UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10068 / April 19, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 77645 / April 19, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3766 / April 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17213

In the Matter of

ENER1, INC.,

CHARLES L. GASSENHEIMER,

JEFFREY A. SEIDEL,

and

ROBERT R. KAMISCHKE,

Respondents.

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 Ener1, Inc., Charles L. Gassenheimer, Jeffrey A. Seidel, and Robert R. Kamischke (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("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 consent to the entry of this 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 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

Ener1, Inc. was formerly a NASDAQ-listed U.S. company that designed, manufactured, and developed lithium ion batteries for transportation, grid energy, and consumer products. Ener1 committed violations of the federal securities laws resulting in materially overstated earnings and assets for year-end 2010 as well as the first quarter of 2011. It did so by: (1) not impairing at year-end 2010 its investments in the equity of an unconsolidated related-party entity of which it had 48% voting rights; (2) improperly recognizing revenue from sales of batteries to that entity during the fourth quarter of 2010; and (3) not properly assessing the collectability of its loan and accounts receivables from that entity to determine whether those assets were impaired at year-end 2010 and end of the first quarter of 2011. Ener1 materially misstated its financial statements because its management did not appropriately analyze the impairment issues and because senior management did not communicate certain facts relevant to an impairment analysis to Ener1's accounting staff and external auditor. Ener1 lacked sufficient procedures and staff to determine the relevant U.S. Generally Accepted Accounting Principles ("GAAP") as well as accounting internal controls to obtain necessary information to apply GAAP. In the course of the foregoing, Respondents committed various violations of the federal securities law as cited herein.

Respondents

1. **Ener1, Inc.** ("Ener1") was, at all relevant times, headquartered in New York with offices in Indiana and Florida (was a Florida corporation, founded in 1985) and was a public, US-based company that designed, manufactured and developed lithium ion batteries for transportation, grid energy, and consumer products. On December 2, 2011, the NASDAQ Stock Market, LLC, filed a Form 25 notice of delisting of Ener1's common stock from the NASDAQ market and terminating its registration obligation under Section 12(b) pursuant to Section 12(d) of the Exchange Act. On January 26, 2012, Ener1 filed for bankruptcy. On March 30, 2012, Ener1 filed a Form 15 notice of deregistration of its securities from registration under Section 12(g) and suspension of duty to file reports under Sections 13 and 15(d) of the Exchange Act. As of that day, it emerged from bankruptcy as a private company.

[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.

2. **Charles L. Gassenheimer** ("Gassenheimer" or "Respondent"), age 42, of Glen Head, New York, was at all times relevant the Chief Executive Officer ("CEO") and Board Chairman of Ener1. He became an Ener1 Director in 2006, Board Chair in 2007, and CEO in 2008. Gassenheimer also became the CEO and Director of Ener1 Group, Inc. As CEO, Gassenheimer signed the certifications associated with Ener1's Form 10-K for the year-ended December 31, 2010 and the Form 10-Q for the quarter ended March 31, 2011.

3. **Jeffrey A. Seidel** ("Seidel" or "Respondent"), age 53, of New Canaan, Connecticut, was Chief Financial Officer ("CFO") of Ener1 from September 2010 to October 2011. Seidel joined Ener1 as Vice President for Corporate Strategy in 2008 and became Ener1's Chief Strategy Officer in January 2010. Seidel has never been a CPA. As CFO, Seidel signed the certifications associated with Ener1's Form 10-K for the year-ended December 31, 2010 and the Form 10-Q for the quarter ended March 31, 2011.

4. **Robert R. Kamischke** ("Kamischke" or "Respondent"), age 61, of Fenton, Michigan, was the Chief Accounting Officer ("CAO") of Ener1 and CFO of Ener1 subsidiary, EnerDel, Inc., from September 2010 to July 2011. Kamischke has never been a CPA. Kamischke had joined Ener1 in November 2008 as Controller of the Ener1 subsidiary, EnerDel, Inc. and focused on implementing project controls, budget, planning, and cost systems. As CAO, Kamischke signed the certifications associated with Ener1's Form 10-K for the year-ended December 31, 2010 and the Form 10-Q for the quarter ended March 31, 2011.

