

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75860 / September 9, 2015**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3690 / September 9, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16798**

**In the Matter of**

**RONALD E. HEINEMAN,**

**Respondent.**

**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 CIVIL PENALTY**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Ronald E. Heineman (“Heineman” 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, and except as provided herein in Section V, 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 (“Order”), as set forth below.

### III.

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

#### A. SUMMARY

1. These proceedings concern materially misleading statements and omissions made by Heineman, the chief executive officer ("CEO") of General Employment Enterprises, Inc. ("GEE" or the "Company") in 2009, to the Company's auditors after substantially all of the Company's cash—\$2.3 million—was unaccounted for.

#### B. RESPONDENT

2. **Heineman**, age 57 and a resident of Cincinnati, Ohio, served as the CEO of GEE from July 1, 2009 through December 23, 2009. Heineman also served as manager of River Falls Financial Services, LLC from as early as January 2009 through April 29, 2011.

#### C. RELEVANT ENTITIES AND INDIVIDUALS

3. **GEE** is an Illinois corporation headquartered in Oakbrook Terrace, Illinois that provides professional placement services and temporary staffing services in certain industries. GEE's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE MKT stock exchange. GEE files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder.

4. **River Falls Financial Services, LLC** ("River Falls Financial"), **River Falls Investments, LLC f/k/a Oxygen Unlimited II, LLC** ("River Falls Investments"), **River Falls Holdings, LLC** ("RFH"), **Accredited Investor Resources, LLC f/k/a Oxygen Investment Partners, LLC** ("AIR"), **Oxygen Unlimited, LLC** ("Oxygen"), **O2HR, LLC** ("O2HR"), **SDH Realty, LLC** ("SDH"), **WTS Acquisition LLC** ("WTS"), **H2H Holdings, LLC** ("H2H"), and **PSQ, LLC** ("PSQ") (collectively, the "Affiliated Entities") are purported holding, investment, employment-related, and insurance companies. River Falls Financial, AIR's administrative member, purportedly owned at least 99% of AIR's common units and millions of dollars of AIR's preferred units. AIR was purportedly an investment company designed to make investments in River Falls Investments and certain other of the Affiliated Entities. River Falls Investments was a purported holding company of Oxygen, which was a purported holding company of O2HR, a professional employer organization. RFH was the purported holding company of River Falls Investments. PSQ was a purported holding company whose sole asset was GEE shares representing a controlling stake in the Company acquired as of July 1, 2009.

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<sup>1</sup> 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.

5. During at least 2009 and 2010, **Wilbur Anthony Huff** (“Huff”)<sup>2</sup> exercised substantial financial and management control during at least 2009 and 2010 over numerous entities, including, among others, the Affiliated Entities and their holdings. As a convicted felon, Huff faced legal and practical barriers to operating business entities in his own name, particularly business in regulated industries, including employment-related, insurance, and banking companies. Huff installed other business partners, including Heineman, to perform day-to-day operational functions and/or serve as the listed owners, directors, or managers. From as early as May 2008 through at least November 2009, Huff paid Heineman as much as \$15,000 per month through the Affiliated Entities, mostly through River Falls Investments. In exchange, Heineman agreed to serve as the listed officer, director, or manager for GEE, River Falls Financial, and many of the Affiliated Entities and also purportedly advised Huff on various matters.

6. **Park Avenue Bank** (“PAB” or “the Bank”) was a New York State chartered bank until it was closed by the New York State Banking Department on March 12, 2010, and the Federal Deposit Insurance Corporation was named Receiver. The Affiliated Entities primarily conducted their banking business through PAB. **Charles J. Antonucci, Sr.** (“Antonucci”) served as the president and CEO of PAB from June 2004 until October 2009. In October 2010, Antonucci pled guilty to multiple criminal charges, including securities fraud, bank bribery, embezzlement, and providing a false confirmation to BDO of GEE’s purported CD at PAB. Separately, **Park Avenue Insurance** was a private insurance company owned by Antonucci that was not affiliated with PAB.

7. **BDO USA, LLP** (“BDO”), formerly known as BDO Seidman, LLP, is a Delaware limited liability partnership and a PCAOB-registered public accounting firm with its headquarters in Chicago, Illinois. BDO served as GEE’s independent auditor from 2004 through 2012.

8. **Stephen B. Pence** (“Pence”), age 60 and a resident of Louisville, Kentucky. As of July 1, 2009, Pence became a beneficial owner of a majority of GEE’s common stock through a holding company, PSQ, LLC (“PSQ”), with the right to appoint three directors, including himself as chairman of the board, and to designate a CEO, a position he assigned to Heineman. Pence served as the chairman of the board of GEE until November 17, 2010. Pence formerly served as

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<sup>2</sup> Huff pled guilty to federal mail fraud charges for obtaining insurance premium finance loans under false pretenses in the Western District of Kentucky in 2003. In 2008, the Commission filed charges against Huff related to a scheme to misappropriate assets from and to record fake letters of credit at Certified Services, Inc. (“Certified”). *SEC v. Huff*, 08-CV-60315 (S.D. Fla.). On October 22, 2010, the Court entered judgment for the Commission against Huff requiring him to pay more than \$13 million, among other relief. Separately, after an October 2012 indictment against him, Huff pled guilty on December 23, 2014 to an information, which alleged, among other things, that: (1) Huff controlled GEE, in whole or in part, by installing other individuals; (2) Huff participated with Antonucci in a conspiracy in which they stole \$2.3 million from GEE and Huff later returned the \$2.3 million to GEE from three companies he controlled; and (3) a large portion of the \$2.3 million received by GEE were funds entrusted to Oxygen by its clients for payment of the clients’ employment tax and other obligations. *U.S. v. Huff*, 12-CR-750 (S.D.N.Y.).

the lieutenant governor of Kentucky from 2003 to 2007 and the United States Attorney for the Western District of Kentucky from 2001 to 2003.

9. **Salvatore J. Zizza** (“Zizza”) served as CEO of GEE from December 23, 2009, the day that Heineman resigned as CEO, through December 2012. Prior to his appointment as CEO, Zizza received monthly payments of \$20,000 from PSQ, which were funded by several of the Affiliated Entities, for purported consulting services, and Zizza frequently attended GEE board meetings as an “invited guest.” In 2009, businesses owned or operated by Zizza received loans in excess of \$1 million that Huff directed from certain of the Affiliated Entities.

10. **Associate-1** was another of Huff’s business partners and was listed or served at various times as a manager of River Falls Investments, Oxygen, and O2HR, and as co-manager of River Falls Financial with Heineman. Associate-1 was also involved in PSQ’s acquisition of a controlling stake in GEE and attended several GEE board meetings in 2009. In addition, from July 2009 until September 2009, Associate-1 was a signatory on GEE’s bank account at PAB despite the fact that Associate-1 was not an official employee, officer, or director of the Company. Associate-1 also purported to be the owner of WTS (another of the Affiliated Entities), a holding company of **On-Site Services, Inc.** (“On-Site”) and **Ameritemps, Inc.** (“Ameritemps”), which WTS had acquired in January 2009 with funding from other Affiliated Entities. Almost immediately after PSQ’s acquisition of a controlling stake in GEE, Heineman began presenting proposals to GEE’s board for GEE to acquire these companies. For example, at a GEE board meeting on August 10, 2009, attended by Pence and Zizza, the board authorized Heineman to enter into a letter of intent with WTS to acquire On-Site, and Heineman reported that he would present another acquisition candidate, Ameritemps, at the September board meeting.

#### **D. BACKGROUND**

11. GEE’s May 18, 2009, definitive proxy statement disclosed that in January 2009, GEE began discussions with representatives of River Falls Financial concerning the possibility of a tender offer and direct cash investment in GEE. The River Falls Financial representatives included Heineman and Pence, and Huff was present for one of the relevant meetings. The proxy statement further disclosed that, on February 11, 2009, River Falls Financial and PSQ, a special purpose vehicle purportedly formed by Pence, entered into a non-binding letter of intent with GEE for a purchase and tender offer agreement to obtain a controlling stake in GEE.

12. According to GEE’s May 18, 2009, definitive proxy statement, on March 30, 2009, after negotiations continued following the February 2009 non-binding letter of intent, Pence signed on behalf of PSQ a definitive securities purchase and tender offer agreement (the “Purchase Agreement”). The Purchase Agreement provided that, subject to shareholder approval, PSQ would acquire a controlling stake in GEE by (1) purchasing 7,700,000 newly-issued shares of GEE common stock in a private placement transaction at a purchase price of \$0.25 per share for a total purchase price of \$1,925,000; (2) commencing a cash tender offer to purchase from the Company’s shareholders up to 2,500,000 shares of common stock at a purchase price of \$0.60 per share; (3) appointing three directors to a five-member board of directors, including Pence becoming the chairman of the board; and (4) designating Heineman GEE’s CEO. On June 22, 2009, a GEE press released announced shareholders approved the Purchase Agreement and the closing of the

Purchase Agreement was announced on July 1, 2009. As a result, PSQ acquired more than 65% ownership of the Company, Pence became GEE's chairman and appointed two other directors, and Heineman became GEE's CEO.

13. Although Pence purported to be sole member and owner of PSQ, as Heineman knew, PSQ was one of the Affiliated Entities over which Huff exercised substantial financial and management control. Virtually all of the funds deposited in PSQ's bank accounts during 2009 were deposits made directly from several of the Affiliated Entities, including AIR, Oxygen, River Falls Financial, and RFH, typically at the direction of Huff. Specifically, in almost every instance in which PSQ needed to make a payment, PSQ received the necessary funds from one of the Affiliated Entities and immediately paid the obligation with the deposited funds. For example, to fund PSQ's obligations under the Purchase Agreement, AIR transferred \$1,925,000 to PSQ, and to cover PSQ's tender offer obligations, AIR transferred \$850,000 and Oxygen transferred \$372,000 (a total of \$1,222,000) to PSQ. In exchange, Huff required Pence to sign two purported promissory notes to AIR in his personal capacity for these amounts (\$1,925,000 and \$1,222,000), even though \$372,000 had been provided by Oxygen. Although the two promissory notes required Pence to pay annual interest of 5%, Huff did not actually require Pence to make any interest payments to AIR and no payments were made.

14. In late June 2009, Pence arranged for Associate-1 to become a signatory on GEE's bank account at PAB and Associate-1 remained a signatory from July 2009 until September 2009. In addition, Associate-1 negotiated certain employment and other agreements on behalf of GEE, and Associate-1 attended several GEE board meetings in 2009. At the same time, Huff and Associate-1 controlled WTS, which owned a number of companies that Huff and Associate-1 intended to sell to GEE. Because Huff and Associate-1 controlled WTS, Pence did not appoint Associate-1 to be an officer, director, or employee of GEE, which avoided scrutiny of this clear conflict of interest.

15. Huff and his business partners—including Pence, Heineman, and Associate-1—created a number of oral and written side agreements regarding ownership, profit sharing, and management of the Affiliated Entities. For example, at the time AIR purportedly loaned Pence the funds for PSQ's transaction with GEE, Pence had no ability to repay the loans without fully liquidating the GEE shares purchased by PSQ. Thus, in consideration for AIR's purported loans to Pence, Pence and Huff orally agreed that if GEE's stock price increased Pence would compensate AIR with GEE shares in addition to repaying the amounts of the promissory notes. As a result, Huff and AIR had a beneficial ownership interest in the GEE shares held by PSQ, which was not disclosed.

16. From March 2009 through at least April 2010, in connection with PSQ's majority ownership of GEE, PSQ paid Zizza \$20,000 per month purportedly for consulting work. Huff funded PSQ's payments to Zizza through the Affiliated Entities. For example, Pence notified Huff on January 2, 2010 that PSQ needed to pay Zizza for consulting and specifically asked Huff and Huff's assistant to deposit money into PSQ's account so PSQ could pay Zizza. Huff's assistant sent PSQ a check from a River Falls Financial account on January 4, 2010, and Pence sent Zizza a check from PSQ's account for \$20,000 on the same date. Zizza advised Pence and Huff on several acquisitions that GEE was considering in 2009. Huff and Pence also promised Zizza that if GEE's

stock price increased, they would compensate Zizza with at least 500,000 GEE shares. Zizza became the CEO of GEE on December 23, 2009.

