

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

)	
IN THE MATTER OF:)	
)	
SNOWS ACQUISITION, LLC,)	
)	
RESPONDENT.)	Docket No. E-2021-0082
)	

CONSENT ORDER

I. PRELIMINARY STATEMENT

This Consent Order (the “Order”) is entered into by the Enforcement Section of the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts (the “Enforcement Section” and the “Division,” respectively) and Snows Acquisition, LLC (“Snows”) with respect to an investigation into whether Snows engaged in acts or practices that violated the Massachusetts Uniform Securities Act, Mass. Gen. Laws c. 110A (the “Act”), and the regulations promulgated thereunder at 950 Code Mass. Regs. 10.01-14.413 (the “Regulations”).

On June 2, 2023, Snows submitted an Offer of Settlement (the “Offer”) to the Division. Snows admits the facts set forth in Sections III to VI below, admits the violations of law set forth in Section VII below, and consents to the entry of this Order by the Division, consistent with the language and terms of the Offer, hereby settling the above-captioned investigation (E-2021-0082) with prejudice. This Order is necessary and appropriate in the public interest for the protection of investors and is consistent with the purposes fairly intended by the policies and provisions of the Act.

II. JURISDICTION

1. The Division has jurisdiction over matters relating to securities pursuant to the Act, codified at Massachusetts General Laws Chapter 110A.
2. The Offer was made and this Order is entered in accordance with the Act and Section 10.10 of the Regulations.
3. The acts and practices that were the subject of the Enforcement Section's above-captioned investigation occurred in Massachusetts within the meaning of Section 414 of the Act.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the acts and practices described herein occurred during the period of April 19, 2016, to March 29, 2019 (the "Relevant Time Period").

IV. RESPONDENT

5. Snows Acquisition, LLC, d/b/a "Barts and Snows Ice Cream Co." ("Snows"), is a Massachusetts limited liability company organized on April 19, 2016. It has a principal place of business located at 80 School Street, Greenfield, Massachusetts 01301.

V. RELATED PERSON

6. Thomas Kelley Schmidt ("Schmidt") is an individual resident of Massachusetts. He is the founder, majority member, and sole manager of Snows.

VI. STATEMENT OF FACTS

A. Snows's History and Business Operations

7. On June 17, 2016, Schmidt created Snows to acquire the assets of a Massachusetts-based ice cream producer then known as Snows Nice Cream Co, Inc.

8. Snows has produced, distributed, and marketed ice cream in New England under the brand names of “Barts Ice Cream” and “Snows Premium Ice Cream” since June 2016.

9. Since June 2016, over 95% of revenue comes from selling ice cream. For a brief period, Snows also sold food goods such as bagels, sauces, and frozen pizza.

10. Barts Ice Cream is sold in pints throughout New England at more than four hundred (400) distribution points, including in grocery stores such as Stop & Shop, Big Y World Class Market, and Whole Foods Market, convenience stores and specialty food outlets.

11. Pints of Barts Ice Cream are priced to compete with premium brands.

12. Snows also sells Barts Ice Cream at its brick-and-mortar “Scoop Shop” in Greenfield, Massachusetts. These sales represented less than 1% of 2022 revenue.

B. Snows Offered and Sold Unregistered Securities in Massachusetts.

i. Schmidt Solicited Investors on Behalf of Snows.

13. As the founder and sole manager of a small business, Schmidt had between 8 and 10 employees and oversaw all aspects of Snows, including sales & marketing, production, distribution and human resources. During the period in questions, Snows raised money on two separate occasions from ‘friends and family.’

14. As the manager of Snows, Schmidt has always had the legal authority to sign contracts and effectuate the sale of securities on the business’s behalf.

