

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): September 24, 2020

Power Solutions International, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35944
(Commission
File Number)

33-0963637
(IRS Employer
Identification No.)

201 Mittel Drive, Wood Dale, Illinois 60191
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (630) 350-9400

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---------------------|----------------------|--|
| None | — | — |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

On September 24, 2020, Power Solutions International, Inc. (the “Company”) issued a press release announcing it had entered into agreements with the United States Attorney’s Office for the Northern District of Illinois (the “USAO”) and the United States Securities and Exchange Commission (the “SEC”) to resolve these agencies’ previously disclosed investigations into the Company’s past revenue recognition practices. As part of this resolution, the Company will make a payment of \$1.7 million as a civil penalty to the SEC. Copies of the press release, the Non-Prosecution Agreement with the USAO and the Settled Administrative Order with the SEC are included as Exhibits 99.1, 99.2, and 99.3, respectively, to this report and are incorporated by reference into this Item 8.01.

Item 9.01 Financial Statements and Exhibits.

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 99.1 | <u>Press Release of Power Solutions International, Inc., dated September 24, 2020.</u> |
| 99.2 | <u>Non-Prosecution Agreement dated September 24, 2020, between Power Solutions International, Inc. and the USAO.</u> |
| 99.3 | <u>Settled Administrative Order with the SEC dated September 24, 2020.</u> |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

POWER SOLUTIONS INTERNATIONAL, INC.

By: /s/ John P. Miller

John P. Miller

Chief Executive Officer

Dated: September 25, 2020



Power Solutions International, Inc.

201 Mittel Drive
Wood Dale, Illinois 60191
www.psiengines.com

Power Solutions International Announces Settlements with the USAO and SEC to Resolve Previously Disclosed Investigations

*Company is committed to the full remediation of its internal controls
and the enhancement of its corporate compliance program*

WOOD DALE, Ill., September 24, 2020 — Power Solutions International, Inc. (“the Company” or “PSI”) (OTC Pink: PSIX), a leader in the design, engineering and manufacture of emission-certified engines and power systems, announced that it has entered into agreements with the United States Attorney’s Office for the Northern District of Illinois (the “USAO”) and the United States Securities and Exchange Commission (the “SEC”) to resolve these agencies’ previously disclosed investigations into the Company’s past revenue recognition practices. The conduct under investigation involved individuals no longer employed by the Company and ended more than three years ago. As part of this resolution, the Company will make a payment of \$1.7 million as a civil penalty to the SEC. In addition, the Company entered into a Non-Prosecution Agreement (the “NPA”) with the USAO, which contains no further monetary penalty and provides that the USAO will not charge the Company with a crime, provided that the Company complies with the provisions of the NPA. With these agreements, the investigations into the Company on behalf of the USAO and SEC have concluded.

Management Comments

John Miller, chief executive officer, commented, “We are pleased to resolve these matters and to fully focus on our mission of solving the power challenges of global OEMs.”

Miller added, “When the Company became aware of certain allegations on this issue in 2016, our Audit Committee engaged outside legal counsel to conduct an independent investigation. The Company cooperated extensively with the government’s investigations and has engaged in substantial remedial measures to address the conduct uncovered in those investigations, including, among other things, the retention of a new leadership team and the ongoing overhaul and enhancement of internal controls and operational systems to improve the reliability of financial reporting.”

Under the settled administrative order with the SEC, the Company, among other undertakings, is committed to remediate by April 30, 2021 the deficiencies in its internal control over financial reporting that constituted material weaknesses identified in its Form 10-K filed May 16, 2019, unless an extension

is provided by the SEC. The Company is similarly committed to continuing to enhance its corporate compliance program pursuant to the NPA with the USAO. The Company will continue to cooperate with both agencies pursuant to the settlements.

About Power Solutions International, Inc.

Power Solutions International, Inc. (PSI) is a leader in the design, engineering and manufacture of a broad range of advanced, emission-certified engines and power systems. PSI provides integrated turnkey solutions to leading global original equipment manufacturers and end-user customers within the energy, industrial and transportation end markets. The Company's unique in-house design, prototyping, engineering and testing capacities allow PSI to customize clean, high-performance engines using a fuel agnostic strategy to run on a wide variety of fuels, including natural gas, propane, gasoline, diesel and biofuels.

PSI develops and delivers complete power systems that are used worldwide in stationary and mobile power generation applications supporting standby, prime, demand response, microgrid, and co-generation power (CHP) applications; and industrial applications that include forklifts, agricultural and turf, arbor care, industrial sweepers, aerial lifts, irrigation pumps, ground support, and construction equipment. In addition, PSI develops and delivers powertrains purpose-built for medium-duty trucks and buses including school and transit buses, work trucks, terminal tractors, and various other vocational vehicles. For more information on PSI, visit www.psiengines.com.

Cautionary Note Regarding Forward-Looking Statements

This press release contains forward-looking statements regarding the current expectations of the Company about its prospects and opportunities. These forward-looking statements are entitled to the safe-harbor provisions of Section 21E of the Securities Exchange Act of 1934. The Company has tried to identify these forward-looking statements by using words such as "anticipate," "believe," "budgeted," "contemplate," "estimate," "expect," "forecast," "guidance," "may," "outlook," "plan," "projection," "should," "target," "will," "would," or similar expressions, but these words are not the exclusive means for identifying such statements. These statements are subject to a number of risks, uncertainties, and assumptions that may cause actual results, performance or achievements to be materially different from those expressed in, or implied by, such statements.

The Company cautions that the risks, uncertainties and other factors that could cause its actual results to differ materially from those expressed in, or implied by, the forward-looking statements, include, without limitation: management's ability to successfully implement the Audit Committee's remedial recommendations; the timing of completion of steps to address, and the inability to address and remedy, material weaknesses; the identification of additional material weaknesses or significant deficiencies; variances in non-recurring expenses; risks relating to the substantial costs and diversion of personnel's attention and resources deployed to address the financial reporting and internal control matters; the ability of the Company to accurately forecast sales, and the extent to which sales result in recorded revenues; changes in customer demand for the Company's products; volatility in oil and gas prices; the impact of U.S. tariffs on imports from China on the Company's supply chain; the Company's obligations to indemnify the past and present directors and officers and certain current and former employees with respect to the investigations being conducted by the SEC, and the criminal division of the USAO, which will be funded by the Company with its existing cash resources due to the exhaustion of its historical primary directors' and officers' insurance coverage; any delays and challenges in recruiting key employees consistent with the Company's plans; the impact the coronavirus pandemic could have on the Company's business and financial results; any negative impacts from delisting of the Company's common stock from the NASDAQ Stock Market and any delays and challenges in obtaining a re-listing on a stock

exchange; and the risks and uncertainties described in reports filed by the Company with the SEC, including without limitation its Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and the Company's subsequent filings with the SEC.

The Company's forward-looking statements are presented as of the date hereof. Except as required by law, the Company expressly disclaims any intention or obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise.

Contact:

Power Solutions International, Inc.

Philip Kranz

Director of Investor Relations

+1 (630) 451-5402

Philip.Kranz@psiengines.com

**U.S. Department of Justice**

*United States Attorney
Northern District of Illinois*

*L. Heidi Manschreck
Assistant United States Attorney*

*Dirksen Federal Courthouse
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604*

*Direct Line: (312) 469-6205
Fax: (312) 469-6198
E-mail: heidi.manschreck2@usdoj.gov*

September 24, 2020

David Hoffman
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
david.hoffman@sidley.com

Re: Power Solutions International, Inc.

Dear Mr. Hoffman:

The United States Attorney's Office for the Northern District of Illinois ("the Office") and Power Solutions International, Inc., on behalf of itself and its subsidiaries ("PSI" or the "Company"), enter into this Non-Prosecution Agreement ("Agreement"). PSI, pursuant to authority granted by its Board of Directors, agrees to certain terms and obligations as set forth below.

1. The Office enters into this Agreement based on the individual facts and circumstances presented by this case and relating to the Company, including:

(a) PSI is an Illinois-based company with headquarters in Wood Dale, Illinois. PSI manufactures and distributes engines and power systems for energy, industrial, and transportation end markets. From on or about May 28, 2013, through on or about April 18, 2017, PSI's common stock was listed on the Nasdaq Stock Market, which is a national securities exchange;

(b) PSI cooperated extensively with the Office after it learned of the Office's investigation, and has accepted responsibility for the conduct at issue in this matter – which involved revenue recognition fraud at the direction of certain former PSI senior executives between 2014 and 2016 and the use of materially false and misleading representations to PSI's outside auditor and its shareholders, as further described in the attached Statement of Facts (Attachment A);

1. The Office did not deem PSI eligible to receive voluntary disclosure credit because it concluded that PSI did not voluntarily and timely

disclose to the Office the conduct described in the attached Statement of Facts. Certain former members of PSI management were involved in the conduct, while other former members of PSI management were aware of the conduct by March 2016 at the latest. In May 2016, the Company's former Chief Operating Officer alleged fraud at PSI involving, among other things, the Company's revenue recognition practices and provided these allegations to the PSI Board of Directors. In July 2016, the Audit Committee of PSI's Board hired outside counsel and later an outside forensic accounting firm to conduct an independent investigation relating to these allegations. In August 2016, following PSI's failure to timely file its Form 10-Q for the second quarter of 2016, the Securities and Exchange Commission ("SEC") issued a document retention request to PSI, and shortly thereafter the Office opened an investigation. Upon learning of the SEC's and this Office's investigations, PSI took certain steps, including: (1) notifying the Office of the Audit Committee's ongoing independent investigation and keeping the Office updated on the status and scope of that investigation; (2) beginning in early 2017, disclosing the results of that investigation to the Office promptly upon completion of the investigation; (3) making efforts to remove executives and employees involved in the conduct, as described below; and (4) implementing extensive remedial measures and operational improvements, as described below;

2. PSI otherwise received full credit for its cooperation with the Office's investigation, including: making the Company's independent investigation counsel available for presentations regarding that investigation; voluntarily making employees available for interviews, proffers, and testimony; collecting, organizing, and producing voluminous documents; facilitating and encouraging witnesses to cooperate with the Office's investigation; voluntarily waiving the attorney-client privilege and work product protection to provide additional information to the Office, including the results of its independent investigation and information related to certain subject matters that would otherwise reflect corporate counsel's knowledge and communications; and providing to the Office all relevant facts apparently known to it, including information about the individuals involved in the conduct described in the attached Statement of Facts;

(c) PSI engaged in extensive remedial measures to address the conduct uncovered in its independent investigation, this Office's investigation, and the SEC's investigation, including the following:

1. removing certain executives and employees who were either directly

involved in the conduct as described below or failed to implement and execute internal control over financial reporting at the Company; as a result, as of June 2017, the senior leadership at PSI did not include any individuals who were involved in the conduct described in the Statement of Facts;

2. retaining a new leadership team including a new Chief Executive Officer, Chief Financial Officer, Corporate Controller, Vice President of Internal Audit, Director of Financial Reporting, and Director of Accounting;
3. appointing a new Chairman of the Board;
4. making an effort to compensate the shareholder victims of the revenue recognition fraud described in the Statement of Facts by paying \$8.5 million to settle a lawsuit brought by a shareholder class, as described further below;
5. pursuant to the terms of its settlement with the SEC, as described further below, committing to full remediation of the deficiencies in its internal control over financial reporting that constituted material weaknesses identified in its Form 10-K filed May 16, 2019 by April 30, 2021, unless an extension is provided by the SEC, and to pay a \$1.7 million fine; and
6. making extensive operational improvements, including: (a) creating an internal control steering committee and a Vice President of Internal Audit position, which reports directly to the Audit Committee, to help prioritize and monitor internal control improvement efforts; (b) with the help of internal control experts, overhauling and enhancing internal controls and operational systems to improve the reliability of financial reporting, including by implementing a new sub-certification and periodic control validation process, a weekly transaction review process, and mandating CFO review and approval for material non-routine transactions; (c) implementing new and improved ethics, compliance, delegation of authority, and finance policies and training; and (d) meeting at least weekly with its external auditor to ensure an open and transparent relationship;

(d) PSI resolved various shareholder lawsuits related to the conduct described in the Statement of Facts. In January 2017, the United States District Court for the Northern District of Illinois consolidated two putative class actions against PSI and appointed Richard Giunta as lead plaintiff. The consolidated case is captioned *Giunta v. Power Solutions International, Inc.*, No. 1:16-cv-09599 (N.D. Ill.) (the “*Giunta Action*”). In May 2019, the court approved a final settlement of the *Giunta* action, which included an \$8.5 million payment by PSI;

(e) although PSI’s compliance program was inadequate during the time period covered by the Statement of Facts, PSI has implemented various changes to improve its compliance program, including an improved whistleblower hotline reporting system, an improved Code of Business Conduct and Ethics designed to address the conduct described in the Statement of Facts, and compliance trainings of all employees. PSI is committed to continuing to enhance its compliance program, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment B to this Agreement (Corporate Compliance Program);

(f) based on PSI’s extensive remediation thus far; the state of its compliance program; its commitment to full remediation as part of its settlement with the SEC, including its agreement to provide written certification to the SEC of full remediation, supported by evidence, and to hire an independent consultant to monitor and review the Company’s internal control over financial reporting in the event that PSI does not fully remediate its material weaknesses by April 30, 2021 and no extension has been provided by the SEC; and its agreement to report to the Office as set forth in Attachment C to this Agreement (Corporate Compliance Reporting), the Office determined that an independent compliance monitor is unnecessary;

(g) PSI has no prior criminal history;

(h) based on the Company’s current financial condition, cash flows, and future projections, along with substantial uncertainties related to the Company’s ability to maintain, extend, or refinance its current debt agreement and to access sufficient liquidity to fund its business activities, PSI has demonstrated it is not able, even with the use of a reasonable installment schedule, to pay a criminal monetary penalty in addition to its \$8.5 million payment to settle a lawsuit brought by a shareholder class and its anticipated payment of \$1.7 million as a civil penalty to the SEC, without seriously jeopardizing the Company’s continued viability; and

(i) PSI has agreed to continue to cooperate with the Office as set forth in Paragraph 5, below.

