. 60059, 2009 SEC LEXIS 1853, at *29-30, 36 (June 8, 2009) (violation of Rule 17a-4(b)(4) for “fail[ure] to preserve for three years certain communications related to [] business as such, including text messages and instant messages.”).

64. A registered representative aids and abets a broker-dealer’s books and records violation where “(1) a violation of the books and records provisions occurred; (2) the [registered representative] substantially assisted the violation; and (3) the [registered

representative] provided that assistance with the requisite scienter,” which “may be satisfied by evidence that the [registered representative] knew of, or recklessly disregarded, the wrongdoing and his or her role in furthering it.” *In the Matter of the Application of Eric J. Brown*, Exchange Act Rel. No. 66469, 2012 WL 625874, at *11 (Feb. 27, 2012) (citations omitted).

65. Similarly, a registered representative is liable for causing a violation of the securities laws if (1) a primary violation has occurred; (2) an act or omission by the registered representative contributed to that primary violation; and (3) the registered representative knew, or should have known, that his or her conduct would contribute to the violation. *In the Matter of Robert M. Fuller*, Exchange Act Rel. No. 48406, 2003 WL 22016309, at *4 (Aug. 25, 2003) (citation omitted).

66. Legend failed to maintain required books and records – namely Karow’s business-related text messages. Karow aided and abetted and caused Legend’s violation of the books and records requirement by destroying those text messages.

67. Although Legend’s violation here (and its supervision failures involving Karow) would support a penalty, the Commission – in determining to accept Legend’s offer – considered the particular circumstances of this case, including Legend’s financial condition.

Violations

68. As a result of the conduct described above, Karow willfully violated Sections 5(a) and (c) of the Securities Act.

69. As a result of the conduct described above, Legend failed reasonably to supervise Karow within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting Karow’s willful violations of Sections 5(a) and (c) of the Securities Act.

70. As a result of the conduct described above, Legend willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and Karow willfully aided and abetted and caused Legend’s violation of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Karow’s and Respondent Legend’s Offers.

A. Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- a. Respondent Karow cease and desist from committing or causing any violations and any future violations of Sections 5(a) or 5(c) of the Securities Act and/or Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.
- b. Respondent Karow be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.
- c. Respondent Karow be barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.
- d. Any reapplication for association by Respondent Karow will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent Karow, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.
- e. Respondent Karow shall pay disgorgement of \$67,089.03, prejudgment interest of \$7,313.01, and a civil monetary penalty of \$20,000 for a total of \$94,402.04 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. Payment shall be made in the following installments: (i) \$7,866.84 within thirty (30) days of the entry of this Order; and (ii) eleven additional payments of \$7,866.84 each to be paid every thirty (30) days, with the first such payment due within sixty (60) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any

additional interest accrued pursuant to 31 U.S.C. § 3717 and the Commission's Rule of Practice 600, shall be due and payable immediately, without further application.

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

a. Respondent Legend shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

b. Respondent Legend is censured.

C. Payments must be made in one of the following ways:

(1) Respondent Karow may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent Karow 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 Karow 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 the respective 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, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. 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 Karow agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Karow'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 Karow agrees that he 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 Karow 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.

V.

It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent Karow, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Karow under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Karow of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary