

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64497 / May 13, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3282 / May 13, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14385

<p>In the Matter of</p> <p style="text-align:center">PETER DISESSA,</p> <p>Respondent.</p>

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER AND A CIVIL PENALTY

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Peter DiSessa (“DiSessa” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and a Civil Penalty (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:¹

Summary

1. These proceedings concern Peter DiSessa's role in the improper recognition of revenue for certain material transactions by GSI Group, Inc. ("GSI" or "the company") during 2007 and 2008 (the "Relevant Period"). DiSessa and others caused GSI to recognize revenue from certain significant transactions in its Semiconductor Systems segment (the "Systems Division") that materially impacted GSI's financial results even though revenue recognition for each of these transactions was prohibited pursuant to Generally Accepted Accounting Principles ("GAAP"). For example, during fiscal year 2007, DiSessa entered into a side agreement that materially altered the terms of an arrangement between GSI and a Korean customer in a way that made the revenue from the transaction not eligible for inclusion in GSI's financial statements at that time, and he failed to disclose those terms to GSI's financial staff or external auditors. In connection with that same transaction, DiSessa signed a memo prepared by GSI's corporate controller indicating that GSI had vendor specific objective evidence ("VSOE") of value for an undeveloped laser when, in fact, DiSessa knew or should have known that it did not. As a result, during the first and second quarters of fiscal year 2008, GSI improperly recorded in its books and records and reported in its filings with the Commission over \$16 million in revenue that should have been deferred to later quarters or fiscal years. In addition, during the fourth quarter of fiscal year 2007, DiSessa also caused GSI to improperly recognize nearly \$5 million in revenue from a Taiwanese customer, even though he knew or should have known that GSI had not completed all the necessary customized software automation, a fact that made the revenue ineligible for recognition at that time under GAAP.

Respondent

2. **Peter DiSessa**, 59, of Winthrop, Massachusetts, worked for GSI Group, Inc. from 2006 through May 2009 as a product line manager. During the Relevant Period, DiSessa earned a bonus of \$18,252.

Other Relevant Party

3. **GSI**, a New Brunswick, Canada corporation with its principal place of business in Bedford, Massachusetts, manufactures and sells laser systems and other technology products. GSI's stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ National Market System until July 31, 2006. From July 31, 2006 until April 15, 2010, GSI's stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ Global Market. On April 15, 2010, GSI's stock was

¹ 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.

delisted from the NASDAQ Global Market because it was delinquent in its Commission filings, deregistered from Section 12(b) of the Exchange Act, and reverted back to its designation under Section 12(g) of the Exchange Act. On November 20, 2009, GSI filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. On May 27, 2010, the U.S. Bankruptcy Court for the District of Delaware confirmed GSI's plan for reorganization. On July 23, 2010, GSI completed a rights offering and emerged from the Chapter 11 proceeding. On December 4, 2008, GSI announced that past financial statements filed with the Commission could no longer be relied upon due to errors discovered with GSI's recognition of revenue for those periods. On April 13, 2010, GSI filed restated annual and quarterly financial statements for the periods contained within the fiscal years 2004, 2005, 2006, 2007, and 2008. Effective February 14, 2011, GSI re-registered its common stock pursuant to Section 12(b) of the Exchange Act and is currently listed on the Nasdaq Global Select Market.

Facts

Background

4. During the Relevant Period, GSI's Systems Division manufactured production systems that it sold to both domestic and international customers. GSI's production systems generally had both hardware (including lasers) and software components (including, in certain instances, customized, vendor specific, factory automation software) and required on-site installation by GSI personnel. DiSessa was the product line manager for one of the Systems Division's product lines.

5. From mid-2007 through October 2008, GSI's corporate controller, assisted by the assistant corporate controller, made the determination when to recognize revenue from Systems Division sales. Systems Division staff – including DiSessa – documented the basic terms of a transaction in a sales order approval form, which was reviewed and, depending on the size of the order, approved by varying levels of sales, finance and management staff. Transactions generally were automatically recognized as revenue upon shipment. Prior to the close of the quarter, the corporate controller and assistant corporate controller reviewed the documents related to each transaction and determined whether to recognize or defer revenue for the period.

The Korean Transaction

6. During November 2007, a Korean customer agreed to purchase from GSI ten systems for nearly \$1 million per system. Each system was equipped with a laser previously sold by GSI. GSI agreed to upgrade these systems by replacing the original lasers with a laser that had not yet been developed (the "Undeveloped Laser") when it became available.² As a final

² During this period, GSI had two undeveloped lasers – a Multiple Pulse Infrared Laser and a Multiple Pulse Green Laser – that were to be upgraded in the production systems ordered by the Korean customer during 2007 and 2008. Neither of the lasers was substantially similar to the original lasers in the production system and, for the purposes of this Order, will be referred to collectively as the Undeveloped Laser(s).

condition, the customer demanded that GSI upgrade five systems that the customer had previously purchased with Undeveloped Lasers once they became available.

7. In November 2007, DiSessa sent a letter to the Korean customer confirming GSI's obligation to upgrade the five systems with Undeveloped Lasers. Although the letter was reviewed by at least some members of the Systems Division, DiSessa did not copy anyone on the letter, and neither the letter nor the terms therein were provided to GSI's finance department (the "Finance Department"). DiSessa completed the sales order approval form for the transaction representing, among other things, that GSI had not made any "promises or guarantees for future deliverables (systems improvements, software upgrades, etc)." DiSessa also signed a quarterly certification for the Finance Department stating that he was unaware of any side transactions or contingencies connected to the transaction. DiSessa knew that this certification (and the representations therein) would be used by GSI in preparing its financial statements and would be provided to GSI's independent auditor in connection with the quarterly reviews of GSI's financial statements.

8. In December 2007, DiSessa, members of the Finance Department staff, and the Systems GM met to discuss whether they could establish VSOE of value, or "fair value," for the Undeveloped Lasers and thus recognize revenue from the transaction. During these discussions, they concluded that GSI could establish fair value for the Undeveloped Laser if they could find a substantially similar laser that GSI had previously sold. Shortly thereafter, they identified a laser (the "Identified Laser") as being substantially similar to the Undeveloped Laser.

9. In fact, the Identified Laser was not substantially similar to the Undeveloped Laser for the purposes of recognizing revenue. Among other things, the Undeveloped Laser was a unique, undeveloped product that had significantly different future application potential. In addition, on several occasions DiSessa had communicated to the Finance Department and others that the Undeveloped Lasers were worth substantially more than the Identified Laser.

10. On December 20, 2007, the corporate controller emailed DiSessa a draft of a memo (the "Fair Value Memo") concluding that the Undeveloped Laser and the Identified Laser were substantially similar, which he asked DiSessa to finalize and sign. DiSessa, however, initially declined to sign the memo on the grounds that the lasers were different. The corporate controller then called the Systems GM and told him that if DiSessa did not sign the memo, the company would not recognize revenue from the sale. The Systems GM indicated that he would talk to DiSessa and, that same evening, DiSessa emailed the corporate controller the signed Fair Value Memo. DiSessa knew or should have known that this Fair Value Memo (and the representations therein) would be used by GSI in preparing its financial statements and would be provided to GSI's independent auditor in connection with the quarterly reviews of GSI's financial statements.

11. In the first and second quarters of 2008, the Korean customer ordered eight additional systems and corresponding upgrades for Undeveloped Lasers. DiSessa signed another memo (to which the Fair Value Memo was attached) representing that the Undeveloped Laser to be used in these systems was substantially similar to the Identified Laser when in fact the lasers

were not substantially similar. As a result, the Finance Department again used the Fair Value Memo to improperly recognize revenue for the systems.

12. During the first and second quarter of 2008, GSI recorded in its books and records and reported in its financial statements filed with the Commission over \$8.9 million and \$7.1 million in revenue, respectively, from the transactions with the Korean customer. However, GSI should not have recognized any revenue from these transactions during these periods because GSI had not delivered the Undeveloped Lasers, nor had it properly established fair value for the Undeveloped Laser in accordance with GAAP.

The Taiwanese Transaction

13. In or around January 2007, DiSessa supported the Systems Division sales department in the negotiation of a sale of six systems to a Taiwanese customer. The initial proposal specifically referenced a Tool Automation Specifications (“TAS”) Agreement that related to the customer specifications or factory automation software that GSI would be obligated to provide.

14. During this same time, the primary engineer responsible for creating the factory automation software informed DiSessa that implementing all the TAS specifications would be “a huge task,” requiring over an additional 2000 hours of labor, would cost between \$450,000 to \$600,000, and could “not possibly be accomplished in the required time frame.”

15. In March 2007, the Taiwanese customer ordered the six systems and specifically referenced compliance with the TAS as part of the arrangement. The purchase order documentation, including the TAS, was made available to the Finance Department staff. DiSessa and the Systems Division’s management staff generally understood that all of the factory automation software obligations referenced in the TAS would not likely be completed by the time the systems were shipped. DiSessa, however, never informed the Finance Department that, as part of the March transaction, the customer required factory automation software that would not likely be completed until several months after the systems had been installed and were operational. GSI booked the order and, between May and October 2007, shipped and installed the six systems. Although the systems were operational, GSI did not complete all the factory automation obligations required under the agreement.

16. In late September 2007, GSI’s Finance Department told DiSessa and other Systems Division personnel that GSI could not agree to any upgrades, contingencies, or future deliverables if it wished to recognize the revenue from the transaction. DiSessa responded with an email specifically stating that “there are NO upgrades or contingencies,” even though he knew that GSI had agreed to provide the customer with unique, customized software. DiSessa also signed a quarterly certification stating that he was unaware of any contingencies or side agreements connected to the transaction. When the customer accepted the first system during the fourth quarter of 2007, GSI recognized in its financial statements nearly \$5 million in revenue for that quarter from the six systems that had shipped, even though GSI still owed the customer the

customized software. Because GSI had not delivered the customized software, and because it did not have fair value for the software, this revenue should not have been recognized at that time. DiSessa knew that the quarterly certifications that he signed (and the representations therein) would be used by GSI in preparing its financial statements and would be provided to GSI's independent auditor in connection with the quarterly reviews of GSI's financial statements.

17. On March 20, 2008 GSI's corporate controller emailed DiSessa and others asking whether there existed a factory automation issue with respect to the Taiwanese customer. In response, DiSessa told the corporate controller that GSI owed the customer "Phase II" factory automation software, which GSI hoped to complete by the second quarter of 2008. DiSessa provided the corporate controller with a copy of the TAS, which he stated contained the Phase II factory automation specifications.

18. During the fourth quarter of 2007, GSI recorded in its books and records and reported in its financial statements filed with the Commission nearly \$5 million in revenue from sales to the Taiwanese customer. However, GSI should not have recognized any revenue from this transaction during this period because GSI had not delivered the customized, factory automation software required under the customer agreement.

Impact on Financial Statements

19. The misleading financial information that resulted from the improper recognition of revenue from the Korean and Taiwanese transactions was material because it (1) overstated revenues by 7.1% in the fourth quarter of 2007, by 1.6% for fiscal year 2007, 14.7% in the first quarter of 2008, and by 12.1% in the second quarter of 2008; and (2) overstated revenues for GSI's Systems Division by 21.5% in the fourth quarter of 2007, by 4.3% during fiscal year 2007, by 39.3% in the first quarter of 2008, and by 48.0% in the second quarter of 2008.³

20. As a result of the conduct described above, GSI's Form 10-K for the company's fiscal year 2007, as well as the Forms 10-Q for the quarters ended March 31, 2008 and June 30, 2008, contained false and misleading statements concerning GSI's financial results. For those two quarterly periods in 2008, GSI issued press releases, subsequently filed with the Commission on Forms 8-K, containing the false and misleading financial information.

Violations

21. As a result of the conduct above, DiSessa willfully⁴ committed violations of Section 13(b)(5) of the Exchange Act, which prohibits persons from knowingly circumventing or

³ GSI also overstated pre-tax income by \$1.4 million (6.4%) for fiscal year 2007, \$3.6 million (5,206.0%) for the first quarter of 2008, and \$2.9 million (1,443.1%) for the second quarter of 2008 as a result of the improper revenue recognition for the Korean and Taiwanese transactions.

⁴ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977

knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account as described in Section 13(b)(2) of the Exchange Act.

22. Also as a result of the conduct above, DiSessa caused GSI's violations of Section 13(b)(2)(A) of the Exchange Act, which requires all reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and disposition of their assets.

23. Also as a result of the conduct above, DiSessa caused GSI's violations of Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

24. Also as a result of the conduct above, DiSessa committed violations of Rule 13b2-1 of the Exchange Act, which prohibits any person from falsifying, or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

25. Lastly, as a result of the conduct above, DiSessa caused GSI's violations of Sections 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual, quarterly and other reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent DiSessa's Offer.

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

A. Respondent DiSessa cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 12b-20, 13b2-1, 13a-1, 13a-11, and 13a-13 thereunder.

B. IT IS FURTHER ORDERED that Respondent shall pay a civil money penalty in the amount of \$25,000 and disgorgement of \$10,140 plus prejudgment interest of \$1,370, for a total payment of \$36,510, to the United States Treasury. DiSessa shall pay \$10,000 within 10 days of entry of this Order, and shall pay the remaining \$26,510 in installments of \$8,255 within 180 days, \$8,255 within 270 days, and \$10,000 within 364 days of entry of this Order. If any payment

(D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F Street, NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Peter DiSessa as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Associate Regional Director, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, Massachusetts 02110-1424.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and a Civil Penalty ("Order"), on the Respondent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
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