

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
INVESTINGCI.COM) ADMINISTRATIVE ORDER
LOUIS BERK) NO. CD - 2016 - 0005
TOMAS GOLDMARK)
)
RESPONDENTS)

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the state of Alabama, has determined as follows:

RESPONDENTS

1. **INVESTINGCI ("ICI")** is a Florida based Limited Liability Company and is a trademark platform operated by SEL Investments, LTD. ICI has a business address of 1613 East Robinson Street, #5, Orlando, Florida 32803.

2. **LOUIS BERK, ("BERK")** is listed on the Florida Secretary of States website as the Registered Agent for ICI, and has a business address of 800 N. Magnolia Ave. Ste. 1800 Orlando, FL 32803 - 3271.

3. **TOMAS GOLDMARK ("GOLDMARK")** is identified on ICI emails to investors as, "Chief Trading Officer" and has a business address of 530 Lytton Avenue, 2nd Floor, Palo Alto, California 94301.

STATEMENT OF FACTS

4. On or about September 1, 2015, the Commission received information from

an Alabama resident that ICI operated and maintained an online website, www.investingCI.com, in which representatives of ICI execute trades in binary options on behalf of client investors. Binary options trades differ from conventional options contracts, in that the payout will depend entirely on the outcome of a yes/no proposition. The yes/no proposition typically relates to whether or not the price of a particular asset that underlies the binary option will rise above or fall below a specified amount at a specific time.

5. Unlike other types of options, a binary option does not give the holder the right to purchase or sell the underlying asset. Instead, when a binary option expires, the option holder will receive either an amount of cash or nothing at all. Because of the all-or-nothing payout structure, these binary options are often referred to as "all-or-nothing options" or "fixed-return options."

6. Upon registering for an account, the Alabama resident was contacted by ICI personnel who advised of a minimum investment of \$250 with a maximum of two trades per day on the account. In an email to the investor, **GOLDMARK** advised that the trades made by the representatives are insured, against loss, with ICI.

7. According to the website instructions, clients can monitor their account by logging onto the ICI website and view the entry date, the asset, what type of trade (puts or calls), expiration date and the payout. The investor had no input as to what their funds were invested in, how much would be invested per trade, or when to withdraw the funds.

8. The Alabama investor established an account with ICI and on July 23, 2015, deposited \$450 into the new account. The account was monitored online which reflected that the Alabama investor's funds were traded by ICI representatives in put and call positions re: Boeing stock, Apple stock, and precious metals such as gold and silver.

9. Following the initial investment, representatives of ICI contacted the Alabama investor, via email, urging the investor to make additional investments. On August 27, 2015, the Alabama investor withdrew an additional \$6,000 from a separate 401(k) account and deposited the funds into the online ICI account via a VISA debit card. The Alabama investor's account quickly reflected a substantial increase in value based

on the trades performed by **ICI** representatives.

10. In December, 2015, the Alabama investor contacted an individual who identified themselves as **GOLDMARK**, via email, and requested to make a withdrawal from the **ICI** account. Shortly after making the request the Alabama investor discovered the account lost \$27,043 on one trade and was reduced to zero. The Alabama investor emailed **GOLDMARK** for an explanation as to how this loss occurred since the investor was told previously, by **GOLDMARK** in an email, that the trades were insured. An individual who identified themselves as **GOLDMARK** responded that the trades were not insured, but that **ICI** would match the amount of any new deposits the investor placed into the account. **GOLDMARK** then solicited the investor to deposit an additional \$27,000 and pledged that **ICI** would match the amount.

11. During the Commission's investigation of **ICI**, numerous other investors throughout the United States and the United Kingdom, were interviewed and related a similar story. Each stated that their **ICI** accounts value increased rapidly until they requested to make a withdrawal. Upon attempting to withdrawal either all or part of their funds, their account value went to zero after **ICI** personnel placed the entire amount on one trade and in which the entire account amount was lost.

12. An investigation of the bank accounts for **ICI** revealed that the invested funds were deposited into an account controlled solely by **BERK**.

13. On November 4, 2015, a search of the registration files maintained by the Commission revealed that neither **ICI**, **BERK** nor **GOLDMARK** are registered to conduct business in the securities industry in Alabama.

14. On November 4, 2015, an online search of the website for the Commodity Futures Trading Commission revealed that neither **ICI**, **BERK** nor **GOLDMARK** were registered to conduct futures trading.

CONCLUSIONS OF LAW

15. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of a security includes an "Investment Contract". The binary options trading platform investment contracts offered and sold by **GOLDMARK** and **ICI** are securities under the Act.

16. Pursuant to Section 8-6-2(5), Code of Alabama 1975, the definition of an "issuer" includes every person who proposes to issue, or has issued, any security. **ICI**, by issuing securities, to wit: "Investment Contracts", is an "issuer" as defined by the Act.

17. Pursuant to Section 8-6-4, Code of Alabama 1975, it is unlawful for any person to offer or sell any security in this state unless; it is registered under the Act; the security is exempt from registration under Section 8-6-10 of the Act; or the transaction is exempt under Section 8-6-11 of the Act. **RESPONDENTS** sold, or caused to be sold, securities which were not registered nor subject to a perfected exemption from registration in violation of the Act.

18. Pursuant to Section 8-6-2(18), Code of Alabama 1975, an investment adviser includes any person, who, for compensation, engages in the business of advising others as to the value of a security or the advisability of investing in a security. Such activity includes the management of accounts or portfolios for clients. **ICI** provided portfolio management for clients within Alabama and is an investment adviser under the Act.

19. Pursuant to Section 8-6-2(19), Code of Alabama 1975, an investment adviser representative includes any person associated with an investment adviser, who, engages in the business of managing the accounts or portfolios for clients. **GOLDMARK** provided portfolio management for clients on behalf of **ICI** within Alabama and is an investment adviser representative under the Act.

20. Pursuant to Section 8-6-3(b), Code of Alabama 1975, it is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless such person is registered under the Act or is subject to an

exemption from registration. **ICI** and **GOLDMARK** were neither registered nor subject to an exemption from registration and operated as an investment adviser and investment adviser representative in violation of the Act.

21. Pursuant to Section 8-6-3(c), Code of Alabama 1975, it is unlawful for any investment adviser to employ an investment adviser unless the investment adviser is registered under the Act. **ICI** and **BERK** employed **GOLDMARK** as an investment adviser representative when **GOLDMARK** was not properly registered, in violation of the Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that are available to it under the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the **RESPONDENTS** to make a timely request for hearing, or default of the **RESPONDENTS**, it is the intention of the Commission to impose sanctions upon the **RESPONDENTS**. Such sanctions may include, *inter alia*, an administrative assessment imposed on **RESPONDENTS**, an additional administrative assessment for investigative cost arising from the investigation of the violation(s) described herein against **RESPONDENTS**, and a permanent order to bar **RESPONDENTS** from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENTS** immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the state of Alabama.

Entered at Montgomery, Alabama, this 23rd day of May, 2016.

ALABAMA SECURITIES COMMISSION
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BY:

Joseph P. Borg
Director