15. Throughout the Relevant Time Period, Schmidt wrote himself checks from the Snows business bank account.

16. Between April 4, 2018 and December 5, 2018, Schmidt received thirteen (13) checks from Snows totaling \$19,231.

17. Between January 7, 2019 and March 29, 2019, Schmidt received three (3) checks from Snows totaling \$5,586.76.

18. The checks that Schmidt received from Snows constituted compensation for the duties that he performed as the business's manager.

ii. Snows's Operating Agreement Allowed the Business to Issue Securities in the Form of Membership Interests.

19. Section IV.1 of the Snows Operating Agreement (the "OA") provides that the business's capital structure consists of a single class of membership interests called "Percentage Interests."

20. Section IV.1 of the OA further states that Snows's manager shall have sole discretion to determine when the business issues Percentage Interests.

21. Section IV.2 of the OA provides that acquiring a Percentage Interest and becoming a member of the business requires an initial capital contribution.

22. Section IV.2 of the OA provides that Snows must create a capital account for each member, to which the member's share of the business's profits shall then be allocated.

23. Section VI.2 of the OA provides that Percentage Interests are transferrable, subject to various conditions and restrictions.

iii. Investors

a. Schmidt

24. In or about June 2016, Schmidt acquired the sole membership interest in Snows. Snows paid \$833,000 in exchange for all of the assets of Snows Nice Cream. The issuance of Percentage Interests to new members of Snows later diluted Schmidt's degree of ownership of the business.

b. Investor One and Investor Two

25. Investor One and Investor Two are a married couple who resided in Massachusetts during the Relevant Time Period. Investor One and Two are accredited investors.

26. On or about March 25, 2018, Investor One and Investor Two signed a subscription agreement under which they would jointly invest \$25,000 in Snows in exchange for a 2% Percentage Interest.

27. Schmidt offered the subscription agreement to Investor One and Investor Two on behalf of Snows.

28. Shortly after signing the subscription agreement, Investor One and Investor Two paid \$25,000 to Snows.

c. Investor Three and Investor Four

29. Investor Three and Investor Four are a married couple who resided in Massachusetts during the Relevant Time Period. Investor Three and Four are accredited investors.

30. On or about March 30, 2018, Investor Three and Investor Four signed a subscription agreement under which they would jointly invest \$25,000 in Snows in exchange for a 2% Percentage Interest.

31. Schmidt offered the subscription agreement to Investor Three and Investor Four on behalf of Snows.

32. Shortly after signing the subscription agreement, Investor Three and Investor Four paid \$25,000 to Snows.

d. Investor Five and Investor Six

33. Investor Five and Investor Six are a married couple who resided in Massachusetts during the Relevant Time Period. Investor Five and Six and are accredited investors.

34. On or before April 1, 2018, Investor Five and Investor Six signed a subscription agreement under which they would jointly invest \$25,000 in Snows in exchange for a 2% Percentage Interest.

35. Schmidt offered the subscription agreement to Investor Five and Investor Six on behalf of Snows.

36. Shortly after signing the subscription agreement, Investor Five and Investor Six paid \$25,000 to Snows.

e. Investor Seven

37. Investor Seven is an individual who resided in Massachusetts during the Relevant Time Period.

38. On or before March 1, 2018, Investor Seven signed a subscription agreement under which he would invest \$12,500 in Snows in exchange for a 1% Percentage Interest.

39. Schmidt offered the \$12,500 subscription agreement to Investor Seven on behalf of Snows.

40. Shortly after signing the subscription agreement, Investor Seven paid \$12,500 to Snows.

41. On or before April 1, 2018, Investor Seven signed a subscription agreement under which he would invest \$43,750 in Snows in exchange for an additional 3.5% Percentage Interest.

42. Schmidt offered the \$43,750 subscription agreement to Investor Seven on behalf of Snows.

43. Shortly after signing the subscription agreement, Investor Seven paid \$43,750 to Snows.

44. On or about February 6, 2019, Investor Seven signed a subscription agreement under which he would invest \$18,750 in Snows in exchange for an additional 1.5% or 2%¹ Percentage Interest.

45. Schmidt offered the \$18,750 subscription agreement to Investor Seven on behalf of Snows.

46. Shortly after signing the subscription agreement, Investor Seven paid \$18,750 to Snows.

g. Investor Nine and Investor Ten

47. Investor Nine and Investor Ten are a married couple who resided in Massachusetts during the Relevant Time Period. Investor Nine and Ten and are accredited investors.

48. On or about February 6, 2019, Investor Nine and Investor Ten signed a subscription agreement under which they would jointly invest \$50,000 in Snows in exchange for a 4% Percentage Interest.

49. Schmidt offered the subscription agreement to Investor Nine and Investor Ten on behalf of Snows.

50. Shortly after signing the subscription agreement, Investor Nine and Investor Ten paid \$50,000 to Snows.

¹ The first paragraph of the subscription agreement stated that the undersigned purchaser was purchasing “a two percent (1.5%) [sic] Percentage Interest” in Snows.

h. Investor Eleven and Investor Twelve

51. Investor Eleven and Investor Twelve are a married couple who resided in Massachusetts during the Relevant Time Period.

52. On or about February 6, 2019, Investor Eleven and Investor Twelve signed a subscription agreement under which they would jointly invest \$25,000 in Snows in exchange for a 2% Percentage Interest.

53. Schmidt offered the subscription agreement to Investor Eleven and Investor Twelve on behalf of Snows.

54. Shortly after signing the subscription agreement, Investor Eleven and Investor Twelve paid \$25,000 to Snows.

55. On or about March 1, 2019, Schmidt, acting on behalf of Snows, offered a \$25,000 promissory note to Investor Eleven for value received.

56. Under the terms of the promissory note, Investor Eleven would be entitled to repayment of the principal, plus interest at the rate of 12% per year, no later than July 1, 2020.

57. On March 1, 2019, Investor Eleven accepted Snows's offer and signed the promissory note. Snows subsequently repaid the note to Investor Eleven.

iv. Snows Failed to Comply with the Securities Registration Requirements of the Act and the Regulations.

58. Schmidt was physically located within the territory of Massachusetts when he offered and sold the securities detailed in Section V(ii)-(iii) above on behalf of Snows.

59. Snows has never registered the offer or sale of any security with the Division.

60. Snows has never filed a notice of a securities offering exempt from registration with the Division.

61. Snows has never filed a Form U-2 Uniform Consent to Service of Process with the Division.

VII. VIOLATIONS OF LAW

Count I - Mass. Gen Laws c. 110A, § 301

62. Section 301 of the Act provides:

It is unlawful for any person to offer or sell any security in the [C]ommonwealth unless:—

- (1) the security is registered under this [Act];
- (2) the security or transaction is exempted under [S]ection 402 [of this Act]; or
- (3) the security is a federal covered security.

Mass. Gen. Laws c. 110A, § 301.

63. Section 14.402 of the Regulation provides:

The exemption allowed by [Section] 402(b)(9) [of the Act] for offers in which payment of a commission or other remuneration is made, is not available unless a notice (as set forth in [Section] 14.402(B)(9)(g) [of the Regulations]) is filed with the Division no later than ten calendar days prior to the receipt of any consideration from, or the delivery of a subscription agreement by any purchaser which results from such offers.

950 Code Mass. Regs. 14.402(B)(9)(k).

64. Snows' acts and practices, as described above, constitute violations of Section 301 of the Act.

Count II - Mass. Gen. Laws c. 110A, § 414(g)

65. Section 414 of the Act provides:

Every applicant for registration under this [Act] and every issuer which proposes to offer a security in the [C]ommonwealth through any person acting on an agency basis in the common-law sense shall file with the [S]ecretary, in such form as he by rule prescribes, an irrevocable consent appointing the [S]ecretary or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or his successor, executor, or administrator which arises under this [Act] or any rule or order hereunder after the consent has

been filed, with the same force and validity as if served personally on the person filing the consent.

Mass. Gen. Laws c. 110A, § 414(g).

66. Section 14.412 of the Regulations provides:

The forms prescribed for use under [the Act] and [the Regulations], which are identified and described in [Section] 14.412 [of the Regulations], are hereby incorporated by reference and made a part of [Sections 14.401-14.413 of the Regulations]:

....

(b) Uniform Consent to Service of Process (Form U-2) (used with registration of securities)

950 Code Mass. Regs. 14.412(A)(1)(b).

67. Snows's acts and practices, as described above, constitute a violation of Section 414(g) of the Act.

VIII. ORDER

IT IS HEREBY ORDERED:

A. Snows shall permanently cease and desist from further violations of the Act and the Regulations.

B. Snows is hereby censured by the Division.

C. Snows shall register or notice file with the Division all of its future offers to sell securities that are made in Massachusetts within the meaning of Section 414(c)-(e) of the Act, regardless of any otherwise applicable exceptions or exemptions, but subject to the following terms and conditions:

i. If the security is not a federal covered security within the meaning of Section 401(p) of the Act, the security shall be registered pursuant to Section 302 or 303 of the Act.

ii. If the security is a federal covered security within the meaning of Section 401(p) of the Act and is not of a type already required to be notice filed by some provision of Section 14.402 of the Regulations, the security shall be notice filed in the same manner prescribed under Section 14.402(B)(13)(I) of the Regulations, except that any federal registration statement or exemption notice filed with the Securities and Exchange Commission (the “SEC”) may be substituted for Form D if the security is not being offered under SEC Regulation D, 17 C.F.R. §§ 230.500 to -.508.

iii. Section VIII(C)(ii) above shall not apply to any security for which Section 18 of the Securities Act of 1933 provides that States may not impose notice filing requirements.

D. Snows acknowledges the oversight of registering.

E. Snows shall provide partial rescission totaling \$60,000 (USD) to those Massachusetts investors identified by the Enforcement Section (the “Massachusetts Investors”), subject to the following terms:

a. Snows shall make written offers of rescission to the Massachusetts Investors;

b. Prior to making any offer or returning any funds pursuant to this Section, and within ten (10) days² of the entry of this Order, Snows shall provide to the Enforcement Section an accounting in a spreadsheet (the “Accounting”) of all investments made by Massachusetts investors to be subject to offers of partial

² For purposes of this Offer, the last day of the time period so computed is to be included unless it is a Saturday, Sunday, legal holiday, or any other day on which the Division is closed, in which event the period shall run until the end of the next business day.

rescission, per Section VIII(E)(a). The Accounting shall include the names and addresses of all recipients of rescission, as well as the total amount owed by Snows under the Accounting, and the partial rescission amount that Snows proposes to offer to each Massachusetts investor. The Accounting shall not be unacceptable to the Enforcement Section;

c. The proposed written offer to Massachusetts investors to provide partial rescission per Section VIII(E)(a) shall not be unacceptable to the Enforcement Section, and a draft of the proposed written offer shall be provided to the Enforcement Section together with the Accounting;

d. Within ten (10) days of receiving written or electronic notice that the Accounting, together with the proposed written offer of partial rescission, are not unacceptable to the Enforcement Section, Snows shall make written offers of partial rescission to Massachusetts investors, per Section VIII(E)(a);

e. The written offers of partial rescission shall remain open to Massachusetts investors for at least sixty (60) days (the "Offer Period");

f. Within ten (10) days following the expiration of the Offer Period, Snows shall make payment to all Massachusetts investors who accepted written offers of partial rescission;

g. Within thirty (30) days following the date that Snows makes partial rescission payments, Snows shall provide the Enforcement Section with a final accounting (the "Final Accounting") and certification of the disposition of the payments made pursuant to Section VIII(E)(a). The Final Accounting shall be in a form not unacceptable to the Enforcement Section and include: (1) the name and

address of each recipient of rescission; (2) the amount paid to each recipient of rescission; (3) the date of each payment; (4) evidence of all payments made; (5) the date and amount of any returned payment(s); (6) a description of any effort to locate a prospective recipient of rescission whose payment was returned, or to whom payment was not made due to factors beyond Snows' control; and (7) the balance of any undistributed funds, if any. Snows shall cooperate with reasonable requests for information in connection with the Final Accounting and provide supporting documentation to the Enforcement Section upon request;

h. Within thirty (30) days of the Final Accounting, Snows shall distribute the remaining undistributed funds, on a pro-rata basis, to those Massachusetts investors who accepted written offers of partial rescission, if applicable; and

i. Within thirty (30) days following the date that Snows distributes the remaining undistributed funds pursuant to Section VIII(E)(h), Snows shall provide the Enforcement Section with an updated Final Accounting, including evidence of all payments made pursuant to Section VIII(E)(h), if any.

F. Snows shall pay an administrative fine in the amount of \$50,000 (USD) within ninety (90) days of the entry of this Order, subject to the following terms and conditions:

i. Payment shall be:

a. Made by United States Postal Service postal money order, certified check, bank cashier's check, bank money order, or wire transfer;

b. Made payable to the Commonwealth of Massachusetts;

c. Mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per the Division's instructions; and

- d. Submitted under cover letter or other documentation that identifies the party making the payment and that bears the docket number of this matter (Docket No. E-2021-0082).
 - ii. Snows shall provide the Enforcement Section with notice twenty-four (24) hours prior to making payment.
- G. In light of the information provided to the Enforcement Section related to Snows' and Schmidt's financial state, including financial attestations made by both directly to the Enforcement Section, the Enforcement Section agrees to waive pursuit, enforcement, or collection of the fine referenced in Section VIII(F), subject to the following conditions:
 - a. Neither Schmidt nor Snows has made any material misrepresentations regarding their financial condition in disclosures made to the Enforcement Section in anticipation of the Offer;
 - b. The waiver contained in Paragraph G, above, shall cease to be in effect if:
 - i. Any of either Schmidt's or Snows' material representations in the financial disclosures made to the Enforcement Section prove to be inaccurate; or
 - ii. Schmidt or Snows experiences a material change in financial circumstances within five years of the date of this Order;
 - c. In the event that any of the above conditions are met, the Enforcement Section may seek an Order compelling compliance with terms of VIII(F), above.
- H. Snows shall not claim, assert, or apply for a tax deduction or tax credit with regard to any local, state, or federal tax for any amount that it shall pay in accordance with this Order.

I. Snows shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that it shall pay in accordance with this Order.

J. If Snows is the subject of a voluntary or involuntary bankruptcy petition under Title 11 of the United States Code within three hundred sixty-five (365) days after the entry of this Order, Snows shall provide written notice to the Enforcement Section within five (5) days after the date of the petition.

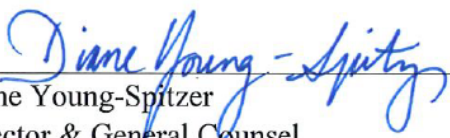
K. Any fine, penalty, and/or money that Snows shall pay in accordance with this Order is intended by Snows and the Division to be a contemporaneous exchange for new value given to Snows pursuant to 11 U.S.C. § 547(c)(1)(A) and is, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. § 547(c)(1)(B).

L. Upon entry of this Order, if Snows should fail to comply with any of said terms, the Enforcement Section may institute an action to have the settlement agreement and Order declared null and void.

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M. For good cause shown, the Enforcement Section may extend any of the procedural deadlines set forth above.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
Diane Young-Spitzer
Director & General Counsel
Securities Division
Office of the Secretary of the Commonwealth
John W. McCormack Building, 17th Floor
One Ashburton Place
Boston, MA 02108

Dated: June 7, 2023