

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10719 / October 11, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 87289 / October 11, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19584

In the Matter of

UQM Technologies, Inc.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND 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 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against UQM Technologies, Inc. (“UQM” 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 8A of the Securities Act and Section 21C of the Exchange Act, 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. This matter involves a series of false and misleading disclosures made by UQM Technologies, Inc. about a supply agreement for the purported sale of at least 3,000 electric motors to a Chinese startup company. In 2015, UQM falsely disclosed in public filings and on an investor call that the agreement could generate more than \$400 million in revenue. UQM further indicated that the Chinese startup company was holding up its end of the agreement by submitting a cash deposit and executing documents that rendered the order non-cancellable. These claims were false.

2. UQM also misrepresented the identity and operating history of the Chinese startup company, which in turn exaggerated the likely value of the supply agreement. For example, UQM falsely touted that the Chinese startup company was a subsidiary of a large and well-known Chinese bus manufacturer, which would provide UQM with direct access to the Chinese bus market.

3. UQM made these disclosures in advance of a \$6.4 million equity offering in October 2015. Immediately following the disclosures, the company's stock price increased significantly, and UQM sold newly issued shares into the inflated market.

4. UQM made the disclosures without conducting any due diligence about the Chinese startup company's ability to fulfill its obligations under the agreement and despite significant red flags concerning the Chinese startup company's commercial viability and ties to the Chinese bus manufacturer. The Chinese startup company was, in fact, minimally capitalized, had no customers, no operating history, and no commercial ties to the Chinese bus manufacturer, and ultimately purchased only eleven motors from UQM.

5. In early 2017, UQM impaired most of the value of the inventory it had stated that it would sell to the Chinese startup company, wiping out more than half of the book value of UQM's total assets.

6. Based on the foregoing and the conduct described below, UQM violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

Respondent

7. UQM is a Colorado corporation based in Longmont, Colorado. UQM develops, manufactures, and sells high-efficiency electric motors, generators, controllers, and fuel cell compressors for use in buses, commercial trucks, and other automobiles. Its securities were

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

previously registered pursuant to Section 12(b) of the Exchange Act, and its common stock traded on the NYSE American Stock Exchange during the time period at issue. On August 1, 2019, UQM filed a Form 25 terminating its registration of common stock under Exchange Act Section 12(b), and on August 13, 2019, UQM filed a Form 15 terminating its registration of common stock under Exchange Act Section 12(g).

Facts

UQM's Deteriorating Financial Condition

8. In the fall of 2015, UQM was faced with a significant cash flow problem. Two years earlier, UQM's largest business partner—an electric car startup—had declared bankruptcy, leaving UQM with a large manufacturing facility, a payroll of engineering and manufacturing staff, and an inventory of 3,000 electric motors, but few remaining customers. As a result, UQM had consistently experienced net financial losses and a significant decrease in sales of its electric motors—UQM's annual revenue had dropped from approximately \$10 million in 2012 to \$4 million in 2015.

9. In response, UQM turned its focus to establishing business relationships in China. But UQM's efforts bore no fruit, and by late 2015, UQM's management was increasingly concerned that it would deplete the company's operational cash reserves. In late September 2015, UQM's senior executives informed the board of directors that the company would likely run out of cash within nine months if the company did not obtain significant new financing.

10. To remedy its impending cash shortfall, UQM retained investment banking advisors to explore strategic alternatives, including the sale of the company. In September 2015, UQM retained an investment banking firm to assist in identifying a Chinese company to take a significant equity stake in UQM. Then in early October 2015, UQM retained another investment banking firm to explore the possibility of raising money through the sale of convertible notes.

UQM Met the Chinese Startup Company in Suzhou

11. In August 2015, UQM was introduced to the Chinese startup company. As part of UQM's ongoing efforts to establish a toehold in China, UQM arranged to meet with the Chinese startup company during a planned trip to Suzhou in September 2015. In advance of the meeting, a representative of the Chinese startup company told UQM that the CEO of a Chinese bus manufacturer would also attend the meeting.

12. On September 13, 2015, UQM's management met with the CEO of the Chinese startup company and the CEO of the Chinese bus manufacturer in a hotel conference room in Suzhou. During the meeting, the CEO of the Chinese bus manufacturer spoke only in a Chinese language, and his statements were translated by his assistant as well as the Chinese startup company's CEO. The meeting lasted a few hours, during which UQM and the Chinese startup company reached a preliminary agreement in for the sale of 3,000 UQM motors for a price of \$16.8 million.

13. Following the Suzhou meeting, UQM's management understood that that the Chinese startup company had no existing customers in the electric drive business, but that it hoped to do

business with the Chinese bus manufacturer. UQM's management did not have an understanding of the nature of the commercial relationship, if any, between the Chinese startup company and the Chinese bus manufacturer, but surmised that a significant commercial relationship existed based on the body language of the representatives at the meeting, which appeared to indicate that the Chinese startup company's CEO was deferring to the Chinese bus manufacturer's CEO.

14. Before publicly announcing its agreement, UQM did almost no confirmatory due diligence with respect to the corporate identity and commercial viability of the Chinese startup company. Among other things, UQM did not seek or obtain financial statements or other documents to verify that the Chinese startup company had the financial capacity to purchase the motors under the terms that had been agreed upon. Further, although UQM's management had visited factories of other potential Chinese counterparties, it made no effort to confirm whether the Chinese startup company had operations or a business presence in China.

UQM Proceeded Despite Red Flags Warning That the Chinese Startup Company Was Not a Viable Counterparty

15. Following the Suzhou meeting, UQM continued working with its investment banking advisors in two separate work streams. It engaged with one firm on potential strategic alternatives, including a potential joint venture with the Chinese bus manufacturer, and engaged with the other firm on alternatives for raising additional operating capital through an offering of securities. As part of those efforts, both investment banks engaged in limited due diligence.

16. One of UQM's investment banking advisors confirmed as part of its due diligence efforts that the Chinese bus manufacturer (not the Chinese startup company) had significant commercial operations, but its research did not reveal any commercial relationship between the Chinese startup company and the Chinese bus manufacturer.

17. The other investment banking advisor made limited inquiries of the Chinese startup company as part of its due diligence efforts. In response to these inquiries, the Chinese startup company claimed to be "part of" the Chinese bus manufacturer, but did not claim to be a subsidiary or otherwise provide meaningful description of, or documents memorializing, the nature of its commercial relationship with the Chinese bus manufacturer. Moreover, the Chinese startup company disclosed through its answers that it did not have any manufacturing facilities and that it had not secured any agreements to sell its products.

18. Three weeks after the Suzhou meeting, UQM's management sent the Chinese startup company a draft supply agreement, which contained provisions for the sale of 3,000 UQM motors to the Chinese startup company in 2017. Under the terms of the agreement, the sale price of those motors totaled over \$18 million, and the order for those motors would be non-cancellable. The agreement also provided that a deposit of 50% of the price of the first month's quantity of the 3,000-unit order would become due immediately. The supply agreement did not refer to the Chinese bus manufacturer, and no one from UQM sent the draft agreement to any representative of the Chinese bus manufacturer.

19. On October 20, 2015, the Chinese startup company executed the supply agreement and returned it to UQM. But the Chinese startup company neither submitted a required release

authorization setting shipment dates for the 3,000-unit order nor submitted a required deposit for the order. UQM did not communicate with the Chinese bus manufacturer about the agreement, and did not communicate with the Chinese startup company about its failure to post a deposit or submit a release authorization.

20. After executing the supply agreement, the Chinese startup company sent UQM a purchase order for 3,000 motors, to ship in 2017. However, the quantities and types of electric motors referenced in the purchase order did not correspond to those referenced in the supply agreement, and the purchase order did not specify any shipment dates. The supply agreement provided that the Chinese startup company would purchase 3,000 UQM motors, including 2,000 light-duty motors and 1,000 heavy-duty motors, for a total of price of \$18.6 million. The purchase order, however, stated that the Chinese startup company would purchase only 3,000 light-duty motors, lowering the total cost to \$12.6 million. UQM did not communicate with the Chinese startup company about these discrepancies.

UQM Made Material Misstatements About the Supply Agreement, Boosting UQM's Stock Price Ahead of the Offering

21. On October 26, 2015, UQM filed a Form 8-K that included a press release and the supply agreement as exhibits. In the filing, UQM claimed that it had formed a ten-year supply agreement with the Chinese startup company, which would commence with an order of 3,000 UQM motors to ship in 2017. The press release stated that the Chinese startup company was a subsidiary of the Chinese bus manufacturer and included a false, detailed narrative about a long-running relationship between the two companies. In the press release, UQM claimed that the agreement had the potential to generate revenue in excess of \$400 million.

22. In the press release and Form 8-K, UQM made false and misleading statements that the Chinese startup company:

- was “responsible for the entire electric drive supply to [the Chinese bus manufacturer] and its subsidiaries” when the Chinese startup company actually had no prior sales to any customers;
- had a “preferred supplier relationship” with a large public bus operator, when the Chinese startup company did not have a commercial relationship with any bus operators; and
- had over “one thousand hybrid and pure electric trucks and buses already on the road,” when the Chinese startup company had no operating history and had not yet contributed to the manufacturing of even a single vehicle.

23. The supply agreement also created the false impression that the Chinese startup company was well financed and had already made a tangible financial commitment by submitting a deposit for the 3,000-unit order. The Chinese startup company had actually made no such commitment. In reality, the Chinese startup company lacked the funds at that time to purchase even a single motor from UQM, and never submitted the required deposit.

24. UQM's false and misleading statements and omissions worked in concert, in service of the headline claim that the supply agreement "could generate over \$400 million over a ten year period based on projected orders." In fact, UQM had no reasonable basis in fact for the claim about potential revenues, and it did not qualify representations made about the purported relationship between the Chinese startup company and the Chinese bus manufacturer, or the Chinese startup company's operational history.

25. No person or group of persons at UQM was tasked with verifying the accuracy of the company's public statements about the supply agreement, including the Chinese startup company's financial ability to purchase the motors, its connections (if any) to the Chinese bus manufacturer, and its access to the Chinese electric bus market.

26. The market reacted immediately to UQM's announcement, and the company's stock price significantly increased. News outlets that covered the announcement focused on the projection of \$400 million in revenue as well as the Chinese startup company's purported status as a subsidiary of the Chinese bus manufacturer. Later that evening, the UQM board adopted a resolution to raise \$5 to \$10 million by selling newly issued common stock and warrants.

27. On the morning of October 27, 2015, a day after issuing the press release and shortly before the equity offering, UQM held an investor call to discuss the supply agreement. During the call, UQM's management reiterated the company's prior misrepresentations regarding the Chinese startup company's relationship with the Chinese bus manufacturer, describing the Chinese bus manufacturer as the Chinese startup company's "parent company," and stating that the agreement "could generate revenues in excess of \$400 million [from the Chinese bus manufacturer's] portfolio alone."

28. On the morning of October 27, 2015, one of UQM's investment banking advisors was actively communicating with potential investors, and by the end of the morning, UQM had executed agreements to sell eight million shares of common stock and four million warrants to six institutional investors for a total price of \$6.4 million. At least one of the institutional investors based its decision to participate in the offering on the representations in the press release.

29. In the face of emerging concerns from investors that arose shortly after the offering, UQM sought to provide assurance about the viability of the supply agreement. On November 12, 2015, UQM directed an investor relations consultant to create a publication about the Chinese bus manufacturer for UQM's investors, and sent several paragraphs describing the Chinese bus manufacturer to be included in the publication. The final version of the publication, which was posted online, included false statements that had not been verified by UQM.

Through Late 2016, UQM Continued to Make Material Misstatements Regarding its Agreement with the Chinese Startup Company

30. In a Form 10-Q filed on November 10, 2015, UQM again falsely stated that the Chinese startup company was a subsidiary of the Chinese bus manufacturer, and claimed, without a reasonable basis in fact, that UQM expected to ship 3,000 motors to the Chinese startup company in 2017.

31. In a Form 10-Q filed on February 4, 2016, UQM repeated its previous misleading statement that “revenues could exceed \$400 million” from the supply agreement with the Chinese startup company.

32. In a Form 10-K filed on June 7, 2016, UQM reiterated the false statement that revenues from the agreement “could exceed \$400 million.” By this time, UQM had been directly informed that the Chinese startup company was not a subsidiary of the Chinese bus manufacturer. Despite this, UQM made no attempt to correct its previous false public statements.

33. As of November 2016, more than a year after the execution of the supply agreement, the Chinese startup company had repeatedly failed to meet UQM’s deadlines to make a deposit for the 3,000-unit order. It had also refused to provide financial statements to UQM verifying its financial status. By that time, substantial doubt that the Chinese startup company would follow through with the order had permeated through UQM’s staff.

34. On November 15, 2016, a UQM employee emailed UQM’s management, stating that UQM’s staff had declined to procure necessary components for the Chinese startup company’s order due to widespread skepticism that the Chinese startup company would ever submit the deposit.

35. On December 13, 2016, UQM issued a press release announcing that it had scheduled a shipment of 300 motors to the Chinese startup company. This press release failed to disclose that the shipment was unlikely to occur, as the Chinese startup company had failed to submit the required deposit. Moreover, the press release included a statement referring to the Chinese startup company as a “key customer,” despite the widely held belief among UQM’s employees that the Chinese startup company would likely never issue the payment for the order.

36. In a Form 10-KT filed on March 30, 2017, UQM stated that it wrote off a significant portion of its light-duty motor inventory, due to “long delays in [the Chinese startup company’s] product launch and the lack of a significant cash payment towards this inventory.” Though UQM had repeatedly represented to the market that it could generate \$400 million in revenue over ten years, beginning with the sale of 3,000 motors in 2017, it sold only eleven motors to the Chinese startup company.

Violations

37. As a result of the conduct described above: UQM violated Sections 17(a)(2) of the Securities Act, which makes it unlawful, in the offer or sale of securities, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and 17(a)(3) of the Securities Act, which, in the offer or sale of securities, proscribes any transaction, practice or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities.

38. As a result of the conduct described above, UQM violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require issuers to

file with the Commission accurate current reports, which include such further information as may be necessary to make the required statements not misleading.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. UQM cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. UQM shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 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. 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
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying UQM 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 Anita Bandy, 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