2. PSI agrees that it is responsible under United States law for the acts of its officers and employees as set forth in the attached Statement of Facts and that the facts described therein are true and accurate. PSI also acknowledges that the facts described in the attached Statement of Facts constitute a violation of law, specifically securities fraud, in violation of Title 18, United States Code, Section 1348.

3. PSI agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for PSI make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by PSI set forth above or in the facts described in the attached Statement of Facts. PSI agrees that if PSI issues a press release or holds any press conference in connection with this Agreement, PSI shall first consult the Office to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters relating to this Agreement; and (b) whether the Office has any objection to the release.

4. PSI's obligations under this Agreement shall have a term of three years from the date on which the Agreement is executed (the "Term"). PSI agrees that, in the event the Office determines, in its sole discretion, that PSI has knowingly violated any provision of this Agreement or is not in compliance with its obligations under this Agreement, an extension or extensions of the Term may be imposed by the Office, in its sole discretion, for up to a total additional time period of one year, without prejudice to the Office's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment C, for an equivalent period. Conversely, in the event the Office finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the reporting requirement in Attachment C, the Agreement may be terminated early. In such event, PSI's cooperation obligations described in Paragraph 5, below, shall survive until the date upon which all such investigations and prosecutions are concluded.

5. PSI shall cooperate fully with the Office in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts until the later of the end of the conclusion of the Term or the date upon which all investigations and prosecutions arising out of such conduct are concluded. At the request of the Office, PSI shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of PSI or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts. PSI's cooperation pursuant to this Paragraph and its sub-Paragraphs is subject to valid claims of attorney-client privilege or attorney work product doctrine (except to the extent that PSI has already waived privileges); however, PSI must provide to the Office a log of any information or cooperation that is not provided based on an assertion of privilege, and PSI bears the burden of establishing the validity of any such assertion. PSI agrees that its cooperation described in this Paragraph shall include, but not be limited to, the following:

(a) PSI shall truthfully and in a timely manner disclose all factual information with respect to its activities, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which PSI has any knowledge and about which the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of PSI to promptly provide to the Office, upon request, any document, record or other tangible evidence about which the Office may inquire of PSI.

(b) Upon request of the Office, PSI shall designate knowledgeable employees, agents or attorneys to provide to the Office the information and materials described above on behalf of PSI. It is further understood that PSI must at all times provide complete, truthful, and accurate information.

(c) PSI shall use its best efforts to make available for interviews or testimony, as requested by the Office, present or former officers, directors, employees, agents, and consultants of PSI. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of PSI, may have material information regarding the matters under investigation.

(d) With respect to any information, testimony, documents, records or other tangible evidence provided to the Office pursuant to this Agreement, PSI consents to any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government, of such materials as the Office, in their sole discretion, shall deem appropriate.

6. In addition, during the Term, should PSI's executives, directors, or officers learn of conduct related to the activities of PSI by its executives, directors, officers, or employees that could constitute a felony under U.S. federal law, PSI shall promptly report such conduct to the Office. On the date that the Term expires, PSI, by the Chief Executive Officer and the Chief Financial Officer of the Company, will certify to the Office that PSI has met its disclosure obligations pursuant to this Agreement. Each certification will be deemed a material statement and representation by PSI to the executive branch of the United States for purposes of 18 U.S.C. § 1001.

7. PSI represents that it has implemented and is continuing to implement improvements to its compliance and ethics program designed to prevent and detect violations of anti-fraud, reporting, and books and records provisions of federal securities laws throughout its operations, including those of its agents and joint ventures. The Company's compliance program will include, but not be limited to, the minimum elements set forth in Attachment B (Corporate Compliance Program). In addition, PSI agrees that it will report to the Office annually during the Term

regarding remediation and implementation of the compliance measures described in Attachment B. These reports will be prepared in accordance with Attachment C (Corporate Compliance Reporting).

8. In order to address any material deficiencies in its internal controls, policies, and procedures, PSI represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies, and procedures regarding compliance with anti-fraud, reporting, and books and records provisions of federal securities laws. Where necessary and appropriate, PSI agrees to adopt a new compliance program, or to modify its existing one, including internal controls, compliance policies, and procedures, in order to ensure that PSI maintains an effective compliance program that incorporates relevant internal controls, as well as policies and procedures designed to effectively deter and detect violations of anti-fraud, reporting, and books and records provisions of federal securities laws. The compliance program will include, but not be limited to, the minimum elements set forth in Attachment B.

9. To date, PSI has paid \$8,500,000 to settle a lawsuit brought by a class of shareholders who were victims of the conduct described in the Statement of Facts. In addition, PSI has agreed to pay \$1,700,000 as a civil fine to the SEC, which may distribute some or all of the funds to victims. Nothing in this Agreement shall be deemed an agreement by the Office that these amounts cover the losses to the victims of the fraud described in the Statement of Facts or represent a loss calculation under the United States Sentencing Guidelines, and the Office is not precluded from arguing in any prosecution of an individual that the Court should impose restitution for the shareholder victims, and the amount of such restitution.

10. The Office is not requiring PSI to pay a criminal monetary penalty under this Agreement, which is conditioned on PSI paying the \$1,700,000 civil fine to the SEC. The Office agrees that this disposition is appropriate given the facts and circumstances of this case, including the relevant considerations outlined in Paragraph 1, above. Nothing in this Agreement, however, shall be deemed an agreement by the Office that the civil fine to the SEC is the maximum penalty that may be imposed in any future prosecution, and the Office is not precluded from arguing in any future prosecution that the Court should impose any type or amount of monetary penalty, including a criminal fine, disgorgement or civil or criminal forfeiture. PSI acknowledges that no tax deduction may be sought in connection with the civil fine to the SEC in connection with this Agreement.

11. The Office agrees, except as provided herein, that it will not bring any criminal or civil case (except for criminal tax violations, as to which the Office does not make any agreement) against PSI relating to any of the conduct described in the attached Statement of Facts. To the extent there is conduct disclosed by PSI that does not relate to any of the conduct described in the attached Statement of Facts, such

conduct will not be exempt from prosecution and is not within the scope of or relevant to this Agreement. The Office, however, may use any information related to the conduct described in the attached Statement of Facts against PSI: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by PSI or any of its present or former parents or subsidiaries. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with PSI, or any of its present or former parents, or subsidiaries.

12. If, during the Term, (a) PSI commits any felony under U.S. federal law; (b) PSI provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) PSI fails to cooperate as set forth in this Agreement; (d) PSI fails to implement a compliance program as set forth in this Agreement and Attachment B; or (e) PSI otherwise knowingly violates any provision of this Agreement, regardless of whether the Office becomes aware of such a breach after the Term is complete, PSI shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by the Office in the U.S. District Court for the Northern District of Illinois or any other appropriate venue. Determination of whether PSI has breached the Agreement and whether to pursue prosecution of PSI shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by PSI or its personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against PSI, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, PSI agrees that the statute of limitations as to any felony violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Office is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

13. In the event the Office determines that PSI has breached this Agreement, the Office agrees to provide PSI with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty days of receipt of such notice, PSI shall have the opportunity to respond to the Office in

writing to explain the nature and circumstances of such breach, as well as the actions PSI has taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of PSI.

14. In the event that the Office determines that PSI has breached this Agreement: (a) all statements made by or on behalf of PSI to the Office or to the Court, including the attached Statement of Facts, and any testimony given by PSI before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads or evidence derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against PSI; and (b) PSI shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of PSI prior or subsequent to this Agreement, or any leads or evidence derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, PSI will be imputed to PSI for the purpose of determining whether PSI has violated any provision of this Agreement shall be in the sole discretion of the Office.

15. PSI expressly acknowledges that the Office's discretionary determinations under this Agreement, including in paragraphs 4, 11 and 13, are not subject to judicial or other review.

16. Except as may otherwise be agreed by the parties in connection with a particular transaction, PSI agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to PSI's consolidated operations, as they exist as of the date of this Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, PSI shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the Office's ability to determine whether there has been a breach under this Agreement is applicable in full force to that entity. PSI agrees that the failure to include this Agreement's breach provisions in the transaction will make any such transaction null and void. PSI shall provide notice to the Office at least thirty days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The Office shall notify PSI prior to such transaction (or series of transactions) if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If at any time during the Term PSI engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the Office may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement.

17. This Agreement is binding on PSI and the Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of PSI and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by PSI.

18. It is further understood that PSI and the Office may disclose this Agreement to the public.

19. This Agreement sets forth all the terms of the agreement between PSI and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for PSI, and duly authorized representatives of PSI.

Sincerely,

JOHN R. LAUSCH, JR.
United States Attorney
Northern District of Illinois

Date: September 24, 2020

BY: /s/ Heidi Manschreck
L. Heidi Manschreck
Corey B. Rubenstein
Assistant U.S. Attorneys

AGREED AND CONSENTED TO:

POWER SOLUTIONS INTERNATIONAL, INC.

Date: September 24, 2020

BY: /s/ John P. Miller
JOHN P. MILLER
CEO
Power Solutions International, Inc.

Date: September 24, 2020

BY: /s/ David Hoffman
David Hoffman
Scott Lassar
Geeta Malhotra
Sidley Austin LLP
Counsel for Power Solutions International, Inc.

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Non-Prosecution Agreement (the "Agreement") between the United States Attorney's Office for the Northern District of Illinois (the "Office"), and Power Solutions International, Inc., on behalf of itself and its subsidiaries ("PSI" or the "Company"). Based on information available to PSI, including from its independent investigation, the Office's investigation, and the U.S. Securities and Exchange Commission's (the "SEC") investigation, PSI hereby agrees and stipulates that the following information is true and accurate. PSI admits, accepts, and acknowledges that it is responsible for the acts of its officers and employees as set forth below.

PSI, Relevant Executives, and Relevant Entities

1. PSI is an Illinois-based company with headquarters in Wood Dale, Illinois. PSI manufactures and distributes engines and power systems for energy, industrial, and transportation end markets. Between 2014 and December 28, 2016 (the "relevant period"), PSI's common stock was listed on the Nasdaq Stock Market, which is a national securities exchange. According to its 2015 Form 10-K, as of February 22, 2016, PSI had approximately 819 employees and contractors.

2. During the relevant period, Gary S. Winemaster was the Chief Executive Officer and Chairman of the Board of Directors of PSI. Winemaster owned approximately 35% of PSI's stock and was the Company's largest shareholder. Craig

M. Davis was PSI's Vice President of Sales. Among other responsibilities, Davis supervised many of the Company's sales representatives and sales contractors, including James F. Needham Davis reported to Winemaster. Needham was General Manager for Industrial, Heavy Duty Products at PSI and was responsible for sales of heavy-duty power systems for energy and industrial applications. Needham reported to Davis and Winemaster.

3. Company B was a Wyoming-based company that built generators, among other products. Company C was a Wyoming-based company that distributed and serviced generators. Company D was a Mississippi-based company that manufactured generators.

Revenue Recognition at PSI

4. When ordering products from PSI, a customer typically submitted a purchase order specifying the type and quantity of products being ordered, the requested delivery date, and the purchase price. The standard terms governing a purchase order were the terms listed in PSI's distribution agreement with the customer. When PSI and the customer had not agreed to terms through a distribution agreement, the standard terms governing a purchase order were those listed on PSI's website. For a particular transaction, a customer and PSI could agree to special terms that were different from the standard terms.

5. If PSI's accounting personnel were not aware of special terms for a particular transaction, they would treat the transaction as governed by the standard terms for the customer. Based on those standard terms, once the product was shipped, a sale was posted to the Company's general ledger, and PSI recognized the revenue from the sale as of that date.

6. The existence of certain special terms for a particular transaction, including rights to return products, rights to exchange products, discounts, and extended and indefinite payment terms, was material to the assessment by PSI's Accounting Department of whether, and when, revenue could be recognized for the transaction.

Reporting Revenue to the Public

7. During the relevant period, PSI's fiscal years were January 1 through December 31 of each year. For each fiscal year, the first quarter ended on March 31, the second quarter ended on June 30, the third quarter ended on September 30, and the fourth quarter ended on December 31.

8. Following the completion of each fiscal year, PSI prepared consolidated financial statements and submitted those statements to its outside auditor, Auditor A. Following the completion of each fiscal quarter, PSI provided interim financial information to Auditor A. During the relevant period, in management representation letters submitted quarterly to Auditor A, PSI's management, including Winemaster, confirmed that, among other things, (i) there were no side agreements or other arrangements that had not been disclosed to Auditor A; (ii) PSI's financial statements and financial information were presented in accordance with accounting principles generally accepted in the United States ("GAAP"); and (iii) to the best of their knowledge and belief, no events or transactions had occurred that would require recognition or disclosure in the prior year's financial statements.

9. Following a review or audit, as applicable, by Auditor A, PSI reported its financial information to the investing public in periodic reports filed with the SEC. Among other metrics, PSI reported to the public the revenues the Company earned during the reporting period. In making such reports, the Company represented that its financial statements were prepared in accordance with GAAP.

Revenue Recognition Fraud

10. From 2014 to approximately December 28, 2016, PSI, through Winemaster, Davis, Needham and other PSI employees, participated in a scheme to defraud its shareholders and other investors in connection with PSI's common stock listed on the Nasdaq Stock Market. Over the course of the scheme, PSI fraudulently inflated by millions of dollars the revenue the Company reported to the investing public in certain periods. In doing so, PSI deceived the Company's shareholders and other investors about PSI's financial health and performance.

