

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 74765 / April 20, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15992**

**In the Matter of**

**MARC SHERMAN**

**Respondent.**

**ORDER MAKING FINDINGS  
AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-  
DESIST ORDER PURSUANT TO  
SECTION 21C OF THE  
SECURITIES EXCHANGE ACT  
OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate to issue this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) as to Marc Sherman (“Respondent” or “Sherman”).

**II.**

Following the institution of these proceedings on July 30, 2014, Respondent submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

**III.**

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

**A. SUMMARY**

1. During its 2008 fiscal year and continuing up to its filing for Chapter 11 bankruptcy on July 2, 2009 (the “relevant period”), QSGI Inc. (“QSGI” or the “Company”) was a reseller of and maintenance services provider for used computer equipment. Sherman, who during the relevant period served as QSGI’s Chief Executive Officer and Chairman, was aware of deficiencies in and the circumvention of internal controls for inventory and the resulting falsification of the Company’s books and records. Sherman withheld this information from the Company’s external auditors in connection with their audit of the financial statements for the fiscal year ended December 31, 2008 and review of the financial statements for the quarter ended March 31, 2009, and made affirmative material misrepresentations and statements that were materially misleading as a result of his omission of information in management representation letters to the auditors about the design, maintenance, and operation of internal controls. Further, Sherman signed a Form 10-K and a Form 10-K/A for the 2008 fiscal year, each containing a management’s report on internal control over financial reporting (“ICFR”), as required by Section 404 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”) and Exchange Act Rule 13a-15(c), which falsely represented that he, in his capacity as CEO, had participated in assessing the effectiveness of the Company’s ICFR. Sherman also signed certifications required under Section 302 of the Sarbanes-Oxley Act and Rule 13a-14 of the Exchange Act included in filings with the Commission falsely representing that he had evaluated ICFR and, based on this evaluation, disclosed all significant deficiencies to the auditors. The certifications were attached to the 2008 Forms 10-K and 10-K/A, and to the first quarter 2009 Form 10-Q filed with the Commission, which Sherman also signed.

**B. RESPONDENT**

2. Sherman, age 51 and a resident of West Palm Beach, Florida, founded QSGI in 2001. He has since served as QSGI’s CEO and Chairman of its Board of Directors. After the Company filed for bankruptcy, he also signed a Form 10-K/A for the fiscal year ended December 31, 2008 filed with the Commission in July 2010 in the capacity of Chief Financial Officer and Chief Accounting Officer.

**C. RELEVANT ENTITY**

3. QSGI, Inc., incorporated in 1967 in Delaware under a different name and headquartered during the relevant period in West Palm Beach, Florida, is engaged in the business of purchasing, refurbishing, selling, and servicing used computer equipment, parts and mainframes. On May 4, 2011, the U.S. Bankruptcy Court for the Southern District of Florida, West Palm Beach Division, confirmed QSGI’s plan of reorganization pursuant to which, effective June 17, 2011, the corporate shell merged with a private company which had been founded by Sherman and others. During the relevant period, the Company’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and quoted on the OTC Link (formerly “Pink Sheets”) operated by OTC Markets Group Inc.

## **D. FACTS**

### **Sherman's Awareness of Deficiencies in and Circumvention of Inventory Controls**

4. During the relevant period, QSGI maintained inventory principally at facilities in New Jersey and Minnesota. The New Jersey inventory, which comprised 50% of the Company's reported gross inventory and 55% of its reported net inventory, after reduction for reserves, as of the close of its fiscal year ended December 31, 2008, was comprised of laptops, monitors, and other consumer electronics and components. The Minnesota inventory, which comprised 40% of QSGI's reported gross inventory and 35% of its reported net inventory, after reduction for reserves, as of the close of QSGI's 2008 fiscal year, was comprised chiefly of servers, mainframes, and component parts.

5. For a period of years prior to the Company filing for bankruptcy in 2009, QSGI experienced recurring inventory control problems. Throughout the relevant period, Company personnel: (1) shipped certain inventory received into its facilities out to customers without making the appropriate entries into the Company's books and records; and (2) removed items from physical inventory without relieving the inventory from the Company's books and records. Company personnel removed component parts from the physical inventory for such parts without recording the parts removed and occasionally stripped component parts from operating systems without recording the parts removed. As a result, the Company's books and records incorrectly reflected certain components in inventory and operating systems as intact systems. These component parts were then sold by the Company or used for the Company's maintenance services.

6. These internal control problems resulted in the falsification of QSGI's books and records relating to QSGI's inventory.