17. As part of his arrangement with Huff, Heineman served in various roles at several of the Affiliated Entities and signed numerous agreements involving the Affiliated Entities, including:

- Heineman signed a December 2008 agreement on behalf of WTS in which WTS purchased the Ohio assets of Ameritemps, Inc., which later became two companies that GEE purchased in 2010, RFFG of Cleveland, LLC and DMCC Staffing, LLC.
- At Huff's direction, Heineman personally guaranteed a loan of \$1.5 million made by PAB to a Affiliated Entity called Aviation Solutions, LLC.
- Heineman served as an authorized signer on several bank accounts that certain Affiliated Entities had with PAB.
- At Huff's direction, Heineman signed a November 2010 agreement, as manager of River Falls Financial and on behalf of AIR, in which AIR agreed that PSQ would assume Pence's \$3 million promissory notes issued to AIR.

18. Huff covertly exercised influence and control over GEE operations through Pence and Heineman as a result of his control over AIR, which financed PSQ's investment in GEE. Huff also sent substantial monthly payments to Pence (\$25,000), Zizza (\$20,000), and Heineman (\$15,000) from various Affiliated Entities in an attempt to ensure his control over, and ability to influence, GEE operations.

19. Huff exerted control over GEE by, among other things, causing GEE to acquire several entities owned by WTS, which Huff and Associate-1 controlled. For example, at an August 10, 2009, GEE board meeting, attended by Pence and Zizza (as Pence's guest), Heineman convinced the GEE board of directors to authorize him to enter into a letter of intent with WTS to acquire its subsidiary On-Site, which was publicly announced on September 6, 2009. In June 2010, while Zizza was GEE's CEO, GEE acquired On-Site, resulting in a financial benefit to Huff. In November 2010, GEE acquired additional assets of WTS doing business as Ameritemps, RFFG of Cleveland, LLC and DMCC Staffing, LLC, again resulting in a financial benefit to Huff. During 2010, Zizza had numerous discussions with Huff concerning these acquisitions.

**E. HEINEMAN KNEW OR SHOULD HAVE KNOWN THAT THE PURPORTED \$2.3 MILLION CD ASSIGNMENT WAS FRAUDULENT**

20. As part of the July 2009 closing of PSQ's Purchase Agreement with GEE, GEE opened a checking account at PAB into which PSQ's escrowed \$1,925,000 would be deposited upon the closing. In June 2009, Associate-1 coordinated with GEE's chief financial officer (the "GEE CFO") to have the GEE checking account opened at PAB and the authorized signatories on the account were the GEE CFO, Pence, and Associate-1. The GEE CFO, Pence, and Associate-1 remained the only authorized signatories on the account until September 2009, at which time

Associate-1 was removed and Heineman was added. Following the closing, Heineman directed the GEE CFO to transfer an additional \$750,000 from GEE's accounts at other banks to the GEE PAB checking account. The approximately \$2.6 million deposited in the GEE PAB checking account constituted substantially all of GEE's cash and half of its assets. Heineman understood that GEE opened the bank account with PAB because of Huff's business relationship with Antonucci, PAB's president. Heineman also knew or should have known that the Affiliated Entities primarily maintained their bank accounts at PAB and that Huff and the Affiliated Entities had other business dealings with Antonucci.

21. In approximately July 2009, Huff discussed with Pence the possibility of GEE investing money in Park Avenue Insurance to achieve greater returns on GEE's cash. Pence told Heineman about Huff's idea and involved Heineman in exploring the terms for GEE's potential investment. Heineman knew or should have known that Park Avenue Insurance was privately owned by Antonucci and that Pence had served as Park Avenue Insurance's president during part of 2009.

22. On July 14, 2009, Heineman received a draft promissory note from Huff's attorney that proposed that GEE make a one-year loan to Park Avenue Insurance in the amount of \$2.4 million with four percent interest. Heineman responded that the promissory note should be changed to \$2.7 million. No promissory note between GEE and Park Avenue Insurance appears to have been actually executed.

23. However, in August 2009, the GEE CFO reviewed the July 2009 PAB monthly statement indicating that \$2.3 million had been withdrawn from the GEE PAB operating account on July 23, 2009, without his knowledge. When asked about the missing funds, Heineman claimed that he had authorized GEE to invest \$2.3 million into a certificate of deposit account at PAB. Although the GEE CFO repeatedly requested that Heineman provide documentation concerning the purported CD, such as a written authorization, account agreement, and account statements—and cited the lack of documentation as a control deficiency—Heineman only provided the GEE CFO with a one-page PDF of a typewritten "Certificate of Deposit Receipt" for \$2.3 million with a single maturity date of October 21, 2009, and interest rate of two percent.

24. GEE's fiscal year ended on September 30, 2009. On October 19, 2009, the GEE CFO provided to audit committee members and BDO a report of the evaluation of internal control for fiscal year 2009, which noted the purported PAB CD as an identified control deficiency. The report noted that "[t]he transaction was not executed by the office of the Treasurer, and no written approval or account agreement was provided to the accounting department" and that "it did not conform to the company's investment guidelines" because it did not provide sufficient diversification and PAB did not meet GEE's size requirement. However, the report concluded that the control deficiency did not constitute a material weakness. BDO concurred with this assessment. In response, Heineman did not provide any additional information or documentation to the GEE CFO.

25. In early November 2009, the GEE CFO noticed that PAB had not remitted the proceeds of the purported CD of \$2.3 million plus interest into GEE's checking account upon the maturity date, October 21, 2009. When the GEE CFO contacted PAB, a PAB representative stated

that the Bank had no record of the purported CD in its system. The GEE CFO then pressed both Heineman and Pence for an explanation. On November 9, 2009, Pence asked Heineman for information about the purported CD; Heineman responded that Huff would contact PAB on GEE's behalf.

26. According to the minutes of a November 23, 2009, audit committee meeting, attended by BDO, the GEE CFO reported his concerns that GEE had little documentation supporting the purported CD, including no written authorization from an account signatory and no deposit agreement. According to the minutes, Heineman claimed that he authorized the purported CD at Pence's direction, and claimed the lack of documentation was due to "the rapid pace of the transactions in which he had been involved, coupled with reorganization and personnel changes at Park Avenue Bank." Heineman next stated that he had anticipated that the CD would be maintained on a continuing renewal basis but he had asked Pence to liquidate the purported CD and have the funds transferred into the PAB checking account by the end of the week. The minutes also state that the BDO engagement partner "said that the audit was substantially completed, pending resolution of the missing funds issue, receipt of legal letters from counsel, and the executed management representation letter" and that BDO "would be issuing an unqualified opinion on the consolidated financial statements."

27. On November 24, 2009, the BDO engagement partner emailed the GEE audit committee chairman (the "AC Chair"), stating that the GEE CFO had "indicated there was an update on the CD and that the funds would be returned in installments. I am not sure if you can provide any further clarity on why this would be. I wanted to check with you before I had another discussion with [Heineman]." The AC Chair replied that he "[could] not provide any clarity" and expressed concern that one of the audit committee members (the "AC Member") "seems to be tied in with this group." The AC Member had been appointed by Pence in connection with the PSQ transaction in July.

28. The BDO engagement partner replied to the AC Chair the following day, November 25, 2009, that he had spoken to Heineman that morning and Heineman indicated that Pence and the AC Member "were taking the lead on this as they have a previous working relationship with the bank." BDO's engagement partner also noted that Heineman, however, had "disagreed with the fact that the CD would be 'paid back in installments'" and had "indicated that the proceeds of the CD would be in the Company's bank account by Monday."

29. On November 24, 25, and 27, 2009, Huff directed and caused a total of \$900,000 to be transferred to GEE's bank accounts in installment payments of \$300,000 on each such date from the bank accounts of two of the Affiliated Entities: SDH and Oxygen.

30. On November 30, 2009, GEE's CFO asked Heineman if he knew anything concerning two \$300,000 wire transfers that GEE had unexpectedly received from SDH and Oxygen. Heineman claimed that he did not know why those transfers had occurred. Heineman's statement was materially misleading.

31. Also on November 30, 2009, Pence, Zizza, and Heineman attended a GEE board of directors meeting. Zizza, who had no formal role at GEE at this time, attended as an "invited

guest.” The board minutes indicate that the AC Chair explained that the Company’s Form 10-K had not yet been filed because BDO’s “final” opinion was predicated on the satisfactory accounting for the PAB CD and an explanation for where GEE’s funds had been since the CD matured on October 21. During this November 30, 2009, board meeting, the AC Member stated he believed that the situation occurred as a result of administrative errors on the part of the Bank, and Pence said that the AC Member had agreed to pursue the matter with PAB. Neither Pence nor Heineman (or anyone else) mentioned anything about GEE selling or assigning the purported CD to a third party.

32. On December 4, 2009, the BDO engagement partner on the GEE audit sent an email to the AC Chair, Heineman, and Pence, among others, summarizing the open items requiring resolution prior to the issuance of BDO’s audit report. The email begins by noting that after the CD had matured in October 2009, when the GEE CFO had contacted the Bank, a PAB representative informed the GEE CFO that there was no record of the purported CD and that after some investigation by the AC Member, “in late November it was determined that the funds would be returned to GEE in installments.” The email then notes that GEE had received the following wire transfers: (i) November 24: \$300,000 wire transfer from SDH; (ii) November 25: \$300,000 wire transfer from Oxygen; (iii) November 27: \$300,000 wire transfer from SDH; and (iv) December 1: \$100,000 wire transfer from Oxygen. It then stated that the BDO engagement partner had discussed the matter with Heineman and Pence, who both referred him to the AC Member who was working directly with PAB on the matter, and that the AC Member left him a voicemail “indicating the bank continues to put money against the CD they owe [GEE] and it should be fully repaid by the close of business on Monday, Dec. 7” and that the Bank would provide a short apology note.

33. Shortly after receiving it, the AC Chair forwarded the December 4, 2009, email from the BDO engagement partner to Heineman, Pence, the AC Member, the GEE CFO, and GEE’s board, noting: “Multiple representatives of BDO have told me that they will not sign off on the GEE Audit . . . until they have sufficient documentation of what has transpired. [BDO’s] position is that the Liabilities associated with a sign-off far exceed any past or potential future Audit Fees that [they] have received or will receive. The high level message is that a letter of apology from Park Avenue Bank will not be sufficient.” The BDO engagement partner received a copy of this email and replied to all: “To clarify, [our] primary concern is getting an understanding of exactly what has occurred in order to allow us to complete our audit procedures. As I am sure everyone would agree, what has transpired over the last few weeks with the funds at [PAB] has been highly unusual. I know everyone has been working to resolve the issue. However, time continues to pass and [GEE’s] filing deadline will be here before we know it. As such, I wanted to clarify the importance of appropriately addressing the issue as quickly as possible to allow us to complete the audit.”

34. Later in the day on December 4, the AC Chair sent an email to the BDO engagement partner and concurring partner summarizing his call with the AC Member, stating that when he spoke with the AC Member “he told me that [PAB] had reported these transaction [sic] to the FDIC and that the money sent to the various entities that are now sending GEE the money are sending us the banks money rather than sending it back to the bank.” The AC Chair continued: “This makes absolutely no sense. It looks like [PAB] is on the verge of failing. The FDIC and a

bankruptcy estate are going to require [PAB] to collect every cent they can under loans or other arrangements to settle with the creditors of the bank before they send money to third parties.”

35. The following day, on December 5, 2009, the AC Chair emailed GEE’s board (including Pence) and Heineman calling for a special audit committee meeting on December 9 because of “several unanswered questions related to \$2.3 million of the Company’s cash which supposedly was invested in a Certificate of Deposit (‘CD’) at Park Avenue Bank which will need to be answered before BDO will complete their Audit Report for the Company’s fiscal year ended September 30, 2009.” The AC Chair’s email noted several issues, including that (i) there was no account agreement with PAB or regular reporting on the CD; (ii) PAB did not remit the proceeds of the CD into GEE’s operating account when it reached its maturity date on October 21, 2009; (iii) PAB provided no explanation to the GEE CFO when he attempted to investigate; and (iv) the AC Member who took the lead on this matter with PAB “was informed on or about November 21, 2009, that the funds would be returned to [GEE] in a series of deposits.” The email also provided a chart of seven wire transfers totaling \$1.7 million, which included the four noted in Henaghan’s December 4 email plus a December 2, 2009, wire transfer from Oxygen for \$100,000, a December 2, 2009, wire transfer from River Falls Financial of \$300,000, and a December 3, 2009, wire transfer from River Falls Financial also for \$300,000. The address listed for both SDH and River Falls Financial on each of their wire transfers in the chart was 11921 Brinley Ave, Louisville, KY.

36. On December 4 and December 9, 2009, GEE received two additional wire transfers from River Falls Financial for \$300,000 each, bringing the total amount received by GEE from River Falls Financial to \$1.2 million and the total of the nine wire transfers to \$2.3 million, the same amount that Heineman had purported to invest in a CD. Heineman knew or should have known that Huff, in conjunction with Associate-1, directed the transfers from SDH, Oxygen, and River Falls Financial to return the missing funds to GEE.

37. On December 8, the AC Chair emailed the BDO engagement partner, providing some links he suggested the BDO engagement partner review before he had a conversation with the AC Member and any representatives of PAB, “particularly the Anthony Huff links” and explained that he “met Anthony Huff when we went to New York” to negotiate PSQ’s acquisition. The email included links to a press release announcing the Commission’s lawsuit against Huff, a link to Huff’s website noting the address 11921 Brinley Avenue, Louisville, KY in the text of the email, and a link to the website for Oxygen noting the identical address. This is the same address that appeared in the wires sent to GEE by River Falls Financial and SDH, as noted in the AC Chair’s December 5 email described in paragraph 36, above. Also, Huff’s website at the time contained references to River Falls Investments, SDH, Oxygen, and O2HR.

38. Also on December 8, 2009, the day before the special audit committee meeting, the AC Chair received an email from Heineman to the audit committee with several attachments. Heineman’s email purported to offer a new explanation for why GEE had received \$2.3 million from the three entities rather than PAB. Heineman claimed that he had negotiated an assignment agreement with the manager of River Falls Investments (Associate-1), who “offered to purchase” the purported CD from GEE at face value. Heineman also attached to his email an unsigned, draft assignment agreement and a letter from Heineman to PAB, dated July 21, 2009, that purportedly authorized the \$2.3 million CD investment. Heineman’s email also attached a July 2009 monthly

statement for GEE's operating account at PAB, which included the description of the \$2.3 million withdrawal as a debit on July 23 with a debit memo stating in handwriting: "To: Park Avenue Insurance, See Attachment Approval, \$2,300,000.00." Park Avenue Insurance was a private insurance company separately owned by Antonucci that was not affiliated with PAB.

39. The AC Chair responded to Heineman's email that day, stating: "Given the chain of event[s] you described below, why was GEE not informed immediately when River Falls Investments purchased the CD and why are we just now learning that a law firm has been engaged to document the assignment of the CD? We have been asking questions about the CD now for nearly a month."

40. The BDO engagement partner also exchanged emails with the AC Chair later that day, noting his agreement with the AC Chair's questions to Heineman and that "the sale of the CD would constitute a related party transaction which typically should be approved by the board." The AC Chair replied to the BDO engagement partner that he had just spoken to Heineman and Heineman "claims that RFI (River Falls Investment) is 100% owned by [Associate-1] and is not related to River Falls Financial [] or any of the other entities." The BDO engagement partner replied, "That is consistent with what [] Pence told me in my conversation with him. The common names are a little strange though."

41. Heineman's aforementioned statements to BDO around December 2009 were materially misleading because, among other things, Heineman knew or should have known that:

- a. he did not negotiate an assignment agreement with Associate-1 (or anyone else);
- b. Huff controlled River Falls Investments, which was a related party; indeed, River Falls Investments had been making substantial monthly payments to Heineman since May 2008;
- c. Huff had directed the three Affiliated Entities to transfer funds to GEE in late November and early December to preserve the financial viability of GEE for the benefit of Huff and PSQ;
- d. his assignment agreement story had falsely explained why GEE had received those payments from the Affiliated Entities;
- e. Pence did not actually own or control River Falls Financial, Huff did; and
- f. Pence, Huff, Associate-1, and Heineman had an unwritten agreement to divide amongst themselves any financial windfalls associated with the market performance of GEE's stock.

42. Along with his December 8, 2009, email to the audit committee, Heineman attached a letter, dated July 21, 2009, signed by him and addressed to the president of PAB, stating: "Please transfer \$2,300,000 from the GEE checking account to a 90-day automatic renewal Certificate of Deposit." Heineman had drafted this July 2009 letter in late 2009 and

presented it to GEE's audit committee to convince everyone that he had authorized the purchase of the purported CD in light of the increased scrutiny concerning GEE's missing funds.

43. According to the minutes of GEE's audit committee meeting on December 9, 2009:

- The BDO engagement partner expressed concern that BDO still did not have a clear understanding of the purported CD transaction.
- The BDO engagement partner said that BDO needed to understand the nature of the purported administrative errors at PAB that he had been told were responsible for the lack of proper documentation regarding the CD transaction. He also explained that BDO required documentation validating the banking transactions, and an explanation as to why there was no existence of an account agreement with the Bank or no record of the CD being at the bank.
- Another BDO partner, BDO's Midwest Regional Business Line Leader, said he believed members of GEE's senior management appeared hesitant to provide information related to these transactions.
- The BDO engagement partner stated that the assignment agreement did not resolve the outstanding issues as BDO still needed to know what transpired within PAB and make a determination of whether the assignment agreement with River Falls Investments was a related party transaction.
- BDO also advised that although the assignment agreement "may reduce or eliminate the need for going concern disclosure, it would increase the requirement that management provide sufficient disclosure regarding any related party conflicts."

44. On December 14, 2009, GEE's outside counsel sent PAB a formal letter requesting all documentation and information concerning the purported CD. PAB's December 16, 2009, response provided only documents relating to GEE's checking account and did not provide any documents or other information about the purported CD. The checking account documentation, however, indicated that only Associate-1, the GEE CFO, and Pence were authorized signers on GEE's account from July to September 2009—not Heineman—and the checking account statements reflected a debit memo for the transfer of \$2.3 million of GEE's cash to Park Avenue Insurance on July 23, 2009.

45. On December 22, 2009, BDO sent the AC Chair a letter stating that BDO did not have sufficient audit evidence to formally conclude the audit and demanded an independent investigation ("BDO's demand letter"). BDO's demand letter identified multiple inconsistencies and problems in the audit evidence BDO had received regarding the purported CD, including that a number of significant questions remained unanswered concerning both the existence of the purported CD (e.g., why bank records provided by PAB showed a transfer of \$2.3 million to Park Avenue Insurance) and the manner in which \$2.3 million had been transferred to the Company by the Affiliated Entities (e.g., why Associate-1 would pay 100% of the face value of the purported

CD after the maturity date had expired without payment by PAB, why had River Falls Financial—purportedly owned by Pence—transferred approximately \$1 million to GEE in connection with the alleged assignment of the purported CD to River Falls Investments, and why Heineman had made inconsistent representations about his involvement in negotiating the alleged assignment with Associate-1). Pence reviewed the letter and told Huff that he was very concerned. Pence also forwarded BDO’s demand letter to Zizza and Associate-1, the purported manager of River Falls Investments.

46. On the evening of December 22, 2009, BDO learned that the Audit Committee meeting that was scheduled for the following day had been cancelled, Zizza, an advisor to Pence who had attended GEE board meetings through the fall of 2009, would be taking over as CEO, and that Pence and Associate-1 intended to prepare written responses to each of the issues identified in the December 21 letter. On December 23, 2009, Heineman formally resigned as GEE’s CEO and that same day Pence appointed Zizza, who had previously brought new business to BDO in the form of several auditing clients, to be GEE’s new CEO.

## **F. VIOLATIONS**

47. Rule 13b2-2 of the Exchange Act prohibits officers and directors from, directly or indirectly, making or causing to be made materially false or misleading statements or omissions to accountants in connection with an audit or preparation of reports to be filed with the Commission.

48. As a result of the conduct described above, Heineman violated Rule 13b2-2 under the Exchange Act.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 13b2-2.

B. Respondent shall pay a civil penalty of \$150,000 to the Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (1) \$40,000 within 10 days of the entry of this Order; (2) \$40,000 within 120 days of the entry of this Order; (3) \$40,000 within 240 days of the entry of this Order; and (4) \$30,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. 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 Heineman 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 Timothy Casey, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281-1022.

**V.**

It is further Ordered that, solely 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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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