<u>Other Relevant Parties</u>

5. Think Holdings, AS, a private Norwegian limited liability company, was majority owner of Think Global, AS (which are collectively referred to as "Think"). Think Global was an electric car manufacturer. Think filed for bankruptcy protection in 2006 and again in 2008. It emerged from the 2008 bankruptcy in 2009 through a debt settlement entered into by Ener1, a third-party contract manufacturer for Think, a Norwegian government investment fund, and others. After its emergence from bankruptcy, Gassenheimer became a Think Holdings, AS, Director in 2009 and Think Holdings Board Chairman in 2010. On June 22, 2011, Think Global again filed for bankruptcy.

<u>FACTS</u>

A. *The Financial Statements Contained in Ener1's 2010 Form 10-K Did Not Conform with GAAP*

6. During the period relevant to this Order, January 1, 2010 through June 22, 2011 ("Relevant Period"), Ener1 was a manufacturer of lithium batteries for various purposes including electric cars. During this time, one of its largest customers was Think, a manufacturer of electric cars. Ener1 not only supplied batteries to Think but also had voting rights for almost 50% of its equity and held loan and accounts receivables from Think. In its Form 10-K for the year-ended December 31, 2010 filed on March 10, 2011, Ener1 reported an equity investment in Think of $58.6 million, which represented 15 percent of Ener1's $396.5 million in total assets, and 48% voting interest in Think; accounts receivable from Think of $13.6 million ($8.5 mm past due), which represented three percent of Ener1's assets; loans receivable from Think totaling $14.0

million, which represented 3.5 percent of Ener1's assets; and sales to Think of $18.8 million, representing 24% of Ener1's 2010 revenue of $77 million.

7. At December 31, 2010, as described above, Ener1's investment in Think was $58.6 million, Ener1's accounts receivable from Think was $13.6 million, Ener1's loans receivable from Think was $14.0 million and sales to Think were $18.8 million. On March 10, 2011, Ener1 filed its Form 10-K for 2010. Gassenheimer, Seidel, and Kamischke signed the Form 10-K and provided certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

8. The financial statements contained in Ener1's 2010 Form 10-K did not conform with GAAP in several ways thereby causing material misstatements in the 2010 Form 10-K concerning Ener1's financial results. The financial statements did not conform with GAAP because Respondents did not take into account the deteriorating financial condition of Think as detailed below when determining whether to impair the assets associated with Think as well as the revenue derived from sales to Think.

1. <u>Think's Deteriorating Financial Condition</u>

9. Ener1 had purchased Think B shares in several tranches at Norwegian Kroner ("NOK") 10 per share, the last of which had been purchased by May of 2010. The May 2010 financing was projected to "fully finance" Think until the end of 2010. However, during the third week of September, 2010, Think informed Gassenheimer, who was serving as Think's Chairman and Ener1's CEO at the time, that the company's previous estimates regarding cash and inventory were inaccurate. Instead of $14.3 million in cash projected to be on hand as of September 2010, Think had negative $2 million, and instead of $13.6 million in inventory, the company had $24.4 million due to accounting errors and mistakes in accounting for inventory.

10. Due to its cash constraints, Think could not pay creditors. Think sought immediate funding from prior investors, including Ener1, through two rounds of funding in September and December of 2010, which ultimately fell short of covering Think's financial needs. In 2010, Think had also retained an investment firm "to act as its lead placement agent in connection with the sale of its equity or equity-linked securities." Due in part to Think's cash issues, the investment firm postponed its efforts to introduce Think to possible investors until January 2011.

11. On January 12, 2011, Ener1 management emailed Think management (copied to Kamischke, Seidel, and Gassenheimer) a memo that required Think to present a "thorough and credible plan" for Think's immediate operations and cash management. On January 14, 2011, as the plan Ener1 had requested, the so-called "90 day plan," was presented to Think's Board, including Gassenheimer. The 90 day plan included receiving a $10 million bridge loan from Ener1, selling more cars, cutting expenses, negotiating supplier payment suspensions, and "rais[ing] $50-70 million at whatever valuation it [could] get." At that time Seidel and Kamischke agreed that Ener1 could not provide the $10 million in additional financing that Think had requested from Ener1. On February 11, 2011, a representative of the investment firm addressed Think's Board at a meeting that both Gassenheimer and Seidel attended, and stated that the probability of raising $50 million would be greater with a low per-share valuation, describing a potential capital raise as "valuation sensitive."