11. PSI, through Winemaster, Davis, Needham, and other PSI employees, offered, caused to be offered, and agreed to special terms for certain transactions, and then knowingly and intentionally withheld and concealed those special terms from PSI's Accounting Department. These terms included, but were not limited to, giving customers discounts, rights to return products, rights to exchange products, and extended and indefinite periods in which to pay for products. As a result, at the time of such transactions, PSI's Accounting Department did not learn all of the terms of the transactions, causing PSI to recognize revenue for such transactions in periods for which some or all of the revenue should not have been recognized under GAAP, and to report fraudulently inflated revenues to the investing public.

12. PSI, through Winemaster and Davis, knowing that PSI's customers had not agreed to accept delivery of certain products at certain times, and without the customers' knowledge and consent, shipped products to customers and to warehouses so that records from the shipments fraudulently supported treating the transactions as sales in the periods during which they were shipped. As a result, PSI recognized revenue for the transactions in periods for which the revenue should not have been recognized under GAAP and reported fraudulently inflated revenues to the investing public.

13. PSI, through Winemaster, for the purpose of inducing Auditor A to certify and approve PSI's financial information so that PSI could report its fraudulently inflated revenues to the investing public, knowingly submitted to Auditor A management representation letters that fraudulently confirmed that, among other things, (i) there were no side agreements or other arrangements that had not been disclosed to Auditor A; (ii) PSI's financial statements and financial information were presented in accordance with GAAP; and (iii) to the best of his knowledge and belief, no events or transactions had occurred that would require recognition or disclosure in the prior year's financial statements; knowing that these representations were false.

14. PSI, through Winemaster, Davis, and Needham, undertook various efforts to conceal the scheme, including: (a) renegotiating and modifying the special

terms of transactions entered in prior periods for the purpose of creating false records to fraudulently support PSI's accounting for the transactions; (b) knowingly creating and causing to be created documents that falsely described the terms of transactions to fraudulently support PSI's accounting for those transactions; (c) knowingly making materially false statements and/or causing materially false and misleading statements to be made to Auditor A, for the purpose of fraudulently convincing Auditor A that PSI properly accounted for certain transactions; and (d) knowingly arranging and causing to be arranged new sales transactions by PSI's customers, involving products that PSI knew had been delivered to the customers by PSI in earlier transactions pursuant to terms that had not been disclosed to PSI's Accounting Department at the time of the earlier transactions, to fraudulently support PSI's accounting for the earlier transactions.

15. For the purpose of executing the scheme, on February 26, 2016, PSI knowingly submitted to the SEC PSI's Annual Report for fiscal year 2015 containing Company A's consolidated financial statements and financial information on Form 10-K, which statements fraudulently reported to the investing public that PSI earned substantially more revenue in 2015 than PSI actually earned.

16. The Company's 2015 Form 10-K included inflated revenues related to, among others, (a) an approximately \$7.8 million transaction with Company D that was fraudulently recorded in the first quarter of 2015; (b) an approximately \$10 million transaction with Company B that was fraudulently recorded in the second quarter of 2015; (c) an approximately \$4.2 million transaction with Company B that

was fraudulently recorded in the third quarter of 2015; and (d) an approximately \$3 million transaction with Company C that was fraudulently recorded in the fourth quarter of 2015.

CORPORATE COMPLIANCE PROGRAM

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with anti-fraud, reporting, and books and records provisions of the federal securities laws ("Relevant Laws"), Power Solutions International, Inc. on behalf of itself and its subsidiaries ("PSI" or "the Company") agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, PSI agrees to modify its compliance program, including its system of internal controls, its Code of Business Ethics and Conduct, and its compliance policies and procedures, in order to ensure that it maintains (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) an effective compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of federal law. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of the Company's existing internal controls and compliance program.

High-Level Commitment

1. PSI will ensure that its officers, directors, and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of Relevant Laws and its compliance program.

Policies and Procedures

2. PSI will develop and promulgate a clearly articulated and visible corporate policy against violations of the anti-fraud, reporting, and books and records provisions of the Relevant Laws, which policy shall be memorialized in written additions to its compliance program.

3. PSI will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of the Relevant Laws and the Company's compliance program, and PSI will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of anti-fraud, reporting, and books and records provisions of the Relevant Laws by personnel at all levels of the Company. These policies and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of and at the direction of the Company in a foreign jurisdiction, including but not limited to agents and intermediaries, consultants, representatives, distributors, contractors and suppliers, and joint venture partners (collectively, "authorized agents and business partners"). The Company shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of the Company.

4. The Company will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts. This system should be designed to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

Periodic Risk-Based Review

5. PSI will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of the Company.

6. The Company shall review its policies and procedures related to anti- fraud, reporting, and books and records provisions of the Relevant Laws no less than annually and update them as appropriate to ensure their continued effectiveness, taking into account relevant developments in the field and evolving international and industry standards.

Proper Oversight and Independence

7. The Company will assign responsibility to one or more senior corporate executives of the Company for the implementation and oversight of the Company's compliance program. Such corporate official(s) shall have the authority and obligation to report directly to independent monitoring bodies, including the Company's Board of Directors, the Audit Committee of the Board of Directors, or the Vice President for Internal Audit, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

Training and Guidance

8. The Company will implement mechanisms designed to ensure that its compliance program, including policies related to anti-fraud, reporting, and books and records provisions of the Relevant Laws, is effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance), and, where necessary and appropriate, agents and business partners; and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

9. The Company will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners, on complying with the Company's compliance program, including when they need advice on an urgent basis.

Internal Reporting and Investigation

10. The Company will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of the anti-fraud, reporting, and books and records provisions of the Relevant Laws and those aspects of the Company's compliance program related thereto.

11. The Company will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of anti-fraud, reporting, and books and records provisions of the Relevant Laws, and violations of the Company's compliance program.

Enforcement and Discipline

12. PSI will implement mechanisms designed to effectively enforce its compliance program, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

13. The Company will institute appropriate disciplinary procedures to address, among other things, violations of anti-fraud, reporting, and books and records provisions of the Relevant Laws and the Company's compliance program by the Company's directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the director, officer, or employee. The Company shall implement procedures to ensure that, where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing its internal controls and compliance program and making modifications necessary to ensure the overall compliance program is effective.

14. The Company will use appropriate risk-based due diligence and compliance requirements pertaining to the retention and oversight of all its authorized agents and business partners, including:

- a. properly documented due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;
- b. informing agents and business partners of the Company's commitment to abiding by anti-fraud, reporting, and books and records provisions of the Relevant Laws, and of the Company's compliance program; and
- c. seeking a reciprocal commitment from agents and business partners.

15. Where necessary and appropriate, the Company will include standard provisions in agreements, contracts, and renewals thereof with its authorized agents and business partners that are reasonably calculated to prevent violations of anti-fraud, reporting, and books and records provisions of the Relevant Laws, which may, depending upon the circumstances, include: (a) anti-fraud representations and undertakings relating to compliance with the Relevant Laws; (b) where appropriate and feasible, rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of anti-fraud, reporting, or books and records provisions of the Relevant Laws, the Company's compliance program, or the representations and undertakings related to such matters.

Mergers and Acquisitions

16. PSI will develop and implement policies and procedures for mergers and acquisitions requiring that the Company conducts appropriate risk-based due diligence on potential new business entities, including appropriate federal securities fraud due diligence by legal, accounting, and compliance personnel, or persons acting under their supervision.

17. PSI will ensure that the Company's compliance program, policies, and procedures regarding anti-fraud, reporting, and books and records provisions of the Relevant Laws apply as quickly as is practicable to newly acquired businesses or entities merged with PSI and will promptly train the directors, officers, employees, agents, and business partners, consistent with Paragraph 8 above, on PSI's compliance program.

Monitoring and Testing

18. PSI will conduct reviews and testing of its compliance program periodically, and at least once per reporting period, to evaluate and improve its effectiveness in preventing and detecting violations of anti-fraud, reporting, and books and records provisions of the Relevant Laws, taking into account relevant developments in the field and evolving industry standards.

REPORTING REQUIREMENTS

Power Solutions International, Inc. on behalf of itself and its subsidiaries (“PSI” or the “Company”), agrees that it will report to the Office periodically, at no less than twelve-month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment B. During this three-year period, PSI shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two follow-up reviews and reports, as described below:

a. By no later than one year from the date this Agreement is executed, PSI shall submit to the Office a written report setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the Company’s internal controls, policies, and procedures for ensuring compliance with anti-fraud, reporting, and books and records provisions of the federal securities laws, and the proposed scope of the subsequent reviews. The report shall be transmitted to:

L. Heidi Manschreck
Assistant United States Attorney
U.S. Attorney’s Office for the Northern District of Illinois 219 South Dearborn Street
Chicago, IL 60604

PSI may extend the time period for issuance of the report with prior written approval of the Office.

b. PSI shall undertake at least two follow-up reviews and reports, incorporating the views of the Office on the Company’s prior reviews and reports, to

further monitor and assess whether the Company's policies and procedures are reasonably designed to detect and prevent violations of anti-fraud, reporting, and books and records provisions of the federal securities laws.

c. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the Office. The second follow-up review and report shall be completed and delivered to the Office no later than thirty days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Office determines in its sole discretion that disclosure would be in furtherance of the Office's discharge of its duties and responsibilities or is otherwise required by law.

e. PSI may extend the time period for submission of any of the follow-up reports with prior written approval of the Office.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89984 / September 24, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4169 / September 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20062

In the Matter of

POWER SOLUTIONS
INTERNATIONAL, INC.

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**

I.

The Securities and Exchange Commission (“Commission” or “SEC”) 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 Power Solutions International, Inc. (“PSI” 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, Respondent admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and 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 finds¹ that:

SUMMARY

1. This case concerns accounting fraud by former executives of PSI, a publicly traded company that manufactures and sells engines. Gary Winemaster ("Winemaster"), PSI's former Chief Executive Officer, Craig Davis ("Davis"), PSI's former Vice President of Sales, and James Needham ("Needham"), PSI's former General Manager for Industrial, Heavy Duty Products, fraudulently inflated PSI's revenue in order to try to meet PSI's prior revenue guidance and analysts' revenue expectations. As a result of their fraud, PSI issued materially misstated financial statements in its public filings for every period from the fourth quarter of 2014 through the fourth quarter of 2015. Taken together, the fraud caused PSI to overstate its revenues by almost \$25 million.

2. Winemaster, Davis and Needham caused PSI to fraudulently recognize revenue for purported sales of products that the customer had not yet agreed to accept; that had not yet been completed to customer specifications; and for which Winemaster, Davis and Needham had negotiated improper "bill and hold" arrangements. They also caused PSI to improperly recognize revenue for transactions for which they had created undisclosed side agreements that included contingencies such as product return rights and special financing and payment terms. They also caused PSI to improperly recognize revenue in amounts that exceeded the actual sale price.

3. Winemaster, Davis, and Needham orchestrated the transactions that resulted in the accounting misstatements. They engineered transactions designed to create the appearance of revenue in certain periods when, in fact, PSI was not entitled to report revenue from those transactions at that time.

4. Winemaster, Davis, and Needham also misled certain members of PSI's accounting department, or hid information from them, to ensure that PSI recognized revenue from the transactions in question. They misled accounting department personnel in an effort to meet PSI's revenue targets. They also engaged in fraudulent conduct to conceal the true nature of several transactions from PSI's auditor ("Auditor A").

5. Beginning in August 2016, PSI disclosed information concerning its misstated financial statements in various Forms 8-K filed over time. When PSI disclosed this information about its financials, PSI's stock price fell significantly.

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.

6. On May 16, 2019, PSI issued restated financial statements when it filed its 2017 Form 10-K. The restated financial statements included significant reductions in revenue as a result of PSI's fraud. The reductions in revenue as a result of the fraud totaled \$846,000 for the fourth quarter of 2014, and more than \$24 million for fiscal year 2015. In addition to the fraud-related adjustments, PSI also made other revenue-related adjustments to its previously issued financial statements.

7. The following chart summarizes the quantitative impact on PSI's financial statements from its accounting fraud:

| Impact of Fraudulent Transactions on Net Revenue <i>(dollar amounts in thousands)</i> | Increase (Decrease) | | | | | |
|---|----------------------------|----------------|----------------|----------------|-----------------|-----------------|
| | Q4 2014 | Q1 2015 | Q2 2015 | Q3 2015 | Q4 2015 | FY 2015 |
| Originally Reported Net Revenue | 103,910 | 86,139 | 94,629 | 112,008 | 96,670 | 389,446 |
| Fraudulent Transactions | (846) | (6,951) | (10,020) | (1,286) | (5,823) | (24,080) |
| Other Adjustments | (1,863) | 4,132 | 746 | 4,229 | (12,087) | (2,981) |
| Net Revenue Adjustments | (2,709) | (2,819) | (9,274) | 2,943 | (17,910) | (27,060) |
| Restated Net Revenue | 101,202 | 83,320 | 85,355 | 114,951 | 78,760 | 362,386 |
| Impact of Fraudulent Transactions, as Percentage of Restated Net Revenue | 0.8% | 8.3% | 11.7% | 1.1% | 7.4% | 6.6% |

| Impact of Fraudulent Transactions on Income (Loss) Before Taxes <i>(dollar amounts in thousands)</i> | Increase (Decrease) | | | | | |
|--|----------------------------|----------------|----------------|----------------|----------------|-----------------|
| | Q4 2014 | Q1 2015 | Q2 2015 | Q3 2015 | Q4 2015 | FY 2015 |
| Originally Reported Income (Loss) Before Taxes | 13,630 | (72) | 6,206 | 8,643 | (887) | 13,890 |
| Restated Income (Loss) Before Taxes | 10,585 | (2,585) | 1,246 | 6,908 | (18,162) | (12,593) |
| Fraudulent Transactions | (320) | (2,424) | (3,007) | (1,286) | (1,054) | (7,771) |
| Other Adjustments | (2,438) | 384 | (482) | 26 | (3,751) | (3,823) |
| Gross Profit Adjustment | (2,758) | (2,040) | (3,489) | (1,260) | (4,805) | (11,594) |
| Gross Profit Impact of Fraudulent Transactions, as Percentage of Restated Income Before Taxes | 3.0% | 93.8% | 241.3% | 18.6% | 5.8% | 61.7% |

RESPONDENT

8. **Power Solutions International, Inc.**, a Delaware corporation headquartered in Wood Dale, Illinois, manufactures and sells power systems to industrial equipment manufacturers and transportation companies. PSI became a publicly traded company on April 29, 2011. PSI's common stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ as "PSIX." NASDAQ delisted PSI's common stock on April 17, 2017 for its failure to timely file required periodic reports with the SEC. Following the delisting, PSI's common stock has traded on the OTC Pink market as "PSIX."