7. These inventory control problems escalated at the Minnesota facility beginning in 2007 for several reasons. First, a manufacturer's policy of curtailing resellers' ability to modify machines to customers' specifications hastened QSGI's shift from selling machines to selling parts and providing repair and maintenance services. This, in turn, exacerbated the problem in Minnesota of personnel removing component parts from operating systems without any corresponding adjustment to the Company's books and records. The units continued to be recorded on the books and records as intact systems. Second, key personnel, including accounting personnel, left the Minnesota operations in late 2007. Personnel designated to replace the departed accounting staff lacked an accounting background and failed to fully carry out their responsibilities. Third, while QSGI management had undertaken to design, document, and implement internal controls to come into compliance with federal securities law requirements, such efforts were not begun in earnest in Minnesota until late 2007, after the departure of key personnel. Prior to that point, QSGI senior management had accorded Minnesota personnel a fair amount of autonomy, including using an accounting system that differed from the one used in New Jersey.

8. The Company's efforts to introduce new controls to the Minnesota operations during the 2008 fiscal year largely failed. More particularly, the Company failed to design procedures taking into account the existing control environment, including the qualifications and experience level of persons employed to handle accounting. Training of accounting, sales, and warehouse personnel either did not take place or was inadequate. As a result, controls the Company attempted to implement in February 2008 were widely ignored during the ensuing ten months of the 2008 fiscal year and well into the 2009 fiscal year. For example, sales and warehouse personnel often failed to document their removal of items from inventory or, to the extent they did prepare the paperwork, accounting personnel often failed to process the paperwork and to adjust inventory in the company's financial reporting system. The Company's attempts to monitor compliance on an ongoing basis were also inadequate. Company personnel regularly circumvented controls.

9. In periodic filings with the Commission relating to the relevant period and certifications included therein pursuant to Rule 13a-14 of the Exchange Act, Sherman acknowledged his responsibility for the design and operation of internal controls.

10. During the relevant period, Sherman knew of ongoing deficiencies in and the circumvention of internal controls relating to inventory. For example, in the final days of the 2008 fiscal year, QSGI senior management, including Sherman, communicated openly amongst themselves about the failed implementation, including training in, and circumvention of controls introduced to the Minnesota operations earlier in the year. Management agreed that corrective action was needed which, given the timing, could not be undertaken until 2009. Based on further communications, management, including Sherman, was aware that the problems continued through the Company filing for bankruptcy in July 2009.

### **Sherman's False Representations in Management's Report on ICFR and Concerning QSGI's Critical Accounting Policies**

11. At no time during the relevant period did Sherman disclose, or direct anyone else to disclose, to QSGI's external auditors the foregoing inventory issues and the resulting falsification of QSGI's books and records.

12. To the contrary, in management representations letters to the auditors, Sherman made affirmative misrepresentations and made statements that were misleading as a result of his omitting material facts which were necessary in order to make the statements made not misleading. Sherman affirmatively represented in management representation letters he provided to the auditors in connection with their review of quarterly financial statements in 2008 that either there were no significant deficiencies or that he had disclosed to the auditors all such deficiencies. At the conclusion of the fiscal year, he provided yet another management representation letter in connection with the external auditors' audit of the 2008 fiscal year financial statements in which he acknowledged his responsibility for establishing and maintaining ICFR. Omitted from the letter was any reference to the existence, or his disclosure to the auditors, of significant

deficiencies. Following on his management representation letters for the first three quarters of 2008, however, and in the context of his having acknowledged in the year-end management representation letter his responsibility for establishing and maintaining ICFR, the omission of any reference to significant deficiencies implied falsely that none existed. In the management representation letter relating to the external auditors' review of the first quarter 2009 financial statements, Sherman affirmatively misrepresented that he had disclosed to the auditors all significant deficiencies.

13. Had Sherman disclosed to the external auditors the deficiencies in and the circumvention of inventory controls described above, the auditors would have changed the nature, timing, and extent of their procedures in conducting the audit of the financial statements for the fiscal year ended December 31, 2008 and review of the financial statements for the quarter ended March 31, 2009.

### **Sherman's False Representations in Management's Report on ICFR and Concerning QSGI's Critical Accounting Policies**

14. QSGI's Form 10-K for the fiscal year ended December 31, 2008 included a Company management's report on ICFR, as required by Section 404 of the Sarbanes-Oxley Act and Exchange Act Rule 13a-15(c). A management's report on ICFR was also included in a Form 10-K/A for the 2008 fiscal year.

