UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77646 / April 19, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3767 / April 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17214

IN THE MATTER OF **ROBERT D. HESSELGESSER, CPA,** **RESPONDENT.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 4C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against Robert D. Hesselgesser, CPA ("Respondent" or "Hesselgesser") pursuant to Sections 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[2]

II.

[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[3] that:

A. SUMMARY

At all times relevant herein, Ener1, Inc. ("Ener1") designed, manufactured and developed car batteries. Among others, Ener1 sold batteries to a private company, Think Holdings, AS, majority owner of Think Global, AS (collectively referred to as "Think") which was a Norwegian-based electric car manufacturer. Ener1 held an equity interest in Think and lent money to Think to fund its operations, and Ener1's interest in Think was material to its year-end 2010 balance sheet. At year-end 2010, Ener1's equity investment in Think totaled $58.6 million and represented 15 percent of Ener1's $396.5 million in total assets and a 48% voting interest in Think; Ener1's accounts receivable from Think Global totaled $13.6 million ($8.5 million past due), and represented three percent of Ener1's assets; Ener1's loan receivables from Think totaled $14.0 million and represented 3.5% of Ener1's assets; and Ener1's sales to Think totaled $18.8 million and represented 24% of Ener1's 2010 revenue of $77 million.

These proceedings arise out of Robert D. Hesselgesser's improper professional conduct as the engagement partner for PricewaterhouseCoopers LLP's audit of Ener1's 2010 financial statements. Hesselgesser violated Public Company Accounting Oversight Board ("PCAOB") Standards by not performing sufficient procedures to support his audit conclusions that Ener1 management had appropriately accounted for its Think-related assets and revenue. Hesselgesser did not obtain sufficient competent evidential matter to support his audit conclusion regarding the reasonableness of Ener1 management's determination not to recognize an impairment to the book value of Ener1's Think-related assets, and to continue to recognize revenue from Think. As Ener1's Think-related assets were material to Ener1's financial statements and Think was a related party, these transactions warranted heightened scrutiny. In addition, Hesselgesser failed to exercise due professional care during the audit by accepting management's impairment analysis and conclusion that Ener1's Think-related assets were not impaired without obtaining sufficient

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

competent evidential matter. As engagement partner, Hesselgesser failed to conduct the audit in accordance with PCAOB standards.

B. RESPONDENT

Robert D. Hesselgesser is a partner with PricewaterhouseCoopers LLP ("PwC"). At the time of the relevant conduct, Hesselgesser was licensed as a CPA in Ohio, Nebraska, Indiana, and Kentucky. His licenses in Indiana and Kentucky have since lapsed, and he has since become licensed in Georgia. Prior to the conduct described in the order, Hesselgesser was also licensed as a CPA in Tennessee and South Dakota, and had Practice Privileges in Oregon. During the time-period relevant to this proceeding, Hesselgesser served as the engagement partner for PwC's audit of Ener1's financial statements as of, and for, the year ended December 31, 2010.

C. RELEVANT ENTITIES

1. **Ener1, Inc.** ("Ener1"), founded in 1985, was at all relevant times a Florida corporation headquartered in NY with offices in Indiana and Florida. Ener1 designed, manufactured and developed lithium ion batteries for transportation, grid energy, and consumer products. Until December 2, 2011, Ener1's stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act. On January 26, 2012, Ener1 filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Southern District of New York seeking relief under the provisions of Chapter 11 of Title 11 of the United States Bankruptcy Code.

2. **Think Holdings, AS** was a private Norwegian limited liability company, which was majority owner of Think Global, AS (collectively referred to as "Think"). Think Global was an electric car manufacturer. Think filed for bankruptcy protection in 2008 and it emerged from the 2008 bankruptcy in 2009 through a debt settlement entered into, among others, by Ener1, resulting in Ener1 obtaining an ownership interest in Think. On June 22, 2011, Think filed for bankruptcy.

D. FACTS

<u>Background</u>

1. Ener1 designed, manufactured and developed car batteries, which it sold to, among others, Think, a Norwegian-based electric car manufacturer. Ener1 also held an equity interest in Think, and lent money to Think to fund its operations. Ener1's CEO and Board Chair served as Think Board Chair.