OTHER RELEVANT INDIVIDUALS

9. **Gary Winemaster**, 62 years old, is a resident of Mundelein, Illinois. Winemaster was a co-founder of PSI and was employed by PSI as its CEO, President and Chairman of the Board from at least 2011 until April 2017. While serving as PSI's CEO, Winemaster was responsible for (a) reviewing and approving PSI's consolidated financial statements and (b) reviewing, approving, signing, and certifying PSI's periodic public reports (including its Forms 10-K and 10-Q). From 2014 through 2016, Winemaster, along with his brother who was also employed by PSI, owned a majority of the common stock of PSI. Winemaster resigned as PSI's CEO, President and Chairman of the Board in April 2017 and became its chief strategy officer. Winemaster served in that position until he retired from PSI in May 2019.

10. **Craig Davis**, 46 years old, is a resident of Batavia, Illinois. From at least 2014 until around October 2018, Davis was employed by PSI as its VP of Sales. Davis reported to Winemaster while Winemaster was CEO of PSI. Davis was terminated by PSI in or around October 2018.

11. **James Needham**, 58 years old, is a resident of Leavenworth, Kansas. From at least 2014 until around April 2019, Needham was employed by PSI as its General Manager for Industrial, Heavy Duty Products. Needham reported to Winemaster while Winemaster was CEO of PSI. Needham was terminated by PSI in or around April 2019.

FACTS

Background

12. PSI, a publicly traded company, is a global producer of a broad range of engines that it sells to manufacturers of industrial equipment, trucks, and busses. Many of PSI's largest customers purchased engines to be used in the oil and gas industry, primarily in support of operating wells. As such, demand for a significant segment of PSI's products was tied to the price of oil (*i.e.*, as the price of oil decreased, demand for PSI's products used in the oil and gas industry also decreased). For many of its customers, PSI was the sole source provider of engines.

13. PSI registered its common stock and started trading on the NASDAQ on April 29, 2011. After taking that step, PSI was required by the federal securities laws to file various periodic reports with the SEC, including annual reports (Forms 10-K), quarterly reports (Forms 10-Q) and current reports (Forms 8-K). PSI was required, among other things, to include financial statements in its quarterly and annual reports that accurately and fairly reflected PSI's financial condition. These filings stated that the included financial statements were prepared in accordance with Generally Accepted Accounting Principles ("GAAP").² The annual financial statements were also required to be audited by an independent public accountant. Once filed, PSI's periodic reports and accompanying financial statements became available to the investing public.

² GAAP is codified in the Financial Accounting Standards Board Accounting Standards Codification ("ASC").

14. ASC 605 is the governing accounting standard for revenue recognition, and was issued by the Financial Accounting Standards Board. ASC 605-10-25-1 provides that revenue may be recognized when it is realized, or realizable, and earned.

15. Consistent with PSI's obligation to recognize revenue only when it was realized, or realizable, and earned under ASC 605-10-25-1, PSI's revenue recognition policy, as represented in its SEC periodic filings, provided that "[w]e recognize revenue upon transfer of title and risk of loss to the customer, which is typically when products are shipped, provided there is persuasive evidence of an arrangement, the sales price is fixed or determinable and management believes collectability is reasonably assured." PSI further represented in its SEC periodic filings that:

In certain circumstances, [PSI] recognizes revenue before delivery has occurred. In such circumstances, among other things, risk of ownership has passed to the buyer, the buyer has made a written fixed commitment to purchase the finished goods, the buyer has requested the finished goods be held for future delivery as scheduled and designated by them, and no additional performance obligations exist by [PSI].

16. At all times relevant to this Order, PSI did not have any other stated revenue recognition policies other than what was disclosed in its SEC filings.

17. Winemaster, Davis and Needham knew that PSI filed financial statements in its quarterly and annual reports. They knew about PSI's revenue recognition standards and policies. They also knew that PSI's financial statements needed to be truthful and accurate.

18. As PSI's CEO, Winemaster was responsible for reviewing and approving PSI's financial statements and its quarterly and annual reports. He was also responsible for establishing and maintaining PSI's internal control over financial reporting. At all times relevant to this Order, Winemaster signed each of PSI's annual and quarterly reports before they were publicly filed. He certified, among other things, that each report (a) did not include any material misstatements or omissions, and (b) fairly presented, in all material respects, the financial condition of PSI for that period.

19. Davis was in charge of PSI's sales department, which was primarily responsible for selling product to PSI's customers. Davis oversaw its sales personnel (with the exception of Needham), and approved all sales incentives offered to PSI customers. Davis also was responsible for communicating those incentives to others in sales and the accounting group to ensure the sales incentives were appropriately documented and recorded. Davis reported to Winemaster, who exercised close oversight of the sales department and maintained close contact with a number of PSI customers.

20. Needham was PSI's General Manager for Industrial, Heavy Duty Products. In that role, Needham was responsible for selling PSI product to customers serving the oil and gas industry. Needham reported directly to Winemaster.

21. PSI's revenue was recorded through PSI's enterprise resource planning system, EPICOR. The accounting department relied upon "word of mouth" from PSI's sales department to ensure any non-standard terms granted to customers for orders matched what was input into EPICOR. PSI's sales department personnel, including Needham, were told by accounting department personnel on multiple occasions to inform accounting of any side arrangements or atypical terms entered into with PSI customers that were different from PSI's standard terms because PSI was a public company and therefore needed to report transactions appropriately. Winemaster, Davis and Needham all knew that they needed to inform PSI's accounting department about any sales transaction terms that deviated from PSI's standard terms so that the accounting department could properly record the revenue associated with those transactions.

22. The accounting department did not review customer purchase orders or shipping documents for customer orders before recording revenue. If a customer was given terms different from those entered by sales department personnel into EPICOR, those terms would not be reflected on the invoice generated by the accounting department.

23. As is very common with public companies, stock analysts reviewed PSI's periodic reports and other public disclosures, including forward-looking guidance, so they could develop recommendations. Specifically, stock analysts offered projections for a number of PSI's financial metrics, including anticipated net revenue. Various financial firms and media outlets combined analysts' projections for PSI's quarterly net revenue into a "consensus estimate" for that period. That consensus net revenue estimate was available to the public through various financial news websites. The consensus net revenue estimate is an important metric for public companies and for investors. When a company falls short of its consensus net revenue projection, it is not unusual for that company to experience a negative reaction from investors with a corresponding decrease in the stock price.

24. Winemaster determined what revenue guidance PSI provided to the public and consistently set revenue targets for PSI. In 2014 and 2015, PSI management, including Winemaster and Davis, used quarterly analyst guidance as a benchmark for its internal quarterly revenue targets. On August 5, 2015, PSI provided the investing public with quarterly revenue guidance for the third and fourth quarters of 2015 along with reduced full year guidance for 2015. Subsequently, on November 9, 2015, PSI provided the investing public with revised, lower quarterly revenue guidance for the fourth quarter of 2015. During this period, PSI management, including Winemaster and Davis, also continued to look at quarterly analyst guidance as a benchmark for its internal quarterly revenue targets.

25. At all times relevant to this Order, Winemaster, Davis and Needham each understood that it was important for PSI to meet or exceed the analyst consensus net revenue guidance. Each of them also understood that it was important for PSI to meet or exceed PSI's own public net revenue guidance.

PSI's Fraudulent Revenue Recognition Practices

26. PSI's revenue targets became increasingly difficult to meet in 2015 when the price of oil was depressed. In order to achieve these targets, Winemaster and Davis pressured PSI's salesmen to provide incentives to their customers to take additional product before the end of quarters, including by incenting customers to place additional orders for product they did not currently need and pushing customers to take delivery of already ordered product earlier than desired. Doing so resulted in a significant amount of sales being "pulled ahead" from future periods to a current quarter. For example, approximately 24 percent of PSI's sales for the first quarter of 2015 were pulled ahead from the second quarter to the first quarter.

27. These end-of-quarter drives to hit revenue targets led to PSI's customers accumulating inventory that they did not need and ultimately led to PSI's customers having little appetite to purchase additional product from PSI in 2016. This practice also was detrimental to PSI's gross profit margins in 2014 and 2015 because cost of goods sold increased due to inefficient production rushes, labor overtime, and expedited freight charges related to those sales.

28. Winemaster, Davis and Needham did not simply encourage customers to buy more, or buy early. They also orchestrated transactions to cause PSI to fraudulently recognize revenue so that they could meet PSI's previously issued revenue guidance and analysts' revenue expectations.

29. To achieve PSI's revenue targets, Winemaster, Needham and Davis caused PSI to fraudulently recognize revenue for purported sales of products that the customer had not yet agreed to accept; that had not yet been completed to customer specifications; and for which Winemaster, Needham and Davis had negotiated improper "bill and hold" arrangements. They also caused PSI to improperly recognize revenue for transactions for which they had created undisclosed side agreements that included contingencies such as product return rights and special financing and payment terms. In addition, they caused PSI to improperly recognize revenue in amounts that exceeded the actual sale price. This misconduct began in the fourth quarter of 2014 and increased in scope as the demand for PSI's product slowed throughout 2015.

30. A summary of the fraudulent accounting is set forth below:

- a. **Fourth Quarter 2014:** PSI fraudulently recorded revenue totaling approximately \$846,000 for a purported "bill and hold" sale of engines that was not requested by the customer and was not delivered to the customer until 2015.
- b. **First Quarter 2015:** PSI fraudulently recorded revenue totaling approximately \$7.8 million for the purported sale of engines to a customer that was given an indefinite, open-ended right to return the engines if it did not need them.

- c. **Second Quarter 2015:** PSI fraudulently recorded revenue totaling approximately \$10 million for the purported sale of engines to a customer when the customer (i) did not have to pay for the engines until 30 days after it used them in a generator and (ii) could exchange the engines for different engines for an unlimited period of time.
- d. **Third Quarter 2015:** PSI fraudulently recorded \$1.3 million when it recognized revenue of \$4.3 million for engines that were sold to a customer for only \$3 million under a side agreement.
- e. **Fourth Quarter 2015:** PSI fraudulently recorded \$3 million in revenue on the purported sale of 3 generator-sets to a customer, when in fact that customer's receipt of the generator-sets was conditioned upon the return of other previously sold engines that would have offset all of the revenue recognized from the generator-sets. PSI also fraudulently recorded revenue totaling approximately \$600,000 for the purported sale of 48 engines to a customer, although PSI did not finish manufacturing the engines to the customer's specifications and did not ship them to the customer before the end of 2015. In addition, PSI fraudulently recorded revenue totaling approximately \$300,000 for the purported sale of 147 engines that were shipped to a warehouse that PSI controlled without the customer's knowledge and acceptance. Finally, PSI fraudulently recorded revenue totaling approximately \$1.9 million for the purported sale of 775 "base engines" to a customer, although the engines did not include all of the components required by the customer, and the risk of loss did not shift to the customer until 2016.

Fourth Quarter 2014

31. In the fourth quarter of 2014, PSI appeared to meet the consensus analyst expectation for net revenue of \$103.4 million when it reported net revenue of \$103.9 million. In that quarter, PSI recognized approximately \$846,000 of revenue for a fraudulent bill and hold transaction with Customer A as described below. If PSI had accounted for that transaction in accordance with GAAP, PSI would have missed the consensus analyst net revenue expectation for that quarter by approximately \$400,000. Davis approved this fraudulent "bill and hold" transaction.

32. Sellers can recognize revenue on the sale of goods before delivery has occurred if the standards for "bill and hold" transactions are satisfied. In essence, a "bill and hold" sale of goods requires that: (i) the risks of ownership pass to the buyer at the time of the bill and hold transaction; (ii) the buyer makes a fixed commitment to purchase the goods; (iii) the buyer, not the seller, requests that the transaction be on a bill and hold basis; (iv) the buyer has a substantial

business purpose for ordering the goods on a bill and hold basis; (v) there is a fixed schedule for delivery of the goods that is both reasonable and consistent with the buyer's substantial business purpose for the bill and hold transaction; (vi) the seller does not retain any specific performance obligations related to the sale; and (vii) the goods are complete and ready for shipment at the time of the bill and hold transaction. PSI incorporated the requirements for "bill and hold" transactions in its revenue recognition policies as described above in ¶ 15.

33. In late November 2014, at Davis's direction, the PSI sales representative responsible for the Customer A account approached Customer A and offered extended payment terms to incent Customer A to take delivery of 30 engines early in order to enable PSI "to hit some numbers for 2014." In addition to the extended payment terms, Customer A asked PSI to cover the cost of warehousing the engines at an off-site location as well as the shipping costs to get the engines to the off-site location. Davis approved Customer A's counteroffer, stating that PSI needed to do the deal, "as we are still 4 million short" of the quarterly sales target. PSI delivered the product to the agreed upon off-site location in December 2014 and paid for the storage of the engines until Customer A accepted the engines in February 2015.

34. An internal email sent by the PSI sales representative for the Customer A account summarized the true nature of this transaction: "the WHOLE reason behind this entire exercise was to try and jam as much business in the [sic] 2014 as possible. [Customer A] agreed to take all the engines they had on order for 2015 in December. That was 30 units. They don't want any of them, but agreed to help us out."

35. PSI recognized approximately \$846,000 of revenue associated with this transaction in the fourth quarter of 2014. PSI recognized revenue on the transaction despite not meeting the criteria required by ASC 605-10-25-1 and which were included in its own policies as described in ¶ 15. Customer A did not request the bill and hold nor did it have a business purpose for ordering on a bill and hold basis. In addition, by reimbursing Customer A for the storage of these engines until Customer A needed the engines in 2015, PSI did not meet the delivery requirements to recognize revenue in 2014.

36. Davis did not tell PSI's accounting department that the customer did not request the bill and hold, had received extended payment terms, or that PSI was covering the costs of storing the engines. When challenged by a senior operations executive about the appropriateness of recognizing revenue under these circumstances, Davis lied to that executive by falsely telling him that PSI's CFO and others in accounting had been informed about the transaction details and approved of the accounting for the transaction.

37. Due to the misconduct identified in ¶¶ 31, 33-36 above, PSI's 2014 Form 10-K contained materially misstated financial statements that improperly recognized \$846,000 in revenue. A reasonable investor would have viewed this misstatement as important because the misstatement: (i) involved a fraudulent accounting position with no GAAP support, (ii) arose as an ongoing effort by senior PSI management to meet revenue targets provided to the market, (iii) allowed PSI to meet the consensus analyst expectation for net revenue for that quarter, and (iv) constituted a 0.8 percent overstatement of net revenue and a 3.0 percent overstatement of pre-tax income.

38. Davis acted with scienter with respect to the fraudulent accounting for this transaction. For example, he approved the key terms for the transaction, including the agreement to reimburse Customer A's storage costs, knowingly withheld important information about the transaction from PSI's accounting department, and also lied to a senior PSI operations executive about consulting with the accounting department concerning the appropriateness of recognizing revenue from the transaction. He knew that the transaction in question had the purpose and effect of artificially inflating PSI's revenue. Davis' scienter is imputed to PSI.

First Quarter 2015

39. In the first quarter of 2015, PSI appeared to narrowly miss the consensus analyst expectation for net revenue of \$87 million when it reported net revenue of \$86.1 million. It was a narrow miss only because PSI manipulated its revenue. In that quarter, PSI fraudulently recognized approximately \$7.8 million of revenue related to a contingent sales transaction with Customer B as described below. If PSI had accounted for that transaction in accordance with GAAP, PSI would have missed the consensus analyst expectation for net revenue for that period by a wide margin. Davis and Winemaster orchestrated this fraudulent accounting transaction.

40. In late February 2015, at Davis's direction, PSI's sales representative for Customer B approached Customer B about accelerating the delivery of around \$8 million worth of engines scheduled for delivery in June, July, and August of 2015 to the first quarter in order to meet PSI's quarterly revenue target. At the time, PSI's sales representative for Customer B emailed Davis and questioned how PSI could continue to pull ahead sales in this manner to meet quarterly revenue targets. Davis agreed with the salesperson's concern but noted that without the Customer B pull ahead the quarterly results would be "tragic."

41. Customer B rejected PSI's multiple offers of various incentives to take the engines early because Customer B did not want the engines in the first quarter of 2015. In a last ditch effort to recognize the revenue in the first quarter, Winemaster called the president of Customer B and offered, in addition to the other incentives previously offered, an indefinite right of return on the engines if Customer B's intended customer for the engines cancelled its order. Customer B accepted Winemaster's offer, and the engines were delivered before the end of the first quarter of 2015.

42. Winemaster did not inform anyone else in the PSI organization of this indefinite right of return prior to the filing of PSI's Q1 2015 Form 10-Q. The PSI sales department, including Davis, learned of the return right offered by Winemaster from representatives of Customer B. Neither Winemaster nor Davis informed the accounting group of the return right Winemaster granted Customer B.

43. Ultimately, Customer B did not have demand from its own customers for the engines, and it requested to return those engines to PSI in 2017. However, as discussed in more detail at ¶ 130, in order to try to conceal the true nature of the transaction, PSI did not take the engines back. Instead, representatives of PSI's sales department, with Winemaster's and Davis's knowledge and approval, arranged to have one of PSI's other customers (and a competitor of Customer B) purchase the engines from Customer B.

44. As a result of Winemaster's and Davis's conduct, PSI recorded revenue associated with the transaction even though it had failed to meet the criteria required by ASC 605-15-25-1 (Sales of Product when Rights of Return Exists) when it recognized revenue for this transaction in the first quarter of 2015. Under ASC 605-15-25-1e and 605-15-25-1f, PSI could not recognize revenue unless it could reasonably estimate the amount of future returns, and had no future performance obligation to help Customer B resell the engines.

45. PSI did not meet the aforementioned criteria. For example, PSI had no way of reasonably estimating the future returns from Customer B. At the time, PSI had only accepted returns due to defect or performance issues. PSI had no way of knowing, into the indefinite future, whether Customer B's intended customer would someday cancel its order. Consequently, the earnings process was not complete, and the sale should not have been recognized in the first quarter of 2015.

46. Due to the misconduct identified in ¶¶ 39-45 above, PSI's Q1 2015 Form 10-Q contained materially misstated financial statements that improperly recognized approximately \$7.8 million in revenue. A reasonable investor would have viewed this misstatement as important because the misstatement: (i) involved a fraudulent accounting position with no GAAP support, (ii) arose as an ongoing effort by senior PSI management to meet revenue targets provided to the market, (iii) masked the severity of the downward revenue trend PSI was facing in 2015, and (iv) contributed to an 8.3 percent overstatement of net revenue and a 93.8 percent overstatement of pre-tax income.

47. Winemaster and Davis acted with scienter with respect to the fraudulent accounting for this transaction. For example, Winemaster granted the return right to Customer B; Winemaster and Davis knowingly withheld the existence of the return right from PSI's accounting department; and Winemaster and Davis authorized PSI's sales staff to facilitate Customer B's resale of the engines to another PSI customer in 2017 after Customer B requested to return the engines to PSI. They knew that the transaction in question had the purpose and effect of artificially inflating PSI's revenue. Winemaster's and Davis' scienter is imputed to PSI.

48. In addition, Winemaster signed and certified PSI's Q1 2015 Form 10-Q and approved the filing on May 7, 2015 of a Form 8-K announcing PSI's net revenue for the quarter even though he knew that \$7.8 million of net revenue for the quarter had been improperly recognized.

49. Winemaster also hid the existence of the Customer B return right from Auditor A. On or around May 8, 2015, Winemaster signed a management representation letter for Auditor A that stated, among other things, that: (i) the financial information for Q1 2015 is presented in accordance with GAAP; (ii) “[w]e have no knowledge of any fraud or suspected fraud affecting the Company;” and (iii) “[t]here are no material transactions that have not been properly recorded in the accounting records underlying the interim financial information.” He signed this letter despite knowing that the \$7.8 million transaction with Customer B was fraudulently recorded as revenue in Q1 2015 and without otherwise informing Auditor A of the return right for the transaction.

Second Quarter 2015

50. In the second quarter of 2015, PSI appeared to meet the consensus analyst expectation for net revenue of \$87 million when it reported net revenue of \$94.6 million. In that quarter, PSI fraudulently recorded approximately \$10 million of revenue related to a conditional sales transaction with Customer C, based on the conduct of Needham, Davis and Winemaster, as described below. If PSI had accounted for that transaction in accordance with GAAP, PSI would have missed the consensus analyst expectation for net revenue for that period. Needham, Davis and Winemaster all participated in this transaction.

51. Customer C was in the business of manufacturing and leasing generators to be used by its customers in operating oil and gas wells. As such, demand for its product tracked the price of oil and gas. PSI supplied Customer C all of the engines it used in its generators, as the PSI engine was the only engine that worked in Customer C’s generators.

52. In late May 2015, in order to meet its quarterly sales target, Needham approached Customer C to take \$10 million of product by the end of June 2015. At the time, Customer C did not have the demand from its customers to justify such a purchase given the decrease in the price of oil.

53. Nonetheless, after receiving pressure from Needham to take the \$10 million worth of engines, Customer C agreed to do so, but only after negotiating a side letter agreement with PSI (“June 2015 Letter Agreement”). That side agreement contained numerous protections should Customer C not have sufficient demand for the engines from its own customers. The June 2015 Letter Agreement provided, among other things, that: (i) Customer C would not have to pay for each engine until 30 days after the engine was placed in a Customer C generator (which Customer C did not do until it had a customer that desired to lease the generator); and (ii) Customer C could exchange engines at a later date for others that were more in demand. This engine exchange right did not contain a time limitation. Customer C referenced the June 2015 Letter Agreement on its purchase order for the engines, specifically stating the order was “[p]ursuant to letter dated June 8, 2015 from PSI and signed by Jim Needham.” (The purchase order is hereinafter referred to as the “June 2015 PO.”) The engines purchased pursuant to the June 2015 PO were shipped to Customer C by the end of June 2015.

54. The agreement was negotiated and signed by Needham. Winemaster and Davis knew and approved of the June 2015 Letter Agreement. Neither Winemaster, Davis or Needham informed PSI's accounting group about the June 2015 Letter Agreement prior to the filing of PSI's Q2 2015 Form 10-Q.

55. Under GAAP, if a seller gives the buyer the right to return product, revenue from the sales transaction shall be recognized at the time of sale only if the conditions in ASC 605-15-25-1 (Sales of Product when Rights of Return Exists) are met. One of those conditions is that "[t]he buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product. If the buyer does not pay at time of sale and the buyer's obligation to pay is contractually or implicitly excused until the buyer resells the product, then this condition is not met." ASC 605-15-25-1b.

56. Here, the June 2015 Letter Agreement allowed Customer C to not pay for the engines it purchased until they were consumed, and it also gave Customer C the right in the future to exchange engines for others that were more in demand. Due to these indefinite extended payment terms, the sales price was not fixed or determinable, and revenue should not have been recognized in the second quarter of 2015.

57. Additionally, PSI could not recognize revenue in accordance with ASC 605-15-25-1f unless it could reasonably estimate the amount of future returns. PSI had no way of estimating the future returns from Customer C. It had previously only accepted returns due to defect or performance issues.

58. Due to the misconduct identified in ¶¶ 50-57 above, PSI's Q2 2015 Form 10-Q contained materially misstated financial statements that improperly recognized around \$10 million in revenue. A reasonable investor would have viewed this misstatement as important because the misstatement: (i) involved a fraudulent accounting position with no GAAP support, (ii) arose as an ongoing effort by senior PSI management to meet revenue targets provided to the market, (iii) masked the severity of the downward revenue trend PSI was facing in 2015, (iv) allowed PSI to meet the consensus analyst expectation for net revenue for that quarter, and (v) resulted in an 11.7 percent overstatement of net revenue and a 241.3 percent overstatement of pre-tax income.

59. Winemaster, Davis and Needham acted with scienter with respect to the fraudulent accounting for this transaction. For example, Needham, with Winemaster's and Davis's knowledge and approval, negotiated the June 2015 Letter Agreement on behalf of PSI; and Winemaster, Davis and Needham did not inform PSI's accounting group about the June 2015 Letter Agreement prior to the filing of PSI's Q2 2015 Form 10-Q. They knew that the transaction in question had the purpose and effect of artificially inflating PSI's revenue. Winemaster's, Davis' and Needham's scienter is imputed to PSI.

60. In addition, Winemaster also signed and certified PSI's Q2 2015 Form 10-Q and approved the filing on August 5, 2015 of a Form 8-K announcing PSI's net revenue for the quarter even though he knew that \$10 million of net revenue for the quarter had been improperly recognized.

61. Winemaster also hid the existence of the June 2015 Letter Agreement from Auditor A. On or around August 7, 2015, Winemaster signed a management representation letter for Auditor A that stated, among other things, that: (i) the financial information for Q2 2015 is presented in accordance with GAAP; (ii) “[w]e have no knowledge of any fraud or suspected fraud affecting the Company;” and (iii) “[t]here are no material transactions that have not been properly recorded in the accounting records underlying the interim financial information.” He signed this letter despite knowing that the \$10 million transaction with Customer C was fraudulently recorded as revenue in Q2 2015 and without otherwise informing Auditor A of the June 2015 Letter Agreement.

Third Quarter 2015

62. In the third quarter of 2015, PSI reported net revenue of \$112 million. PSI appeared to narrowly miss the consensus analyst expectation for net revenue of \$113.6 million, and appeared to meet the low end of the quarterly guidance (\$110 million) it released to the public in August 2015. In this quarter, PSI fraudulently recognized approximately \$1.3 million of revenue related to an inflated Customer C purchase order as detailed below. Winemaster, Davis and Needham were all responsible for the fraudulent inflation of revenue created by this purchase order.

63. In an effort to meet its sales goal for the third quarter, PSI’s sales group was aggressively pursuing customers to take additional product. Davis, in a September 3, 2015 email, informed Winemaster that: “[w]e are pushing every angle. I have some really unhappy customers . . . as I am jamming everything to them in the quarter and they are not happy with me.”