15. The management report included in both filings falsely represented that QSGI's management, with the participation of QSGI's CEO, Sherman, had evaluated QSGI's ICFR as of December 31, 2008 using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control – Integrated Framework. In fact, Sherman, in his capacity as CEO, did not participate in the referenced evaluation and was unfamiliar with the referenced framework.

16. The discussion on critical accounting policies in QSGI's Form 10-K for the fiscal year ended December 31, 2008 falsely stated that “[m]anagement continually monitors its inventory valuation . . . .”

17. The discussion on critical accounting policies included in QSGI's Form 10-K/A for the fiscal year ended December 31, 2008 falsely stated that, “[m]anagement closely monitors and analyzes inventory for potential obsolescence and slow-moving items on an item-by-item basis . . . .”

18. Sherman knew, or was reckless in not knowing, that these statements were materially false and misleading because he knew that the Company did not closely monitor inventory in the manner described because the Company lacked the necessary resources.

19. Sherman signed the 2008 Form 10-K in his capacity as Chief Executive Officer and Chairman of QSGI's Board of Directors. Sherman signed the 2008 Form 10-K/A in his capacity as Chairman, CEO, CFO and CAO. He was the sole signing

officer of the Form 10-K/A. The 2008 Form 10-K and Form 10-K/A were filed with the Commission on March 31, 2009 and July 23, 2010, respectively.

### **Sherman's False Sarbanes-Oxley Certifications**

20. Pursuant to Sarbanes-Oxley Act Section 302 and Exchange Act Rule 13a-14, Sherman signed certifications which were attached to QSGI's 2008 Forms 10-K and 10-K/A and Form 10-Q for the periods ended December 31, 2008 and March 31, 2009, respectively.

21. Sherman individually certified in each filing that, based on his and the other certifying officer's "most recent evaluation of [ICFR]," they had disclosed to QSGI's external auditors all significant deficiencies, "in the design or operation of [ICFR] which are reasonably likely to adversely affect [QSGI's] ability to record, process, summarize and report financial information." Omitted from the certification attached to the Form 10-K, but included in the certification attached to the Form 10-Q, were Sherman's certifications to the effect that the other certifying officer and he: (1) had been responsible for establishing and maintaining ICFR and designing, or supervising others in the design of, ICFR; and (2) had designed, or caused to be designed, such ICFR.

22. Sherman's certifications were false because: (1) he had not participated in designing, establishing, or maintaining ICFR, and had not evaluated ICFR; and (2) the other certifying officer and Sherman had not made the referenced disclosures to the external auditors.

23. Sherman knew, or was reckless in not knowing, that his certifications were materially false and misleading.

24. As mentioned, Sherman signed the 2008 Form 10-K and Form 10-K/A, which were filed with the Commission. Sherman also signed the Form 10-Q for the first quarter of 2009 in his capacity as CEO and Chairman of the Board of Directors, which was filed with the Commission on May 14, 2009.

### **E. VIOLATIONS**

25. Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of any security: (a) the use of any device, scheme, or artifice to defraud; (b) the making of material misrepresentations or omissions; and (c) any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. A finding of scienter is required to establish a violation. *Aaron v. SEC*, 446 U.S. 680, 697 (1980). The three subdivisions of Rule 10b-5 should be considered mutually supportive, rather than mutually exclusive. *See Cady, Roberts & Co.*, 40 S.E.C. 907, 913 (1961) (noting that "a breach of duty of disclosure may be viewed as a device or scheme, an implied misrepresentation, and an act or practice, violative of all three subdivisions").

26. “For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.” *Janus Capital Group, Inc. v. First Derivatives Traders*, 131 S. Ct. 2296, 2302 (2011).

27. Courts construe the “in connection with” requirement flexibly to effectuate its remedial purposes. *SEC v. Zandford*, 535 U.S. 813, 819 (2002). Any statement that is “reasonably calculated to influence the investing public” satisfies the “in connection with” requirement. *SEC v. Tex. Gulf Sulphur Co.*, 401 F.2d 833, 861-62 (2d Cir. 1968). When the fraud alleged involves public dissemination in a document on which an investor would presumably rely, the “in connection with” requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation. *SEC v. Rana Research*, 8 F.3d 1358, 1362 (9th Cir. 1993).

28. Information is material if there is a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). “It is well-settled that information impugning management’s integrity is material to shareholders.” *United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010).

29. Scienter is the “mental state embracing the intent to deceive, manipulate or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter can be established by showing knowing misconduct or severe recklessness, which is defined as “an extreme departure of the standards of ordinary care... which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982).