12. By January 20, 2011, Gassenheimer, Seidel, and Kamischke received an interim report by Think's auditor ("Think Auditor Report") that described multiple controls and financial reporting deficiencies and stated that Think may "risk threats to the going concern assumption" if management did not continue to "focus on securing the companies' income, control of expenses and ensuring adequate liquidity." On January 21, 2011, Think's auditor sent a letter to the Think Board, including Gassenheimer, stating that it was aware that the December fundraising efforts had been unsuccessful, and warned the directors that if the company could not make payments when due, and the equity fell to less than half of the capital, the directors had an obligation, with attendant criminal liability, under Norwegian law, to dissolve the company.

13. In a January 31, 2011 email drafted by Seidel, Gassenheimer, and the Ener1 COO, the Ener1 board was informed of the following: 1) existing Think investors had not funded Think adequately; 2) Ener1 had sent Think $2.8 million in January 2011 in order for Think to cover its current payroll obligations; and 3) Think had $30 million in payables to Ener1 and other suppliers, and a maximum of $15.5 million potential gross proceeds in finished and near finished goods. Ener1 did not include this information in board minutes provided to its auditors.

14. On February 2, 2011, a party related to an existing Think investor submitted a preliminary proposal for a term sheet with a target raise of $20 million of Think B shares at NOK 2 per share. Gassenheimer, Seidel, and Kamischke received a copy of the preliminary term sheet proposal. During the 2010 year-end audit, Ener1's auditors were never provided with a copy of the proposal or otherwise made aware of its terms.

15. Think's 90-day plan included obtaining a $10 million bridge loan from Ener1. However, Seidel and Kamischke determined that Ener1 could not provide that additional financing. During a February 5, 2011 Think Board meeting (a meeting attended by Seidel and Kamischke), Gassenheimer proposed the additional bridge financing. In response, Seidel explained in an email to Gassenheimer (copied to Kamischke) that Ener1 was not in a financial position to fund a $10 million bridge loan to Think, adding that Think sales had not increased and the car's bill of materials cost had not decreased.

16. By early February 2011, Ener1's budget projections assumed that Ener1 would not receive payments from Think, and Ener1 would not sell any more batteries to Think in 2011. On February 15, 2011, the COO and Kamischke presented a revised budget to the Ener1 Board (a meeting attended by Gassenheimer and Seidel), showing "meager Think sales" and an "inability to collect" on Think receivables.

17. Because of Think's inability to pay the third party that actually manufactured its cars ("third-party manufacturer"), at the beginning of February 2011, Think and its third-party manufacturer negotiated a four-week production shut down. On February 20, Think informed its third-party manufacturer that it was suspending operations and payments to all suppliers for sixty days. As a result, beginning in early February 2011, although the third-party manufacturer may have completed some cars already in process, it did not manufacture new cars.

2. Not Applying Properly Impairment Factors as to Ener1's Equity Investment in Think Resulted in a $58.6 Million Overstatement.

18. As described above in the Form 10-K filed on March 10, 2011, Ener1 reported an equity investment in Think of $58.6 million. Ener1 had purchased Think B shares in several tranches recorded at NOK 10 per share, the last of which it purchased in May of 2010. Ener1's equity investment in Think B shares was recorded at cost because the form of the investment was not deemed to be equivalent to common stock for accounting purposes. *See* FASB Accounting Standards Codification ("ASC") 325. As part of preparing its financial statements to be included in its Form 10-K, Ener1's accounting staff undertook an analysis ("Impairment Memo") to determine whether, and if so, to what amount Ener1's $58.6 million equity investment in Think was impaired pursuant to ASC 320, Investments – Debt and Equity Securities. The accounting staff did so because Ener1's investment in Think was a material part of the balance sheet.

19. Ener1's equity investment in Think B shares was recorded at cost because the form of the investment was not deemed to be equivalent to common stock for accounting purposes. For investments held at cost, such as Ener1's investment in Think, GAAP requires that the reporting entity evaluate whether an event or change in circumstances has occurred in that period that may have had an adverse effect on the fair value of the investment. GAAP impairment indicators include, but are not limited to: 1) a significant deterioration in the earnings performance, credit rating, asset quality, or business prospects of the investee; 2) a significant adverse change in the regulatory, economic, or technological environment of the investee; 3) a significant adverse change in the general market condition of either the geographic area or the industry in which the investee operates; 4) a bona fide offer to purchase (whether solicited or unsolicited), an offer by the investee to sell, or a completed auction process for the same or similar security for an amount less than the cost of the investment; and/or 5) factors that raise significant concerns about the investee's ability to continue as a going concern, such as negative cash flows from operations, working capital deficiencies, or noncompliance with statutory capital requirements or debt covenants.[2]

20. In the Impairment Memo, prepared by Ener1's accounting department and reviewed by Seidel and Kamischke, the company concluded that Ener1's investment in Think was not impaired as of December 31, 2010 because no impairment factors were present. Ener1's accounting staff provided this memorandum to Ener1's auditors as support of its decision to continue carrying its investment in Think at cost.

21. However, contrary to the conclusion in the Impairment Memo, Respondents were aware of information that should have indicated that a change of circumstances had occurred that had an adverse effect on the fair value of Ener1's investment in Think from the time of purchase such that the equity investment should have been impaired. In fact, by the time that Ener1 filed its Form 10-K, Think had: 1) softer than expected sales; 2) considered raising funds at "whatever valuation"; 3) a cessation of production of cars; 4) a lack of cash to pay creditors or maintain operations; 4) a preliminary going concern from its auditors; 5) a preliminary offer; 6) failed to pay its loans from Ener1 when due and payable; and 7) failed to pay for batteries shipped to it by

[2] *See* FASB Accounting Standards Codification ("ASC") 320-10-35-27.

Ener1.[3] These impairment indicators, should have necessitated Ener1 impairing its $58.6 million equity investment in Think as of December 31, 2010, instead of Ener1 incorrectly reporting it as an impairment as of March 31, 2011.[4]

3. <u>Not Conducting an Impairment Analysis as to Loans Receivable Such that Loans Receivable Were Overstated by $ 14 Million at Year-End.</u>

22. In its Form 10-K filed on March 10, 2011, Ener1 reported that its loans receivable from Think totaled $14.0 million, which represented 3.5 percent of Ener1's assets. It found that the loans receivable did not require impairment because Ener1 concluded, based on a minimal analysis in the Impairment Memo without any citation to the relevant accounting literature, that the loans receivable were not impaired.

23. However, under GAAP, a loss from receivables must be recorded when both of the following conditions are met: 1)"[i]nformation available before the financial statements are issued or are available to be issued… indicates that it is probable that an asset has been impaired at the date of the financial statements," and 2) "[t]he amount of the loss can be reasonably estimated.[5]"

24. Ener1 made the following loans in late 2010 when Think was already in significant financial distress: 1) an October 1, 2010 $5 million loan, due December 31, 2010 that Think never repaid nor did it make any interest payments required by the terms of the loan; 2) an October €1 million loan paid directly to the third-party manufacturer so it would continue producing cars on behalf of Think, which was never repaid; and 3) a November 18, 2010, $5 million line of credit to Think (exhausted by December 2010), due on January 21, 2011 that was never repaid. Despite Think's desperate need for cash, and its failure to pay any interest on the outstanding loans receivable, Ener1 did not conduct any analysis as to the likelihood that the loans receivable was impaired. In fact, Ener1 did not have specific written procedures by which to assess the impairment of loans. By not impairing the loans receivable as of December 31, 2010, Ener1 overstated its assets by $14 million or 3.5 percent of its total assets.

4. <u>Not Conducting an Impairment Analysis as to Accounts Receivable Resulted in an Overstatement of $13.6 million in Accounts Receivable.</u>

25. For purposes of the 2010 year-end audited financial statements included in Ener1's Form 10-K, Ener1's accounts receivable from Think were recorded at $13.6 million ($8.5 mm past due), which represented 3.4 percent of Ener1's assets. Ener1 concluded, based a short analysis in the Impairment Memo without any citation to the relevant accounting literature, that the accounts receivable were not impaired as of December 31, 2010.

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[3] None of these facts were included in the Impairment Memo. Instead, the Impairment Memo represented that original investment had not deteriorated, car sales were strong, Think continued to sell its shares at NOK 10, and there was no going concern regarding Think because it would be able to raise additional funds through financing.
[4] As discussed below, the company issued a Form 8-K in August 2011, recognizing that it should have impaired its equity investment in think as of year-end 2010.
[5] *See* ASC 310-10-35-8.