64. Against this backdrop, Needham was pushing Customer C to purchase \$3 million of engines directly from PSI instead of another company set up as a PSI joint venture (“PSI JV”), which Customer C ultimately agreed to do.

65. Needham verbally assured Customer C that it would only have to pay \$3 million for the engines when invoiced. However, Needham also directed Customer C to issue a purchase order for these engines at a higher price, \$4.3 million, in order to make PSI’s revenue numbers look better for the quarter. The purchase order (\$4.3 million) overstated the actual sale price (\$3 million) by \$1.3 million.

66. Both Winemaster and Davis were aware and approved of Needham’s direction to Customer C to issue its purchase order at the overstated \$4.3 million price. Neither Winemaster, Davis or Needham told accounting about the true nature of the deal made with Customer C prior to the filing of PSI’s Q3 2015 Form 10-Q. As a result, accounting booked the \$4.3 million as revenue when the engines shipped to Customer C in the third quarter of 2015, even though the actual sale price was only \$3 million.

67. Due to the conduct of Winemaster, Davis and Needham, PSI improperly booked the overstated revenue (\$4.3 million) associated with this transaction. Because Needham had informed Customer C it would only have to pay \$3 million for the engines, the incremental \$1.3 million invoiced was not realizable and should not have been recognized as revenue under ASC 605-10-25-1. Customer C only paid the \$3 million that it had agreed to pay. The remaining \$1.3 million of revenue was eventually reversed by PSI in connection with its restatement filed on May 16, 2019.

68. Due to the misconduct identified in ¶¶ 62-67 above, PSI's Q3 2015 Form 10-Q contained materially misstated financial statements that improperly recognized around \$1.3 million in revenue. A reasonable investor would have viewed this misstatement as important because the misstatement: (i) involved a fraudulent accounting position with no GAAP support, (ii) arose as an ongoing effort by senior PSI management to meet revenue targets provided to the market, (iii) masked the severity of the downward revenue trend PSI was facing in 2015, and (iv) resulted in a 1.1 percent overstatement of net revenue and an 18.6 percent overstatement of pre-tax income.

69. Winemaster, Davis and Needham acted with scienter with respect to the fraudulent accounting for this transaction. For example, Needham, with Winemaster's and Davis's knowledge and approval, directed Customer C to issue an inaccurate purchase order; and neither Winemaster, Davis or Needham informed PSI's accounting group about the real price for the \$4.3 million transaction with Customer C prior to the filing of PSI's Q3 2015 Form 10-Q. They knew that the transaction in question had the purpose and effect of artificially inflating PSI's revenue. Winemaster's, Davis' and Needham's scienter is imputed to PSI.

70. In addition, Winemaster also signed and certified PSI's Q3 2015 Form 10-Q and approved the filing on November 9, 2015 of a Form 8-K announcing PSI's net revenue for the quarter even though he knew that the \$1.3 million of net revenue for the quarter had been improperly recognized.

71. Winemaster also hid the true nature of the Customer C purchase order from Auditor A. On or around November 9, 2015, Winemaster signed a management representation letter for Auditor A that stated, among other things, that (i) the financial information for Q3 2015 is presented in accordance with GAAP; (ii) "[t]here are no material transactions that have not been properly recorded in the accounting records underlying the interim financial information;" (iii) "[w]e have no knowledge of any fraud or suspected fraud affecting the Company;" and (iv) "[t]here are no . . . [s]ide agreements or other arrangements (either written or oral) that have not been disclosed to you." He signed this letter despite knowing that PSI had entered into an oral side agreement with Customer C to purchase the engines for \$3 million in order to fraudulently inflate PSI's revenue number in the third quarter of 2015 and without otherwise informing Auditor A of the Customer C arrangement.

72. As of November 2015, PSI was not on track to meet the analyst revenue expectations for the fourth quarter of 2015. At that time, Davis reported to Winemaster and others in senior management that PSI was going to have to pull forward a lot of sales from 2016 because “[w]e are 30 million short of the number that was given to the market as of right now.”

73. In an effort to meet those revenue projections, PSI fraudulently recognized approximately \$5.8 million of revenue related to a number of transactions that were engineered by Winemaster, Davis and Needham as described below. Notwithstanding its efforts to pull in sales, PSI appeared to miss the consensus analyst net revenue expectation for the quarter of \$105.7 million as well as the low end of its own public guidance of \$100 million when it reported net revenue of \$96.7 million. Without the fraud, PSI would have missed the target by a wider margin.

Customer D \$3 Million Transaction

74. Entering the fourth quarter of 2015, PSI management, including Davis and Winemaster, began discussing how they might achieve the company’s revenue target. Davis noted that the sale of several Waukesha generator sets (“Waukesha Gen-Sets”) assembled by its Professional Power Products (“PPPI”) subsidiary was “essential” to achieving PSI’s fourth quarter sales goals. Customer D purchased generator sets exclusively from Customer C, and those generator sets used PSI engines.

75. PSI’s sales department attempted throughout much of 2015 to sell the Waukesha Gen-Sets directly to Customer D. On December 10, 2015, Needham and Customer D’s CEO agreed to a deal in which Customer D would receive 3 of the Waukesha Gen-Sets at a per unit price of \$995,000 in exchange for PSI accepting the return of approximately 97 PSI engines previously purchased by Customer C to fulfill Customer D generator set orders. As designed, the return of these 97 engines would have created a credit at PSI that Customer D would use to fund the purchase of the 3 Waukesha Gen-Sets.

76. Over the final week of 2015, Needham worked to create documentation supporting the transaction. Though Customer D understood that the transaction would be an exchange by Customer C of the 97 PSI engines for the 3 Waukesha Gen-Sets (that Customer D would subsequently purchase from Customer C), Needham insisted that Customer D issue a purchase order for the 3 Waukesha Gen-Sets directly to PPPI. Prior to issuing a PO, Customer D requested written confirmation that PSI had agreed to accept the return of the engines from Customer C, and thus create a credit for Customer D. On the morning of December 29, 2015, Needham emailed a statement to Customer D stating that PSI would accept the return sometime in the first quarter of 2016. Later that same day, Customer D issued a PO for the 3 Waukesha Gen-Sets. The Waukesha Gen-Sets were not shipped to Customer D before the 2015 year end.

77. Davis and Needham improperly attempted to characterize this Customer D transaction as a bill and hold sale. Needham provided Customer D with a bill and hold agreement for execution, stating that it “allows us to recognize revenue.” That agreement provided that: (1) Customer D requested the bill and hold treatment, (2) the Waukesha Gen-Sets were complete, and (3) Customer D took title to the Waukesha Gen-Sets. However, Customer D did not have customers for whom it would lease the Waukesha Gen-Sets as of December 2015 and had no need or desire for the Waukesha Gen-Sets to be delivered in the foreseeable future. Needham and Davis, among others, knew that Customer D had not initiated or requested the bill and hold treatment. Rather, it was proposed by PSI strictly as a means to record revenue in 2015.

78. Neither Needham nor Davis informed anyone in the accounting group about the true nature of the transaction or that it was conditioned upon the return of the 97 engines from Customer C prior to the filing of PSI’s 2015 Form 10-K.

79. PSI improperly recognized approximately \$3 million of revenue on this Customer D transaction in 2015 when it failed to meet the criteria required by ASC 605-10-25-1 and which were included in its own policies as described in ¶ 15. PSI’s accounting for the transaction should have reflected all substantive terms of the negotiated deal, including PSI’s agreement to accept the return of previously sold engines in exchange for the purported sale of the Waukesha Gen-Sets. This would have resulted in no recognized net revenue for the fourth quarter of 2015 related to this transaction. Instead, PSI recorded only the Waukesha Gen-Set part of the transaction, thus inflating 2015 net revenues by \$3 million.

80. Further, PSI failed to meet the criteria disclosed in its own policies as necessary for a bill and hold transaction to be recognized as revenue. Its revenue recognition policy required, among other things, that the buyer had requested the finished goods be held for future delivery. These criteria were not met. PSI requested the transaction to be structured as a bill and hold solely to recognize revenue in 2015. Buyers must also have a substantial business purpose for requesting bill and hold treatment, which Customer D did not have for the Waukesha Gen-Sets transaction.

Customer E \$600,000 Transaction

81. Customer E issued a purchase order to PSI for 48 engines (totaling around \$600,000) which PSI expected to ship to Customer E by the end of 2015. However, there was a delay in PSI procuring the custom oil pan required to meet the Customer E specification for the engine. In an effort to recognize the revenue on the transaction in 2015, PSI’s sales department determined that the 48 engines would be shipped to the PSI JV facility in China (Dalian facility) on December 31, 2015 with a standard oil pan until they could be refitted sometime in 2016 with the correct oil pan before being delivered to Customer E.

82. PSI’s Controller learned about the sales department’s plan for shipping these engines without the correct oil pan and consulted with PSI’s customer service department, who informed him that the Customer E engines would not be functional within Customer E’s intended product without the correct oil pan. PSI’s Controller relayed this issue concerning the oil pan to PSI’s CFO.

83. PSI's CFO then emailed the sales department and told them that their plan would result in no revenue being recognized for the transaction in 2015 because the product was not complete to customer specification and would not be shipped to Customer E by the end of 2015. In response to this email, the salesperson responsible for the Customer E account emailed Winemaster directly and updated him that PSI's CFO believed revenue could not be recognized for the transaction.

84. Subsequently, Winemaster told PSI's CFO that the Customer E engines were fully functional and that revenue should be recognized for the transaction even though Winemaster knew that the Customer E engines were not built to specification and were not functional within Customer E's intended product.

85. PSI recognized revenue on this Customer E transaction in 2015 despite not meeting the criteria required by ASC 605-10-25-1 and which were included in its own policies as described in ¶ 15. Because the engines for Customer E were not complete to the customer's specification by the end of 2015 and needed to be re-fitted with the correct oil pan to operate appropriately for the customer's needs, PSI had not completed the earnings process to recognize revenue. In addition, the engines were not shipped to Customer E by the end of year; instead a Customer E-coordinated transporter simply moved them to a PSI-controlled facility in China to be finished at a later date. As a result, the risk of loss for the engines had not shifted to Customer E by the end of 2015. Consequently, revenue should not have been recognized for this transaction.

Customer F \$300,000 Transaction

86. In December 2015, PSI's sales group was attempting to do everything possible to ship product to meet its sales goals for the quarter. To that end, a PSI sales representative attempted to convince Customer F to take early delivery – before the end of 2015 – of engines that it had previously ordered. To incentivize Customer F to take the engines early, the PSI salesperson offered Customer F extended payment terms. At the time, Customer F did not want to take delivery of the engines because of the lack of its own customer demand for its product.

87. Still faced with a revenue shortfall on the last day of 2015, Davis called PSI's Director of Facilities and told him to ship 147 engines that Customer F had on order but was not prepared to take delivery of to an off-site warehouse ("Warehouse A"), which was leased and controlled by PSI, by the end of the day and to not tell anyone about the shipment. On the call, Davis also relayed that he had already talked to Winemaster about the shipment and that the only 3 people who would know about the shipment were Winemaster, Davis and the Director of Facilities.

88. The 147 engines were shipped to Warehouse A by the end of 2015; Customer F was invoiced for the engines (approximately \$300,000 worth of engines); and the revenue for that transaction was recognized in 2015. At the time, Customer F did not accept delivery of the engines, and did not know of – let alone authorize – the shipment of the engines to Warehouse A. Further, PSI's accounting group was not made aware of the circumstances surrounding the shipment of the 147 engines, namely that they were shipped to Warehouse A without Customer F's knowledge, prior to the filing of PSI's 2015 Form 10-K.

89. PSI recognized revenue on this transaction despite not meeting the criteria required by ASC 605-10-25-1 and which were included in its own policies as described in ¶ 15. Since Customer F did not accept the shipment of the 147 engines (and was not even aware they had been shipped to a warehouse), PSI had neither realized nor earned revenue in accordance with ASC 605-10-25-1. As a result, revenue should not have been recognized for this transaction.

90. In March 2016, PSI's accounting department was working with PSI's sales department to collect the balance owed by Customer F related to the 147 engines shipped on December 31, 2015. In connection with these efforts, PSI's sales representative for Customer F informed PSI's accounting department for the first time that Customer F was not "even aware that we shipped the last (147) engines." Upon learning this, PSI's accounting department reversed the sales revenue (around \$300,000) for the transaction in the first quarter of 2016 but did not restate PSI's previously issued fourth quarter financial statements.

Customer G \$1.9 Million Transaction

91. In November 2015, Customer G agreed to purchase a certain type of engine that was being discontinued. The agreement provided that Customer G would purchase 775 "base engines," which included the base engine block, fuel system, and catalyst, by the end of 2015. These "base engines" would be stored at Warehouse A. The "base engines" would then be brought back to PSI from the off-site location during 2016 and re-fitted with additional parts to enable the engines to function in Customer G's equipment, before being shipped to Customer G. Davis knew that the purpose behind the proposed transaction structure was to increase 2015 revenue for PSI.

92. PSI manufactured and shipped the "base engines" to the PSI-leased warehouse before the end of 2015. However, those engines did not include the catalysts, a required component under the agreement between PSI and Customer G, because PSI had difficulty procuring them. The salesperson responsible for the Customer G account informed Winemaster, Davis, and certain operations personnel that: "I spoke with [Winemaster] last night and . . . we should NOT ship the catalysts with this order. Let's add those when we trim the engines next year." Winemaster and Davis did not tell PSI's accounting group that the "base engines" shipped offsite did not contain the catalysts prior to the filing of PSI's 2015 Form 10-K.