2. In the fourth quarter of 2010, Ener1's financial exposure to Think increased: Ener1 loaned Think \$5 million; provided Think an additional \$5 million in the form of a line of credit; directly paid a Think creditor €1 million; and purchased \$2.5 million of another Think investor's Think-related receivables. Ener1 lacked a formal written policy for performing a collectability analysis on the loans and receivables. As Think experienced operational problems, its financial

condition deteriorated. As a result, Ener1's Think-related receivables outstanding at the end of 2010 went unpaid.

3. Hesselgesser and his audit team received Ener1's impairment analysis of its Think-related assets during the year-end 2010 audit. Ener1's analysis contained unsupported assertions that: the value of Ener1's investment, Think's earnings performance, and vehicle quality had not deteriorated; Think's growth plan was delayed, but had not deteriorated; Think continued to sell its shares at the same price Ener1 acquired its shares; and that there were interested investors in Think's ongoing $50-60 million fund raising effort. The analysis concluded that the Think-related assets were not impaired but did not include material information regarding Think's financial condition. Hesselgesser did not appropriately corroborate the statements and information in Ener1's impairment analysis given the higher risk of material misstatement related to the transactions and failed to obtain sufficient competent evidential matter.

4. Think was experiencing operational and financial distress such that Ener1 should have recognized an impairment of its Think investment[4] and receivables[5] at year-end 2010. In addition, in the fourth quarter of 2010, Ener1 overstated its revenues. Ener1 improperly recorded revenues from Think for which collectability could not be reasonably assured.[6] The failure to recognize an impairment of the Think assets caused a material misstatement of Ener1's assets in its year-end 2010 balance sheet. The recognition of the fourth quarter revenue from Think caused Ener1's year-end 2010 revenue to be materially overstated. In its Form 10-K 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 Global of $13.6 million ($8.5 million past due), which represented three percent of Ener1's assets; loan receivables from Think totaling $14.0 million, which represented 3.5 % of

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[4] 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. 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. *See* ASC 320-10-35-27.

[5] GAAP requires the recognition of a loss 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." *See* ASC 310-10-35-8.

[6] ASC 605-10-25-1 provides that revenue may be properly recognized only when it is both a) realized or realizable and b) earned. *See also* Staff Accounting Bulletin 104, *Revenue Recognition*, as codified in ASC 605-10-S99, 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.

Ener1's assets; and sales to Think of $18.8 million, representing 24% of Ener1's 2010 revenue of $77 million. These matters were material to Ener1.

5. Ener1 recognized an impairment of all of its $59.4 million investment (but not its receivables) in Think as of March 31, 2011. On June 22, 2011, Ener1 announced that because Think had not been successful in securing long term financing, Think would file for bankruptcy, and as a result, Ener1 would take a material charge of $35.4 million relating to its Think loans and accounts receivable. On August 10, 2011, Ener1 filed a Form 8-K stating 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, Ener1 stated that it would amend its 2010 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: impairments of its investments in Think (which had previously been recorded in the first quarter of 2011); impairments of its Think accounts receivable and its Think loans receivable including accrued interest; and also 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.

Failure to Exercise Due Professional Care and Skepticism

6. PCAOB standards required that Hesselgesser exercise due professional care throughout the audit. Due professional care requires the auditor to exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of the audit evidence. *See* PCAOB Standard AU § 230.07.[7]

7. Despite the fact that members of Ener1's management did not provide material information regarding Think's financial condition, Hesselgesser failed to exercise due professional care and professional skepticism during the audit when he inappropriately relied on management's impairment analysis and associated conclusion not to impair Ener1's Think assets even though he was aware of certain impairment indicators during the audit. Among other things, Hesselgesser knew that: in the third quarter 2010, Think ceased to pay its accounts receivables and received funding from Ener1; and in the fourth quarter 2010, Think continued to require funding, and loans owed to Ener1 by Think had been extended multiple times. The analysis Hesselgesser relied on also did not provide sufficient support that accounts receivable and loans receivable were realizable since management failed to analyze the collectability of these accounts. In addition, Hesselgesser failed to properly perform procedures to determine whether revenue from Think could be recorded by Ener1, given that Ener1 did not have a formal written revenue recognition policy, had not conducted a collectability analysis, and collectability was not reasonably assured.

[7] References to the PCAOB Standards included herein refer to the standards in effect at the time of the relevant conduct.

Failure to Obtain Sufficient Competent Evidential Matter with Respect to Transactions with a Related Party

8. PCAOB Standards required Hesselgesser to obtain sufficient competent evidential matter by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit. *See* PCAOB Standard AU § 326.01. Representations from management are part of the evidential matter obtained in an audit, but are not a substitute for the application of auditing procedures necessary to afford a reasonable basis for an audit opinion. *See* PCAOB Standard AU § 333.02. Due to the fact that Think was a related party, PCAOB standards required Hesselgesser to apply necessary procedures to obtain satisfaction concerning the purpose, nature, and extent of Ener1's transactions with Think and their effect on Ener1's financial statements. These procedures should be directed toward obtaining and evaluating sufficient competent evidential matter and should extend beyond inquiry of management. *See* PCAOB Standard AU § 334.09.

9. Hesselgesser failed to conduct procedures appropriate to evaluate the valuation of Ener1's investment in, and receivables from Think, a related party, and failed to obtain sufficient competent evidential matter. Hesselgesser failed to perform procedures to corroborate Ener1's conclusions that its Think investment and receivables were not impaired. In addition, Hesselgesser did not properly evaluate the collectability of Ener1's revenues related to Think. In large part, Hesselgesser relied on communications with management and an impairment memorandum prepared by Ener1 staff. Hesselgesser did not sufficiently corroborate management's representations concerning Think's performance and prospects to obtain financing. For example, Hesselgesser did not request or sufficiently review Think documents relating to Think Board meetings; investments made by other Think investors as cited in Ener1's impairment memorandum; an interim 2010 review conducted by Think's auditors; and the status of Think's financing efforts. These types of documents would have helped Hesselgesser better understand Think's financial condition and assess for reasonableness the amounts to be recorded in the financial statements.

Management Representations

10. PCAOB Standards required Hesselgesser to obtain written representations from management in its representation letter as a part of the audit of Ener1's financial statements. *See* PCAOB Standard AU § 333.01. The auditor obtains written representations from management to complement other auditing procedures. *See* PCAOB Standard AU § 333.03. The written representations ordinarily confirm representations explicitly or implicitly given to the auditor, indicate and document the continuing appropriateness of such representations, and reduce the possibility of misunderstanding concerning the matters that are the subject of the representations. Even if Hesselgesser believed that management was honest, he was required to obtain persuasive evidence. *See* PCAOB Standard AU § 333.02.

11. Hesselgesser failed to obtain specific written representations from management in its representation letter concerning key factors management considered in its impairment analysis.

Failure to Maintain Adequate Work Paper Documentation

12. The PCAOB Standards establish the general requirements for documentation that an auditor should prepare and retain in connection with audits of financial statements and require that the auditor's work papers clearly demonstrate that work was, in fact, performed. *See* PCAOB Auditing Standard No. 3, paragraphs 1 and 6.

13. During the audit, Hesselgesser failed to sufficiently document his oral communications with Ener1 management concerning the accounting treatment of the Think related assets.

Failure to Adequately Plan and Supervise the Audit

14. PCAOB standards required that Hesselgesser adequately plan the audit and supervise assistants. *See* PCAOB Standard AU § 311.01.

15. Hesselgesser failed to supervise properly his assistants because the Ener1 Board minute summaries prepared by assistants in the audit workpapers failed to capture all Ener1 Board meetings during the period and pertinent information from certain Ener1 Board meetings. Had Hesselgesser reviewed properly prepared Ener1 Board minute summaries or the Ener1 Board minutes, he would have been alerted to issues concerning Think's financial and operational distress.

Violations

16. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice define improper professional conduct. Section 4C of the Exchange Act and Rule 102(e)(1)(iv)(B) of the Commission's Rules of Practice provide that negligent improper professional conduct includes either (1) "[a] single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted," or (2) "[r]epeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission."

Findings

17. Based on the foregoing, Hesselgesser engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(iv)(B)(1)&(2) of the Commission's Rules of Practice. Hesselgesser engaged in a single instance of highly unreasonable conduct where heightened scrutiny was warranted, or alternatively, repeated instances of unreasonable conduct indicating a lack of competence to practice before the Commission.

IV.

On the basis of the foregoing, Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer:

Accordingly, it is hereby ORDERED, effective immediately, that**:**

A. Respondent Hesselgesser is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After two years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

   (a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

   (b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

   (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

   (d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Brent J. Fields
Secretary