26. Under GAAP, a loss from receivables must be recorded when both of the following conditions are met: 1)"[i]nformation available before the financial statements are issued or are available to be issued… indicates that it is probable that an asset has been impaired at the date of the financial statements," and 2) "[t]he amount of the loss can be reasonably estimated.[6]" Think made its last payment for batteries received from Ener1 in mid-September 2010, although Ener1 continued to ship batteries and record revenue through January 2011. By November 2010, Think owed Ener1 $4.5 million from batteries already shipped, and Ener1 accounting personnel including Kamischke were concerned regarding the non-payment. Despite that concern, Ener1's accounting staff did not perform any collectability analysis as to whether the accounts receivable might be impaired. In fact, Ener1 did not have specific written procedures by which to assess the impairment of accounts receivable. By not impairing the accounts receivable as of December 31, 2010, Ener1 misstated its assets by over 3 percent.

5. <u>Not Determining Whether Fourth Quarter 2010 Think-Related Revenue Should Have Been Recognized Caused 14% Revenue Overstatement</u>

27. For purposes of the audited year-end financial statements included in the 2010 Form 10-K, Ener1 recognized $18.8 million in revenue in connection with the shipment of batteries to Think. Although Ener1 lacked a formal written revenue recognition policy, Ener1 disclosed in its Form 10-K that to recognize revenue it must determine that that there was reasonable assurance of collectability for revenue to be recognized.[7] Here, because of the deteriorating condition of Think, as detailed above, Ener1 did not perform the analysis for sufficient reasonable assurance that it would be able to collect on the revenue recognized from its shipment of batteries to Think during the fourth quarter of 2010. By recognizing revenue from that quarter, Ener1's revenue was overstated by 14% ($77 million reported would become $66 million as adjusted).

28. In its year-end 2010 Form 10-K, Ener1 disclosed that as of January 2011, it "temporarily stopped" sending batteries to Think at its direction "until the company rebalanced its overall inventory levels." Gassenheimer reiterated this reason in a March 10, 2010 conference call. By the time of the filing of the Form 10-K and the conference call, Think was also experiencing a severe operational and financial deterioration, was undertaking a restructuring plan, and had also negotiated a shutdown with its third-party manufacturer because it could not pay the manufacturer.

B. Events Subsequent to the Filing of the 2010 Form 10-K

29. Subsequent to the filing of Form 10-K, Think's financial condition continued to deteriorate. By the end of March, Think was unable to pay payroll taxes, its investment banker had been unable to find any willing investors, and its CFO, after consulting with Seidel, sent an email to Gassenheimer, among others, recommending that Think seek court-ordered liquidation. By

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[6] *See* ASC 310-10-35-8.

[7] ASC 605-10-25-1 provides that revenue may be properly recognized only when it is both a) realized or recognizable and b) earned. *See also* Staff Accounting Bulletin Topic 13, *Revenue Recognition*, which provides that revenue is generally realized or realizable and earned when all of the following criteria are met: 1) persuasive evidence of an arrangement exists; 2) delivery has occurred or services have been rendered; 3) the seller's price to the buyer is fixed or determinable; and 4) collectability is reasonably assured.

April, Gassenheimer emailed the Ener1 Board indicating that Think was in need of restructuring because its past due payables exceeded $50 million.

30. Throughout March and April 2011, Gassenheimer and Seidel, with the assistance of the Ener1 accounting staff, formulated various organization and ownership scenarios, all of which contemplated Ener1 contributing its Think-related assets in exchange for an interest in a joint venture, that would include Think's third-party manufacturer and Ener1's largest shareholder, to take ownership of Think. None of those scenarios provided for Ener1 to recover 100 percent of its reported amount of its equity investment and/or receivables in Think. The scenarios also failed to account for the payment, either in cash or interest in a joint venture, of Think's other equity investors or trade creditors other than the third-party manufacturer.

31. On April 17, 2011, the Think Board considered a liquidation analysis/going concern analysis performed by Think's investment banker ("liquidation analysis"). The analysis concluded that Think would be worth $10-15 million in liquidation and it would require a $135 to $150 million capital investment to remain as a going concern. Seidel received the liquidation analysis and an invitation to the Board meeting from Gassenheimer. Seidel sent the liquidation analysis to Kamischke.

C. Ener1's Form 10-Q for the First Quarter of 2011 Contained Financial Statements that Did Not Conform with GAAP

32. Ener1 did not impair its Think loans or accounts receivable, based upon the assertion that those amounts would be recovered in the joint venture. On April 29, Seidel, in an email to Gassenheimer challenged the recoverability of the receivables given the percentages of ownership in the joint venture, and the amount of financial contribution by other joint venture partners as compared with the total amount of Ener1 receivables. Gassenheimer replied that the capital commitments from the joint venture partners still needed to be negotiated.

33. On May 10, 2011, Ener1 filed its Form 10-Q for the First Quarter of 2011. Gassenheimer, Seidel, and Kamischke each signed and certified the filing. In its Form 10-Q, although Ener1 disclosed that the Think investment was impaired, and recorded an impairment loss of approximately $59.4 million (100%) during the three months ended March 31, 2011, "primarily due to the uncertainty of when or if Think Global will recommence operations…" it did not impair the accounts receivable or loans receivable. In the filing, Ener1 stated that impairment was unnecessary because management believed it would realize full value, "which may include our receipt of equity or other value in connection with a potential equity restructuring of Think Holdings."

34. Think filed for bankruptcy on June 22, 2011, and on the same day, Ener1 announced that it would take a material charge for the Think receivables. In a Form 8-K filed on August 10, 2011, Ener1 stated that its year-end 2010 Form 10-K and first quarter 2011 Form 10-Q should not be relied upon, and that Ener1 would restate its filings. Specifically, the Company stated that it would amend its 2010 year-end Form 10-K and its first quarter 2011 Form 10-Q for the quarter ended March 31, 2011 to restate its financial statements to reflect, as of December 31, 2010, the impairments of its investment in Think (which had previously been recorded in the first quarter of 2011), its Think accounts receivable and its Think loans receivable including accrued

interest, as well as reflect the corrected accounting for revenue recognized in connection with transactions with Think during the year ended December 31, 2010 and the three months ended March 31, 2011. Ultimately, Ener1 did not file a restatement, and in January 2012, it filed for bankruptcy protection.

D. Accounting and Internal Accounting Controls Environment at Ener1

35. It was of central importance for those responsible for financial reporting and internal controls at Ener1 to have a command of GAAP. It was also important that the accounting staff received the requisite information to determine that Think-related assets and revenue were properly stated in accordance with GAAP given the significance of Think to the financial statements of Ener1.

36. Ener1 had numerous deficiencies throughout its system of internal accounting controls that were attributable, in part, to its failure to understand and assess the risks in its control environment. First, Ener1 lacked procedures to ensure that the geographically dispersed accounting personnel received necessary information generally and specifically, as it related to Ener1's relationship with Think.[8] Second, it did not maintain a sufficient complement of personnel with the requisite level of accounting knowledge, experience, and training in the application of GAAP. Finally, Ener1 did not have specific documented accounting procedures as to: 1) when and how to conduct an impairment analysis as to any equity held by the company; 2) determining the collectability of loans receivable; 3) determining the collectability of accounts receivable; and 4) the recognition of revenue. Gassenheimer, Seidel, and Kamischke did not ensure that Ener1 had these requisite procedures in place to ensure that the books and records were properly maintained, and ultimately that the financial statements disclosed in public filings would be in accordance with GAAP.

37. Ener1 lacked any specific procedures regarding information distribution to the accounting staff. Instead, the accounting staff shared information through weekly telephone calls, and some members of the accounting staff routinely received Ener1 board minutes while others did not. Specifically, as to Think, while Gassenheimer, Seidel and Kamischke received significant information regarding Think such as Think board minutes and Think board presentations, they did not have a specific documented procedure so that the accounting staff responsible for financial reporting received necessary information. Respondents did not ensure that pertinent information with respect to Ener1's investment in and transactions with Think were identified, captured, and communicated in a form and time frame sufficient to enable finance and accounting personnel to carry out their responsibilities.

38. Respondents Seidel and Kamischke lacked expertise in accounting to assess the information obtained regarding Ener1's exposure to Think. Neither Seidel nor Kamischke was a CPA. Furthermore, Seidel and Kamischke were new to their roles and had never been responsible for a public company's financial reporting. Gassenheimer, Seidel, and Kamischke did not ensure

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[8] Ener1's accounting function was dispersed among three locations located in New York, Florida, and Indiana. Seidel worked in the NY corporate office with Gassenheimer while Kamischke and the Controller worked at a manufacturing and research facility in Indianapolis. Meanwhile, the Director for Financial Reporting worked in the Florida office and only worked full time during the reporting season. Also located in the Florida office was the Director of Internal Controls.

that Ener1 had a sufficient complement of personnel with the requisite level of accounting knowledge, experience, and training.

E. Sales of Ener1 Treasury Securities

39. Ener1 sold 2,858,357 shares of Ener1 treasury securities on the open market between January 25, 2011 through June 3, 2011, for gross proceeds of $9,452,577 at a time when Ener1's financial statements were materially inaccurate, and Think's operational and financial deterioration had not been disclosed.[9] The shares were sold to provide funding for Ener1's operations and to pay quarterly interest on senior unsecured notes.

Violations

40. Section 17(a)(2) makes it unlawful to obtain money or property through misstatements or omissions about material facts; and Section 17(a)(3) proscribes any transaction or course of business that operates or would operate as a fraud or deceit upon a purchaser of securities. *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 861 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 1348 (2d Cir. 1998). Only negligence is required for liability under Sections 17(a)(2) and 17(a)(3). *Aaron v. SEC*, 446 U.S. 680, 697 (1980).

41. Section 13(a) of the Exchange Act requires issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1 and 13a-13 require the filing of annual and quarterly reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'l, Inc*., 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex*, Inc., 425 F. Supp. 310, 316 (S.D.N.Y. 1975). No showing of scienter is necessary to establish an issuer's violation of Section 13(a). *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

42. Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles. No showing of scienter is necessary to establish violations of Sections 13(b)(2)(A) and 13(b)(2)(B). *SEC v. World-Wide Coin Investments*, 567 F. Supp. 724, 749-51 (N.D. Ga. 1983).

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[9] The sales took place pursuant to a Form S-3 shelf registration that Ener1 filed (Gassenheimer signed) and that became effective on February 5, 2009. Shares were taken off the shelf, and the S-3 was updated with a Form 424 filed on January 25, 2010 in connection with an Open Market Sale Agreement with Jefferies & Company, Inc. ("Jefferies") to sell up to $60 million of treasury securities. The agreement with Jefferies prohibited sales during blackouts and in the event of material adverse changes based on Ener1's insider trading policies.

43. Exchange Act Rule 13b2-1 prohibits a person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act. Exchange Act Rule 13b2-2(a)(2) provides that no director or officer of an issuer shall, directly or indirectly, omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with financial-statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission. No showing of scienter is required to establish a violation of Rules 13b2-1 or 13b2-2. *World-Wide Coin*, 567 F. Supp. at 749; *Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices*, Exch. Act Rel. No. 15570, 16 SEC Docket 1143 (Feb. 15, 1979).

44. Exchange Act Rule 13a-14, Certification of Disclosure in Annual and Quarterly Reports, requires each Form 10-Q and 10-K to include certifications signed by each principal executive and principal financial officer of the issuer (or persons performing similar functions). Among other things, the certifying officers must confirm that the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report.

Findings

45. Based on the foregoing the Commission finds that Respondent Ener1 violated Securities Act Sections 17(a)(2) and (3) and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Exchange Act Rules 12b-20, 13a-1, and 13a-13.

46. Based on the foregoing, the Commission further finds that: (1) Respondents Gassenheimer, Seidel, and Kamischke violated Securities Act Sections 17(a)(2) and (3), and Exchange Act Rule 13a-14; (2) Respondents Seidel and Kamischke violated Exchange Act Rule 13b2-1 and Rule 13b2-2; and (3) Respondents Gassenheimer, Seidel, and Kamischke caused Ener1's violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B), and Exchange Act Rules12b-20, 13a-1, and 13a-13.

IV.

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

A. Accordingly, it is hereby ORDERED that pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Ener1, Gassenheimer, Seidel and Kamischke shall cease and desist from committing or causing any violations and any future violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder. Respondents Gassenheimer, Seidel, and Kamischke shall cease and desist from committing or causing any violations and any future violations of Rule 13a-14. Respondents Seidel and Kamischke shall cease and desist from committing or causing any violations and any future violations of Exchange Rules 13b2-1 and 13b2-2.

B. Respondent Gassenheimer shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. Respondent Seidel shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. Respondent Kamischke shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $30,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

E. All 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 Respondent 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 Gerald Hodgkins, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. 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, Respondents Gassenheimer, Seidel, and Kamischke agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Gassenheimer's, Seidel's or Kamischke's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents Gassenheimer, Seidel, and Kamischke agree that they 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 Respondents Gassenheimer, Seidel and Kamischke 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 Respondents Gassenheimer, Seidel and Kamischke and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Gassenheimer, Seidel, and Kamischke 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 Respondents Gassenheimer, Seidel, and/or Kamischke 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