93. Customer G also did not take on the risk of loss of the purported "base engines" until 2016 because it did not lease Warehouse A until that time. The accounting department and Davis knew that Customer G had not leased Warehouse A before the end of 2015.

94. As a result of the misconduct set forth above in ¶¶ 91-93, PSI improperly recognized approximately \$1.9 million of revenue on this transaction in 2015 despite not meeting the criteria required by ASC 605-10-25-1 and which were included in its own policies as described in ¶ 15. Because the "base engines" shipped to Warehouse A were missing the catalyst, PSI had not completed the earning process required to recognize revenue. Further, the risk of loss associated with those engines did not transfer to Customer G in 2015 because the engines were shipped to a PSI-leased warehouse.

95. Due to the misconduct identified in ¶¶ 39-94 above, PSI's Q4 and full-year 2015 financial statements – included in its 2015 Form 10-K – were materially misstated because they improperly recognized around \$5.8 million in revenue for Q4 2015 and around \$24.1 million in revenue for full-year 2015. A reasonable investor would have viewed these misstatements as important because they: (i) involved fraudulent accounting positions with no GAAP support, (ii) arose as an ongoing effort by senior PSI management to meet revenue targets provided to the market, (iii) masked the severity of the downward revenue trend PSI was facing in 2015, and (iv) constituted a 7.4 percent overstatement of net revenue and a 5.8 percent overstatement of pre-tax income for Q4 2015 and contributed to a 6.6 percent overstatement of net revenue and a 61.7 percent overstatement of pre-tax income for full-year 2015.

96. Winemaster, Davis and Needham acted with scienter with respect to the fraudulent accounting for these transactions. For example, Davis and Needham knew of and did not inform PSI's accounting group about the contemplated return of Customer C engines as part of Customer D's purchase of the Waukesha Gen-Sets; Winemaster approved recognizing \$600,000 of revenue despite knowing that the Customer E engines were not built to customer specification and were not functional within Customer E's intended product; Winemaster and Davis authorized the shipment of \$300,000 worth of engines on the last day of 2015 to Warehouse A without Customer F's consent and concealed such shipment from PSI's accounting department; and Winemaster and Davis knew the engines for Customer G were not complete to customer specification and failed to inform PSI's accounting department of that fact. They knew that the transactions in question had the purpose and effect of artificially inflating PSI's revenue. Winemaster's, Davis' and Needham's scienter is imputed to PSI.

97. In addition, Winemaster signed and certified PSI's 2015 Form 10-K and also approved the filing on February 22, 2016 of a Form 8-K announcing PSI's net revenue for the fourth quarter of 2015 even though he knew that at least \$2.8 million of revenue for Q4 2015 and at least \$21.1 million of revenue for full-year 2015 had been improperly recognized.

98. Despite knowing relevant details of the transactions described above (¶¶ 39-94) and without otherwise informing Auditor A of them, Winemaster on or around February 26, 2016 signed a management representation letter for Auditor A that stated, among other things, that: (i) the financial statements for 2015 are presented in accordance with GAAP; (ii) “[t]here are no . . . [m]aterial transactions that have not been properly recorded in the accounting records underlying the consolidated financial statements;” (iii) “[w]e have no knowledge of fraud or suspected fraud affecting the entity;” (iv) “[t]here are no . . . [s]ide agreements or other arrangements (either written or oral) undisclosed to you;” and (v) “[w]e have informed you of all uncorrected misstatements.” This management representation letter was false.

Concealment of Fraudulent Accounting

99. Winemaster, Davis and Needham attempted to conceal the important terms of a number of the transactions described above in order to avoid reversing or restating the recognized revenue associated with those transactions. They attempted to renegotiate terms of some of the transactions in later periods, and misled Auditor A about certain of the transactions.

Concealing the June 2015 Letter Agreement and the Truth about the \$4.3 Million Customer C Transaction

100. In October 2015, while trying to collect Customer C's outstanding \$10 million receivable for the engines it had purportedly purchased in the second quarter of 2015, PSI's accounting department received a copy of the June 2015 Letter Agreement from Needham. The June 2015 Letter Agreement provided, among other things, that Customer C would not have to pay for an engine until it was placed in a generator and that Customer C could exchange the engines at a later date for those that were more in demand. Customer C had refused to pay the \$10 million based on that letter agreement.

101. PSI's Controller gave a copy of the agreement to PSI's CFO and told him that, given its conditional terms, he believed the transaction constituted a consignment sale, that PSI should have deferred the related revenue as of June 30, 2015, and that the amount of the transaction likely required PSI to restate its second quarter 2015 financial reports. PSI's CFO and inside counsel for PSI then drafted a proposed amendment to the June 2015 Letter Agreement that removed the conditional terms and shared it with Winemaster. Winemaster subsequently sent the proposed draft amendment to Davis and Needham. The proposed draft amendment was never sent to Customer C.

102. Notwithstanding Winemaster's, Davis' and Needham's knowledge of the existence of the June 2015 Letter Agreement and the proposed draft amendment to the agreement, they did not tell Auditor A about the side agreement. Further, Winemaster falsely represented in a management representation letter to Auditor A on November 9, 2015, that there were no "[s]ide agreements or other arrangements (either written or oral) that have not been disclosed to you."

103. Winemaster, Davis and Needham also concealed the truth about the \$4.3 million Customer C transaction booked in the third quarter of 2015 from Auditor A. In late January 2016, Customer C's COO emailed Needham regarding the \$4.3 million Customer C transaction, asking for the "real amount we need to pay" for the engines purchased at the end of the third quarter, noting "[i]f you remember when we did the \$3M deal . . . PSI upped the price so it made your numbers look better."

104. Needham conferred with Davis who told him to have Customer C “pay the lower amount and not reference anything at this point in time.” Accordingly, Needham responded to Customer C that it should only pay the \$3 million and PSI would adjust the \$1.3 million balance at a later time. When Davis updated Winemaster on the transaction, he noted:

It was agreed upon that we would sell these engines to [Customer C] at the JV price but sell them at the normal price and now as we negotiate with [Customer C] to pay these invoices they are going to short pay these invoices by . . . 1.2 million dollars. This is the deal that was agreed to. Before accounting gets short paid 1.2 million dollars I wanted you to be aware. This is obviously a problem.³

105. Also, Needham told Davis he was concerned that PSI’s accounts receivable department would contact Customer C and ask for an explanation as to why Customer C had paid only \$3 million of the \$4.3 million purportedly owed. In an attempt to address that concern and collect Customer C’s \$10 million balance from the June 2015 PO (which was then still outstanding), Needham attempted to trade a write-off of the \$1.3 million balance (which he previously had already promised Customer C) and price incentives for future purchases in exchange for Customer C’s payment of the \$10 million balance over the next six months. In response, Customer C’s COO stated:

The \$1.2M was added in order to boost PSI’s sales revenue I see you’re washing it away but why wasn’t it “discounted” on the payment we just made . . . ? That was the deal you and I made. We shouldn’t have that \$1.2M anywhere involved with the \$10M deal. In fact, if that \$1.2M shows up as owed on our bill it’s going to raise all sorts of red flags around here

106. In February 2016, Winemaster, Davis and Needham continued to have conversations with Customer C representatives regarding the \$10 million balance from the June 2015 PO. In connection with these conversations, they offered, among other things, to subsidize Customer C’s cost of capital to allow it to make a \$5 million payment on the balance. Customer C did not accept PSI’s offer at that time.

107. In late March 2016, PSI’s accounting department received the January 2016 email correspondence between Customer C and Needham described above. Upon receiving this email correspondence, PSI’s Controller communicated his concerns to PSI’s CFO that there was no justification for booking the \$1.3 million and that PSI had thereby committed fraud. PSI’s Controller also provided a hard copy of this email correspondence to PSI’s CFO. A couple weeks later, PSI’s CFO reported to PSI’s Controller that he had spoken to Winemaster, who had told him that PSI “doesn’t do business like that” and that Winemaster was going to meet with Customer C on this transaction.

108. In early April 2016, Needham and Winemaster attempted to create after-the-fact documentation, which would be sent by Customer C, to justify the inflated price for the originally recorded \$4.3 million transaction.

³ The difference between the price Customer C agreed to pay and the amount PSI recorded was \$1,286,000. Some at PSI referred to the amount as \$1.2 million while others refer to the rounded-up amount of \$1.3 million.

109. Needham's and Winemaster's plan was to claim that PSI shipped domestic EPA-certified engines priced at \$4.3 million as opposed to international non-certified engines priced at \$3 million because PSI did not have the international non-certified engines available in September 2015. In order to avoid detection of the communications regarding this issue, Winemaster drafted one proposed email, printed it out, and texted a picture of the print-out to PSI's CFO. That draft email stated:

We are now clear that PSI did not have the [PSI JV] price reduced engine blocks in stock and therefore sold us standard engines to meet the distribution requirement. Therefore we will purchase engines in 2016 at the JV pricing to balance the agreement between our companies.

110. This draft proposed email was false. PSI did not sell its standard, domestic engines in connection with this transaction. Instead, it shipped Customer C the same non-EPA certified international engines that Customer C would have purchased from the PSI JV for \$3 million but invoiced Customer C for the standard, domestic engine (EPA-certified) \$4.3 million price.

111. PSI's CFO then provided Winemaster comments on the draft email via text. For example, PSI's CFO texted Winemaster on April 13, 2016:

Gary - keep this in mind while U are with [Customer C]. Our auditors will be in next week and the [Customer C] discount and cash collections will be front of mind. [Customer C] needs to return the discount for now and restate their January email without mention of future discounts - anything less is a major problem.

Winemaster's proposed email apparently was never sent to Customer C.

112. On April 14, 2016, Winemaster and Needham met with Customer C. Davis kept himself informed of what was occurring at the meeting. At that meeting, Winemaster pressured Customer C to make additional payments on the engines purchased pursuant to the June 2015 Letter Agreement even though the engines had not yet been placed in generators, including by threatening to stop selling Customer C additional engines or engine parts if it did not pay off the debt. PSI engines and parts were important for Customer C's operations, as PSI was the only supplier who could provide Customer C the engines for its generators to operate.

113. Ultimately, Customer C agreed to pay PSI \$5 million even though it was not required to do so under the June 2015 Letter Agreement. Prior to agreeing to make this \$5 million payment, Customer C had made payments totaling around \$1.6 million on the debt from the June 2015 PO. Consistent with the June 2015 Letter Agreement, Customer C paid these amounts only after placing engines into generator sets. In connection with its agreement to pay the \$5 million amount, Winemaster agreed to subsidize Customer C's cost of capital on the \$5 million payment for six months and to allow Customer C to return around \$4 million worth of product. The cost of the subsidy was granted in the form of a monthly parts credit.

114. After this meeting, Winemaster told PSI's CFO that Customer C was going to pay PSI \$5 million in the near future and would pay the remaining balance owed by the end of June 2016. Soon thereafter, PSI's CFO informed the accounting department of Customer C's contemplated payments. Neither Winemaster, Davis or Needham told the accounting department about the cost of capital subsidy and return right that Winemaster had given to Customer C at the meeting to induce the \$5 million payment. On April 20, 2016, Customer C sent PSI the promised \$5 million payment.

115. Notwithstanding his knowledge of these transactions and agreements, on May 10, 2016, Winemaster signed a management representation letter for Auditor A that, in relevant part, provided that he had no knowledge of any fraud or suspected fraud affecting PSI and that "[t]here are no . . . [s]ide agreements or other arrangements, either written or oral, that have not been disclosed to you."

Concealing the Truth Concerning the Customer D Transaction

116. In April 2016, a dispute began to surface between PSI and Customer D related to the 2015 year-end purported sale of the Waukesha Gen-Sets. PSI refused to accept the return of the Customer C engines that was an element of the Customer D transaction. This prompted Customer D's COO to email Needham on April 15, 2016:

As you know, the PO [Customer D] issued was requested by PSI in order for PSI to book the sale of the three Waukesha's by the end of 2015. We were going to utilize the deal you and I made . . . to return [Customer C's] excess 8T and 11L engines to use as a credit towards the three Waukesha's. As you know the PO wasn't for a direct deal between [Customer D] and PSI instead it notionally represented that [Customer D] would end up with the Waukesha's when PSI received the returned 8T and 11T [sic] inventory. The PO used for PSI to book the sale is not a valid PO and was built at your request.

117. This resulted in a months-long series of correspondence between Winemaster and Customer D executives asserting their respective positions and threatening legal action. In connection with this correspondence, Winemaster was made aware of the engine exchange element of the Customer D transaction no later than June 3, 2016.

118. In the midst of Winemaster's ongoing correspondence with Customer D, PSI's CFO wrote an email to Winemaster on July 25, 2016 inquiring, "Gary – when can we discuss the [Customer D] units? Auditors will want to remove these sales and force a change to history – not an outcome we want." Winemaster replied the same day, "[t]hese will get cleared. Try and push for end of August (15th min if you can). We are shutting off the telematics 7/31 to force them to pay thier [sic] outstanding." PSI controlled access to the "telematics" referenced in Winemaster's email. The telematics were used by Customer D to manage and monitor its operating units and were important to its operations.

119. In late August 2016, PSI and Customer D reached a settlement agreement in which Customer D agreed to take delivery of and pay for the 3 Waukesha Gen-Sets originally “sold” to them by PSI in December 2015. Winemaster and PSI’s Chief Legal Officer insisted during the settlement negotiations that Customer D not issue a new PO for the Waukesha Gen-Sets. Rather, they explained that PSI needed the transaction to supplement the previously issued December 2015 PO “for accounting purposes.” The Waukesha Gen-Sets were shipped to Customer D in or around August 2016.

Misrepresentations to Auditor A During Internal Investigation

120. In May 2016, PSI’s COO left the company in the midst of an employment dispute. Upon departing, he communicated allegations of unethical and unlawful activities to the PSI Board in the form of a letter and draft complaint against PSI (“COO Complaint”). PSI’s COO asserted that top management at PSI directed sales staff to “channel stuff” and “pull-up” sales from 2016 to falsely inflate PSI’s 2015 revenues to avoid missing PSI’s revenue guidance. The COO Complaint included allegations regarding the second and third quarter Customer C transactions, the fourth quarter Customer D transaction, and the fourth quarter Customer F transaction as examples of PSI recognizing revenue improperly.

121. Soon after this complaint was received, PSI’s Audit Committee and Board of Directors had discussions regarding the COO Complaint with Winemaster and PSI’s Chief Legal Officer. During these discussions Winemaster told members of the Audit Committee and Board that he did not believe there was any merit to the former COO’s allegations but that management would investigate the COO’s allegations. This internal investigation was going to be performed by PSI’s Chief Legal Officer and CFO and would ultimately be documented in writing. Winemaster’s statement to the members of the Audit Committee and Board was a lie; he knew that there was merit to the claims the COO had made.

122. Also soon after the COO’s Complaint was received, PSI’s Board of Directors decided to retain independent counsel to investigate the former COO’s allegations. The process of selecting and engaging independent counsel was completed by mid-July 2016 with the independent counsel beginning the independent investigation in August 2016.

123. On July 31, 2016, PSI’s CFO for the first time also sent the former COO’s letter and the COO Complaint to Auditor A. After receiving this information, Auditor A requested the results of PSI’s internal investigation before deciding whether it could sign off on PSI’s second quarter Form 10-Q.

124. On August 2, PSI's Chief Legal Officer and Deputy Chief Legal Officer began the internal investigation into the COO Complaint. Over the course of the next couple of weeks, PSI's CFO, Chief Legal Officer and Deputy Chief Legal Officer provided Auditor A with information and documents in response to Auditor A's requests regarding the COO Complaint. In connection with these efforts, Winemaster told PSI's Chief Legal Officer that Customer C's \$1.3 million short pay related to the third quarter of 2015 transaction was a misunderstanding and that the shipment of Customer F engines to Warehouse A was done at his direction to more easily allow PSI to reclaim the engines should Customer F fail to pay for them. These statements by Winemaster were false. Winemaster's lies regarding these transactions were shared with Auditor A.

125. As the deadline to file PSI's Form 10-Q for the second quarter of 2016 approached, Winemaster, PSI's CFO, and PSI's Chief Legal Officer continued to work towards addressing Auditor A's requests. These efforts included a late night conference call on August 8, 2016, during which Winemaster attempted to convince Auditor A that the transactions identified by the former COO were all legitimate business deals that were fully collectable. On the same call, Winemaster also mentioned, with respect to Auditor A, "don't these guys know who they work for." Ultimately, Auditor A did not sign off on PSI's second quarter 2016 Form 10-Q.

Continued Efforts to Conceal after SEC Investigation Commences

126. Winemaster's efforts to conceal the fraudulent accounting for the transactions with Customer B and Customer C continued even after the SEC had issued a document preservation notice and document subpoena to PSI in August 2016.

127. In or around September 2016, Winemaster told his VP of Advanced Product Development that PSI needed to clean up its outstanding receivables from Customer C before the end of 2016 to mitigate its exposure during the investigation by the SEC. To that end, Winemaster directed his VP of Advanced Product Development to help find a buyer for Customer C's excess engine inventory so that Customer C would then pay down its outstanding balance from the second quarter and third quarter transactions described above. Initially, PSI explored an opportunity to connect a prospective UK-based power generation customer with Customer C for a direct sale transaction that would "keep [PSI's] hands clean." When that opportunity did not appear viable before the end of the year, Winemaster directed his VP of Advanced Product Development and Needham to directly purchase 60 generator sets from Customer C that contained previously sold PSI engines. PSI had not identified customers to purchase these generators, and entered into the purchase as a way to induce Customer C to pay for the engines consumed to cover up PSI's prior accounting misstatements.

128. In addition, Winemaster and Davis attempted to disguise the return right Winemaster granted to Customer B in connection with its \$7.8 million purchase in the first quarter of 2015. Specifically, Winemaster and Davis authorized PSI's sales staff to facilitate Customer B's resale of the engines to another PSI customer in 2017 after Customer B requested to return the engines to PSI.

PSI's Fraud Unravels and PSI Restates its Financial Statements

129. The accounting misstatements came to light in various Forms 8-K filed over the period August 4, 2016 through April 7, 2017. These disclosures resulted in a significant decline in PSI's stock price.

130. After learning additional details of the conduct described herein from PSI's independent investigation, Auditor A resigned as PSI's auditor on January 27, 2017.

131. PSI originally filed annual reports for its fiscal years ending 2014 and 2015, quarterly reports for the first, second and third quarters of 2015 and current reports disclosing financial results for each quarter from the fourth quarter of 2014 through the fourth quarter of 2015 that contained material misstatements of PSI's net revenue. These misstatements principally derived from the improper recognition of revenue for a number of transactions, including those detailed in ¶¶ 26-98 above.

132. On May 16, 2019, PSI issued restated financial statements when it filed its 2017 Form 10-K. Those restated financial statements included a cumulative \$29.8 million reduction of revenue for PSI's financial statements from the fourth quarter of 2014 through the fourth quarter of 2015, as well as adjustments to other income statement and balance sheet line items for its previously issued financial statements.

133. The following chart summarizes PSI's revenues and income, as originally reported and as restated.

Impact of All Adjustments on Net Revenue
(dollar amounts in thousands)

| | | | Increase (Decrease) | | Q4 2015 | FY 2015 |
|--|---------|---------|---------------------|---------|----------|----------|
| | Q4 2014 | Q1 2015 | Q2 2015 | Q3 2015 | | |
| Originally Reported Net Revenue | 103,910 | 86,139 | 94,629 | 112,008 | 96,670 | 389,446 |
| Fraudulent Transactions | (846) | (6,951) | (10,020) | (1,286) | (5,823) | (24,080) |
| Other Adjustments | (1,863) | 4,132 | 746 | 4,229 | (12,087) | (2,981) |
| Net Revenue Adjustments | (2,709) | (2,819) | (9,274) | 2,943 | (17,910) | (27,060) |
| Restated Net Revenue | 101,202 | 83,320 | 85,355 | 114,951 | 78,760 | 362,386 |
| Net Revenue Adjustment, as Percentage of Restated Net Revenue | 2.7% | 3.4% | 10.9% | 2.6% | 22.7% | 7.5% |

Impact of All Revenue Related Adjustments on Income Before Taxes*(dollar amounts in thousands)*

| | Q4 2014 | Q1 2015 | Increase (Decrease) | | Q4 2015 | FY 2015 |
|---|----------------|----------------|---------------------|----------------|----------------|-----------------|
| | | | Q2 2015 | Q3 2015 | | |
| Originally Reported Income (Loss) Before Taxes | 13,630 | (72) | 6,206 | 8,643 | (887) | 13,890 |
| Restated Income (Loss) Before Taxes | 10,585 | (2,585) | 1,246 | 6,908 | (18,162) | (12,593) |
| Fraudulent Transactions | (320) | (2,424) | (3,007) | (1,286) | (1,054) | (7,771) |
| Other Adjustments | (2,438) | 384 | (482) | 26 | (3,751) | (3,823) |
| Gross Profit Adjustment | <u>(2,758)</u> | <u>(2,040)</u> | <u>(3,489)</u> | <u>(1,260)</u> | <u>(4,805)</u> | <u>(11,594)</u> |
| Gross Profit Adjustment, as Percentage of Restated Income Before Taxes | 26.1% | 78.9% | 280.0% | 18.2% | 26.5% | 92.1% |

134. A reasonable investor would have viewed the misstatements detailed in ¶¶ 131-133 as important. The financial impact of these misstatements was significant. In addition, the accounting for many of the transactions comprising these misstatements was fraudulent as described above in ¶¶ 26-98.

135. PSI failed to devise and maintain a sufficient system of internal accounting controls. Among other things, PSI's reliance on "word of mouth" to ensure atypical transaction terms were disclosed to the accounting department was insufficient to provide reasonable assurance that transactions were recorded in accordance with GAAP. PSI's 2017 Form 10-K disclosed that the company's internal control over financial reporting was not effective, disclosing a number of material weaknesses. These material weaknesses contributed to revenue being recognized not in accordance with GAAP. For example, the lack of adequate accounting controls allowed Winemaster, Davis and Needham to conceal the inflated revenue from the third quarter of 2015 Customer C transaction from the accounting department and permitted such revenue to be recognized when it was not realizable under ASC 605-10-25-1.

VIOLATIONS

136. As a result of the conduct described above, Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

137. As a result of the conduct described above, Respondent violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder, which require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission, including annual, quarterly and current reports, on the appropriate forms and within the period specified on the form that must contain any material information necessary to make the required statements made in the report not misleading.

138. As a result of the conduct described above, Respondent violated Exchange Act Section 13(b)(2)(A) which requires issuers of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of assets.

139. As a result of the conduct described above, Respondent violated Exchange Act Section 13(b)(2)(B) which requires issuers of securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to, among other things, permit preparation of financial statements in accordance with GAAP.

PSI'S REMEDIAL EFFORTS AND COOPERATION

140. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

141. PSI shared facts developed in its internal investigation, including by providing regular updates and analyses and identifying key documents, and it facilitated interviews with witnesses.

142. PSI has taken certain remedial measures, including dismissing or disciplining employees involved in the conduct set forth above, and continuing to modify and improve certain internal controls and procedures. PSI has made a number of organizational changes, such as replacing and hiring a new CEO, CFO and Corporate Controller, as well as hiring several additional staff in finance, accounting and sales positions. PSI also revamped its internal audit function, including establishment of a VP of Internal Audit position that reports directly to the Audit Committee. PSI also implemented additional compliance training for employees and specialized training for sales and accounting personnel.

143. PSI also implemented changes to its revenue recognition practices, including (1) revisions to its revenue recognition policies and procedures; (2) enhanced sales controls, policies and procedures; (3) revisions to its review process and monitoring controls over contracts with customers, customer payments, and incentives; (4) training regarding relevant revenue recognition principles for the Accounting, Financing and Sales Teams; and (5) creation of an Internal Control Steering Committee to oversee the enterprise-wide remediation plan.

UNDERTAKINGS

144. Respondent undertakes to:

- a. Cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order.
- b. Produce, without service of a notice or subpoena, any and all non-privileged documents and other information reasonably requested by the Commission's staff, with a custodian declaration as to their authenticity, if requested.

- c. Use its best efforts to cause PSI's current and former employees, officers, directors and consultants to be interviewed by the Commission's staff as such times and places as the staff reasonably may direct.
- d. Use its best efforts to cause PSI's current and former employees, officers, directors and consultants to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be reasonably requested by the Commission's staff.
- e. In connection with any interviews of PSI's current and former employees, officers, directors and consultants to be conducted pursuant to this undertaking, requests for such interviews may be provided by the Commission's staff by regular electronic mail to: Junaid Zubairi, Vedder Price P.C., 222 N. LaSalle Street, Chicago, IL 60601, (312) 609-7720, jzubairi@vedderprice.com.
- f. Fully remediate the deficiencies in its internal control over financial reporting that constituted material weaknesses identified in PSI's Form 10-K filed with the Commission on May 16, 2019 ("MWs") by April 30, 2021, unless an extension has been provided by the Commission's staff pursuant to Paragraph 145 herein.
- g. In the event that the MWs are not fully remediated by April 30, 2021 and no extension has been provided pursuant to Paragraph 145, engage an independent consultant (the "IC"), not unacceptable to the Commission's staff, by June 30, 2021 to conduct a comprehensive review of the then outstanding MWs and of PSI's policies, procedures, controls, and training relating to financial reporting, and to recommend, if and where appropriate, policies, procedures, controls and training designed to provide reasonable assurance that PSI's internal control over financial reporting is effective.
- h. Cooperate fully with the IC by providing access to its own files, books, records, and personnel as reasonably requested for its review. PSI's engagement of the IC will require the IC to complete its review and make its recommendations, if any, within six months of being retained. PSI will promptly adopt all recommendations of the IC; provided however, that within sixty (60) days after receiving the IC's recommendations, PSI may, in writing, advise the IC and the Commission (addressed to the Assistant Director identified below) of any recommendation that it considers to be unnecessary, unduly burdensome, impractical, or costly. As to any such recommendations, PSI shall within thirty (30) days thereafter propose in writing an alternative policy, procedure, or control designed to achieve the same objective or purpose. As to any recommendation on which PSI and the IC do not agree within forty-five (45) days, after attempting in good faith to reach an agreement, PSI will abide by the determination of the IC.

- i. Require the IC to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the IC shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with PSI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the IC will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the IC in performance of his/her duties under this Order shall not, without prior written consent of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with PSI, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- j. Require that these undertakings shall be binding upon any acquirer or successor in interest to PSI.
- k. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and PSI agrees to provide such evidence. The certification and supporting material shall be submitted to Steven Klawans, Assistant Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

145. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above in Paragraph 144. In the event PSI decides to request an extension of any such dates, it shall provide the Commission's staff a written extension request that explains the circumstances and rationale for such request. The written extension request shall be submitted to Steven Klawans, Assistant Director, no later than thirty (30) days before the applicable deadline.

146. Any reports by the IC will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

147. Any reports submitted by PSI will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

148. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraphs 144a-e.

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 Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder.

B. Respondent shall comply with the undertakings enumerated in paragraphs 144f-k and 145-147 above.

C. Respondents shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$1,700,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

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 Power Solutions International, Inc. 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 Steven Klawans, Assistant Director, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

D. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary