

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51501 / April 7, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2225 / April 7, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11885

In the Matter of

STEPHEN C. JONES, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION
21C OF THE SECURITIES EXCHANGE
ACT OF 1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Stephen C. Jones, CPA ("Jones" or "Respondent") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission's Rules of Practice.¹

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

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

Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

A. **RESPONDENT**

Stephen C. Jones, age 38, worked as a Senior Financial Reporting Manager at Dollar General Corporation (“Dollar General”) from February 1998 through April 1999, as a Senior Accounting Manager at Dollar General from April 1999 through August 2000, and as the Director of Financial Planning and Analysis at Dollar General from August 2000 through April 2002. He is a resident of Kentucky. Respondent has been licensed as a Certified Public Accountant in Kentucky since 1994.

B. **FACTS**

1. **Under-Reporting of Freight Expenses**

a. Dollar General is a Tennessee corporation headquartered in Goodlettsville, Tennessee. Dollar General is a discount retailer of general merchandise. The company operates over 7,000 stores in 30 states. Dollar General’s common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

b. In December 1999, Dollar General employees discovered that the Company had failed to record millions of dollars in expenses relating to import freight costs associated with transporting goods from foreign countries to Dollar General (hereinafter referred to as “freight expenses”). Dollar General’s accounting staff analyzed the issue and determined that Dollar

² 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.

General should have recognized an additional \$13.4 million in freight expenses in fiscal year 1999 and prior years. This issue was discussed in a meeting held on January 27, 2000, which was attended by Respondent.

c. Certain of Dollar General's executives collectively determined to defer the bulk of the freight expenses to fiscal year 2000, instead of recording the expenses in the correct periods (fiscal year 1999 and prior periods) as required by Generally Accepted Accounting Principles ("GAAP"). The executives knew that deferring the bulk of the expenses to fiscal year 2000 would avoid the negative impact on already announced fiscal year 1999 earnings as well as year-end bonus payments to Dollar General employees, including Respondent.

d. On or about February 2, 2000, in a meeting attended by several members of Dollar General's accounting team, including Respondent and Dollar General's Controller and its Treasurer, the Controller stated that the Company's executive management had determined to book most of the freight expenses in fiscal year 2000. During this meeting, the Treasurer expressed his view that management could be compromising their ethics by handling the expenses in that manner and that he believed Dollar General's financial statements would not be appropriately presented if the freight expenses were deferred to fiscal year 2000. Respondent and another Dollar General accountant expressed their agreement with the Treasurer.

e. The Controller directed Respondent to record the freight expenses in the following manner: (1) write off \$4 million of the freight expenses in fiscal year 1999; and (2) recognize the remaining \$9.4 million over the course of fiscal year 2000 on a monthly basis. In an attempt to hide part of the improper deferral from the Company's auditors, the Controller directed Respondent to move \$1.3 million of the \$9.4 million to the miscellaneous accrued liabilities account, widely known at Dollar General as the "Rainy Day Fund," and \$2.7 million of the \$9.4 million to corporate bank clearing accounts. Neither of these accounts had any connection to freight expenses. Respondent knew that this accounting treatment was improper, but he nevertheless followed the Controller's instructions.

f. Dollar General's manipulation of the freight expenses resulted in an overstatement of Dollar General's fiscal year 1998 pre-tax income by \$5.9 million and its fiscal year 1999 pre-tax income by \$3.7 million, with corresponding understatements in the Company's fiscal year 2000. By deferring the freight expenses, Dollar General met certain targets. For example, if the freight expenses had been recognized in fiscal year 1999 as required by GAAP, bonuses for Dollar General executives and employees, including Respondent, would have been lower. Further, the deferment enabled Dollar General to meet analysts' expectations for its earnings per share for fiscal year 1999. If Dollar General had recognized the freight expenses in fiscal year 1999, it would have fallen short of the analysts' expectations by two cents per share. The freight expense deferment devised by others and implemented by Respondent and others was

in clear violation of Accounting Principles Board Opinion No. 20, "Accounting Changes," which requires a material error in previously issued financial statements to be reported as a prior period adjustment. In addition, because the import freight expense was material to fiscal year 1999, if all of it was recognized in the fourth quarter, the appropriate treatment of the expense was to allocate it correctly across the prior reporting periods it affected in fiscal years 1998 and 1999. That would have required Dollar General to restate those periods, a material event avoided by spreading the amount over fiscal year 2000.

g. Respondent knew or was reckless in not knowing that Dollar General's external auditors would disagree with the handling of these freight expenses. Respondent, knowing that it was wrong to do so, did not bring the issue to the attention of the auditors.

2. Overstatement of Cash Accounts

a. From approximately November 1997 until March 2000, Dollar General failed to properly or timely reconcile its consolidated retail store bank accounts to its general ledger. Dollar General's management was aware of this practice for years. Upon ultimate completion of the reconciliation process in Dollar General's fiscal year 2000, Dollar General's accounting group discovered an unexplained overstatement of retail cash of at least \$4.7 million. Dollar General's Controller proposed that half of this amount be written off against sales expense and the other half be written off against shrink (an expense relating to reduction in inventory) instead of an appropriate administrative expense account. These recommendations were in contravention of GAAP. Dollar General's accounting staff, including Respondent, understood that no one outside of the Company's accounting department was to know of this cash issue.

b. In a later meeting, Respondent suggested to the Controller that the entire overstatement of cash could be written off to the "franchise purchase discount account." The Controller adopted Respondent's proposal and subsequently charged \$3 million of the cash overstatement as an expense to the franchise purchase discount account over six months in fiscal year 2000. This was not consistent with GAAP because the franchise purchase discount account bears no relation to cash accounts at Dollar General. Respondent knew that this suggestion was not consistent with GAAP, but he believed it was an effective way to hide the cash problem. The Controller charged the remaining \$1.9 million to Dollar General's "Rainy Day Fund", an action also contrary to GAAP. Because this \$1.9 million was not expensed by Dollar General in the fourth quarter of fiscal year 2000, Dollar General's fourth quarter 2000 pre-tax income was overstated by that amount, or approximately 2% of Dollar General's restated fourth quarter 2000 pre-tax income.

c. Dollar General filed registration statements on August 1, 2000, August 9, 2000, and March 9, 2001 in connection with securities offerings by Dollar General that

incorporated the false financial statements contained in Dollar General's Form 10-K for fiscal year 1999.

C. VIOLATIONS

1. Section 17(a) of the Securities Act prohibits misrepresentations or omissions of material facts in the offer or sale of securities. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraud "in connection with the purchase or sale" of securities. A person who "had knowledge of the fraud and assisted in its perpetration" violates Section 10(b) and Rule 10b-5. SEC v. U.S. Environmental, Inc., 155 F.3d 107, 112 (2d Cir. 1998) (Section 10(b) liability not limited to "supervisors or directors of securities fraud scheme" and includes "subordinates who also violated the securities laws").

2. To hold a person liable under Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, the misrepresentation or omission must be material, meaning that a reasonable investor would have considered the misrepresented or omitted fact important when deciding whether to buy, sell or hold the securities in question. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988). In addition, the person must act with scienter, which can be shown by knowledge, or reckless disregard, of the fraudulent scheme or the undisclosed information. See Aaron v. SEC, 446 U.S. 680, 701-02 (1980).

3. Respondent, through his conduct described above, willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Respondent knowingly participated in and implemented a scheme to under-report Dollar General's expenses in its Fiscal Year 1999, thus causing Dollar General's earnings to be overstated. Respondent also knowingly assisted Dollar General to overstate its cash accounts.

4. Section 13(a) of the Exchange Act requires issuers of registered securities to file with the Commission factually accurate reports. Exchange Act Rule 13a-1 requires the filing of annual reports, and Exchange Act Rule 13a-13 requires the filing of quarterly reports on Form 10-Q. Rule 12b-20 requires disclosure of such additional information as may be necessary to make the required statements not misleading. Implicit in these provisions is the requirement that the information reported be true, correct and complete. See United States v. Bilzerian, 926 F.2d 1285, 1298 (2d Cir. 1991). No showing of scienter is required to violate Section 13(a). See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978).

5. As discussed above, Respondent caused Dollar General to file false and misleading quarterly and annual reports with the Commission that misrepresented the financial results of Dollar General. By his conduct described above, Respondent willfully aided and abetted and

caused Dollar General's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

6. Section 13(b)(2)(A) of the Exchange Act requires reporting companies 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 the transactions . . . of the issuer." No showing of scienter is required to establish a violation of Section 13(b)(2)(A). See SEC v. World-Wide Coin Invs., Ltd., 567 F. Supp. 724, 751 (N.D. Ga. 1983). Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain a system of internal accounting controls sufficient to reasonably assure that, among other things, transactions are recorded and financial statements are prepared in conformity with GAAP. Section 13(b)(5) of the Exchange Act provides that no person shall knowingly falsify any such book, record, or account or circumvent internal controls. Rule 13b2-1 also prohibits the falsification of any book, record, or account subject to Section 13(b)(2)(A).

7. As described above, Respondent knowingly falsified Dollar General's books and records by recording freight expenses in 2000 that related to prior periods, contrary to GAAP. As a result, Respondent willfully violated Section 13(b)(5) and Rule 13b2-1 thereunder. In addition, Respondent willfully aided and abetted and caused Dollar General's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

D. FINDINGS

1. Based on the foregoing, the Commission finds that Respondent engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice and willfully violated and willfully aided and abetted the violation of provisions of the federal securities laws within the meaning of Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

2. Based on the foregoing, the Commission finds that Respondent (a) willfully violated Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 promulgated thereunder; and (b) willfully aided and abetted and caused Dollar General's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder.

E. UNDERTAKINGS

1. In connection with this proceeding and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent undertakes and agrees (i) to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) to accept service by mail or

facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) to appoint Respondent's attorney Therese D. Pritchard, Esq. of Bryan Cave LLP, 700 Thirteenth Street, NW, Washington D.C. 20005-3960, as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, to waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules; and (v) to consent to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

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, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 promulgated thereunder; and from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder.

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

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

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

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

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

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

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

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

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

By the Commission.

Jonathan G. Katz
Secretary