30. As discussed above, Sherman made materially false and misleading statements in his certifications attached to the Forms 10-K and 10-K/A for the fiscal year ended December 31, 2008 and the Form 10-Q for the quarter ended March 31, 2009 to the effect that the other certifying officer and he had: (1) evaluated QSGI’s ICFR; and (2) disclosed to the external auditors all significant deficiencies which were reasonably likely to adversely affect QSGI’s ability to record, process, summarize and report financial information. Further, Sherman signed the 2008 Form 10-K and Form 10-K/A in his capacity as an officer which included a management’s report on ICFR which falsely stated that he had participated with management, in assessing ICFR pursuant to a specified framework. Sherman knew, or was reckless in not knowing, that these statements were false. As a result of the foregoing, Sherman violated Section 10(b) of the Exchange Act and Rule 10b-5(a), (b), and (c) thereunder.

31. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act

requires reporting issuers to devise and maintain effective internal accounting controls. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly falsify any such book, record, or account or circumvent internal accounting controls. Rule 13b2-1 also prohibits the falsification of any book, record, or account subject to Section 13(b)(2)(A).

32. As discussed above, deficiencies in the design and operation of internal controls, particularly relating to inventory in the Minnesota operations, had persisted at QSGI. During the relevant period, these deficiencies included: (1) certain inventory received into QSGI facilities being shipped out again without being entered into the Company's books and records; (2) items being removed from physical inventory without being relieved from inventory on the books and records; and (3) the failure to disclose significant deficiencies to the external auditors, and the provision of false management representation letters to the external auditors in connection with their audit of the 2008 fiscal year and review of the first quarter 2009 financial statements. The deficiencies were reflective of a failure to design internal controls mindful of the control environment, including the qualifications of personnel tasked with accounting functions, and the circumvention of such controls as existed. As a result, QSGI failed to devise and maintain effective internal controls and to make and keep books, records and accounts that accurately and fairly reflected the transactions and dispositions of the Company's assets. Sherman caused these violations by failing to design effective internal controls; circumventing controls that existed; and withholding information from the external auditors and making false representations or material omissions in management representation letters. As a result of the actions described above, Sherman caused QSGI's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B), and violated Exchange Act Section 13(b)(5) and Rule 13b2-1 thereunder.

33. Exchange Act Rule 13b2-2 prohibits any director or officer of an issuer from directly or indirectly making or causing to be made a materially false or misleading statement or omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with financial statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission.

34. As discussed above, following on his management representation letters for the first three quarters of 2008 and in the context of his having acknowledged in the management representation letter accompanying the Form 10-K for the fiscal year ended December 31, 2008 his responsibility for establishing and maintaining ICFR, his omission of any reference from the latter to significant deficiencies implied falsely that none existed. He affirmatively misrepresented in a management representation letter relating to the external auditors' review of the first quarter 2009 financial statements that he had disclosed all significant deficiencies in internal accounting controls. As a result of the actions described above, Sherman violated Exchange Act Rule 13b2-2.

35. Exchange Act Rule 13a-14(a), which the Commission promulgated in response to Section 302 of the Sarbanes-Oxley Act, requires that the issuer's principal



executive officer and principal financial officer certify each periodic report containing financial statements filed by an issuer pursuant to Section 13(a) of the Exchange Act. The certifications are included as exhibits to the Forms 10-K and 10-Q.

36. Item 601(b)(31) of Regulation S-K prescribes the wording. Amongst other things, it requires the certifying officer to certify that the other certifying officer(s) and he/she, “are responsible for establishing and maintaining . . . internal control over financial reporting . . .,” and (1) “. . . [d]esigned such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision . . . ; and (2) “. . . have disclosed, based on [their] most recent evaluation of internal control over financial reporting, to the registrant’s auditors . . . [a]ll significant deficiencies . . . in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information . . . .”

37. Sherman falsely certified in the certifications attached to the Forms 10-K and 10-K/A for the fiscal year ended December 31, 2008 and the Form 10-Q for the quarter ended March 31, 2009, respectively, that he had: (1) evaluated QSGI’s ICFR; and (2) disclosed all significant deficiencies to the external auditors which were reasonably likely to adversely affect QSGI’s ability to record, process, summarize, and report financial information. As a result, Sherman violated Exchange Act Rule 13a-14 by signing false Section 302 certifications.

## **F. FINDINGS**

Based on the foregoing, the Commission finds that Sherman: (a) violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 promulgated thereunder; and (b) caused QSGI’s violations of 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

## **IV.**

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

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

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 10(b), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 promulgated thereunder.
- B. Respondent is prohibited for a period of five (5) years from the date of the Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

- C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$7,500 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. 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 Sherman 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 Scott W. Friestad, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary